

TOWN OF SUTTON



Sutton Wetlands and Riverfront District
Administration Bylaw
And its
Rules and Regulations

Table of Contents

1. THE BYLAW

2. THE RULES & REGULATIONS

- a) Guidelines for Applicants
- b) Comprehensive Checklist for Reviewing Public Hearing Information
- c) NOI/RFDA Filing Fact Sheet
- d) Special Conditions
- e) Tree Cutting
- f) Abutter Notification
- g) Fertilizers
- h) New Docks
- i) Fee Protocol
- j) Consultant Application Fee

3. FILING PROCEDURES AND APPLICATION REQUIREMENTS

AN APPLICATION SHALL BE COMPLETE WHEN ALL OF THE INFORMATION BELOW HAS BEEN SUBMITTED TO THE SUTTON CONSERVATION COMMISSION:

- 1. (2) Copies of the Notice of Intent or Request for Determination or other permit application filed and all plans and supporting documents.
- 2. (2) Copies of the Filing Fee Calculation Worksheet and the Notice of Intent Fee Transmittal Form.
- 3. (2) Copies of the check made payable to the Commonwealth of Massachusetts (amount determined by #2 above).
- 4. A check and a copy of the check payable to the Town of Sutton as determined by # 2 above.
- 5. A check and a copy of the check payable to the Town of Sutton for any fees under the local bylaw section.
- 6. A check and a copy of the check payable to the Town of Sutton for the *Millbury/Sutton Chronicle* in the amount of \$35.00 for the cost of printing notice of a public hearing.

INFORMATION THAT IS CONTAINED IN THE FOLLOWING CHECKLISTS AND GUIDELINES REGULATIONS MAY BE REQUIRED IN ORDER TO PROPERLY QUALIFY ANY PROPOSED ACTIVITY OR WORK:

- 1. GUIDELINES FOR APPLICANTS
- 2. COMPREHENSIVE CHECKLIST FOR PUBLIC HEARING INFORMATION
- 3. RFDA / NOI FILING FACT SHEET

FOLLOWING THE PUBLIC HEARING, THE COMMISSION WILL VOTE TO ISSUE AN ORDER OF CONDITIONS OR NOT. AN AFFIRMATIVE, MAJORITY VOTE WILL PERMIT AND REGULATE ANY/ALL JURISDICTIONAL ACTIVITIES AND/OR ANY/ALL WORK ACTIVITIES. ATTACHED TO THE ORDER OF CONDITIONS WILL BE THE STANDARD SPECIAL CONDITIONS FORM FOR PRE-, DURING AND POST-CONSTRUCTION PROCEDURES. THE COMMISSION MAY RULE TO INCLUDE IN ITS APPROVAL OF THE ORDER INSTRUCTIONS OTHER THAN THOSE IN THE SPECIAL CONDITIONS REGULATION.

ONCE ALL WORK IS COMPLETE, THE COMMISSION MUST BE NOTIFIED TO INSPECT THE SITE. THE APPLICANT'S PROFESSIONAL ENGINEER (P.E.) MUST SUBMIT A WET-STAMPED 'AS-BUILT' PLAN AND IF ALL ACTIVITY AND/OR WORK HAS BEEN PERFORMED ACCORDING TO THE PLAN APPROVED BY THE COMMISSION, A CERTIFICATE OF COMPLIANCE WILL BE ISSUED.

NOTE: All submission forms shall be those as are used by the Mass DEP. If you have any questions, please consult with your professional engineer and/or wetlands scientist or call the Conservation Commission Office.

ARTICLE 13. SUTTON WETLAND AND RIVERFRONT DISTRICT ADMINISTRATION BYLAW

1 PURPOSE

The purpose of this Wetland and Riverfront District Administration Bylaw (hereinafter the Bylaw) is to conserve, to protect, and to preserve for the common good all natural resource area in the Town of Sutton. This Bylaw is intended to be administered as a mandate unto itself and an adjunct to MGL c. 131, Section 40, Chapter 258 of the Acts of 1996 their Regulations and 310 CMR 10.00 (the Rivers Protection Act Regulations), and as they may be amended from time to time. Where the Bylaw differs from or exceeds State law, it is by inference to aid in the consistent and effective implementation, regulation and enforcement by way of further definition, explanation, specification, illustration and example. The authority of the Bylaw rests in the Home Rule statutes of the Constitution of the Commonwealth of Massachusetts. The Bylaw shall function as the vehicle by which the Conservation Commission (the "Commission") may control work and activities likely to have a significant or cumulative effect upon resource area(s), the environment, and their interests, including but not limited to, public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality and level water pollution control, fisheries, wild and aquatic life habitats, all rare and endangered species habitat, agriculture, aquaculture, recreation and aesthetic values important to the Town.

2 JURISDICTION

2.1 Application of Jurisdiction

Except as permitted by the Conservation Commission, and/or as provided in this Bylaw, no person shall commence to 'alter' (as defined in Section 9.15) in any manner, remove, fill, dredge, build upon, degrade, discharge or dump into any of the following areas: any freshwater wetland, perched wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, flat, lake, pond of any size, river, all perennial and intermittent streams, creek, beach, estuary, land under water bodies, land subject to flooding or inundation by groundwater of surface water, and any abutting adjacent upland resource areas as defined in Section 9.12 of this Bylaw. Said resource areas shall be protected whether or not they border waters and if they are within 100 feet of the resource area(s), or of the 100 year storm line, or 200 feet if within a Riverfront District.

This Bylaw shall not apply to any Emergency Project as defined in MGL c. 131, Section 40.

The provisions of this section shall not apply to work performed for normal maintenance or improvement of land in agriculture use, or in maintaining, repairing, remodeling but not substantially changing, or enlarging an existing lawfully located structure or facility.

However if any person intends to "alter" any resource area(s), as defined herein, they then shall file written application to do so. No work or activity whatsoever shall begin until all required information is presented and a permit is issued pursuant to this Bylaw. Violation of any provision of this Bylaw may result in the issuance of a Violation Notice or Enforcement Order to cease and desist all work activity, to appear before the Commission, and to restore all affected areas to their natural condition prior to such an issuance, including the removal of any and all structures or topographical alterations.

2.2 Jurisdiction Over Presumption Of a Vernal Pool Habitat

The Bylaw presumes vernal pool habitat exists if a wetlands' physical characteristics conform with those defined for vernal pools in the Wetlands Protection Act, MGL c.131, Section 40 and Regulations, 310 CMR 10.00, except that State certification as such is not required.

The term "vernal pool" shall include, any confined basin or depression nor occurring in existing lawns, gardens, orchards, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, containing at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of

Wildlife and Fisheries. This presumptive definition for vernal pools is based on systematic field observations in the Town of Sutton, by the Sutton Conservation Commission showing that virtually all basins that possess the above characteristics actually host or can host breeding vernal species. Undoubtedly this is a particular consequence of Sutton's semi-rural character and enduring woodlands and wetlands.

The presumption of vernal pool habitat may be overcome, however, with the presentation of credible evidence, which in the judgement of the Conservation Commission demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions:

2.1.1 Demonstrating that a Ponding Area is Not a Vernal Pool

For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider:

- 1.1) Evidence that the ponding area does not hold water for at least two continuous months in most years. As rule of thumb the term "most years" shall mean three out of five consecutive years.
- 1.2) Evidence that vernal pool species do not breed, or have not bred, in the ponding area. The Conservation Commission shall provide explicit guidelines for this evidence.
- 1.3) Evidence that the ponding area could not be a viable breeding or habitat site for vernal pool species due to incompatible physical, chemical, biological or other permanent conditions at the site in most years. Such evidence could include, without limitations, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian and reptile brooding and/or invertebrate survival.

2.1.2 Timing of Evidence Collection

Many of the indicators of vernal pool species habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period is consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence and information.

2.3 Jurisdiction Over Intermittent Streams

Intermittent streams are important for storm damage prevention, flood control ground water protection, wildlife habitat, and recreation values. During spring, summer, and fall these streams disperse snow melt and storm runoff across the landscape thereby preventing dangerous volumes and flows from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.

Intermittent streams are an essential source of food and water for wildlife and are often the only source of water in higher elevation areas of town. The moist soils that border intermittent are significantly rich in herbs and flowering/fruited plants - the base trophic level of food - those in surrounding upland areas. During all seasons, but especially in winter and spring, intermittent streams act as essential corridors for animal movement especially when food is scarce. Some animals such as pickerel frogs and eastern spotted newts, rely heavily on intermittent streams for movement. For these reasons the upland areas surrounding intermittent streams are heavily utilized by wildlife for living space, breeding, reproduction, feeding, migrating, dispersal and security.

Accordingly, this Bylaw protects intermittent streams of all forms (Section 9-9) and the adjacent upland resource area(s) and associated bordering vegetated wetlands within 100 feet of those streams, within 200 feet in a Riverfront District, and any bordering vegetated wetlands, regardless of whether or not they appear on USGS maps.

2.4 Jurisdiction Over Wetlands In General

2.4.1 All those resource areas, including the 100 foot buffer zone, 200 feet in a Riverfront District or adjacent upland resource area(s) and/or any perched wetlands, any bordering vegetated wetlands, are those areas related to water, the water table or column, and/or subject to isolated or bordering floods, and all area(s) under water, and which are defined and protected under the regulative jurisdiction of the Wetlands Protection Act, MGL c. 131, Section 40, Regulations, and the Rivers Protection Act, 310 CMR 10.00, as they may be amended from time to time, and this Bylaw.

2.4.2 All those abutting and adjacent area(s) that are related to erosion or sedimentation control to prevention of water pollution and to the raising and/or lowering the level of a watershed's water table or column or its aquifer.

3 CONDITIONAL EXCEPTION

3.1 Exception for Existing Structures

The application and permit required by this Bylaw shall not be required for maintaining, repairing, remodeling, or enlarging an existing lawfully located single family residential structure or appurtenance thereto unless said filing is otherwise required by State or Federal law.

The intent of this partial exemption is to allow owners of single family homes, built prior to this Bylaw, to continue to live and work according to the rules, regulations, and assumptions under which they originally purchased their homes or received a signed Building Permit.

Any property owner, irrespective of when the property was developed, has the legal right to challenge any provision of this Bylaw at any time. However, those whose properties were developed prior to this Bylaw might face an undue burden under this Bylaw, because the configuration of their lot and associated development were determined without prior knowledge of this Bylaw. In contrast, single family residences built after this Bylaw could be appropriately planned around restrictions in order to minimize constraints.

3.1.1 Definition and Application of the Term Existing (See also Section 9.4)

The term "existing" refers to structures for which an occupancy permit has been issued prior to the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw and refers to both the single family structure and any appurtenance or existing house foundation claiming exemption.

Therefore, the application and permit required by this Bylaw shall apply to work associated with entirely new structures (those that are not simply replacing antecedents of record) placed in service with the issuance of a Building Permit on or after the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw whether or not they would be considered appurtenant.

In those instances where a State or Federal filing is required for projects associated with existing single family residences, the full application and permit required by the Bylaw does also apply. The above notwithstanding there are a number of other special rules and exemptions pertaining to single family residences that existed prior to the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw such as delineation of certain adjacent upland resources that might still apply.

3.2 Agricultural Practices

Those practices are defined by and pursuant to Rules and Regulations promulgated by the Department of Environmental Protection and as they may be amended from time to time.

4 APPLICATIONS AND FEES

Written application shall be filed with the Conservation Commission to perform all related activities affecting all wetland and adjacent upland resource areas, in the 100 foot buffer zone, or the 200 foot Riverfront District, which are protected by and in the interests of this Bylaw. The permit application shall contain such plans and analysis as are deemed necessary by the Commission, as specified in this Bylaw and its Rules and Regulations, to describe proposed activities and their effects on the resource areas protected by this Bylaw.

Such application may be identical in form to the Notice of Intent filed pursuant to MGL 131, Section 40, and shall be sent by certified mail to the Sutton Conservation Commission, as well as to the Boards of Selectmen, Health and Planning, accompanied with the appropriate filing fee(s), as outlined herein and thereby, payable to the Town of Sutton. Any such application must be filed concurrently with any application(s) for variances and approvals required by any other Town

Board or Commission or their Regulations, or after such are issued, if the Commission so decides to waive this requirement.

No activities shall commence without receiving and complying with a permit processed and issued pursuant to this Bylaw.

Where this Bylaw and the Wetlands Protection Act, MGL c. 131, Section 40, and Regulations, 310 CMR 10.00, have concurrent jurisdiction the Conservation Commission shall accept the Notice of Intent and plans filed under the Wetlands Protection Act as the permit application and plans under this Bylaw for those parts of the project where precise overlap exists, provided all pertinent areas and activities subject to the jurisdiction of this Bylaw and all information required by this Bylaw and its Rules and Regulations are addressed.

Any person desiring to know whether or not a proposed activity or an area will be subject to this Bylaw may in writing request a determination from the Conservation Commission. Such a Request for Determination (RFD) shall include all information and plans as are deemed necessary by the Commission. Within 21 days of such a Request, the Commission shall make a written determination as to whether this Bylaw is applicable to any land or work thereon. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as the requesting person.

At the time of the permit application, the applicant shall pay a filing fee according to the following schedule:

- a) \$25 for a single minor project-i.e. house addition, tennis court, swimming pool deck, or other accessory residential activity
- b) \$250 for a new single family dwelling with only one wetlands crossing (driveway), plus \$250 for each additional subsequent crossing
- c) \$500 plus \$2 per linear foot of road sideline within the resource area for a subdivision roadway or street and/or utilities easement
- d) \$500 plus \$2 per cubic feet of drainage, detention/retention basin within a resource area
- e) \$500 plus \$100/unit for a multiple dwelling structure which is within the resource area
- f) \$500 plus \$1 per square foot of disturbance in an undeveloped resource area in a commercial or industrial project
- g) Double the above fee for an application filed after issuance of an Enforcement Order and as secured by Section 10, Security, of this Bylaw, because the review process is not only for the application but monitoring also the terms and conditions required for final dissolution of said Enforcement Order
- h) No charge for a Determination of Applicability
- i) \$1,000 per project for remediation of a contaminated site or enhancement of a degraded resource area (excluding any violations)
- j) \$2,500 per project for remediation of a contaminated site wherein applicant has been adjudicated of violating prevailing Environmental Laws concerning Hazardous Materials i.e. all hazardous, toxic, and/or environmentally or statutorily controlled materials and as secured against "risk" by Section 10, Security, of this Bylaw.

The filing fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, Section 40, and Regulations, 310 CMR 10.00. Town, county, State, and Federal projects are exempt from the filing fee. The fee for an application for a modification of a permit will be the excess of the fee for the modified project as calculated above over the filing fee paid for the original permit, but in no instance will it be less than \$25.

The conservation Commission shall have the ability to accept all or part of these filing application fees but not less than those amounts required under M.G.L. The Commission shall have the discretion to refund, waive or decrease certain filing fees. These fees as charged shall not exceed in the aggregate the actual cost(s) incurred by the Commission and its Agents or Representatives in administering, fulfilling and servicing applications filed under this Bylaw. Any excess fee collected shall be refunded to the Applicant.

4.1 Single Minor Project With Significant Adverse Impact

For the purposes of fee determination, work to alter, remove debris and hazardous materials from wetlands, including wetland restoration projects, and similar projects for improving the natural capacity of a wetland resource to protect, remediate or enhance wetland values shall be considered a single minor project with the potential of significant adverse impact and be subject to a wetlands filing fee of \$1,000 because of the consequentially heightened analysis and monitoring required. The applicant may be required to replicate all areas so disturbed in or as a result of the process.

4.2 Subdivision Roadway Fees

For the purposes of fee determination the term 'roadway' in the case of subdivision(s) shall include all common and private driveway(s) associated with new lot construction. Therefore driveway sidelines that fall within the adjacent upland resource areas and bordering vegetated wetlands shall be added to the overall roadway sideline calculation pertinent to fees for roadway construction in the adjacent upland resource.

In those instances, where driveways for new lots are not included in the subdivision application, the pertinent driveway sidelines charge shall be imposed when the specific lot plan is submitted for permit. Where the base \$500 wetlands filing fee for roadways then entering into the 100 foot buffer zone and/or wetlands crossing, has already been paid, as is required as part of the subdivision application, this fee shall also cover the fee for subsequent driveway plans in the subdivision or common driveway, unless the proposed work shall again enter into the 100 foot buffer zone and/or require a wetlands crossing, in which case a separate \$500 filing fee shall be required for each entering and/or crossing.

4.3 Drainage Structure Fees

A \$500 fee will apply to each independent, or each network or hydraulically connected detention basin(s), retention basin(s), catch basin(s), or combination of swale(s), infiltration pit(s), and dissipation field(s) that:

- a) is located in whole or in part in a adjacent upland resource area(s) and bordering vegetated wetlands, and/or
- b) discharges into an adjacent upland resource area(s) and/or bordering vegetated wetland(s), directly or indirectly and/or
- c) requires, in the discretion of the Conservation Commission substantial review of pre- and post-drainage calculations analyses.

Swales, infiltration pits, and dissipation fields networked with detention, retention, or catch basins will not be assessed an additional fee. The above notwithstanding, in no case shall the wetlands filing fee for projects involving drainage structures be less than \$500.

4.4 Disturbed Adjacent Upland Resources for Commercial and Industrial Projects

The fee of \$1.00 per square foot of disturbed adjacent upland resource area shall pertain to area(s) not previously or presently under industrial or commercial use.

4.5 Consultant Fee

- 4.5.1 Upon receipt of a Permit Application or RFD, or at anytime during the Hearing process, the Conservation Commission is authorized to require an applicant to pay a fee for all reasonable costs, at competitive commercial rates, and for direct expenses borne by the Commission of and for an independent, third-party, expert qualified professional(s), who in the Commission's sole discretion can provide the specific services deemed necessary by the Commission to come to a final objective decision on the application; the "consultant fee",
- 4.5.2 The Commission shall provide the applicant with a copy of the Agreement or Contract with said "consultant" or Qualified Professional. Any unused portion of the fee shall be returned to the applicant, unless the Commission at a public meeting decides that additional services will be required,
- 4.5.3 The specific consultant services may include, but are not limited to, resource area survey and delineation, analysis of resource area functions and values, including wildlife and aquatic habitat evaluations, hydrogeologic, soils and drainage analysis, and environmental or land use law,
- 4.5.4 A project may not be segmented to avoid being subject to a "consultant fee",
- 4.5.5 This consultant fee is over and above any other required fees,
- 4.5.6 The maximum fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

<u>Project Cost</u>		<u>Maximum Fee</u>
Up to	\$100,000	\$1,250
\$100,001-	\$500,000	\$2,500
\$500,001-	\$1,000,000	\$5,000
\$1,000,001-	\$1,500,000	\$7,500
\$1,500,001-	\$2,000,000	\$10,000

Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged an additional \$2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro-rata for that portion of the project costs applicable to those activities with resource area(s) protected by this Bylaw. The applicant shall submit estimated costs at the time of application to the Commission. Such costs shall be subject to review and appeal, as provided hereunder, but the applicant shall nonetheless bear the burden of proof as to their justification. The lack of such estimated project costs shall not avoid the payment of the "consultant fee," when the Commission in its reasonable and considered judgement so decides that it needs the information, which only a consultant or qualified professional can provide, in order to come to a final objective decision.

4.6 Payment of Fees

All fees that are shared with the State of Massachusetts, when paid, shall be placed and held in the Sutton Wetlands Protections Fund, so constituted, pursuant to MGL c. 43 Section 218 of the Acts of 1997 (Amending MGL c. 13 1, Section 40). Fees required solely under this Bylaw shall be deposited in a 'revolving fund' pursuant to MGL c. 44, Section 531/2. These fees shall include all application fees, related and any prorated fees, fees of any kind, including the "consultant fee", required under this Bylaw,

5 NOTICE AND HEARINGS

The Commission shall hold a public hearing on a permit application within twenty (21) days of its receipt. Notice of the time and place of the hearing shall be given by the Commission, at the expense of the applicant, not less than five days of the hearing in a newspaper in general circulation in Sutton and by mailing a notice to the applicant and owner, the Board of Selectmen, Planning Board, and to such other persons as the Commission may by regulation, determine.

The Commission, its agents, officers, members and employees may enter, without being deemed of trespassing, upon privately owned land, for the purpose of performing their duties under this Bylaw.

6 COORDINATION WITH OTHER BOARDS

As appropriate, the Conservation Commission may choose to solicit the advice and opinions of other Town Boards and Commissions and officials in the course of its deliberations. Town Boards and officials shall be entitled to file written comments and recommendations with the Commission at or before the public hearing. The Commission shall take any such comments and recommendations into account but shall not be bound by them. The applicant shall have the right to receive any comments and recommendations and to respond to them at a hearing of the Commission, prior to final action or determination.

7 PERMITS AND CONDITIONS

If, after a public hearing, the Conservation Commission determines that the area, which is the subject of permit application, is significant to the interests protected by this Bylaw, the Commission within twenty one (21) days of such hearing, shall issue or deny a permit for the work requested. If the Commission issues a permit after making such determination, it shall impose such order of conditions (or lack thereof) as it determines necessary or desirable for the protection of those interests, and all work shall be performed in accordance with those conditions.

Permits shall expire one year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to expiration.

The applicant shall have and bear the burden of proving (the "burden of proof") by a preponderance of credible evidence that the work proposed in the application will not harm the interests protected by the Bylaw. Failure to provide adequate evidence or information to the Commission supporting a determination that the work will not harm the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another mutually acceptable date to enable the applicant or others to present additional related information or evidence.

7.1 Performance Standards and Design Criteria for Adjacent Upland Resources

As stated in the Bylaw, Section 7, Permits and Conditions, lands within 100 feet of wetlands resource areas, 200 feet within a Riverfront District and as may be hydrologically extended:

are presumed important to the protection of these areas as resources because activities undertaken in close proximity to wetlands and other adjacent or bordering resources have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or work, or over time as a consequence of daily operation or existence of the activities. These adverse impacts from construction or work and use can include without limitations, erosion and siltation, loss of groundwater recharge capability, poor water quality, and harm to wildlife habitat.

The Conservation Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 100 foot buffer zone resource area and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the Commission that the area or part of it may be disturbed without potential harm to the functions and values protected by this Bylaw.

In certain circumstances, some types of activities, when properly conditioned, may be acceptable in adjacent upland resource areas. Under other circumstances, even adjacent upland resource disturbance may have serious harmful effects on resource area values and functions. When the presumption of significance is questioned, the actual determination of impact shall be made on a project-and site specific basis yet without waiving the burden of proof. And in this respect the actual impact of proposed adjacent upland resource work or activities on wetland values and functions can often be reduced substantially, and thus made permissible, when appropriate conditions are imposed.

However, any work or activity which differs, significantly or not, from that plan approved in the Order of Conditions, shall be subject to remediation or restoration of effected resource area(s) to there prior to undisturbed condition. This may include removal of all structures or appurtenances so constructed. After determining 'good cause', the Commission may revoke or modify a permit or determination issued under this Bylaw following notice to the permit holder, any abutters within 300 feet, Town boards and the public at-large, pursuant to Sections 5 and 6 of this Bylaw.

Therefore the traditional approach of "all or nothing" adjacent upland resource restrictions unnecessarily creates conflicts between property use and resource protection. Accordingly the Bylaw gives the Conservation Commission broad discretion to permit, condition, and prohibit work within the adjacent upland resource area(s) and bordering vegetated wetlands as the specific situation warrants.

However, the Conservation Commission shall be entitled to consider requests for variances from these performance standards and design criteria, if for good and valuable consideration the applicant provides other forms of resource areas, such as but not necessarily limited to the setting of Conservation Restriction(s), formerly known as a "conservation easement(s)", pursuant to MGL c. 184, Sections 31-33.

Furthermore the Conservation Commission shall consider proposals for work in the adjacent upland resource area in terms of four broad forms of disturbance areas. This approach is intended to allow maximum flexibility for property use while maintaining adequate levels of resource protection by the creation of:

7.1.1 No Disturbance Area

This is an area where no activities or work, other than passive passage are permitted. No vegetation may be disturbed or cut, leaf litter and debris remains in place, no trees taller than 20 feet or greater than 10 inches in diameter may be felled. The no disturbance area should remain unchanged from its pre-project status. The Commission shall have sole, discretion in establishing the limit(s) of a strip(s) of continuous undisturbed vegetative cover. Value, for the purposes of the Bylaw, increases the closer any disturbance is to wetlands.

7.1.2 Temporary Disturbance Area

This is an area in the adjacent upland resource where temporary disturbance for a limited period of time is permitted, such as for regrading or travel by heavy machinery. Once the activity is completed, however, the area will be allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing. The Conservation Commission shall establish specific time frames and guideline conditions for allowing temporary disturbances as well as setting criteria for assessing the successful return of the adjacent upland resource area(s) to natural functions.

7.1.3 Limited Disturbance Area

This is an area in the adjacent upland resource where a limited set of activities and work is permitted in perpetuity. For example, recreational and work activities like understory clearing of poison ivy might be allowed, but no clearing of overstory and no planting of lawn. Unlimited (sustainable) harvesting of wood, composting of brush etc., and storing of firewood are other examples of limited activities allowed.

7.1.4 Permanent Disturbance Area

This is an area in the adjacent upland resource in which most, if not all, legal activities and permanent disturbances are permitted: houses, garages, sheds, porches, driveways, gardens, swimming pools, and lawns in the adjacent upland resource area(s) represent permanent disturbance areas.

Nevertheless, within the context of permanent disturbance the Conservation Commission may set specific standards and conditions in prohibiting or restricting those forms of work and activities in the adjacent upland resource area deemed potentially harmful to overall resource area functions and values, such as, but not limited to, the use of herbicides and pesticides, use of interceptor drains, installation of in-ground sprinkler systems for irrigating areas in the adjacent upland resource area, or any work that results, or may result in significant or adverse impact(s) on and/or net loss of wetlands.

7.2 Considerations in Setting Disturbance Restrictions.

A growing body of research evidence suggests that even "No Disturbance" areas reaching 100 feet from wetlands may be insufficient to protect many important wetland resource characteristics, functions and values. Problems of nutrient runoff, water pollution siltation, erosion, raising or lowering of the water table, vegetation change, and habitat destruction and loss of wetlands are greatly exacerbated by activities within 100 feet of wetlands.

Thus, in general, work and activity within 100 feet of wetlands is to be avoided and discouraged and all reasonable alternatives pursued. The Commission's mission is to lessen and regulate any or all potential adverse impact(s).

Accordingly, the Conservation Commission shall begin with the presumption that lands within the adjacent upland resource area(s) of a wetlands resource are best left in an undisturbed and natural state.

However the Commission shall designate areas of the adjacent upland resource area(s) to be suitable for temporary, limited, or permanent disturbance, as it deems appropriate, when the applicant can demonstrate to the Commission's satisfaction that the proposed work or activity will not affect wetland values, singularly or cumulatively, and that reasonable alternatives to the proposed work or activity do not exist. In considering designation of adjacent upland resource disturbance areas, the types of work and activities allowable and conditions to apply, the Conservation Commission shall consider:

7.2.1 Values and Functions of the Resource Area

The quantity and quality of resource area values and functions shall be considered explicitly in placing conditions on adjacent upland resource area work. Some isolated land subject to flooding, for example, may serve for temporary flood storage only. Minimal adjacent upland resource restrictions within several feet of the outer resource area might be necessary to prevent erosion.

Other isolated land subject to flooding might provide vernal pool habitat. It might also provide important flood storage capacity and intersect ground water. In this instance, far stronger adjacent upland resource restrictions would be appropriate, because a larger number of functions are involved, and some functions, such as habitat, are more sensitive to adjacent upland resource activity and require greater protection. If rare or endangered species, such as blue spotted salamanders, or spotted turtles, were found at the site, then still greater levels of measures and restrictions would be appropriate.

7.2.2 Pro-project Characteristics

The site ground slope, soil conditions, vegetation, and prior disturbances are just a few of the site specific characteristics that shall be considered in setting conditions for work in the adjacent upland resource.

For example land that slopes toward a wetland demands greater restrictions on work and activity and larger no-disturbance distances to prevent pollution and silt from stormwater runoff, and from harming wetlands characteristics functions and values. Larger or greater slopes imply greater restrictions.

7.2.3 Wildlife Habitat and Rare Species

The near-upland and bordering vegetated areas around wetland resources often play important roles in determining and maintaining the wildlife habitat functions and values of associated wetlands. While it is common to think of the protective or “buffering” value of adjacent upland resource area(s) in terms of area undisturbed, habitat values may be equally affected by the configuration of the adjacent upland resource perimeter. The inclusion or exclusion of specific topographical and ecological features such as an abutting sandy knoll or the tree canopy, etc. may be taken into consideration.

Therefore, where significant wildlife habitat functions and values are present, delineation of non-disturbance areas within the adjacent upland resources shall, as is reasonable, maximize the perimeter length of the area to be left undisturbed, exclude fingers, islands, or other upland projections or indentations of the non-disturbance zone, and in general avoid delineating oddly shaped, or hard to access non-disturbed areas. The Commission shall give special attention to inclusion inside the no disturbances area of those topographical and ecological features that it deems important for maintaining the wildlife habitat value and integrity of the resource.

The potential presence of rare or endangered species and their specific sensitivity to adjacent upland resource activity shall be considered in determining adjacent upland resource area restrictions. Evidence of the presence of such species, or evidence including timeliness of likely habitat shall be considered by the Conservation Commission.

Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Program is not necessary. The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program, other authorities or experts as it deems necessary for guidance and recommendations.

7.2.4 No Significant Adverse Impact on Wildlife or Aquatic Habitat

Wildlife and aquatic-life habitat serve a variety of functions in support of wild and/or aquatic-life. Food, water, breeding/brooding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas.

Therefore in accordance with the Bylaw’s fundamental purposes (see Section 1) no project may have a significant adverse impact, either project specific or cumulative, on wildlife habitat for more than two growing seasons. For wildlife habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work in a resource area that would under reasonable assumptions:

- a) result in a measurable decrease in the extant wildlife populations or biological composition, structure or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby properties, or
- b) impair damage, destroy or reduce in value for wildlife purposes certain specific habitat features and characteristics, and/or
- c) result in a net loss of wetlands.

Wildlife studies have shown that direct impacts from work - filling, grading, vegetation removal construction of barriers to movement, etc. in resource areas can severely harm wildlife populations. For example low stone walls bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes, hummocks, and streams, intermittent and otherwise. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls pileated woodpeckers, mink, etc.

Accordingly, the Commission shall prohibit the placement of walls, fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features. Examples of protected habitat features include (but are not limited to):

Large cavity trees

Turtle nesting areas

Existing nest trees for birds that reuse nests (e.g., great blue herons, osprey)

Beaver dams, dens and lodges
 Mink, muskrat or otter dens
 Vernal pools
 Vertical sandy banks

Migration corridors that provide connectivity between wildlife habitats, sphagnum hummocks, and pools suitable to serve as-nesting habitat for salamanders and turtles.

But indirect impacts, the effects of human activities near wildlife habitat, can have equally harmful effects. Therefore the Commission shall take into account indirect effects on a project by project basis. So, for example, no work within resource areas shall be permitted within 100 feet of existing beaver, mink, muskrat or otter dens, or within 200 feet of existing osprey or great blue heron nesting areas.

As clearly stated in Section I of the Sutton Wetlands and Riverfront District Administration Bylaw, the purpose of this Bylaw is to preserve for future generations of residents the natural resources and open space amenities, including wild and aquatic-life habitat(s), that are presently enjoyed in Sutton. The Bylaw protects future functions and values as well as current ones.

Therefore, the Commission will be especially cognizant of the likely cumulative impact of work or activity within all wetlands related resource areas.

For wildlife habitat purposes a significant cumulative adverse impact is defined as an impact that would under reasonable assumptions result in a measurable decrease in the extant wild and aquatic life populations or biological structure, composition, or richness on the site or in the vicinity, taking into account the projected impacts of future projects that could be proposed in the vicinity, with similar comparable, or other significant impacts and disturbance(s).

This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to regulate the marginal impact of all proposed (and potential) projects in the vicinity while ensuring appropriate protection, present and future, of the functions and values and interests protected by this Bylaw.

7.2.5 Projects to Enhance or Benefit Wildlife and Aquatic, Habitat

The Conservation Commission may, as part of the permitting process, require at its discretion any project that proposes to alter the extant wildlife populations or biological composition, structure or richness of an area as a wildlife benefit to have that permit's plan(s) approved by the Massachusetts Division of Fisheries and Wildlife.

7.2.6 The Character of the Work or Activities Proposed and Alternatives

The applicant shall carry the burden of proof for demonstrating to the Conservation Commission's satisfaction that the proposed work or activities in the adjacent upland resource area(s) are necessary and that reasonable alternatives, including reducing the wale and scope of the project, do not exist using best management practices and scientific techniques.

The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the wetland resource. For example, understory clearing and shrub landscaping in sensitive sections of the adjacent upland resource area might be appropriate, where a lawn might not due to concerns about nutrient runoff. Similarly, clearing a flat section of the adjacent upland resource area to establish a vegetable garden might not threaten adjacent wetland values and functions. However, construction of a tennis court or swimming pool with extensive impervious surface on the same site and covering the same area might not be acceptable.

The Conservation Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetlands values and functions toward the goal of modifying the project to make it acceptable and less impactful. However, the Commission is not obligated to do so and shall not be bound in its decision-making by any prior advice or suggestions offered to applicants.

7.3 Subdivision Roadways

The construction of impervious surfaces such as road and driveways in watersheds can significantly alter the quantity and quality of stormwater runoff and affect important ground water characteristics. Impervious surfaces reduce surface infiltration, potentially worsening flooding problems by increasing stormwater runoff volumes and by redirecting flows within a watershed. The increase in surface flows from impervious surfaces may create new erosion or flooding problems, where storm flows are directed and discharged. Impervious surfaces increase the opportunities for various pollutants to mix in water flows. Roadways, for example, shall retain a surface coating of petroleum and combustion byproduct pollutants that will flush during the early stages of a storm. Roof runoff can pick up a variety of chemicals used in fertilizers, pesticides, and herbicides as it transverses lawns and landscape areas. Impervious surfaces that direct water flows into wetlands may inundate sensitive resources and thereby destroy vital vegetative and wildlife characteristics, reduce pre-existing flood storage capacity, and contaminate ground water recharge areas.

Conversely, impervious surfaces may direct traditional water flow patterns away from wetlands and thereby destroy the necessary hydrological conditions needed to maintain wetland functions and values.

Therefore, for purposes of flood control, erosion control, water quality protection, and wildlife habitat preservation the Conservation Commission shall review all road and driveway construction plans for impact, immediate and cumulative, on wetlands functions and values.

In particular, the Conservation Commission shall enforce and regulate the following general performance standards:

7.3.1 No Net Change in Runoff Volumes or Net Loss of Wetlands

Pre-project and post-project hydrology should remain fundamentally the same as it pertains to protecting wetland functions and values. Of course some minor degree of change in hydrology is inevitable in any engineering/construction project and within reasonable limits the Commission shall permit such variation, when in its judgment, such changes will not produce a significant impact of wetlands functions and values, including but not limited to, the infiltration of water, increase in sedimentation and total suspended solids, diminishing recharge ground water capability and/or water table lowering. Erosion control may require limiting stormwater discharge volumes and velocities.

Therefore, the Commission may require the construction of such stormwater control structures, and specify particular engineering and design details, as it deems necessary to protect wetland resource functions and values while providing for no net loss of wetlands or resource areas.

7.3.2 Minimizing Change in Runoff Water Quality

The physical chemical and biological qualities of stormwater runoff are altered by encounters with impervious surfaces, especially roadways and related structures. Increases in water temperature, reduction in pH, chemical and nutrient contamination, and transport of silt are just a few of the degrading shifts that may occur. Where such waters are likely to contact wetland resources or adjacent upland resources, the Commission shall impose conditions that in its judgment reduce undesirable water quality changes to levels that will not harm wetland functions or values, initially or cumulatively. The Commission may require the construction of specific structures to improve stormwater runoff quality, such as, but not limited to, wet detention basins for pollutant removal, dry wells, and broad riprap swales for aeration. The Commission may also require the use of a slow-release, 15-0-5, zero phosphate fertilizer in sensitive resource areas, particularly in and around vernal pools, ponds, all streams, lakes and rivers.

7.3.3 Requirements for Hydraulic Calculations

In accordance with the above, the Conservation Commission shall require as part of the permit application complete hydrological calculations for the one, two, five, ten, twenty-five, fifty and one hundred year storm events. Such calculations shall include:

- 7.3.3.1) Runoff from all impervious surfaces associated with the project including individual lot construction and proposed structures as well as;
- 7.3.3.2) Both pre- and post-project calculations for discharge volumes, concentration times, discharge velocities, and other relevant quantities and qualities that the Commission may require for complete information.

7.4 Site Visits

As stated in Section 7, Permits and Conditions, the Conservation Commission may deny a permit if the applicant fails to provide all the information requested by this Bylaw or any Regulations adopted by the Conservation Commission under Section 8 of this Bylaw, or any other information which the Commission determines is necessary to its review of the application. "Information" in this instance may include site visits by the Commission and its staff or representatives for

the purposes of directly observing pre-project and post-project plans and conditions on the property, at seasonally appropriate times.

7.5 Replications

Considering that the history of wetland replication is mixed, scientific reviews conclude that for the most part replications fail to reproduce the range of functions and values in quantity and of the wetlands they ostensibly replace. In particular, difficulties in replicating proper hydrological and anaerobic soil conditions in a consistent and enduring fashion seem to be the source of the problem.

Accordingly, the Conservation Commission strongly discourages any plan that requires replication. In those instances where replication is approved by the Commission the following conditions must be met:

- 7.5.1 The replicated wetland must be constructed in full and conditionally approved prior to construction of any structures or appurtenances.
- 7.5.2 At minimum the replicated wetland must reproduce all the values and functions of the original wetland as determined by the Conservation Commission. Site conditions permitting, the Commission may require that additional values and functions be incorporated into the replication design. In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by large mature trees, over twenty feet tall and/or greater than ten inches in diameter, growing in the resource area) the Commission may require additional compensation of area, functions, values, etc. beyond those required in other sections of this Bylaw and its Rules and Regulations.
- 7.5.3 At the discretion and decision of the Conservation Commission the area of replication may be even as much as twice as large as the area of the original resource that will be destroyed. The actual area ratio of replacement shall be decided on a case by case basis in accordance with 7.5.2 above.
- 7.5.4 In most instances the replication of wetland resource areas will result in the destruction of adjacent upland resource areas and bordering vegetated wetlands. In such instances replication of now adjacent upland resources and bordering vegetated wetlands shall follow 7.5.2 and 7.5.3 above.
- 7.5.5 The top 12 inches of soil from the original wetland must be transplanted with soil structure especially lamination and density profile-intact to the replication area, not simply piled then relocated at later date. This procedure is intended to preserve plant, invertebrate, and plankton communities of the wetland and inhibit the blossoming of invasive species.
- 7.5.6 **Any replication or restoration work that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension said work.**
- 7.5.7 A bond may be required to be posted that will enable the Commission to complete the replication should the applicant fail to fulfill obligations set forth in the Order of Conditions.
- 7.5.8 All replication shall be conducted at minimum on a "one for one" basis, insuring complete coverage with indigenous species and/or approved nursery stock and shall be placed in as similar a setting as possible to its previously undisturbed state, including at the same ground water table level.
- 7.5.9 All replication plans must be 75% complete and sustained within two growing seasons. If not, at the Commission's discretion, the replicated area(s) are to be restocked with more appropriate, heartier nursery stocks.
- 7.5.10 It is incumbent upon all permittees of replication area(s) to provide water and nurture to any approved replication to ensure greater chances of survival.

Standards for the replication shall be specified and varied in terms of functions and values, and actual performance. Technical and engineering specifications used for design and construction shall be considered approximate. Criteria for acceptance and approval shall be based solely on function and performance as specified in the Order of Conditions. In other words, replications will be evaluated on what they are expected to do, not how closely actual construction matched the plan.

For example, although elevations may be used for design and planning of a pond the standards shall be set in terms of volume and depth of water over the course of a year. In vernal pool replication the pool must be capable of sustaining full development of vernal pool species, regardless of design, elevations or siting.

Replications that do not properly perform the approved functions and values as specified in the order of conditions will not be deemed acceptable no matter how closely they adhere to approved engineered plans.

The Commission may set and regulate other conditions on a project/site specific basis.

7.6 Orders of Conditions for Violation Permits

Orders of Conditions for permits associated with violations shall include explicit dates for milestones and completion of work

7.7 Riverfront District Protection

For the purposes of this Bylaw the protections afforded to the Riverfront District, Town of Sutton, created by and herein, and River Front Areas under the 1998 amendment to the Massachusetts Wetlands Protection Act Regulations, 310 CMR 10.00, shall follow the regulations as listed under Sections 7.1 and 7.2 for adjacent upland resource area(s) except that the reach of jurisdiction for the District is statutory and shall extend 200 feet from the bank of any perennial stream, great pond, or river, as they are defined in State law.

7.8 Storm Water Runoff Best Management Practices

All storm water runoff systems shall at minimum conform to best management practices as specified by the Massachusetts Department of Environmental Protection's Best Management Practices Standards and the Department's Regulations and Policies. The Commission may impose more stringent conditions where resource values and functions warrant it.

The Commission may require the applicant to submit a maintenance plan for the storm water management system for the Commission's approval. The Commission may require that the applicant provide a means of ensuring that the approved maintenance plan will be followed. This may be secured in the form of a bond or surety, or through a duly formed homeowners association containing covenants and/or other such instruments of guaranty, running with the land, that satisfy the interests of the Bylaw.

7.9 Alternative Analysis

The Sutton Wetlands and Riverfront District Administration Bylaw clearly states that proposed projects and associated disturbances should be located outside of any resource area(s) that falls under the Jurisdiction, Rules and Regulation, of this Bylaw, including all adjacent upland resource area(s). Practical alternatives to locate the project outside these areas must be investigated and should one or more prove feasible the plan must be amended to relocate or redesign such activities accordingly.

The Commission shall consider, as practical alternatives, options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered or constructed without prior regard to impact on resource areas protected by this Bylaw.)

If, in the Commission's view, there are no practical alternatives, project impact(s) must be minimized and mitigated so there are no adverse impacts to the resource area(s). If the Commission determines that the project will have significant adverse impact(s) on the resource area(s) then the project shall be denied.

7.10 Signature of Building and/or Other Permits

The Conservation Commission will not sign or be required to sign or place its seal on any permit, Building Permit or otherwise, unless and until one or more of the following requirements, when and if the Commission so requests, are met:

- 1) For any proposed work or activity in uplands areas or otherwise, having first provided the Commission a signed, notarized Affidavit from a qualified wetlands scientist or an equally qualified licensed professional stating that there are no wetlands on the entire parcel and if there are wetlands, their ratio of the required lot area be not less than 60% upland and/or more than 40% wetlands and/or contiguous bordering vegetated wetlands and adjacent resource area(s), and that the proposed work or activity will be conducted entirely beyond the 100 foot buffer zone, or 200 foot Riverfront District, (as described on an accompanying, wet signed and sealed topographic plan, complete and drawn to scale) which qualify for wetlands protection within and/or without said parcel
- 2) And, if the conditions stated above are not overcome, then for any proposed work or activity on any parcel of land containing g wetlands, a filing of a Notice of Intent is required, as is the subsequent recording of a valid Order of Conditions with the Registry of Deeds.

8 RULES AND REGULATIONS

Each of the provisions of this Bylaw, as referenced and defined herein, or inferred therefrom, by section are subject to regulation by the Conservation Commission.

The Conservation Commission shall regulate all work and/or activity in its Jurisdiction, and it shall impose qualitative and quantitative determinations and establish appropriate performance standards as ruled and governed by the interests of this Bylaw. The terms of regulation, as defined in this Bylaw, and not inconsistent with this Bylaw, and its provisions, shall govern the amount and filing of fees.

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw effective when voted on and filed with the Town Clerk. 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 and action(s) required by this Bylaw.

9 DEFINITIONS

9.1 Appurtenance

The term appurtenance shall mean any structural adjunct or incidental construct to a single family residential structure or on any parcel of land, such as a septic system, garage, shed, deck, dock, porch, patio, swimming pool, tennis courts, driveway, or sidewalk. Items not considered to be appurtenances include, without limitations, lawns, landscaping, orchards, gardens, and in-ground sprinkler systems.

9.2 Direct discharge

Direct discharge includes, without limitation, any out fall of water that empties into the resource area or adjacent upland resource areas and bordering vegetated wetlands, including infiltration.

9.3 Distance

All distances noted in the Bylaw (excluding depth), such as adjacent upland resource area(s) and mean high-water line distances, are planar distances measured along a single elevation. Consequently, on steeply sloped topography the measured over-ground distance may not accurately reflect the distances specified in the permits and conditions specified by the Bylaw. In particular the 100 foot adjacent upland resource, 200 feet in a Riverfront District, on steeply sloped land will measure considerably more than 100 feet, or 200 feet in a Riverfront District, when measured over ground on site.

9.4 Existing

The term “existing” as used in the Bylaw shall mean existing in full as of the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw unless specified otherwise in this Bylaw or when this Bylaw becomes effective.

Existing house foundation refers to the foundation of single family house where the house was not fully constructed prior to the Effective Date of the Bylaw, that date following the date on which the Office of the Attorney General approves the Bylaw and on such date that the Town Clerk duly posts the Bylaw and an occupancy permit issued.

9.5 Discharges Into Wetlands

Discharges into wetlands, as listed under Section 2, shall include, without limitations, any discharges from the project or any structure that flows to a wetland resource or adjacent upland resource area(s) through now or existing drainage structures, including existing road drainage pipes, that empties into wetland resources or adjacent upland resource area(s), regardless of the distance between the project site and the wetlands resources or adjacent upland resource area(s).

9.6 Recreation

The term recreation connotes passive recreation activities that do not conflict with or diminish other wetland fractions and value. Examples include, but are not limited to bird watching, and other nature studies, walking and hiking, canoeing, horse-back riding, and as permitted, legally licensed fishing, trapping, hunting, etc.

9.7 Wet Detention Basin

A wet detention basin is a detention basin designed to hold water for at least two continuous months during the spring/summer, where the ponding area covers at least one-third of the basin floor to an average depth of six inches of water, which supports wetland vegetation, and which meets the other design requirements set by the Conservation Commission.

For the purposes of this Bylaw a wet detention basin shall be considered a constructed wetland and not acceptable as part of a wetland replication area or plan. As a constructed wetland, a wet detention basin shall "be presumed to serve resource functions and values, including but not limited to pollution attenuation, flood control wetland and/or aquatic and wildlife habitat." The adjacent upland resource area for wet detention basins shall extend two feet beyond the break in slope of the detention basin unless the basin wetland attains dimensions consistent with jurisdiction under the Massachusetts Wetlands Protection Act in which case a full 100 foot adjacent upland resource area shall apply.

9.8 Volume of a Detention/Retention Basin

Basin volume shall be calculated as that volume contained between the basin's 100 year flood elevation and the lowest elevation of the basin floor, except in the case of a wet detention basin 50% of the calculated volume shall be used for any fee determination purposes.

9.9 Intermittent Stream

Intermittent Stream is a defined channel with a hydraulic gradient through which water flows during most years and which either flows out of, into, or within a wetland resource area under this Bylaw. A portion may flow through a culvert or under a bridge.

9.10 Vernal Pool

The term "vernal pool" and criteria for such shall include, in addition to that already defined under the Wetlands Protection Act, MGL c. 13 1, Section 40 and Regulations thereunder, 310 CMR 10.00, and in Section 2, Jurisdiction, of this Bylaw, any confined basin or depression not occurring in existing lawns, gardens, orchards, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring/summer, contains at least 200 cubic feet of water at some time during most years, is free of predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence, which in the judgment of the Commission, demonstrates that the basin or depression does not provide the habitat functions as specified by this Bylaw or its Rules and Regulations.

The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one half of the distance between the vernal pool and any existing house foundation, which ever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, orchards, landscaped or developed areas or those already under Permit.

9.11 Vernal Pool Species

Any species of reptile, amphibian or invertebrate, or any other 'rare or endangered species', plant or animal that breeds, grows or resides in a vernal pool these species may be obligate or facultative.

9.12 Adjacent Upland Resource Area(s)

The term, 'adjacent upland resource area(s)', shall include all lands within 100 feet of wetlands, including but not limited to any watershed containing freshwater wet land, and bordering vegetation associated with and including marshes, wet meadows, bogs, swamps, vernal pools (as defined herein and in Section 9.10), banks, reservoirs; lakes, all perennial and intermittent streams, creeks, rills, springs, lands under water bodies, lands subject to flooding by ground water, surface water, or storm flow, collectively and/or separately. For all perennial streams, great ponds and rivers, it extends for 200 feet from the top of the bank. For vernal pools ponds under 10,000 square feet in area, and in isolated land subject to flooding, occurring within or without that two hundred feet, it extends 100 feet.

9.13 Rare and Endangered Species

The term 'rare and endangered species' shall include, without limitations all invertebrate and vertebrate animal and plant species listed as endangered, threatened, or of special concern, by the Commonwealth of Massachusetts, and the Division of Wildlife and Fisheries, regardless of whether the site in which they occur has been previously identified by the Division.

9.14 Qualified Professional

A person having earned a college degree(s) in an area of study directly related to wetlands science and having a demonstrable minimum of 10 years experience actual hands-on, field experience in delineating, assessing, analyzing, wetlands and their hydrologic soil(s) and biological characteristics, functions and values, and having a current working knowledge of all facets of the Wetlands Protection Act and Regulations, Waterways and Riverways Regulations, Department of Environmental Protection Wetlands Program Policies and Section 401 Water Quality Certification.

9.15 Alter

The term 'alter' shall include without limitation, the following actions or alteration(s) when undertaken in areas subject to this Bylaw:

- a) Removal, excavation or dredging of soil, sand, gravel or aggregate materials or alteration of any kind
- b) Changing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, and flood retention characteristics,
- c) Drainage or disturbance of water level or water table,
- d) Dumping, discharging or filling with any material which may degrade water quality,
- e) Driving of piles, erection of buildings or other structures of any kind,
- f) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water,
- g) Placing of obstructions or objects in wetlands and water bodies,
- h) Destruction of plant life including cutting of trees,
- i) Any activities, changes, or work which may cause or tend to contribute to erosion, pollution or sedimentation of any body of water or to affect the level of ground water,
- j) Application of pesticides and herbicides,
- k) Incremental activities which have a cumulative adverse impact on the resource area(s) protected by this Bylaw, even if proposed alteration may in and of itself be minor,
- l) And/or storage of flood waters and stormwater runoff waters in wetlands is prohibited unless the Conservation Commission deems such action would enhance wetland functions and values.

9.16 Adverse Impact

That effect a proposed project or phase of such project, which by its area, scope, and/or duration, appears to represent more than a minimal change or modification, often cumulative, to the natural undisturbed and unencumbered characteristics, functions and values of any freshwater wetland(s), adjacent upland resource area(s), bordering vegetated wetland(s), watershed, or water body that may indicate significance to the interests of this Bylaw.

9.17 Riverfront District Resource Area

That area of land situated between the bank of a reservoir, a perennial stream, or a great pond, or a river's mean annual high-water line and a parallel line located 200 feet away, measured outward horizontally from the bank or river's mean annual high-water line. This 200 feet shall be of equal interest and shall receive the same consideration(s) as those for wetlands and adjacent upland resource areas.

9.18 Person

"Person" as referred to herein, 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 agencies, public or quasi-public corporations or bodies, the Town 'of Sutton and any other legal entity, and their legal representatives, assigns or agents.

9.19 Bank

The term 'bank' shall include the land area which normally abuts and confines a body of water, or water channel, the lower boundary being the mean annual low flow level and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

10 SECURITY

10.1 Orders of Conditions and Bonding

The Commission may require; as a permit condition, that performance or other continual Orders of Conditions be secured by one or both of the following measures:

1. By posting a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient to satisfy complete performance and payable to the Town of Sutton and/or
2. By requesting a Conservation Restriction (pursuant to MGL c. 184, Sections 31-33), easement or other agreed-upon covenant running with the land, duly executed and properly recorded, (or registered, in the case of registered land.) if the parcel of land under application is not already properly recorded (or registered).

In the specifying of an Order of Conditions and the setting of a performance bond, the Conservation Commission may, at its discretion, take into account the prior history of applicant and the applicant's representatives, consultants, builders, or other contractees; when in the Commission's opinion, prior instances showing disregard for Orders of Conditions, Massachusetts Department of Environmental Protection Enforcement Orders, Violations of the Sutton Wetlands and Riverfront Administration Bylaw or Regulations or Enforcement Order(s) issued pursuant thereto, for practices known to threaten wetlands values and functions, or for failures to fulfill legal obligations pursuant to wetlands or environmental protection raise questions about the applicant's willingness or ability to abide by permit requirements (the "risk"); the Commission can set additional conditions and financial requirements, including Betterment Escrows to ensure adherence to permit requirements and continued performance standards under best management practices and in the interests of this Bylaw. These measures shall not be in lieu of any required filing fees but to insure complete performance and continued adherence to Orders of Conditions.

10.2 Permitting - In the Context of Outstanding Violations

No permit shall be issued for any project to an applicant who has an outstanding Violation Notice under this Bylaw or any outstanding Enforcement Order on the parcel or any adjacent parcel owned by the applicant, under application for which either (a) no corrective Order of Conditions has been recorded at the Registry of Deeds, or (b) which is docketed under legal appeal.

11 ENFORCEMENT

The enforcement of the Rules and Regulations or any provision of the Sutton Wetlands and Riverfront Administration Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act and the Rivers Protection Act. Upon request of the Commission, the Board of Selectmen, and Town Counsel shall take legal action as may be necessary to enforce this Bylaw and any permits issued pursuant to it. Whereas:

1. The Conservation Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under the 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 of Massachusetts,

2. If any of the provisions of this Bylaw are violated, the Commission may issue a cease and desist, stop-work order. Each and every day, or portion thereof following issuance of a Violation Notice or Enforcement Order shall constitute a separate offense, allowing that there could be more than one offense occurring simultaneously,

3. The Commission shall have the authority to enforce the Bylaw, its Rules and Regulations and permits issued thereunder by:

- a) Violation Notices in ticket form
- b) an Administrative Order of Enforcement ("Enforcement Order") and/or
- c) initiation of civil and criminal court actions,

4. In addition to any other remedies available hereunder any law, State or Federal or the Bylaw, any person who violates any provision of this Bylaw, its Rules and Regulations, permits, and/or Administrative Order of Enforcement issued thereunder may be fined not more than \$300 (now as so Amended) per offense per day. Whereas, each and every day, or portion thereof during which a violation(s) continues, or unauthorized fill and/or other alteration remains in place, shall constitute severally and individually, a separate offense,

5. In a specific case, the Conservation Commission or its agent, Town Administrator, Board of Selectmen, Chief of Police, or any other town official having police powers pursuant to MGL C. 40, Section 21D, under the noncriminal disposition procedure established by the Town of Sutton may issue Violation Notices in ticket form. When so enforced, the penalties or fines for violations of any type in the interests of the Bylaw shall be:

a)	First Offense	Warning
b)	Second Offense	\$200
c)	Third and All Subsequent Offense(s)	\$300

6. Pre-acquisition Violation-Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to the Bylaw, shall forthwith comply with any such order or restore such land to its condition prior to any such violation. No action, civil or criminal, shall be brought against such person provided that that such person files a Notice of Intent and receives and records a duly issued Order of Conditions.

12 RELATION TO THE WETLANDS PROTECTION ACT AND RIVERS 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 and Regulations thereunder. Except as is otherwise provided for by and in this Bylaw, the definition of terms in this Bylaw shall be set forth in the Wetlands Protection Act, c. 131, Section 40, and Rivers Protection Act, 310 CMR 10.00 and their Regulations, and as may be amended from time to time.

And pursuant to the above, hereby and hereunder a Riverfront District Bylaw (hereunto the Bylaw) is created and duly constituted in and for the Town of Sutton, whose presumptions and performance standards meet or exceed those interests defined in the Rivers Protection Act and by the enactment of the Sutton Wetlands and Riverfront District Administration Bylaw.

13 APPEALS

- 1.) A decision of the Conservation Commission may be appealed by any person claiming to be aggrieved thereby in the following manner(s):

Such person may, in consort with any other so-called aggrieved party or would-be appellate or abutter within 300 feet of any surveyed property line, within 10 days of the decision, request that the matter be settled through a mediation process conducted by a licensed mediator and/or a disinterested qualified environmental professional, who is mutually agreed upon by the Commission and the so-called aggrieved party or appellate.

If no such qualified professional can be agreed upon, then one shall be appointed by the Conservation Law Foundation. Once the aggrieved party and the Commission agree to such procedure the results thereof shall be binding on both parties. An applicant whose application involves a total parcel size of less than two-acres (including all adjacent upland resource areas not under the jurisdiction of the Commission) and an abutter to the property which is the subject of the application may require that the Commission agree to such procedure. Such qualified mediator and/or professional shall render a decision within 30 days of the commencement of the mediation proceedings, unless the qualified professional if any, requests additional information not in the control of either party. The mediator shall determine how the costs of the proceeding shall be allocated between the parties. The decision of the mediator shall constitute a final decision which may be enforced in any court of competent jurisdiction with the costs of such enforcement procedures to be borne by the party who has refused to comply with such final decision order. Such procedures shall comply with the rules of the American Arbitration Association to the extent not otherwise agreed upon; or

- 2.) The decision shall be renewable in the Superior Court in an action filed within 60 days thereof in accordance with MGL c. 249, Section 4; or

- 3.) To contest a non-criminal disposition Violation Notice and its proceeding(s) shall be by written request to the Clerk Magistrate of the District Court for hearing.

14 SEVERABILITY AND APPLICABILITY

The invalidity of any provision or phrase of this Bylaw shall not invalidate any other section or provision or phrase thereof, nor shall it invalidate any permit, application or determination which previously has been issued and duly filed.

This Bylaw shall not apply if a court of competent jurisdiction determines that such application will result in a taking without compensation.

Adopted: June 1, 1983

Amended: 1/85, 5/8/00, 10/16/00, 5/10/04

Guidelines for Applicants

Types of Filings

THE SUTTON CONSERVATION COMMISSION SHALL USE THOSE FORMS AVAILABLE THROUGH THE MASSACHUSETTS DEP FORMS AND APPENDICES. WHERE, IN THE INTERPRETATION OF/OR CONFLICT WITH, THE SUTTON WETLANDS AND RIVERFRONT DISTRICT ADMINISTRATION BYLAW (THE "BYLAW") EXCEEDS MASSACHUSETTS GENERAL LAW, THE BYLAW SHALL TAKE PRECEDENCE AND PREVAIL.

Request for Determination of Applicability/Department of Environmental Protection Form WPA Form #1: This filing is to be used by applicants who wish to ask the Conservation Commission if a Notice of Intent is required. This application must be accompanied by a package including all information below and the appropriate filing and/or advertising fee. The Commission will then make a determination to either require a full Notice of Intent filing or to issue a Negative Determination with instructions to the applicant.

Notice of Intent/Department of Environmental Protection form WPA Form #4: This filing is used for any project that has known jurisdictional areas pursuant to M.G.L. and The Sutton Wetlands and Riverfront District Administration Bylaw. This application must be accompanied by a package including all information below and the appropriate filing fee.

1. Completed Form including all accurate information pertaining to any activity under the jurisdiction of the Conservation Commission.
2. A scaled plan (1" = 20') with a wet stamp and seal from a licensed Professional Engineer (PE) showing the entire property lot lines for individual lots or subdivisions, any surrounding wetlands, locus, and compass. The plan should include the following: (The applicant may be requested to provide additional plans to larger scale in order to see the entire property on one plan.)
 - a) The delineation of the wetlands with transect lines performed in areas of concern and low gradient areas. Wetland flags are to be numbered and surveyed. Plan should reflect identification of all federal, state and local jurisdictional areas. This data is to be provided by a professional wetland scientist as per the Town of Sutton local Bylaw. The plan must be stamped and signed by a licensed professional engineer. The plan must also be signed and dated by the wetland professional who performed the work.
 - b) The existing and proposed topography of the entire site.
 - c) The 100-foot buffer zone line, the 200-foot river buffer zone line, the 200-foot great pond (i.e. any pond greater than 10 acres) buffer zone, all streams marked as perennial or intermittent.
 - d) Time schedule for any existing and proposed demolition and/or construction of house, septic, well, driveway, limit of lawn, and landscaping grading contours.

- e) Clear plan title and date of plan. Last recording date of the property with name of registry and book and page number.
 - f) Any storm water management system specifications and any proposed drainage. Include soils profile and volume of groundwater and water table levels under any retention and detention basins and/or any excavation.
 - g) Areas of proposed fill scaled, with supporting calculations.
 - h) Any proposed replication areas scaled and with planting and material stockpile plans attached as needed.
 - i) Any and all existing and proposed removal of trees greater than 5" in diameter in the 100-foot buffer zone and the 200-foot river front buffer zone, and the 200-foot great pond buffer zone.
 - j) Schedule of the placement and details of proposed erosion controls for/during/and after construction.
 - k) A **locus plan** detailed street map with **Street number** indicated, showing actual location of site under consideration and with a **North arrow**.
 - l) See Comprehensive Checklist for Reviewing Public Information for other information that the Conservation Commission may require in association with any Public Hearing.
3. If required, a separate plan to scale for the replication area must be submitted with specific species identified and spacing of species within the proposed replication area as well as soils profiles, and materials stockpiles, and ground water levels in the wetland adjacent to the proposed replication area. A wetland scientist must develop this information and provide a
 - 2-year schedule for regular nourishing and watering.
 4. Wetland field data reports provided by the wetland scientist which detail specific site information and transect lines in any sensitive areas. Details of all jurisdictional areas and any possible vernal pools whether certified or not.
 5. Clear and **enlarged** USGS map, in **color**, showing the site and the surrounding area. A one-page copy of the assessor's maps showing all the adjacent lots.
 6. If applicable, proof of filing with Natural Heritage and Endangered Species, Department of Fisheries and Wildlife, and provide a clear and **enlarged**, in **color**, Natural Heritage map with the site identified and accompanying information detailing the specific interest for the area.
 7. If applicable a wild life habitat study should be submitted.
 8. All supporting documentation required under the Massachusetts Storm Water Management Policy and Standards.
 9. All documents required under the Clean Water Act and 401 Water Quality Certification.
 10. All documents filed with the US Army Corps of Engineers.
 11. All copies of documents filed in conjunction with the Massachusetts Environmental Policy Act (MEPA) process.
 12. All documents related to the FEMA flood plain map, if any portions of the site is in a flood plain.

The above guidelines are to assist applicants in the filing process. Additional requirements may be requested as deemed necessary by the Sutton Conservation Commission.

Also Refer to: 1. Sutton Conservation Commission Order Of Conditions – Special Conditions.

2. **Sutton Conservation Commission Comprehensive Checklist for Reviewing Public Hearing Information.**
3. **Sutton Conservation Commission RFDA/NOI Filing Fact Sheet.**

All filings must be accompanied by a plan wet stamped, and sealed by a licensed Professional Engineer.

TOWN OF SUTTON CONSERVATION COMMISSION

COMPREHENSIVE CHECKLIST FOR REVIEWING PUBLIC HEARING INFORMATION

Project name _____ Applicant Name _____

Reviewing Commissioner(s) Name _____ Date of Review _____

Notice of Intent and Supplemental Information

- _____ **All appropriate permits obtained or applied for**
- _____ **Work completion schedule**
- _____ **USGS topographic map**
- _____ **FEMA flood plain map**

Base map(s)—existing site conditions

- _____ **North arrow**
- _____ **scale**
- _____ **key or legend**
- _____ **property identification**
- _____ **abutters identified and notified**
- _____ **datum base**
- _____ **contours**
- _____ **contour interval**
- _____ **drainage divides/watershed clearly defined**
- _____ **benchmarks**
- _____ **location of roadways, cart paths, stonewalls**
- _____ **location of site in watershed**
- _____ **location of existing water bodies**
- _____ **location of 100 and 200 foot buffers for all resource areas with lines in color**
- _____ **location of 10-year and 100-year flood elevations for existing water bodies**
- _____ **location and boundaries of resource areas**
- _____ **location of high water mark for rivers and streams**
- _____ **method of determining high water mark**
- _____ **surveyors stamp**
- _____ **engineers stamp and date**
- _____ **rights-of-way and easements**
- _____ **utilities (above- and below-ground)**
- _____ **septic systems, cesspools, active or abandoned wells**
- _____ **wells**
- _____ **all structures shown**
- _____ **aquifers**

_____ **perennial or intermittent stream designation**

Final site plans (should show all proposed changes)

- _____ **final site plan reviewed**
- _____ **final site plan approved**
- _____ **proposed cut or dredge areas**
- _____ **proposed fill**
- _____ **proposed contours (include all grading)**
- _____ **proposed retention/detention areas**
- _____ **existing impervious areas**
- _____ **proposed impervious areas**
- _____ **proposed stream channelization, culverts, or piping with sizes and invert, outvert elevations**
- _____ **changes in drainage areas clearly identified**
- _____ **site drainage plan before**
- _____ **site drainage plan after**
- _____ **location and elevation of proposed structures**
- _____ **location of proposed wells**
- _____ **landscaping details**
- _____ **proposed resource area impediments**
- _____ **proposed title 5 compliance**
- _____ **stamped and dated by registered P.E.**
- _____ **expansion areas and pipe locations and sizes shown**
- _____ **cross-section of stream alterations**
- _____ **stream banks to be riprapped**
- _____ **engineers and/or registered Surveyor's stamp and date**
- _____ **proposed blasting area clearly identified**
- _____ **limits of work shown**
- _____ **SCS soils map**
- _____ **hydrologic classification of soils**
- _____ **location of soil probes, test pits, and borings**
- _____ **soil logs, soil profiles, depth of soil horizons**
- _____ **thickness of wetland soils**
- _____ **depth to water table (with dates of measurement)**
- _____ **contours of water table**
- _____ **areas of ledge**

Soils map and report

Vegetation/land use map

- _____ forest
- _____ cultivated land
- _____ pasture
- _____ lawns
- _____ impervious areas

- _____ wetlands
- _____ perennial river/stream
- _____ intermittent river/stream
- _____ BVW
- _____ Pond
- _____ lake
- _____ vernal pool
- _____ other resource area
- _____ gravel pits

Hydrologic information

Rational Method for stormwater runoff from roadways and paved areas

- _____ are assumptions met? (provide text)
- _____ accurate delineation of drainage basins
- _____ accurate calculation of drainage basin area
- _____ soils and land use information before and after
- _____ C factors for different storm probabilities
- _____ time of concentration before and after
- _____ overland flows and stream velocities used for time of concentration calculation
- _____ charts used in determining infiltration
- _____ appropriate storm intensity calculations
- _____ chart used for determining (I) rainfall intensity
- _____ modifications for post-project conditions
- _____ peak flows

SCS TR-55 or TR-20 method for determining site runoff

- _____ accurate delineation of drainage basins
- _____ accurate calculation of basin area
- _____ soils maps
- _____ vegetation/land use maps
- _____ area of each soils-vegetation type
- _____ correction for ponding
- _____ correction for connected impervious area
- _____ correction for channel modification
- _____ correction for antecedent moisture conditions
- _____ proper curve number (CN) for each soil-cover type
- _____ proper composite curve number
- _____ appropriate 24-hour storm values
- _____ flow paths for time of concentration calculations
 - _____ time of concentration
 - _____ sheet flow no more than 50 feet segments
 - _____ appropriate roughness coefficients
 - _____ shallow concentrated flow length, slope, and velocity
 - _____ correct channel flow
- _____ correct composite (Tc) time coefficient calculation
 - _____ runoff depth and volume
 - _____ method of determining peak flow rate
- _____ if Graphical Method used, are assumptions met? (provide text)
 - _____ pre- and post-project calculations

Detention/retention areas

- _____ derivation of time of concentration by overland flow
- _____ area draining into retention/detention basin
- _____ inflow/outflow hydrograph
- _____ information for different storm probabilities, 1, 2, 5, 10, 25, 50, 100, year storms
- _____ is flood storage capacity adequate? (provide text)
- _____ include both conveyance system--storm drains, catch basins, etc.--and detention/ retention basins, forebays, swales
- _____ length of time before sediment load will significantly reduce the basin capacity
- _____ if detention/retention is to be provided by an existing wetland, area to be flooded and depth and duration of flooding
- _____ ability of soils to support weight of structure
- _____ overflow structure for extreme storm events
- _____ details of groundwater recharge wicks

Backwater analysis**Flow velocities in pipes, channels, and discharge points****velocity dissipater calculations****operations and maintenance plan**

Information on water quality (concentrations and loadings)

pre-project	post-project
_____	_____ sediment
_____	_____ increase in sediment load
_____	_____ how much
_____	_____ timing
_____	_____ nutrients (phosphate, nitrogen compounds)
_____	_____ increase in nutrient load
_____	_____ how much
_____	_____ timing
_____	_____ road salt
_____	_____ petroleum products and byproducts
_____	_____ floating materials
_____	_____ coliform bacteria and other microbes
_____	_____ oxygen-demanding substances
_____	_____ heat
_____	_____ heavy metals
_____	_____ toxic materials
_____	_____ iron compounds
_____	_____ herbicides
_____	_____ algaecides
_____	_____ pesticides
_____	_____ fertilizer
_____	_____ water quality monitoring schedule and procedures (provide text)

Alternatives Analysis

_____	Assessment of alternative locations, routes, construction
_____	measures, and project designs that would avoid
_____	wetland resource area alterations
_____	Information on engineering and design
_____	measures to minimize wetland alterations
_____	that are unavoidable

Mitigation: Wetlands replication plans

Existing wetlands	Proposed wetlands
_____	_____ wetland delineation by qualified Wetland Scientist
_____	_____ area calculations in square feet
_____	_____ location in relation to bordering waterbody
_____	_____ if vernal pool, in relation to migration routes and surrounding habitat (replacement vernal pools must be in close proximity to original)
_____	_____ elevations relative to known datum
_____	_____ cross-sections as needed to understand hydrology, topography,

soils types and horizons

- _____ test pits or soil borings logs (information should be on cross-sections, above)
- _____ soil chemistry as appropriate
- _____ seasonal high groundwater elevations
- _____ seasonal low groundwater elevations
- _____ perched groundwater conditions
- _____ surface water flow patterns, timing, and rates
- _____ water quality
- _____ wetland plant species
- _____ plant community structure
- _____ wetland plant distributions
- _____ soil excavation and stockpiling procedure
- _____ re-vegetation procedure
- _____ construction schedule and sequence
- _____ post-construction monitoring procedures

Where appropriate, have the effects on wetland resource area characteristics contributing to each statutory interest been addressed?

Groundwater Supply

- _____ **quantity**
- _____ **quality**
- _____ **level**
- _____ **gradient**
- _____ **recharge**
- _____ **discharge**

Drinking Water Supply--Public and Private

- _____ **quantity/availability**
- _____ **quality**

Flood Control

- _____ **retention**
- _____ **detention**
- _____ **bank storage and interflow**
- _____ **barrier protection**
- _____ **erosion**

Storm Damage Prevention

- _____ **detention**
- _____ **dissipation**
- _____ **stabilization**
- _____ **infiltration**

Prevention of Pollution

- _____ **living filter complex**
- _____ **water flow patterns and residence time**
- _____ **increased pollutant loads**
- _____ **release of dissolved and suspended materials**

Fisheries

- _____ **fish**
- _____ **food organisms**
- _____ **prevention of contamination**
- _____ **spawning areas**
- _____ **habitat**

Land Containing Shellfish

- _____ **shellfish beds**
- _____ **water quality**
- _____ **sediment**
- _____ **water circulation food**

Wildlife Habitat

- _____ **plant community composition**
- _____ **plant community structure (heights, ages, dispersion)**
- _____ **hydrologic regime**
- _____ **soil composition**
- _____ **soil structure**
- _____ **topography**
- _____ **water quality**
- _____ **vernal pool habitat**
- _____ **rare species habitat**

Site Visit Information

- _____ **commissioners staff present**
- _____ **applicant present**
- _____ **agent present**
- _____ **engineer/ specialist present**
- _____ **abutters**
- _____ **resource type identified**
- _____ **bank**
- _____ **land under waterbody**
- _____ **land subject to flooding**
- _____ **vernal pool**
- _____ **BVW**
- _____ **Riverfront area**
- _____ **perennial stream**
- _____ **intermittent stream**
- _____ **water body**
- _____ **limited project**
- _____ **resource boundaries identified**
- _____ **observations**
- _____ **potential solutions:**

_____ **actions required:**

—

_____ **unresolved issues:**

_____ **additional information to be provided** **date due**
by whom

Sutton Conservation Commission

RDA/NOI Filing Fact Sheet

REQUEST FOR DETERMINATION OF APPLICABILITY = RFDA

NOTICE OF INTENT = NOI

For Commission Use Only:

DEP #: _____

RFDA filed Date: _____

NOI filed Date: _____

New Business: _____

CONTACT INFORMATION:

Proposed Site information:

Address: _____

Assessor's Map location: _____

Applicant's Representative Information

Company Name: _____

Engineer Name: _____

Address: _____

Phone : _____ **Fax** _____

Email Address: _____

Mobile Phone: _____

Wetland's Scientist Information

Company Name: _____

Wetland Scientist Name: _____

Address: _____

Phone : _____ **Fax** _____

Email Address: _____

Mobile Phone: _____

Applicant Information:

Name: _____

Address: _____

Phone : _____ **Fax** _____

Email Address: _____

Land Owner Information:

Name: _____

Address: _____

Phone : _____ **Fax** _____

Email Address: _____

Reference Form:

	RDA COMPLETED WPA Form #1 2 Copies
	NOI COMPLETED WPA Form #4 2 Copies

In order for proposed project to be placed on a Conservation Commission meeting agenda the Site Plan(s) must contain, at minimum, two copies of the following:

	<p>2 COPIES OF PLAN (1" = 20'SCALE) A WRITTEN STATEMENT ON THE PLANS ABOVE THE SIGNATURE STATING: THESE PLANS AND SPECIFICATIONS COMPLY WITH THE TOWN OF SUTTON'S WETLAND AND RIVERFRONT, DISTRICT ADMINISTRATION BYLAW. SIGNED BY: _____ PRINT NAME: _____ WETLANDS SCIENTIST'S OR SPECIALIST STAMP SEAL AND/OR SIGNATURE SIGNED AND WET STAMPED BY PROFESSIONAL ENGINEER OR LAND SUVEYOR AS THE CASE MAY BE REQUIRED ALL NEW AND EXISTING STONEWALLS TO BE INDICATED ON PLANS CLEAR PLAN TITLE WITH DATE OF PLAN</p>
	<p>LOCUS MUST BE IN COLOR FROM AREA GIS MAP, CLEARLY SHOWING STREET'S IN SURROUNDING AREA</p>
	<p>WETLANDS DELINEATION TRANSECT LINES PERFORMED IN AREAS OF CONCERN AND LOW GRADIENT AREAS WETLAND FLAGS MUST BE NUMBERED</p>
	<p>100' BUFFER ZONE **Note: highlighted in RED 200' RIVER BUFFER ZONE **Note: highlighted in YELLOW 200' GREAT POND **Note: highlighted in BLUE</p>
	<p>STREAMS MARKED PERENNIAL INTERMITTENT</p>
	<p>EROSION CONTROL Proposed Method & construction <u>detail as per Conservation Regulations</u> Proposed Placement(s) of control(s)</p>
	<p>REPLICATION ALL AREAS OF PROPOSED RECLAMATION INCLUDING STOCKPILES</p>
	<p>VEGETATION IDENTIFICATION: PROPOSED EXTENT OF LAWN **Note: highlighted in GREEN PLAN OF ALL PROPOSED TREE REMOVAL **Note: highlighted in ORANGE</p>
	<p>SITE INFORMATION LAST RECORDING DATE OF PROPERTY NAME OF REGISTRY BOOK AND PAGE NUMBER</p>
	<p>WETLANDS FEE (CALCULATED BY WETLAND PE)</p>
	<p>BYLAW FEE: \$25.00</p>
	<p>ADVERTISING FEE: \$40.00</p>
	<p>CONSULTANT FEE: Calculate by using Consultant Schedule</p>

For Commission Use Only:

New business: _____

Site Walked: _____ Initials: _____

Items to be addressed as a result of Meeting/Site Walk:

<u>Complete</u>	<u>Issue:</u>

RDA OR NOI COMPLETE

	APPLICANT IS TO SUBMIT AFFADAVIT OR GREEN CARDS FOR ABUTTERS LIST (ASSESSORS OFFICE) NOTICE SENT BY CERTIFIED MAIL
	ADVERTISE IN PAPER & POSTED FOR MEETING AGENDA \$ 35.00 FEE DUE FROM APPLICANT: MADE OUT TO TOWN OF SUTTON
	Public Hearing

For Commission Use Only:

Public Hearing: _____

Continuation #1: _____

Continuation #2: _____

Public Hearing Close Date: _____

Complete Date: _____

	Commission Proposal Passed ORDER OF CONDITIONS (OOC) Proposal Denied
	ORIGINAL (OOC) MUST BE RECORDED AT WORCESTER REGISTRY OF DEEDS, BY APPLICANT A COPY of the Issued Order of Conditions, SENT TO each dept.: TOWN CLERK BUILDING DEPT BOARD OF HEALTH D.E.P THE FILE ITSELF
	BOOK AND PAGE ON PAGE 8 OF THE OOC TO BE STAMPED BY REGISTRY OF DEEDS AND ORIGINAL MAILED TO THE TOWN OF SUTTON

Sutton Conservation Commission*Order of Conditions-Special Conditions*

Applicant Name: Project Address: DEP #
--

Pre Construction

1. Any change of successor or successor in control of this project shall be submitted in writing to the Sutton Conservation Commission. The request shall include all changes, however minor, to the design plans cited in this order. Prior to any work commencing the conservation commission shall determine if proposed changes to the project require the filing of a new Notice of Intent or a Request for Amendment to the Order of Conditions. A pre-construction conference shall be scheduled at the regularly held Commission meetings for the board to review the project with any new parties. i. e. Change of ownership or controlling interest and/or engineer and/or general contractor.
2. Prior to the pre-construction meeting and any work commencing on the site, a sign of minimum size two (2) feet x two (2) feet shall be displayed so as to be clearly visible from the street showing D.E.P. File No. _____.
3. This order shall be recorded on the deed to all individual lots related to the project.
4. Wetlands Flagging spaced at intervals, by a qualified Wetland Scientist, no greater than 25 feet apart shall identify the boundaries of all wetland resource areas. Flagging used to identify the wetland resource area shall be of a color different from any other flags used on the site. These flags are to be clearly marked and numbered with a permanent medium exactly as they are surveyed on the plan cited in this order.
5. Erosion and control measures shall be placed at a minimum distance of five (5) feet from the delineated wetland line cited on the plan in this order. These measures will include the installation of a siltation fence entrenched six (6) inches and placed directly behind the double staked hay bales, on the upland side, five feet from the delineated wetland line on the plan cited in this order. Erosion and sedimentation controls shall be in accordance with the plan cited in this order or as deemed needed and appropriate by the Sutton Conservation Commission to control potential run-off damage. In addition to required haybales and silt fencing, applicant shall stabilize all exposed slopes or disturbed surfaces likely to contribute to erosion runoff. For shallow slopes (3:1 or flatter), and those slopes of fifty (50) feet or less, which may remain exposed for greater than one week, but less than one month, applicant shall apply hydroseeding, hay mulch, or plastic netting to keep mulch and/or straw down, or other such tackifier. For steeper slopes (3:1 or steeper), and those slopes of fifty (50) feet or more, which may remain exposed for one month or more, applicant shall apply straw blanketing tacked with plastic mesh, coir blankets or mats of coconut fiber or other such similar erosion control. These measures shall be applied to the full transverse length of the slope. Prior to the commencement of any work the construction and placement of all erosion and sedimentation control measures are to be certified in writing, to

the commission, by a qualified wetland scientist or environmental engineer. A Sutton Conservation Commissioner or the commission's designated professional representative shall confirm the certification.

6. The applicant shall notify the Sutton Conservation Commission in writing of the name, address, and business and home telephone numbers for the project supervisor, or any contractor who shall be responsible for ensuring compliance with this Order. The contractor employed to execute the project shall be provided a copy of this order and thereafter-said contractor may be held jointly responsible for any violations and the penalties under law for said violations. The contractor working on a site must be given a copy of the Order Of Conditions and have it on site at all times, while work is being conducted.
7. The applicant shall submit to the Sutton Conservation Commission a schedule of major events in the project.
8. In accordance with the General Condition 8 on page 2 of the Department of Environmental Protection Order of Condition form WPA Form #5, this Order must be recorded at the Worcester Registry of Deeds prior to commencement of any work. The Sutton Conservation Commission shall be notified that The Order has been so recorded not later than 10 days from the mailing date of this order. No activity shall commence until the Order has been recorded and the 10-day appeal period has passed. Failure to comply with this condition shall be considered cause for revocation of the Order.

During Construction

9. Any and all changes to this plan or deviation in construction from the plans shall be requested in writing to the Sutton Conservation Commission. At the public hearing the Sutton Conservation Commission shall determine if said change is substantial enough to require filing of a new Notice of Intent.
10. The contractor or site engineer in charge of the work on the site shall have a copy of this Order and a copy of the approved drawings and plans available on the site at all times.
11. The Sutton Conservation Commission and its agents shall have the right to enter and inspect the property at any time for compliance with the conditions of this Order, the Act and the Wetlands Regulations, 310 CMR 10.00, and the Sutton Wetlands Riverfront District Administration Bylaw, and shall have the right to request and receive any additional data or documentation that it deems necessary for that evaluation.
12. In case of emergencies, problems, or the need to discuss site conditions with the Sutton Conservation Commission,
(508-865-8728), the contact person is:

Francis Gatto	508-865-0485	Mark Briggs	508-865-7839
Jack Sheehan	508-234-3406	Joyce Smith	508-865-5502
Daniel Rice 508-865-9350			
13. Flag lines are to be maintained at all times. A qualified professional designated by the applicant and approved by the Sutton Conservation Commission shall regularly inspect the flags. At the regular inspection flags shall be verified as in place in accordance with the plan cited in this order. Any missing flags shall be replaced.

14. Additional sedimentation and erosion control devices shall be kept on site at all times for repair and maintenance of the existing controls.
15. Failure of any sedimentation or erosion control measure or any construction related event that results in impact to a protected resource area shall be reported to the Sutton Conservation Commission immediately. A qualified wetland specialist approved by the commission shall inspect and assess the impact, recommend mitigation measures and supervise any necessary action. The result of the inspection, assessment, recommendations and actions shall be reported in writing to the Sutton Conservation Commission.
16. During all phases of construction, all disturbed or exposed areas shall be brought to finished grade and either A) permanently stabilized in accordance with the sedimentation and erosion control plan cited in this Order and NRES procedures or, B) Areas that cannot be permanently stabilized within 30 days of disturbance shall be stabilized using accepted best method practices approved by the Sutton Conservation Commission. All exposed soil shall receive a minimum of 6 inches of loam or topsoil prior to seeding and final stabilization. All exposed slopes must be stabilized by plantings, jute, mats, hydroseeding etc.
17. No construction equipment shall be refueled or parked at any time within the buffer zone. No equipment is to enter the site except by the access route specified on the plans and no equipment is to enter or cross a wetland resource area at any time.
18. All plantings and replication areas must be provided moisture and nutrients, on a regular basis, in order to insure survival success. No trees with a caliper diameter in excess of five (5) inches shall be cut or removed until and unless a replanting plan, indicating at minimum 1:1 replacement, be filed and approved by the Commission.
19. Cement trucks shall not be washed out in any wetland resource of the Buffer Zone area on or into any drainage system. Any deposit of cement or concrete products into a Buffer Zone or wetland resource area shall be immediately removed.
20. All plantings and replication areas must be provided moisture and nutrients, on a regular basis, in order to ensure survival success.
21. All stockpiled materials shall be located outside of the wetland resource area and the 100 foot buffer zone and shall be stabilized to prevent erosion and sedimentation into the wetland resource areas.

22. SPECIAL CONDITIONS FOR MONITORING AND REPLICATION PLANS

- A) The applicant shall hire qualified professional monitor to oversee the crossing construction. Said monitor shall be on site to certify the proper procedures have been applied in the following areas:
 1. Installation of erosion control measures
 2. Installation of flume pipe
 3. Installation of Box Culvert
 4. Construction of retaining wall (s)
 5. Final grading of soils

6. Construction and planting of the replication area

A final report shall be submitted to the Sutton Conservation Commission and Natural Heritage certifying the project is in compliance with the protocol. The environmental monitor shall provide a bio or resume reflecting a proven record in the area of wetland science and be currently and actively working in that field.

- B) For the replication area, the herbaceous layer shall be purchased New England Wetland mix and healthy nursery stock.
- C) NO road salt shall be permitted of used within 50 feet of any streambed.

Post Construction

1. The applicant shall submit to the Sutton Conservation Commission a written request for a Certificate of Compliance. The request must include as- built plans signed and stamped by a licensed professional engineer. The as- built must include in detail all changes to original plans and explanations for changes performed without notifying the Sutton Conservation Commission.
2. Within 30 days of receipt of the request for the certificate of compliance the Sutton Conservation Commission will hold a site visit with a quorum of the commission present. At that visit the commission will determine the project is in compliance with this Order and issue a Certificate of Compliance or identify non-compliant areas. Any determination other than compliance will require immediate remediation by the applicant, resubmission of the request for the Certificate of Compliance including updated information and repeat of the process and time periods stated above.

Newest Regulations

- e) **Tree Cutting---**All trees 5 inches or greater which are felled or are or to be cut in any jurisdictional area be replaced in kind with planting(s) of 2 ½ inch caliper stock or greater, unless conditions require otherwise.
- f) **Abutter Notification---**All Applicants must notify any/all abutters within 300 feet of any property corner or line when filling any application required under MGL.
- g) **Fertilizers---**Any application of fertilizer on any lawn, landscaping, garden, orchard, Filed or within 100 feet of any resource area or 200 feet any body of water be 20-0-10, or other reasonable slow release zero phosphate fertilizer.

Sutton Conservation Commission Policy on New Docks

Docks must be located 25 feet from property lines or for properties less than 50 feet wide in a central location.

Docks may be no further than 30 feet into the water measured from the high water mark.

Docks may be no larger than 300 square feet.

All applications must be accompanied by a complete plan to scale.

Permits for Docks:

For a new Temporary or Removable Dock:

Applicant must file a **Request for Determination** with the Conservation Commission even if there is no bank disturbance or a **Notice of Intent** if the bank area is disturbed. A permit is not required to remove Temporary Docks in and out of the water.

For a Permanent Dock or Permanent Bank Alteration:

Applicant must file with the Conservation Commission and must file a Chapter 91 Waterways License Application with the State. Permanent structures are subject to MGL Ch. 131 Section 40. Bank disturbance may not exceed the lesser of 5% of frontage or 25 feet.

All docks must have permanent reflectors on each corner.

A Chapter 91 Waterways license is required for all anchored in-water, off shore floating, swimming docks or pontoon structures.

There may not be more than one dock per parcel.

This policy shall not serve to diminish the requirements of MGL or 310 CMR 9.00 but may be applied more stringently as reserved herein. The Commission may grant certain variance(s) with cause or hardship to this Regulation. This policy shall not apply to existing or and/or licensed docks before October 1, 2007. For any substantial repair with major alteration, a **Request for Determination** or **Notice of Intent** shall be filed with the Commission.

For further information, contact Mark Briggs at: 508-865-8728, leave message.
Email: wbien@town.sutton.ma.us

Fee Protocol and Applicant's Releasable Deposit Account and/or Bond Policy

Whereas, considering the powers granted the Sutton Conservation Commission ("the Commission") regarding the collection of certain fees pursuant to the Sutton Wetlands and Riverfront District Administration Bylaw ("the Bylaw"), as amended, Section 4 " Applications and Fees", whereby the Commission requires the payment of certain filing fees, or in lieu of same by this policy, the posting of a bond with surety, running to the Commission and sufficient as to form and surety in the opinion of the Commission's legal counsel, to secure faithful and satisfactory performance of the work required by any Order of Conditions in such sum, and upon such conditions, as the Commission may deem reasonable and necessary, the following shall apply:

Notwithstanding the above, the amount of such bond or other security, which shall become due under the Bylaw and MGL, shall not exceed the estimated cost to complete the work required or the estimated, amortized expenditure for restoration and long-term maintenance of affected lands and properties. If said work is not performed as required, any Default in fulfilling the obligations in a timely manner , as required under the Order of Conditions, shall constitute forfeiture of any such bond or other security and shall be recoverable at the suit of the Town in Superior Court. The intent of this policy is to define the terms and conditions relevant to certain pre-application standards and performance criteria and to establish the control, disbursement and relinquishment of such collateral security pursuant to the Bylaw and MGL :

1. At the time of application all basic filing fees shall be paid in full pursuant to MGL and the Bylaw.
2. Applicants shall secure and exchange for Commission consideration, under the contractual agreement (" Applicant's Releasable Deposit Account") implied by this policy; by depositing cash security or by posting a bond for any surfeit charges (those charges assessed above the required basic filing fees, e.g. fees for detention ponds or linear disturbance). Any cash security deposit shall be held in a local savings bank account, under the custody and control of the Commission, thus so pledged and assigned. The Applicant's Releasable Deposit Account contract so stipulates that any Default by Applicant or its agents may, by any enabling statute, be just cause for implementing the right of self-help to cure said Default by the Sutton Conservation Commission and/or the Town as appropriated following Notice, posted to Applicant's address of record. These surfeit charges shall be retained until such time as a Certificate of Compliance is requested and issued unconditionally, pending full and faithful performance of work permitted by any Order of Conditions. Failure to post such bond or provide satisfactory guaranty shall be cause for denial or revocation of the Order of Conditions or Certificate of Compliance.
3. At any time, or upon written request an Annual Accounting, of any such Applicant's Releasable Deposit Account, shall be issued by the Commission indicating current cash balance or penal sum in the case of a bond and/or an invoice itemizing any current or extra, actual or reasonable estimated charges due and payable, including annual administrative charges, based on the Department of Revenue statutes and regulations relating to the 'Costing of Municipal Services'.
4. Final discharge of any or all bonds or relinquishment of Applicant's Releasable Deposit Account shall be conditioned upon issuance of a Certificate of Compliance. The

Commission shall provide a written Statement of Release or Relinquishment of Control or invoice and Notice for Payment Due. Any such Release or Relinquishment of Control Statement shall consider, finally, the values of lessened impacts than those impacts conditionally approved or anticipated in an/the Order of Conditions. Types of such in-Lieu-of guarantees are defined by, but not are not limited to, the following valuable milestones:

- a) of providing recorded evidence of the establishment of a Homeowners or Condo Association, whose Articles of Organization contain covenants for the continued financial support to effectuate and maintain the requirements of an approved O/M manual,
- b) of implementing less impactful designs or redesigns arising from changes to the approved plan and made in the field,
- c) of using more efficient technologies,
- d) of making buffer zone enhancements including the limiting of temporary disturbances in jurisdictional areas and any Adjacent Upland Resource Areas, and
- e) of addressing and providing for other interests regulated by the Bylaw and the MA Wetlands Protection Act and Regulations.

5. Amount of cash security or bond: _____

Entered into under seal on this day _____, 200_

Applicant

Conservation Commission

Notary:

Notary:

Commonwealth of Massachusetts
County of _____

On this the _____ day of _____, _____, before me,
Day Month Year

_____, the undersigned Notary Public,
Name of Notary Public

Personally appeared _____
Name (s) of Signer (s)

Proved to me through satisfactory evidence of identity, which was/were
_____,
Description of Evidence of Identity

to be the person (s) whose name (s)
was/were signed on the preceding or
attached document in my presence.

Signature of Notary Public

Printed Name of Notary

My Commission Expires _____

Place Notary Seal and/or Any Stamp Above

- A. Upon receiving a notice of intent, request for determination of applicability, abbreviated notice of resource area delineation, or other application (herein referred to collectively at “the Application”), the Conservation Commission shall determine that in order to review that Application it requires technical advice unavailable from town employees, it shall employ an outside consultant, the Conservation Consultant, and/or other consultants. None shall be considered a Town employee or in the Town’s employ, except insofar as any Conservation Consultant shall report to the Conservation Commission directly. Whenever possible, the Commission shall work cooperatively with the Applicant to identify any other outside appropriate consultants and to negotiate payment of consultant fees by the Applicant. The Commission shall require that the Applicant pay a reasonable review fee or fees for the services of the Commission’s Conservation Consultant(s). In the event that such sum, as may be expended, is insufficient to fund the necessary consulting services, the Commission may require additional deposits. If there are monies remaining after all fees and billings are paid, any excess funds will be returned to the Applicant.

- B. In hiring outside consultants, the Commission shall engage its Conservation Consultant and when and where applicable the Town’s Engineer, or other engineers, surveyors, botanists, wetlands scientists, geologists, hydrogeologists, lawyers, environmental consultants, or other appropriate professionals to assist the Commission in analyzing an application, resource area survey and delineation, analysis of resource area functions and values, including wildlife and aquatic habitat evaluations, soils and drainage analysis, monitoring or inspection a project or site for compliance with the Commission’s decision or regulations, or inspecting a project before, during and after construction or implementation. The Conservation Consultant’s services and/or other outside consultant(s) services shall/may be for the entire scope and duration of the project. The Conservation Consultant may also be employed in investigation matters relating to Conservation Lands, either for the administrative maintenance of same or for the acquisition of such.

- C. Prior to paying the review fee, the Applicant may appeal the selection of a particular consultant to the Board of Selectmen. 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 minimum qualifications shall consist of either an educational degree in or related to the field at issue, or three or more years of practice in the filed at issue or a related field. The required time limits for action upon the application by the Commission shall be extended by the duration of the appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection by the Commission shall stand.

- D. Each review fee shall be deposited in a special account established by the Town Treasurer pursuant to M.G.L. c, 44 §53G. Funds from the special account may be expended only for the purposes described above. All payments to the Commission shall be by check or money order and shall be made out the Town of Sutton. No cash will be accepted.

- E. The fee(s) for the Conservation Consultant shall be paid in full prior to the Commission reviewing any project. Failure to pay the fee(s) in advance may result in a denial of the proposed project in that the Application will be considered administratively incomplete.

- F. This Regulation has been adopted on this _____ day of _____, 2004, by a majority vote of the Conservation Commission.

Town of Sutton
Conservation Commission

Conservation Consultant Fee Schedule

Town of Sutton Wetlands and Riverfront District Administration Bylaw

DEP File no.: _____

A. APPLICANT INFORMATION

Applicant.s Name Property Owner _____

Project Location: Street Address Map & Lot _____

B. FEE CALCULATIONS *(Please check off as applicable)*

Building Permit Review

\$250.00 flat fee per permit review

Request For Determination of Applicability

\$300.00 flat fee per standard, basic application

Abbreviated Notice of Resource Area Delineation

\$500.00 base fee per application, plus;

\$1.50 multiplied by _____ linear feet of wetland delineation = \$ _____

Notice Of Intent . Category One

Minor projects or other projects that fall under Category 1 of WPA Form 3 Fee Schedule (i.e. house addition, tennis court, or other accessory to residential activity, control of vegetation, work on septic system separate from house, new agricultural projects, etc.).

\$500.00 base fee per application, plus;

\$1.50 multiplied by _____ linear feet of wetland delineation = \$ _____

(unless applicant has a valid Order of Resource Area Delineation)

Notice Of Intent . Category Two

Construction of single family house or other projects that generally fall under Category 2 of WPA Form 3 Fee Schedule (i.e. construction of a single family house, parking lot, inland limited projects minus road crossings and agriculture, each crossing for driveway to single family house, each project source (storm drain) discharge, etc.)

\$900.00 base fee per application, plus

\$1.50 multiplied by _____ linear feet of wetland delineation = \$ _____

(unless applicant has a valid Order of Resource Area Delineation)

\$1.00 multiplied by _____ square feet of permanent disturbance to BVW,

ILSF, LUW and/or Riverfront Area = \$ _____

\$1.00 multiplied by _____ linear feet of permanent disturbance to Inland Bank = \$ _____

Page 2 of 2

Notice Of Intent . Categories Three through Five

Construction of a multiple family dwelling, subdivision, or commercial and Industrial Projects or other projects that generally fall under Categories 3, 4, or 5 of WPA Form 3 Fee Schedule (i.e. site preparation for development beyond Notice of Intent scope, each building (for development) including site, road construction not crossing or driveway, water supply development, each crossing for development or commercial road, dam, sand and gravel operations, bridge, dredging, etc.)

\$1,200.00 base fee per application, plus;

\$1.50 multiplied by _____ linear feet of wetland delineation = \$ _____

(unless applicant has a valid Order of Resource Area Delineation)

\$1.00 multiplied by _____ square feet of permanent disturbance to BVW,

ILSF, LUW and/or Riverfront Area = \$ _____

\$1.00 multiplied by _____ linear feet of permanent disturbance to Inland Bank = \$ _____

TOTAL FEE =

\$ _____

THESE FILING FEES ARE AS DETERMINED BY APPLICANT AND ATTACHED IN THE FORM IS A CHECK MADE PAYABLE TO THE TOWN OF SUTTON. FEES SHALL BE DISPEARSED PURSUANT TO MGL 53G

C. SIGNATURE OF AGREEMENT

The Conservation Consultant fees for NOI and ANRAD applications are estimated and Applicant is hereby informed of these fees. Payment is required in advance of any review or work being performed by the Conservation Consultant.

If it is determined that more time and work is necessary to complete any application review, the Conservation Consultant shall provide an additional anticipated scope and fee cost structure for the work proposed. Necessary changes thereafter, and charges beyond the scope of initial review, shall be communicated in a timely manner to the Applicant. Additional review/oversight for work beyond the scope of initial review may include meetings associated with replication area construction, meetings with outside engineers and/or professionals, road/utility line work in and around Resource Areas, wildlife habitat evaluation reviews, etc. Initial review budget includes a written report, one site meeting or field visit and two Conservation Commission hearings with Applicants, their consultants, and/or the Commission.

Any unused portions of the Conservation Consultant fees outlined herein shall be returned in a timely manner to the Applicant.

I, the Applicant, or my authorized representative or agent have read and agree to the terms outlined in this fee schedule.

Signed: _____ Date: _____

By: _____