GENERAL WETLANDS BYLAW

(Adopted 4-8-1985 ATM Article 9; Approved by Attorney General 7-10-1985.)

Amendments:

5-13-1991 ATM Article 32 "Enforcement"; Approved by Attorney General 7-17-1991

5-11-1992 ATM Article 10 "Violations and Enforcement"; Approved by Attorney General 6-15-1992;

5-12-1997 ATM Article 24 "Section 1" ratified 10-29-1997 STM Article 4; Approved by Attorney General 2-17-1998;

5-8-2000 ATM Article 30 "Definitions"; Approved by Attorney General 7-26-2000

5-8-2006 ATM Article 18 "Applications", "Section 10 "Entry Upon Land"; Approved by Attorney General 8-7-2006

5-13-2013 ATM Article 32; Approved by Attorney General 9/13/2013. Amendments to correct typographical errors, coordinate the Bylaw with certain changes in state law and organization but not intending any substantive changes

5-13-19 ATM Article 29; Approved by Attorney General 9/9/19

5-14-2022 ATM Article 17; Approved by Attorney General 8/18/2022

AN INTRODUCTION TO THE DUNSTABLE WETLANDS BYLAW
[Amended 5-13-2013 ATM Article 32]

See "Fees and Procedures" at www.dunstable-ma.gov for additional information on the Wetland Protection Act: M.G.L. c131 §40 and 310 CMR 10.00

PURPOSE: The purpose of the Bylaw is to allow the citizens of the Town through the office of the Dunstable Conservation Commission to have a set of locally enforceable wetlands regulations. They are to complement the wetlands regulations presently in effect under the authority of the Massachusetts Department of Environmental Protection. The DEP regulations are subject to change without regard to the interests and needs of Dunstable, and in some ways do not presently protect local interests. A local bylaw will offer protection against erosion of environmental protection of wetland resources by any changes of the state regulations.

PRECEDENTS: Many communities in Massachusetts have such a local bylaw. The legality of such a bylaw has been challenged, and the constitutionality verified by the Massachusetts Supreme Judicial Court.

SIGNIFICANT POINTS: The bylaw has been drafted so that its application will not significantly increase the burden of paperwork beyond what is presently required of individuals by the DEP Wetlands Protection Regulations presently in effect.

This bylaw is permissive in character. Its function is to assure that activities undertaken in or near wetlands will be carried out in such a way as to preserve the wetland resources which are a public trust.

It is to protect developed or undeveloped wetland resources including public water supply, private water supply, groundwater supply, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, recreation and aesthetics.

As presently required under the DEP Regulations, the burden of proof as to the acceptability of a proposed activity or development lies with the

proponent. It is not to be the role of the Commission to conduct such studies on behalf of an applicant.

The Commission, acting upon a preponderance of credible evidence will be empowered to deny permission for activities on subject lands if in its judgment such denial is necessary to protect the interests of the Bylaw.

The Commission may make a request to the Board of Selectmen to instruct Town Counsel to take such legal action as may be necessary to restrain violations and enforce the orders of the Commission. THE TEXT OF THE BYLAW APPEARS ON THE FOLLOWING PAGES.

General Wetlands Bylaw

Adopted 4-8-1985 ATM Article 9; Approved by Attorney General 7-10-1985

Amendment 5-13-1991 ATM Article 32 [Enforcement]; Approved by Attorney General 7-17-1991

Amendment 5-11-1992 ATM Article 10 [Violations and Enforcement]; Approved by Attorney General 6-15-1992

Amendment 5-12-1997 ATM Article 24 [Section 1] ratified 10-29-1997 STM Article 4; Approved by Attorney General 2-17-1998

Amendment 5-8-2000 ATM Article 30 [Definitions]; Approved by Attorney General 7-26-2000]

Amendment 5-8-2006 ATM Article 18 [Application] [Entry Upon Land]; Approved by Attorney General 8/7/2006 (effective date of amendment 8-30-2006)

Amendment 5-13-2013 ATM Article 32 [typographical errors] [coordinate Bylaw with organization initiatives] [bring Bylaw into line with certain changes on state law]; Approved by Attorney General 9/13/2013

§ 1: APPLICATION [Amended 5-20-1997 ATM Article 24, ratified by 10-29- 1997 STM Article 4; Amended 5-8-2006 ATM Article 18]

The purpose of this Bylaw is to protect the wetlands of the Town of Dunstable by controlling activities deemed to have, or have the potential to have, a significant effect upon wetland values, including but not limited to the following: potential or developed public or private water supply, potential or developed groundwater supply, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, recreation and aesthetics (collectively, the "interests protected by this Bylaw").

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, beach, flat marsh, meadow, bog, swamp, vernal pool, creek, river, stream, pond or lake or any land under said waters or any land subject to flooding or inundation, or within one hundred feet of the 100-year storm flow line, other than in the course of maintaining, repairing or replacing but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without first filing written application for a permit to so remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued by the Conservation Commission; nor shall any new permanent structure or impervious surface (greater than 100 square feet in the aggregate) be permitted within 60 feet of any freshwater wetland as defined in the Bylaw, except that the repair, replacement or enlargement of any single family dwelling house, or any appurtenant structure thereof, existing as of May 31, 1997, may be permitted within such area to the extent that such repair, replacement or enlargement does not result in a reduction in the minimum distance that existed between the previously

existing structure or impervious surface and the fresh water wetland, land under water bodies and waterways, upon completion of such repair, replacement or enlargement, in all events following proceedings in compliance with this Bylaw and the issuance of an appropriate Order of Conditions by the Conservation Commission. Notwithstanding the foregoing, new permanent structure or impervious surface, aggregating no more than one hundred square feet (over one or more projects or occasions), shall be presumed to be permissible and may, in the discretion of the Conservation Commission, upon application, be authorized summarily on an administrative basis without hearing. **[Amended May 13, 2019 Article 29]**

§ IA: EMERGENCY PROJECTS

This Bylaw shall not apply to emergency projects as defined in M.G.L. c.131, §40 **[Amended May 13, 2019 Article 29**], *which are necessary for the protection of the health or safety of the citizens of the Commonwealth and to be performed or ordered to be performed by an agency of the Commonwealth or of the Town. An emergency project may be any project certified to be an emergency by the Commission or by its authorized agent. This Bylaw shall not apply to work performed for normal maintenance or improvement of lands in agricultural use at the time of this application*.

§ 2: DETERMINATION OF APPLICABILITY

Any person may request the Conservation Commission to make a determination ~~area~~ on whether: an area, and/or a proposed activity in an area, is subject to regulation under the Wetlands Protection Act, the boundaries of the resource area have been accurately delineated, the work proposed is subject to the Act, the scope of alternatives is adequate for work in the Riverfront Area, or a local bylaw or ordinance is applicable.

This request shall be sent by certified mail or hand delivered to the Commission or its authorized representative. If the applicant is other than the owner, the applicant shall provide certification that notice was given to the owner by certified mail, as well as providing same certification that the Department of Environmental Protection (MassDEP) has been notified. If

the applicant hand delivers the request to the Commission, the bearer should request a dated receipt.

The applicant shall pay for the publication cost for the legal notice in the newspaper. **[Amended May 13, 2019 Article 29]**

The Commission shall determine, within 21 days of receipt of such request, whether this Bylaw does apply to the particular area of land for the activity specified by the applicant. Upon having made its determination, the Commission will send to the applicant a Determination of Applicability form.

The Determination of Applicability will be sent to the applicant by certified mail. If the applicant is other than the owner, the applicant shall provide certification that notice was given to the owner by certified mail. **[Amended May 14, 2022, Article 17]**

§3: ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION (ANRAD) [Added May 13, 2019]

Filed if an applicant wants to know if the boundary line delineated in the field and shown on the attached plans is accurate. **[Amended May 13, 2019 Article 29]**

This request shall be sent by certified mail or hand delivered to the Commission or its authorized representative. If the applicant is other than the owner, the applicant shall provide certification that notice was given to the owner by certified mail, as well as providing same certification that abutters, the Planning Board, Board of Appeals and Board of Health have been notified. **[Amended May 13, 2019 Article 29]**

The application shall be accompanied by a check for the amount of the filing fee. No filing fee is required when the applicant is the Town of Dunstable. **[Amended May 13, 2019 Article 29]**

The applicant shall pay for the publication cost for the legal notice in the newspaper.

A Notification to Abutters under the Massachusetts Wetlands Protection Act shall be sent by the applicant, at the same time, by certified mail or certificates of mailing to all abutters within 100' of the subject property boundaries and to the owner if other than the applicant. The list of abutters must be obtained from and certified by the Assessors

Department. This list of abutters, so notified, shall be provided to the Commission prior to the Public Hearing.

If the Commission determines an outside consultant is needed, the applicant shall pay reasonable fees for their employment. **[Amended May 13, 2019 Article 29]**

The Conservation Commission shall hold a public hearing within 21 days of receipt of such request. **[Amended May 13, 2019 Article 29]**

Within 21 days of the close of the public hearing, the Conservation Commission shall issue their decision, which will be mailed by certified mail (return receipt requested), or hand delivered to the applicant, his or her agent, or attorney and a copy mailed to owner of property and Natural Heritage, if needed. **[Amended May 13, 2019 Article 29]**

Once the Commission issues an Order of Resource Area Delineation (ORAD), the applicant shall record it at the Registry of Deeds.

§ 4: NOTICE OF INTENT [Amended 5-13-2013 ATM Article 32]

As described in the Wetland Protection Act, a Notice of Intent is an application for a permit (an Order of Conditions or OOC) to perform work in or affecting a protected wetland resource area. [Amended May 13, 2019]. This notice with instructions can be found on the DEP website. Said notice shall include plans and specifications as required of an applicant under M.G.L.c.131, §40, as of January 1, 1985. These plans shall clearly show the location of the wetland boundaries, and the trace of all natural or man-made watercourses of an ephemeral nature or where they are not otherwise identified as or associated with a wetland. Calculations by which it shall be possible for the Commission to evaluate the impact(s), whether actual or potential, of all relevant aspects of the proposed activity shall be included as an integral part of the filing of a Notice of Intent with the Conservation Commission.

The Notice of Intent may be filed before other permits, variances and approvals required under the Town bylaws, Subdivision Control Law or regulations, have been obtained.

The Notice of Intent shall be accompanied by a check for the amount of the filing fee. No filing fee is required when the Town of Dunstable files a

Notice of Intent. In addition, a separate bylaw fee shall accompany the filing. **[Amended May 13, 2019 Article 29]**

Each Notice of Intent shall be sent by certified mail or shall be hand delivered to the Conservation Commission or its authorized representative. If the applicant hand delivers the request to the Commission, the bearer should request a dated receipt. **[Amended May 13, 2019 Article 29]** ~~If the applicant is other than the owner, the applicant shall provide certification that notice was given to the owner by certified mail.~~

Copies of the Notice of Intent shall be sent by the applicant, at the same time, by certified mail or hand delivered, to the Planning Board, the Board of Appeals, and the Board of Health.

A Notification to Abutters under the Massachusetts Wetlands Protection Act shall be sent by the applicant, at the same time, by certified mail or certificates of mailing to all abutters within 100' of the subject property boundaries and to the owner if other than the applicant. The list of abutters must be obtained from and certified by the Assessors Department. This list of abutters, so notified shall be provided to the Commission prior to the Public Hearing. **[Amended May 13, 2019 Article 29]**

PUBLIC HEARING

The Commission shall hold a Public Hearing on the application within 21 days of the filing of the Notice of Intent. Notice of the date, time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation in Dunstable and by mailing a notice to the applicant, the Board of Health, Board of Appeals and Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under M.G.L. c.131, § 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date.

BURDEN OF PROOF

The applicant shall have the burden of proving by preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed 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 at the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence upon such terms and conditions the Commission sees as being reasonable.
[Amended May 13, 2019 Article 29]

ORDER OF CONDITIONS [Amended 5-13-2013 ATM Article 32]

If after said hearing, the Conservation Commission determines that the land on

which the proposed work is to be done is significant to the interests protected by this Bylaw, it shall by written order, within 21 days or such future time as the Commission and applicant shall agree upon, impose such conditions reasonably necessary for the protection of the interests described herein and all work shall be done in accordance therewith. The Conservation Commission may impose such conditions on any proposed removing, dredging, filling or altering as it deems necessary to protect and preserve the interests covered by this Bylaw. Such Order of Conditions shall be in writing and may be subject to the same constraints as any such order issued by the Dunstable Conservation Commission under the provisions of M.G.L. c.131, §40, or successor statues, and shall be issued within 21 days or such further time as the Commission and applicant shall agree upon after the Public Hearing. Such Order of Conditions shall expire in no less than one nor more than three years from the date of issuance. The date of expiration shall be specified in the Order. If the project is not completed within three years, then 30 days prior to the expiration date an extension must be applied for. Such extension may be for no more than three years. No proposed work governed by an Order of Conditions shall be undertaken until all permits, approvals and variances required by the local Bylaw have been obtained and all applicable appeal periods have expired.

If the Commission determines that the area which is the subject of the application is not significant to the interests protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within 21 days of the public hearing.

RECORDING [Amended 5-13-2013 ATM Article 32]

Any original Order of Conditions shall be recorded with the Registry of Deeds in Lowell for the property defined in the Order. Evidence certifying that recording has been done must be returned to the Commission before work begins or a building permit is signed by the Commission. Upon completion of the work, a Certificate of Compliance (310 CMR 10.05 (9)) must be requested in writing and once issued, shall be recorded in the Registry of Deeds in Lowell to remove the lien from the property. **[Amended May 13, 2019 Article 29]**

DENIAL

The Commission is empowered to deny permission for any removal, dredging, filling, or altering, on subject lands within the Town, if, in its judgment such denial is necessary to protect the interest of this Bylaw.

RELATIONSHIP TO M.G.L. CHAPTER 131, SECTION 40

The Commission shall not impose additional or more stringent conditions pursuant to M.G.L. Chapter 131 §40, than it imposes pursuant to this Bylaw, nor shall it require a Notice of Intention pursuant to Section 40 to provide materials or data in addition to those required pursuant to this Bylaw.

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c. 131, §40, and regulations 310 CMR 10.00 thereunder. **[Amended May 13, 2019 Article 29]**

ADDITIONAL INFORMATION

At any time up to the closing of a hearing, the Commission may require such additional information from the applicant as the Commission reasonably deems necessary.

§5. ENTRY UPON LAND [Amended 5-8-2006 ATM Article 18]

The Commission, its agents, and employees may enter upon privately owned land for the purpose of performing their duties under this Bylaw, subject to requirements or limitations of applicable law.

§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 this Bylaw shall forthwith comply with any such order or restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

§7. LEGAL ACTION

The Board of Selectmen shall, upon the request of the Conservation Commission, instruct Town Counsel to take such legal action as may be necessary to restrain a violation of this Bylaw, and enforce the orders of the Commission hereunder and the Town Counsel shall forthwith comply with such instructions.

§8. REGULATIONS

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

§9. RULES [Amended 5-13-2013 ATM Article 32]

Rules:

1) Permit fees are payable at the time of application and are non-refundable.

2) Town, County, State or Federal projects are exempt from fees.

3) There shall be no fee for activities involving improvements undertaken to improve the agricultural use of land currently in agriculture or of land to be converted to agricultural use.

4) No fee is charged for Requests of Determination under the law or for extensions for Orders of Conditions.

5) Failure to comply with the law after official notification shall result in fees twice those normally assessed.

6) The Commission shall have the right to change the fee schedule. Any change of fee schedule must be advertised and posted at the Town Hall at least thirty days prior to the date upon which the changes are to become effective.

7) Please see "Fees & Procedures" for additional information at www.dunstable-ma.gov.

§10. DEFINITIONS [Amended 5-11-2000 ATM Article 30; 5-13-2013 ATM Article 32]

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

a) PERSON; the term PERSON shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town by-laws, administrative agencies, public or quasipublic, corporations or bodies, the Town of Dunstable, and any other legal entity, its legal representatives, agents or assigns.

b) APPLICANT; the term APPLICANT as used in this Bylaw shall mean a person given Notice of Intention to build, remove, fill dredge or alter.

c) ALTER; the term ALTER shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:

1) Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind, muck, peat or other organic soil of any description or kind;

2) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention characteristics;

3) Drainage or other disturbance of the water level or water table;

4) Dumping, discharging, filling with any material or other activity which may degrade surface or ground water quality in or out of the Town of Dunstable;

5) Driving of piles, erection of buildings or structures of any kind;

6) Placing of obstructions whether or not they interfere with the flow of water;

7) Destruction of plant life, including the cutting of trees;

8) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the surface or ground water;

d) BANKS; the term BANKS shall mean that part of land adjoining any body of water or watercourse which confines the water.

e) FRESHWATER WETLANDS – shall mean any area, including Swamps, Marshes, Wet Meadows and Bogs, where water is at or near the surface for a prolonged period of time, as demonstrated by the presence of hydric soils or other indicators of hydrology, and/or the area supports or could support a plant community (cover) comprised of 50% or greater of wetland plant species. Freshwater wetlands that do not border a stream or river must be greater than 500 s.f. in size. Freshwater wetlands includes both Bordering & Isolated Vegetated Wetlands. **[Amended May 13, 2019 Article 29]**

f) VERNAL POOL AND HABITAT- shall mean a confined basin depression that holds water for a minimum of ~~8~~6 continuous weeks during the spring and/or summer and provides breeding habitat for obligate and facultative vernal pool species. It may be without standing water during later summer. Vernal pool habitat is the area within 100‘of the boundaries of such depression. **[Amended May 13, 2019 Article 29]**

The Commission may adopt additional definitions not inconsistent with this Section 10 of this Bylaw.

§ 11: SECURITY

The Commission may require, as a permit condition in some particular cases 1.) Where the scope of the work is such that a failure to perform the work according to the conditions in the Order would be likely to cause grave damage to the interests protected by this Bylaw, or 2.) Where particular conditions in the Order must remain effective through the future to assure continuing protection of interests protected by this Bylaw; that the performance and observance of other conditions be secured by one or both of the following methods:

a) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient to secure performance of conditions and observance of the safeguards of such Order of Conditions and payable to the Town of Dunstable upon default;

b) By a conservation restriction, easement or by a covenant, executed and duly recorded by the owner of record, running with the land, whereby the conditions and safeguards included in such Order of Conditions shall be performed before any lot may be conveyed other than by mortgage deed.

The Commission shall make specific findings of fact in support of terms and conditions imposed under this section.

§12: VIOLATIONS AND ENFORCEMENT [Amended 5-13-1991 ATM Article 32; 5-11-1992 ATM Article 10 C; 5-13-2013 ATM Article 32]

Any person who violates or any corporate or quasi-corporate entity which violates any provision of this bylaw or any conditions of a permit or order issued pursuant to it shall be punished by a fine as listed herein below. Each day or portion thereof during which a violation continues shall constitute a separate offense.

a) Alteration of an area subject to protection under the bylaw without having filed for and having in effect at the time of the activity a valid Order of Conditions regulating the activity undertaken. The penalty shall be three hundred ($300.00) dollars.

b) Failure to comply with an order or orders as set forth in any Order of Conditions in effect to regulate the activity thereby permitted within an

area subject to ~~projection~~*protection* under the bylaw within the time period specified within such orders. The penalty shall be two hundred ($200.00) dollars.

c) Failure to comply with any one or more of the terms of any enforcement Order or Orders duly issued by the Dunstable Conservation Commission within the time limits specified in such Orders. The penalty shall be fifty ($50.00) dollars.

d) Failure to maintain in proper working order or condition appropriate to their intended function, structures, improvements or facilities which were required or permitted as part of activities regulated under an Order of Conditions issued to protect an area subject to regulation under the Bylaw and significant to the interests to be protected under this bylaw. The penalty shall be fifty ($50.00) dollars.

In addition to any other means of enforcement provided for by law, the provisions of this General Wetlands Bylaw may also be enforced at the ~~election~~*discretion* of the Conservation Commission by non-criminal complaint pursuant to any bylaws adopted pursuant to M.G.L.~~, Chapter~~ *c.* 40, ~~Section~~ §21D, as amended, in force in the Town of Dunstable. The enforcing authority shall be either the Dunstable Police Department, including any Police Officer in said Department, or the Conservation Commission.

§ 13: INVALIDITY

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions which have previously become final.

§ 14: APPEALS

In the event that any person shall be aggrieved by a decision of the Conservation Commission under this Bylaw, or by its failure to act thereunder, such person may bring an action in the nature of certiorari under M.G.L. ~~Chapter~~ *c.* 249 §, ~~Section~~ 4.