

I. GENERAL PROVISIONS

A. Introduction

These regulations are promulgated by the Amherst Conservation Commission pursuant to the authority granted to the Commission under Wetlands Protection under the Town of Amherst General Bylaws Article 3.31. These rules and regulations shall have the full force of law upon the effective date.

B. Purpose

1. The Amherst Wetlands Protection Bylaw sets forth a public review and decision-making process by which activities affecting resource areas subject to protection under the Bylaw are to be regulated according to the following Interests (collectively the “Resource Interests Protected by this Bylaw”):

- a. protection of public and private water supply
- b. protection of groundwater
- c. flood control
- d. erosion and sedimentation control
- e. storm damage prevention
- f. protection of water quality
- g. water pollution control
- h. protection of wildlife and fisheries habitat
- i. protection of rare species habitat
- j. protection of agricultural value
- k. protection of aquacultural value
- l. protection of recreation value

2. These regulations serve to implement the Amherst Wetlands Protection Bylaw by establishing standard definitions, uniform procedures, design specifications, and performance standards by which the Commission may carry out its responsibilities under the bylaw.

C. Statement of Jurisdiction

1. Areas Subject to Protection under the Bylaw
 - a. any freshwater wetland, marsh, wet meadow, bog, swamp, isolated wetland, vernal pool (whether certified or potential), bank, reservoir, pond, intermittent and ephemeral stream, or watercourse;
 - b. any land within 100 feet of the areas set forth in Sec.I. C.1.a above;
 - c. any river or perennial stream;
 - d. any land within 200 feet of any river or perennial stream, i.e. Riverfront Area;
 - e. any water within the water bodies set forth in Sec.I. C.1.a and Sec. I. C.1.c. above;
 - f. any land under any of the water bodies set forth in Sec.I. C.1.a and Sec.I. C.1.c above;

- g. any land subject to flooding (bordering or isolated) or inundation by groundwater, surface water, or storm flowage;
2. Activities Subject to Regulation Under the Bylaw
 - a. Any activity proposed or undertaken which constitutes removing, filling, dredging, building upon, degrading, discharging into, or otherwise altering any areas subject to protection specified in Sec. I. C.1 (Areas Subject to Protection) above is subject to regulation under the Bylaw and requires the filing of a Notice of Intent (NOI).
 - b. Any person desiring to know whether or not a proposed activity or an area is subject to the Bylaw may request in writing a determination from the Commission. Such a Request for Determination (RDA shall be submitted pursuant to Sec. III. C of these regulations.

D. Exemptions and Minor Activities

1. Minor Activities
Minor Activities under the State Wetlands Protection Act shall apply.

Commentary

The Amherst Conservation Commission has determined that Activities Subject to Regulations Under the Bylaw in Areas Subject to Protection under the Bylaw are likely to alter those areas and the Conservation Commission shall always require the filing of a Notice of Intent for those activities.

The Amherst Conservation Commission has determined that Activities Subject to Regulations Under the Bylaw within 100 feet of Areas Subject to Protection under the Bylaw are likely to alter those areas. Any Activities Subject to Regulations Under the Bylaw proposed within 50 feet of Areas Subject to Protection under the Bylaw shall require the filing of a Notice of Intent. Any Activities Subject to Regulations Under the Bylaw proposed between 50 and 100 feet of Areas Subject to Protection under the Bylaw shall require the filing of a Notice of Intent.

The Amherst Conservation Commission has determined that Activities Subject to Regulations Under the Bylaw outside of, and over 100 feet from Areas Subject to Protection under the Bylaw are unlikely likely to alter those areas, and therefore the shall not regulate said activities unless and until they actually result in the altering of an Area, or Areas Subject to Protection under the Bylaw.

2. Exemptions
Exemptions under the State Wetlands Protection Act shall apply.
 - a. Vegetation cutting for road safety maintenance, as outlined below in G.3.b.vi.i through iv.
 - b. For all activities listed at G.3.b.vi, cuttings of shrubs and branches from mature trees will be performed with suitable horticultural equipment and methods that do not further damage the trees.
 - c. To prevent the possible export of invasive plants, cut vegetation should be chipped and evenly spread on site, provided the chips are spread outside the buffer zone, and

- raked to a depth not to exceed three inches, clear of all drainage ways. Alternatively, all cuttings and slash shall be removed from the site and properly disposed:
- d. Removal of diseased or damaged trees or branches that pose an immediate and substantial threat to driver safety from falling into the roadway;
 - e. Removal of shrubbery or branches to maintain clear guardrails; such removal shall extend no further than six feet from the rear of the guardrail;
 - f. Removal of shrubbery or branches to maintain sight distances at existing intersections; such removal shall be no farther than five feet beyond the "sight triangles" established according to practices set forth in American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets, 2011, 6th edition, and such removal is a minimum of ten feet from a resource area, other than Riverfront Area; and
 - g. Removal of shrubbery, branches, or other vegetation required to maintain the visibility of road signs and signals.
 - h. Installation, repair, replacement or removal of signs, signals, sign and signal posts and associated supports, braces, anchors, and foundations along existing paved roadways and their shoulders, provided that work is conducted as far from resource areas as practicable, and is located a minimum of ten feet from a resource area, any excess soil is removed from the project location, and any disturbed soils are stabilized as appropriate;
 - i. Pavement repair, resurfacing, and reclamation of existing roadways within the right-of-way configuration provided that the roadway and shoulders are not widened, no staging or stockpiling of materials, appropriate erosion control best management practices are implemented, all disturbed road shoulders are stabilized within 72 hours of completion of the resurfacing or reclamation, and no work on the drainage system is performed, other than adjustments and/or repairs to respective structures within the roadway;
 - j. The repair or replacement of an existing and lawfully located driveway servicing not more than two dwelling units provided that all work remains within the existing limits of the driveway, appropriate erosion control best management practices are implemented, and all surfaces are permanently stabilized within 14 days of final grade.

E. Burden of Going Forward and Burden of Proof

The Burden of Proof and Burden Going Forward under the State Wetlands Protection Act shall apply, along with the additional requirements stated below.

1. The applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the applicant in accordance with the burden of proof pursuant to Sec. I. E.2 below.
2. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not have a significant or cumulative effect on the values protected by the Bylaw. Failure to meet the burden of proof shall be cause for the Commission to deny the application for permit, along with any work or activity proposed herein.