

**SOUTH HADLEY CONSERVATION COMMISSION**  
**NON-ZONING WETLANDS BYLAW REGULATIONS**

Adopted at the April 6, 2011 Conservation Commission Public Hearing.

Table of Contents

1.0	General Provisions.....	2
	1.1 Authority.....	2
	1.2 Purpose.....	3
	1.3 Revision.....	3
	1.4 Jurisdiction.....	3
2.0	Definitions and Abbreviations.....	3
	2.1 Definitions.....	3
	2.2 Abbreviations.....	8
3.0	Application Procedures.....	9
	3.1 Application Forms.....	9
	3.2 Timing Requirements.....	10
	3.3 Plans and Information.....	10
	3.4 Notice to Abutters.....	10
4.0	Performance Standards.....	11
	4.1 General.....	11
	4.2 No Net Loss Policy.....	11
	4.2.1 Rationale for No Net Loss Policy.....	11
	4.2.2 Sequence to Prevent Wetland Loss.....	11
	4.3 Limited Projects.....	12
	4.4 Freshwater Wetlands.....	12
	4.4.1 Definition, Critical Characteristics.....	12
	4.4.2 Presumption of Significance.....	13
	4.4.3 Performance Standards for Freshwater Wetlands.....	13
	4.5 Vernal Pools.....	14
	4.5.1 Definition, Critical Characteristics.....	14
	4.5.2 Timing of Evidence Collection and Type of Evidence.....	14
	4.5.3 Presumption of Significance.....	15
	4.5.4 Performance Standards for Vernal Pools.....	15
	4.6 Intermittent Streams.....	16
	4.6.1 Definition, Critical Characteristics.....	16
	4.6.2 Presumption of Significance.....	17
	4.6.3 Performance Standards for Intermittent Streams.....	17
	4.7 Buffer Zone.....	17
	4.7.1 Definition, Critical Characteristics.....	17
	4.7.2 Presumption of Significance.....	18
	4.7.3 Performance Standards for Buffer Zone.....	18
	4.7.4 Wetlands Setback for Existing Structures.....	18

	4.7.5 Temporary Disturbances and Water-Dependent Activities.....	19
5.0	Fees.....	19
	5.1 Fee Schedule.....	19
	5.1.1 Advertising Fee.....	19
	5.1.2 Penalty for Late Filings.....	19
	5.1.3 Administrative Fees.....	19
	5.2 Non-payment of Fees.....	20
	5.3 Consultant Fees.....	20
6.0	Performance Guarantees.....	20
	6.1 Security.....	20
	6.2 Covenant.....	20
	6.3 Reduction of Security.....	21
	6.4 Release of Performance Guarantee.....	21
	6.5 Default.....	21
7.0	Enforcement.....	21
	7.1 Violations.....	21
	7.2 Form of Notice of Violation.....	21
	7.3 Process for Issuing a Notice of Violation.....	22
	7.4 Request for Hearing.....	22
	7.5 Fines.....	22
	7.5.1 Violation Fine Schedule.....	22
8.0	Severability.....	23
9.0	Effective Date.....	23
	Appendix A – Sources and References.....	25
	Appendix B – Applications Checklists.....	28
	Appendix C – Bylaw Administrative Forms.....	31
	Application for Conservation Permit (ACP).....	32
	Request for Waiver.....	34
	Appendix D – Vernal Pool Map.....	not yet available
	Appendix E – Streams and Rivers Map.....	not yet available

## **1.0 General Provisions**

### **1.1 Authority**

These rules and regulations are promulgated by the Town of South Hadley Conservation Commission (hereafter referred to as the Commission) under the authority of Article XV, the Non-Zoning Wetlands Bylaw of the Town of South Hadley’s General Bylaws (hereafter referred to as the Bylaw), and shall have the force of law upon the effective date.

The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of the Bylaw. Moreover, to the extent that any provision or section of these Regulations are deemed invalid by

a court of competent jurisdiction, the remaining provisions of said Regulations shall remain in full force and effect to the extent permitted by the law.

## **1.2 Purpose**

The purpose of these regulations is to complement and clarify the provisions of the Bylaw and to create a uniformity of process for its administration.

## **1.3 Revision**

The Regulations may be revised as needed by the Commission after public notice and hearing as required by the Bylaw.

## **1.4 Jurisdiction**

Areas subject to protection under the Bylaw include resource areas not protected by the Massachusetts Wetlands Protection Act MGL Chapter 131 section 40 (hereafter referred to as the WPA). Wetland Resource areas protected by this Bylaw include:

- ❖ Freshwater wetlands, bordering or isolated, including marshes, wet meadows, bogs, and swamps;
- ❖ Vernal Pools (certified or uncertified);
- ❖ Banks;
- ❖ The water columns of and the land under lakes, ponds, reservoirs, creeks, rivers and streams;
- ❖ Intermittent streams;
- ❖ Land within 100 feet of the aforesaid resource areas (the Buffer Zone);
- ❖ Isolated Land Subject to Flooding or inundation by groundwater or surface water;
- ❖ Bordering Land Subject to Flooding or inundation by groundwater or surface water;
- ❖ The 200-foot Riverfront Areas.

Freshwater wetlands, ponds and vernal pools are protected whether or not they border surface waters, are located within another resource area, or meet state size requirements, as long as they meet definitions in the Bylaw and Regulations.

The following streams in South Hadley have been identified by the Commission as perennial streams having 200-foot Riverfront Areas, based on their designation on the USGS topographic maps: the Connecticut River, Bachelor Brook, BATTERY Brook, Dry Brook, Elmer Brook, Judd Brook, Leaping Well Brook, Stony Brook and White Brook. Streams not listed above may still have a Riverfront Area associated with them if they meet the definition of perennial stream in 310 CMR 10.58, or alternative criteria the Commission may establish in these Regulations. Intermittent streams protected by this Bylaw shall include only those identified on the Streams & Rivers Map in Appendix E.

## **2.0 Definitions and Abbreviations**

### **2.1 Definitions**

The definitions provided in the WPA Regulations promulgated by the Department of Environmental Protection under 310 CMR 10.00 shall apply to this Bylaw and Regulations except as explicitly modified in the Bylaw or in the Regulations below:

Activity means any form of draining, dumping, dredging, damming, discharging, excavation, filling or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of surface water; the installation of drainage, sewage and water systems; the discharging of pollutants and the destruction of plant life.

Application means the form(s) required by these Regulations, together with all plans or other documents provided by the person seeking a Determination or Permit for activity subject to the Bylaw.

Bank is defined in the WPA Regulations (310 CMR 10.54) as the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and an upland. It may be partially or fully vegetated or exposed soil, gravel or stone.

Bordering Land Subject to Flooding is defined in the WPA regulations (310 CMR 10.57) as an area which floods from a rise in a bordering waterway or water body. Such areas are likely to be significant to flood control and storm damage prevention. The boundary is the estimated maximum lateral extent of flood water for the 100-year frequency storm. This boundary is determined by the flood profile data prepared by the National Flood Insurance Program.

Bordering Vegetated Wetlands are defined in the WPA Regulations (310 CMR 10.55) as freshwater wetlands which border on creeks, rivers, streams, ponds and lakes. They include wetlands referred to as wet meadows, marshes, swamps and bogs.

Buffer Zone includes all land within the area measured 100 feet horizontally from the boundary of any wetland resource area as defined by the WPA and from any wetland resource area, including isolated wetlands, vernal pools and intermittent streams as defined in the Bylaw and these Regulations. The only exceptions are Riverfront Areas, Bordering Lands Subject to Flooding and Isolated Lands Subject to Flooding when not a vernal pool. These are the only resource areas that do not have a protected 100 foot buffer zone.

Bylaw refers to the South Hadley Non-Zoning Wetlands Bylaw, Article XV of the General Bylaws of the Town of South Hadley.

Certifiable means the vernal pool meets the criteria for certification described in these regulations, but has not been certified by the Natural Heritage & Endangered Species Program of the MA Division of Fisheries and Wildlife.

Conservation Zone is the protected fifty (50) foot wide strip of land adjacent to any Freshwater Wetland, Bank, or water body as described in the Bylaw and these Regulations. Bordering Lands Subject to Flooding, Isolated Lands Subject to Flooding that are not vernal pools, and the 200-foot Riverfront Area do not have a 50-foot Conservation Zone. Vernal Pools have a Conservation Zone of 25-50 feet depending on the size of the pool. No activity or disturbance that would have a detrimental effect on the Conservation Zone or wetland resource area is allowed in this Zone, including but not limited to grading, landscaping, vegetation removal, dumping of landscaping materials, filling, excavating, roadway or driveway construction, or construction of any kind, including foundations, buildings, porches, decks, pools, septic systems, and sheds. Storm water management structures such as detention basins and retention ponds that are regularly maintained as such, artificially lined ponds, and constructed wastewater treatment lagoons are not protected resource areas under the Bylaw and do not have a Conservation Zone. Construction of new storm water structures are required to be placed outside the 50-foot Conservation Zone from wetland resource areas. Minor activities allowed in the Conservation Zone include mowing, gardening, and pruning within existing lawn, garden, or landscaped areas.

Determination means a formal opinion rendered by the Commission as to whether or not the Bylaw applies to an area or activity.

Facultative indicator species refers to particular vertebrate species identified by NHESP as frequently using vernal pools for all or a portion of their life cycle, but that are able to successfully complete their life cycle in other types of wetlands as well. Evidence of their presence can be used to certify a vernal pool (NHESP Guidelines for the Certification of Vernal Pool Habitat, 2010).

Footprint of a building shall mean the extent of the building as viewed from overhead.

Freshwater wetlands refers to any area where the topography is low and flat, where soils are annually saturated or flooded, as demonstrated by the presence of hydric soils, or where the vegetation community is composed of species adapted to or characteristic of saturated or ponded conditions. The presence of hydric soils or wetlands vegetation can be used to define an area. The Commission recognizes that soils can be slow to respond to changes in hydrologic conditions and will allow a wetland delineation to be made without the presence of hydric soils in some instances. Freshwater wetlands *may* include Bordering and Isolated Vegetated Wetlands.

Growing Season refers to the portion of the year when the soil temperature is at or above biological zero at a depth of 50 cm (19.7 inches) below the soil surface (NRCS Hydric Soil Criteria as posted on <http://soils.usda.gov/use/hydric/criteria.html>). For the purposes of the Bylaw this period is from March 15<sup>th</sup> to October 15<sup>th</sup>.

Hydric Soils are soils that formed under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part (Field Indicators for Identifying Hydric Soils in New England). Hydric soils shall be determined

under the Bylaw through use of the Field Indicators for Identifying Hydric Soils in New England manual.

Impervious surfaces include areas covered by manmade improvements that inhibit the infiltration of precipitation and surface water to the ground, including buildings, hard structures, macadam, stone and other similar materials.

Intermittent Stream is a section of a body of running water, such as a brook or creek, which moves in a definite channel in the ground due to hydraulic gradient, but experiences naturally occurring interruptions of flow. These interruptions of flow must be adequately documented at least once per day over four consecutive days in any consecutive twelve month period during non-drought conditions in areas not significantly impacted by beaver or other impoundments.

Isolated Land Subject to Flooding is defined in the Bylaw as an isolated depression or closed basin at least 500 square feet in size, which serves as a ponding area for run-off or high ground water which has risen above the ground surface.

Isolated Vegetated Wetlands are vegetated wetlands that do not border on rivers, streams, ponds or lakes. They may include wet meadows, marshes, swamps, bogs or vernal pools. In order to be protected under the Bylaw they must have at least five hundred (500) square feet of surface area.

Normal Maintenance of Land in Agricultural Use is defined under these regulations the same as it is in the WPA Regulations 310 CMR 10.04 (Agriculture)(b).

Obligate indicator species refers to particular vertebrate and invertebrate species identified by NHESP as requiring vernal pools for all or a portion of their life cycle and that are unable to successfully complete their life cycle without vernal pools. Evidence of their presence can be used to certify a vernal pool (NHESP Guidelines for the Certification of Vernal Pool Habitat, 2010).

Permit shall refer to any of the following written authorizations issued by the Conservation Commission under this Bylaw and Regulations: Order of Conditions, Order of Resource Area Delineation, Enforcement Order, Extension of or Amendment to an Order of Conditions. A permit is granted or denied after an application is submitted, a public hearing or meeting is held to discuss the proposed project, and the Commission makes a decision as to the effect of the project upon wetland values protected by the Bylaw.

Pond means any open body of fresh water with a surface area of at least 500 square feet, under non-drought conditions. Ponds may be either naturally occurring or man made by impoundment, excavation or other methods. Ponds shall contain standing water except for periods of extended drought. Periods of extended drought for purposes of this regulation shall be those periods, in those specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management

Task Force, as established by the Executive Office of Energy and Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP). Notwithstanding the above, the following, manmade bodies of open water shall not be considered ponds and protected under this Bylaw: 1) basins or lagoons that are part of wastewater treatment plants; 2) swimming pools or other basins with impervious linings; and 3) manmade retention ponds and detention basins that are part of a storm water management system and have been maintained as such at the time of the issuance of these regulations.

Resource Area includes all wetland areas subject to protection under the Massachusetts Wetland Protection Act (MGL Ch 131 sec 40) and the South Hadley Non-Zoning Wetlands Bylaw and Regulations, including the 100-foot buffer zone to vegetated wetlands, vernal pools and intermittent streams.

River means any natural flowing body of water that empties into any ocean, lake, pond or other river. Rivers include streams that are perennial because surface water flows within them throughout the year. Rivers have a 200-foot Riverfront Area associated with them. The location of these water bodies are shown on the Streams & Rivers Map in Appendix E.

Riverfront Area is the area of land between a river's mean annual high water line measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas, including wetlands adjacent to the river, and their Buffer Zones.

Stream means a body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to Protection under the Wetlands Protection Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water that does not flow throughout the year (i.e., that is intermittent) is also considered a stream even if it is upgradient of, and more than 100 feet from, all bogs, swamps, wet meadows, and marshes.

Structures include, but are not limited to, buildings, foundations and footings associated with buildings, pilings, impervious pads, sonotubes associated with porches, patios, decks, house additions and sheds. The term also includes pools, permanent fencing, walls, new pavement and impervious surface.

Undisturbed vegetation as it applies to the Conservation Zone, includes any land not covered by impervious surfaces and supporting the growth of a plant community, except areas that are actively maintained as lawns or gardens. An area that was previously cleared or landscaped, but which is in a process of succession back to a natural plant community shall be deemed undisturbed vegetation regardless of the presence of invasive or non-native species.

Values refers to the resource area values protected by the Bylaw. These include: protection of public or private water supply, protection of groundwater, flood control, erosion and

sedimentation control, storm damage prevention, prevention of water pollution, protection of fisheries and wildlife habitat, and rare species habitat including rare plant species, recreation and agriculture.

Vegetated Wetlands are areas where the soils are annually saturated and/or at least 50% of the plant community consists of obligate or facultative wetland plant species. Vegetated wetlands include bogs, marshes, wet meadows and swamps.

Vernal Pool is defined in the Bylaw and includes any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, in at least most years, holds water for a minimum of two continuous months during the spring and/or summer, is at least 500 square feet in size at some time during most years, is free of established reproducing 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 NHESP. Under the Bylaw, only certified vernal pools and potentially certifiable vernal pools as shown on a map created for the Regulations shall be protected.

Vernal Pool Habitat includes all wetland resource areas and adjacent upland resource areas within 100 feet of a vernal pool that have natural features suitable for nesting, feeding, overland dispersal, movement to breeding ponds, basking, cover and/or aestivation by reptiles, amphibians or mammals that depend on vernal pools for a portion of their life cycle.

Water column is the water in a lake, pond or stream which extends from the bottom sediments to the water surface.

Wetland Indicator Plants are those species listed as occurring in bogs, marshes, swamps, or wet meadows in the WPA, as well as any plant species known to occur primarily in wetlands, including all species classified as Obligate, Facultative Wetland, or Facultative + or Facultative according to the most recent edition of the National List of Wetland Indicators published by the United States Fish and Wildlife Service. Obligate wetland plants are estimated to occur in wetlands under natural conditions 99% of the time; Facultative Wetland plants 67-99%; and Facultative indicates plants estimated to occur in wetlands 34-66% of the time. A plus (+) or minus (-) indicates an emphasis on the higher or lower end of the range of percentage of occurrence. Only Facultative+ and Facultative plants are considered Wetland Indicator Plants, while all Facultative Wetland and Obligate plants are included as Wetland Indicator Plants.

Wildlife Habitat refers to those areas subject to the Bylaw which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide food, shelter, migratory or over-wintering areas or breeding areas for wildlife.

## **2.2 Abbreviations**

The following abbreviations are used in these Regulations.

ACP – Application for Conservation Permit

ANRAD – Abbreviated Notice of Resource Area Delineation.  
BVW – Bordering Vegetated Wetland  
Ch and sec – Chapter and section  
COC – Certificate of Compliance  
CMR – Code of Massachusetts Regulations  
DEP – Department of Environmental Protection  
DOA – Determination of Applicability  
EOEEA – Executive Office of Energy and Environmental Affairs  
LUW – Land Under Water  
MGL – Massachusetts General Laws  
NHESP – MA Natural Heritage & Endangered Species Program  
NOI – Notice of Intent  
OOC – Order of Conditions  
ORAD – Order of Resource Area Delineation  
RFD – Request for Determination  
WPA – Massachusetts Wetlands Protection Act M.G.L. Chapter 131, section 40

### **3.0 Application Procedures**

#### **3.1 Application Forms**

Applicants filing a Request for Determination of Applicability (DOA) under the Bylaw shall use the latest form bearing the same title provided for use with the WPA and Regulations (310 CMR 10.00) and currently known as Form 1. In addition they shall file simultaneously with these forms an Application for Conservation Permit (ACP) with the Commission. If requesting a waiver, a Request for Waiver form shall also be filed.

Applicants filing a permit application under the Bylaw for an Order of Conditions (OOC), Order of Resource Area Delineation (ORAD) or an Amendment to an existing OOC shall use the latest form entitled "Notice of Intent" (NOI) or "Abbreviated Notice of Intent" or "Abbreviated Notice of Resource Area Delineation" as provided for use with the WPA and Regulations (310 CMR 10.00) and currently known as Form 3, Form 4 and Form 4A respectively. In addition they shall file an ACP with the Commission. If requesting a waiver, a Request for Waiver form shall also be filed.

Requests for extensions to OOC shall be written in compliance with the WPA and Bylaw Regulations. Requests for Certificate of Compliance (COC) shall use the latest form entitled "Request for Certificate of Compliance" as provided for use with the WPA and Regulations (310 CMR 10.00) and currently known as Form 8A.

Application forms can be obtained from the Commission office, Room 205 in the Town Hall at 116 Main Street, South Hadley, MA 01075 or online from the DEP's website for the state forms and the Town of South Hadley website for the town forms.

Pursuant to Section 6 of the Bylaw, the Commission may, at its discretion, consolidate the hearing under the WPA with the hearing under the Bylaw.

### **3.2 Timing Requirements**

The date of filing of the application shall be the date when all required information, fees and notices have been received and deemed complete by the DEP and Commission. All time periods set forth under the Bylaw shall commence from this date.

The Commission will schedule a public hearing on a Notice of Intent (NOI) or Abbreviated Notice of Resource Area Delineation (ANRAD) within three weeks of acceptance of the permit application and issuance of a file number by DEP. The Commission will schedule a public meeting within three weeks of acceptance of a Request for a Determination of Applicability (DOA).

All documentation to be considered as a part of a Request for DOA, Request for Amendment to an OOC, or Request for a COC must be submitted to the Commission no later than ten (10) business days prior to the scheduled public meeting date. If additional information is requested as part of a continuance of a public meeting or hearing, the applicant must submit said information no later than five (5) business days prior to the continued public meeting or hearing. This is the minimum time needed to allow the Commission and staff to properly review, analyze, and check the information provided. Documentation submitted with fewer than the minimum business days for review may be excluded from consideration at the scheduled meeting or hearing and held for discussion at a subsequently scheduled meeting.

### **3.3 Plans and Information**

Plans and information shall be submitted that completely and accurately describe the proposed activity and its effect on the resource areas and values protected by the Bylaw.

Each plan, drawing, sketch or set of calculations shall be titled, dated and signed by the person responsible for their preparation. Plans or information involving the practice of professional engineering or surveying must be stamped and signed by the appropriate design professional who must be registered in the Commonwealth of Massachusetts.

**Appendix B** provides a detailed checklist of information that is required by the Commission to deem a filing complete. The Commission may waive any of the submission requirements if it determines that such information is not necessary for an informed decision on the application.

### **3.4 Notice to Abutters**

Any person requesting a determination or making written application to perform work or certify resource boundaries regulated by the Bylaw shall at the same time give written notice thereof, by mailing by certified mail with return receipt requested, certified mailing list, or by hand delivery, to all abutters within 100 feet of the property under consideration, according to the most recent records of the Board of Assessors, including those across a traveled way, or across a body of water if less than 100 feet across. The abutter notice shall include a copy of the permit application or request, with plans, or shall state where copies may be examined. If the person filing a Request for Determination of Applicability or other application is not the owner of the area subject to the request or application, the applicant shall also give written notice of the

request or application with hearing date and time to the owner of the parcel. The person providing such notices to abutters or property owners by hand delivery shall file an affidavit affirming that notification was done, with a copy of the notice, with the Commission. Evidence of proper notification shall be given to the Conservation Commission before or by the commencement of the Public Hearing. Failure to do so may require postponement of the meeting or hearing until the information is received.

#### **4.0 Performance Standards**

##### **4.1 General**

Applicants proposing alteration of 100 square feet or more of any area subject to the jurisdiction of the Bylaw may be required to replace not only the function of the area to be disturbed, but also its physical properties, characteristics, and vegetative cover. Inability to do so may be cause for denial. Areas subject to jurisdiction of the Bylaw are presumed to be significant to the values protected by the Bylaw until it is demonstrated otherwise by a preponderance of credible evidence to the contrary.

The introduction, purpose and performance standards stated in the WPA Regulations 310 CMR 10.51 - 10.60 shall apply except as stated below.

##### **4.2 No Net Loss Policy**

As expressed in Section 1 of the Bylaw, the Commission seeks to establish measures to protect the town's wetlands and ensure that their values, as listed in the Bylaw, are maintained. The following measures are required to prevent a net loss of wetlands and their values.

###### **4.2.1 Rationale for No Net Loss Policy**

Natural wetlands perform many functions and it is not possible to replicate all of them. Furthermore, it is difficult even to determine which functions are most probably or exclusively being performed in a given wetland area. Therefore, destruction or alteration of wetlands should only be undertaken most cautiously and only as a last resort. Applicants are advised that the Commission will require wetland replication based on the latest available scientific information and practices and will require replication on at least a 2:1 basis in order to increase the likelihood of success of the replication effort. Design of replacement wetlands should be based upon a quantitative showing of the functions operating in the natural wetland.

###### **4.2.2 Sequence to Prevent Wetland Loss**

The Applicant shall submit an analysis of alternatives, with the following "sequencing" approach used to evaluate any proposed wetland loss:

- 1) Avoidance: A permit will be issued only for the least environmentally damaging practicable alternative. It is the obligation of the proponent to present this alternative for any non-water dependent activity. Compensatory mitigation or wetland replication will not qualify as avoidance.
- 2) Minimization: Once the test of avoidance has been met, a proposal should minimize its adverse impacts through project modifications. It is the burden of the applicant to take all appropriate and practicable steps to minimize the impacts.

- 3) Mitigation: After the avoidance and minimization tests have been met, all lost wetlands and resource areas shall be restored or replicated to previous natural vegetated conditions or better on at least a 2:1 basis, with the focus being on replacement or restoration of function and acreage. All mitigation shall be performed in South Hadley.

### **4.3 Limited Projects**

The Commission, at its sole and reasonable discretion, may issue a permit for the Limited Projects identified in the WPA Regulations 310 CMR 10.53(3), with the same or additional performance standards, such as limits on road width, location or number of driveway crossings. The Commission has the discretion to permit with conditions as needed to ensure that the interests of the Bylaw are protected.

### **4.4 Freshwater Wetlands**

#### **4.4.1 Definition, Critical Characteristics**

Freshwater Wetlands shall include both Bordering and Isolated Vegetated Wetlands. Isolated Vegetated Wetlands are areas that meet the definition and critical characteristics of Bordering Vegetated Wetlands as described in WPA Regulations 310 CMR 10.55 but do not border on a creek, river, stream, pond or lake. They exist as "pockets" of wetland vegetation that are supported by hydric soils and /or hydrologic conditions.

Isolated Vegetated Wetlands protected under the Bylaw must be at least 500 square feet in area. In addition to the minimum size requirement, Isolated Vegetated Wetlands must also meet at least two (2) of the following three (3) criteria:

1. The vegetation community consists of at least 50% or more wetland indicator plants as listed in the U.S. Fish & Wildlife Service's National Wetlands Inventory Plant List for Massachusetts. Wetland indicator plants are classified by the U.S. Fish & Wildlife Service into the following categories: Facultative, Facultative Wetland, or Obligate Wetland based on the estimated percentage of the time they occur in wetlands under natural conditions.
2. Presence of indicators of hydrology such as but not limited to: site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, or recorded hydrogeologic data (stream gauge, aerial photo, or other).
3. Presence of hydric soils, as determined by National Resource Conservation Service hydric soil list and the manual Field Indicators for Identifying Hydric Soils in New England.

Freshwater Wetlands are likely to be significant to the following interests: protection of public or private water supply, protection of groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, protection of fisheries and wildlife habitat, and rare species habitat including rare plant species, and recreation and agriculture values.

Freshwater Wetlands are South Hadley's most important habitat for wildlife. The hydrologic regime, plant community composition and structure, soil composition and structure, topography and water chemistry of freshwater wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians, and reptiles. A wide variety of vegetative wetland plants, the nature of which are determined in large part by the depth and duration of water, as well as soil and water composition, are utilized by varied species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersed nature of the vegetative structure is also important in determining its nature and use for wildlife habitat.

#### **4.4.2 Presumption of Significance**

Where a proposed activity involves the removing, filling, dredging, or altering of a Freshwater Wetland, the Commission shall presume that such an area is significant to the values described in the Bylaw and Section 4.4.1. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Freshwater Wetland does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to that effect, setting forth its grounds. This determination may be overcome at a later date by a change in the site and reconsideration of its functions.

#### **4.4.3 Performance Standards for Freshwater Wetlands**

Any proposed work in a Freshwater Wetland shall not destroy or otherwise impair any portion of said wetland. The cutting of vegetation within a Freshwater Wetland in order to maintain a specific successional stage, such as a wet meadow, or for removal of invasive plants, may be permitted at the Commission's sole discretion, through the filing of a Notice of Intent and subsequent Order of Conditions, as part of a management plan approved by the Commission. In addition, and at its sole discretion, the Commission may issue an Order of Conditions allowing work that results in the loss of up to 5000 square feet of Freshwater Wetland when said area is replaced in accordance with the following conditions and any additional, specific conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area that will be lost.

In situations where wetlands loss is unavoidable, a compensatory wetland area shall be provided that is at least twice the size of the lost area; is at or below the same elevation; has the same hydrology and surface water elevation; has the same hydrologic connection to a water body; and is vegetated within two growing seasons with a plant community of at least 75% cover consisting of the same native plant community type and similar species composition to the lost area; and demonstrates a hydrologic regime similar to the lost area within two growing seasons. The Commission may require detailed plans, professional oversight of construction, monitoring for two years, completion of the replication before the project begins, and other conditions as needed to maximize the chance of a successful replication.

Isolated Vegetated Wetlands have a 50-foot no-disturbance Conservation Zone the same as Bordering Vegetated Wetlands, unless they qualify only as Vernal Pools, in which case they follow the setback distances described in Section 4.5. The 100-foot Buffer Zone of an Isolated

Vegetated Wetland shall have the same performance standards as described below for Buffer Zones of other wetlands.

## **4.5 Vernal Pools**

### **4.5.1 Definition, Critical Characteristics**

Vernal Pools and their associated 100-foot buffer zones are likely to be significant to the protection of wildlife habitat and rare animal habitat. Vernal Pools constitute a unique and increasingly rare type of wetland that is used by many species of wildlife, some of which are totally dependent on Vernal Pools and the surrounding upland area for their survival. The area within 100 feet of a Vernal Pool is considered Vernal Pool Habitat. These areas provide the “obligate” vernal pool species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and over-wintering areas. Many other species utilize Vernal Pools and vernal pool habitat for breeding and non-breeding functions as well, although they are not restricted to this type of wetland. The protection of Vernal Pools and vernal pool habitat are essential for the survival of wildlife species that depend on these unique and threatened resource areas. Vernal pools do not need to be certified by the NHESP to be protected under this Bylaw and Regulations, but must be “certifiable” according to the criteria described in these Regulations. The Conservation Zone for Vernal Pools under this Bylaw is based on the size of the pool, although size does not necessarily indicate value. Vernal Pools less than 10,000 square feet in size are protected with a 25-foot Conservation Zone, and those 10,000 square feet and greater in size have a 50-foot Conservation Zone.

Vernal Pools exhibit great variation in physical, geographic, hydrologic and vegetative conditions, which makes it difficult to easily define them. A Vernal Pool is a temporary freshwater body which in most years holds water for a minimum of two (2) continuous months, and is free of established, reproducing fish populations. The boundary of a vernal pool is the perimeter of the largest observed or recorded volume of water confined in said area. In the event of conflict of opinion regarding the extent of water confined in the basin, the Commission shall follow the procedures described for vernal pools in the WPA Regulations 310 CMR 10.57(2)(a)6 and 10.57(2)(b)3. A Vernal Pool is protected under the Bylaw if it is shown on the South Hadley Vernal Pool Map in Appendix D and meets one of the following criteria:

- 1) The Vernal Pool has been certified by the NHESP.
- 2) The Vernal Pool contains evidence of breeding of any one or more of the following obligate indicator species: Spotted salamander, Blue-spotted salamander, Jefferson salamander, Marbled salamander, Wood frog, or the presence of Fairy shrimp, and evidence that the pool meets the Physical Criteria described in the NHESP Guidelines for the Certification of Vernal Pool Habitat.
- 3) In the absence of obligate indicator species, the Vernal Pool contains evidence of breeding by at least two (2) of the following facultative indicator species: Spring peeper, American toad, Gray treefrog, or Fowler’s toad, and meets the Physical Criteria described in the NHESP Guidelines for the Certification of Vernal Pool Habitat.

### **4.5.2 Timing of Evidence Collection and Type of Evidence**

Many of the indicators of Vernal Pools are seasonal. For example, most salamander egg masses are only found between March and May, except Marbled Salamanders which breed in the fall. Wood Frog chorusing usually occurs between late March and late May, and often at night. Not all animals breed every year, depending on site and seasonal conditions, so evidence may be sparse or lacking in some years. 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 a Vernal Pool designation, the Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may require its own site visits or those of a professional as necessary to confirm the evidence or lack thereof.

Type of evidence accepted to verify an area as a Vernal Pool will be the same as described by the NHESP for their certification program. In addition, the Commission may accept as evidence a statement signed under penalties of perjury attesting to the presence of vernal pool obligate indicator species in a pool, from a competent source.

#### **4.5.3 Presumption of Significance**

Where a proposed activity involves the removing, filling, dredging, or altering of a Vernal Pool or its 100-foot Buffer Zone, the Commission shall presume that the Vernal Pool and its 100-foot Buffer Zone are significant to the protection of wildlife habitat and rare species. This presumption is rebuttable by a showing of clear and convincing evidence that the Vernal Pool or its Buffer Zone does not play a role in the protection of said interests. When such evidence is based on the absence of any obligate or facultative indicator species, the Commission may require documentation of such absence of evidence from the spring time of two different years. In the event that the presumption is deemed by the Commission to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds. The determination that the basin is not a Vernal Pool is not permanent, and may be overcome at a later date by the criteria listed in Section 4.5.1 above.

#### **4.5.4 Performance Standards for Vernal Pools**

When the presumption set forth in Section 4.5.3 of these Regulations is not overcome, the following standards shall apply to Vernal Pools, their 100-foot Buffer Zone, and their 25 or 50 foot Conservation Zones:

- 1) No alteration of Vernal Pools will be permitted that will have an adverse effect upon wildlife habitat. Adverse effect means the alteration of any habitat characteristic listed below, insofar as such alteration will, following two growing seasons of project completion and thereafter substantially reduce its capacity to provide the important wildlife habitat functions listed in the WPA Regulations 310 CMR 10.60(2). These characteristics include the topography, soil structure, plant community composition and structure, and hydrologic regime. The procedure to evaluate whether a proposed project will have an adverse effect is described in the WPA Regulations 310 CMR 10.60(1 & 2). Restoration and Replication of altered Vernal Pool habitat shall be performed as described in the WPA Regulations 310 CMR 10.60 (3) except the Commission requires

2:1 or greater replication and may require other additional conditions as deemed necessary to guarantee success of replication and mitigation for the alteration.

- 2) The Conservation Zone is a no-disturbance zone. No activity shall be permitted within 25 or 50 feet (depending on the size of the pool, as described above) of the edge of the Vernal Pool. Prohibited activities include, but are not limited to, grading, filling, vegetation control, excavation, roadway, driveway or building construction. For areas within the 25 or 50 foot Conservation Zone that are already lawn, gardens, landscaped areas, driveways, or buildings, no new or expansion of clearing, cutting, grading, impervious surface or building construction will be permitted.
- 3) The 100-foot Buffer Zone of a Vernal Pool shall have the same performance standards as described below for the Buffer Zone.
- 4) Migratory pathways of Vernal Pool breeders: Work shall not be allowed that obstructs the migratory pathways of Vernal Pool breeding species.

## **4.6 Intermittent Streams**

### **4.6.1 Definition, Critical Characteristics**

For the purpose of these Regulations, an intermittent stream is that segment of a flowing watercourse that experiences naturally occurring sporadic flow interruptions such that it does not have a continuous sheet of surface water for four or more consecutive days in any consecutive twelve month period during non-drought conditions in areas not significantly impacted by beaver or other impoundments.

The Streams and Rivers Map in Appendix E shows the maximum possibility of intermittent streams under the protection of the South Hadley Wetland Protection Bylaw, but it does not determine which are intermittent and which are perennial. That determination is made based on this definition and the criteria below:

Under these Regulations all flowing watercourses shall be considered perennial streams if they are shown as perennial streams on the most current USGS topographic map, qualify under the DEP perennial stream criteria in the WPA Regulations 310 CMR 10.58(2), or are shown as a perennial stream on any two or more government-issued maps or plans, such as Natural Resource Conservation Service soil surveys, U.S. Fish & Wildlife Service National Wetlands Inventory maps, or older USGS topographic maps. This presumption may be overturned by a preponderance of evidence presented to and deemed acceptable by the Commission. Information necessary to overcome this presumption includes, but is not limited to, direct observation and documentation of:

The absence of a continuous sheet of surface water throughout the watercourse, or relevant segment, for a minimum of four (4) consecutive days in any consecutive twelve month period (excluding periods when local drought or other conditions abnormally lowering the water table are known to exist, or due to water withdrawals) as witnessed by a member of the Commission or its staff at least one of those days, and by submittal of documentation following procedures described in the WPA Regulations 310 CMR 10:58(2)d, which shall be considered definitive evidence in overcoming the presumption of perennial status.

Other information that may be relevant to overcoming the presumption of perennial stream status for a watercourse or a segment of that watercourse includes, but is not limited to, direct observation and documentation of:

- 1) absence of a clearly defined flow channel;
- 2) absence of bank undercutting;
- 3) presence of established non-aquatic plants in the flow path (i.e. plants that are unable to grow in continuously submerged conditions);
- 4) absence of continuous sheet water in the stream channel or relevant segment at a time when Commission designated perennial streams of comparable characteristics are flowing, as witnessed by a member of the Commission or its staff or documented according to the WPA Regulations 310 CMR 10:58(2)d methods.

The Commission will also consider estimates from modeling studies of surface water and ground water hydrology in the relevant watershed. However, such information will only be considered as evidence in conjunction with the observable indicators noted above. Observational evidence shall, in all instances, take precedence over estimates, calculations, and other inferential evidence. The Commission shall consider all of the evidence available together, judging the validity and reliability of the information, and base its determination on the preponderance of acceptable evidence. The determination of intermittent status of a designated stream shall be only for that segment or portion for which there is documentation. The Commission shall determine whether the distances between documented sites are too far apart to consider it a continuous section of stream, and how far from the documented site the determination shall apply.

#### **4.6.2 Presumption of Significance**

Where a proposed activity involves the filling, dredging, or altering of an Intermittent Stream, the Commission shall presume that protection of the Intermittent Stream as a resource area is significant to the following values: protection of groundwater, flood control, storm damage prevention, and protection of wildlife habitat. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Intermittent Stream does not play a role in the protection of said values. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to that effect, setting forth its grounds. This determination may be overcome at a later date by a change in the site and reconsideration of its functions.

#### **4.6.3 Performance Standards for Intermittent Streams**

No project shall impair the water quality or water carrying capacity of any stream channel or the capacity of the stream to provide important wildlife habitat functions, protection of groundwater, flood control, and storm damage prevention.

### **4.7 Buffer Zone**

#### **4.7.1 Definition, Critical Characteristics**

Buffer Zones are considered Resource Areas under the Bylaw, as they perform vital functions in protecting the values listed in the Bylaw. The Buffer Zone is the land extending 100 feet horizontally from the delineated edge of the following resource areas:

- 1) Freshwater Wetlands
- 2) Vernal Pools
- 3) Banks
- 4) The water column in, and land under any creek, river, stream, brook, pond or lake.

Note that the Riverfront Area, Bordering Land Subject to Flooding and Isolated Land Subject to Flooding (when it is not a Vernal Pool) do not have a Buffer Zone.

#### **4.7.2 Presumption of Significance**

Where a proposed activity involves the removing, filling, dredging, or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone as a resource area is significant to the following values: protection of public or private water supply, protection of groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, protection of fisheries and wildlife habitat, and rare species habitat including rare plant species, recreation and agriculture. This presumption may be overcome upon a showing of clear and convincing evidence demonstrating that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to that effect, setting forth its grounds. This determination may be overcome at a later date by a change in the site and reconsideration of its functions.

#### **4.7.3 Performance Standards for Buffer Zone:**

The Conservation Commission will carefully examine any proposals for work in the Buffer Zone to determine potential impact on the resource areas and the interests of the Bylaw, and how the applicant has designed the project to avoid any adverse impact on them.

Work permitted in the 100-foot Buffer Zone shall be in accordance with the following standards:

- 1) 50-foot No-Disturbance Conservation Zone: No activity is permitted within fifty (50) feet of the edge of any Freshwater Wetland, Bank, or the water column in, and land under any creek, river, stream, brook, pond or lake, or Vernal Pool 10,000 square feet or greater in size.
- 2) 25-foot No-Disturbance Conservation Zone applies to Vernal Pools less than 10,000 square feet in size.
- 3) No-Disturbance Conservation Zone Demarcation. To maintain the integrity of the No-Disturbance Conservation Zone and to ensure that there will be no encroachments into this zone by the applicant or future owners of the property, the Commission may require the No-Disturbance Conservation Zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be of weather resistant material, and the Commission will decide the type, number, size and locations.

#### **4.7.4 Wetlands Setbacks for Existing Structures**

Work associated with pre-existing structures or other improvements not presently in compliance with Section 4.7.3 may not increase the degree of nonconformity of those structures or activities.

No new activity shall be commenced and no new structure shall be located closer to the edge of a Bylaw protected wetland than existing non-conforming activities or structures. The Commission may permit new activity or structures as close to the wetland as the existing activity or structure if it finds such activity or structure will not adversely impact the wetland.

#### **4.7.5 Temporary Disturbances and Water-Dependent Activities**

Notwithstanding the foregoing provisions of this Section, the Commission may allow temporary disturbances in the 100-foot Buffer Zone associated with the installation of underground utilities, the conduct of test pits and other data collection activities, and pruning or other limited removal of vegetation determined by the Commission to be consistent with the purposes and intent of the Bylaw. The Commission may also permit water dependent structures (such as docks and piers), improvements for recreational purposes (such as trails and signs) and other minimally invasive improvements (such as wellheads). Storm water management structures may be allowed within this area only when there is no practicable alternative, as determined by the Commission.

### **5.0 Fees**

#### **5.1 Fee Schedule**

The fees required under this Bylaw are separate from the fees required under the Wetlands Protection Act. These fees shall be submitted as a separate check made payable to the Town of South Hadley, with a note on the check that it is a Wetlands Bylaw fee. Administrative fees are payable at the time of application and are non-refundable. The administrative fees shall be calculated by the Commission or its agent according to the schedule listed below. Town projects are exempt from fees. These fees are for applications where a filing fee is not already required under the WPA Regulations.

##### **5.1.1 Advertising Fee**

The fee for legal notices in the Town Reminder are the responsibility of the applicant, and should be paid directly to the newspaper.

##### **5.1.2 Penalty for Late Filings**

Fees for permit filings after work has commenced shall be double the fee listed below in section 5.1.3. For those filings that already have a fee under the WPA Regulations and are therefore not listed below, such as a Notice of Intent, there shall be a late filing fee under the Bylaw of \$300. A late filing is any filing that is submitted to the Commission after the start of activity that is subject to these Regulations.

##### **5.1.3 Administrative Fees**

The following administrative fees shall be applied to pay for the costs of administering the Wetlands Protection Act and this Bylaw:

- 1) Request for Determination of Applicability
  - For activities associated with existing single family residences \$ 50.
  - For all other projects \$100.
- 2) Request for Amendment to an Order of Conditions \$200.  
Fee to be applied cumulatively for each Amendment item of Request

- |   |        |
|---|--------|
| 3) Request for Extension of Order of Conditions             | \$100. |
| 4) Request for duplicate original of an Order of Conditions | \$ 50. |
| 5) Certificate of Compliance (Partial or Complete)          | \$100. |
| 6) Emergency Certification                                  | \$100. |
| 7) Request for Local Administrative Appeal                  | \$200. |

**5.2 Non-payment of Fees**

Failure to pay the fees required by the Regulations shall cause the application to be deemed incomplete and the time period for the Commission to act under the Bylaw shall be stayed. The Commission, after notifying the applicant in writing, shall take no further action *on* the filing until the fee is paid.

In the event the correct fee as required by the WPA Regulations 310 CMR 10.03(7) has been paid but the fee required by the Bylaw Regulations has not been paid, the Commission shall act to sever the proceedings, if previously consolidated, and proceed as described in the paragraph above for the Bylaw review. The applicant is reminded that in spite of the issuance of a favorable decision under the WPA, work on the project in question may not go forward until the requirements of the Bylaw Regulations have been met and favorable decisions under both the Bylaw and the WPA have been rendered.

**5.3 Consultant Fees**

As provided by MGL Ch 44 sec 53G, the Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements of the WPA, the Bylaw, Conservation Commission Act (MGL Ch 40 sec 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. Applicants should refer to the procedures described in the “Rules For Hiring Outside Consultants under MGL Ch 44 sec 53G” adopted by the Commission in 2005. Failure to pay the consultant fee shall be deemed sufficient grounds to stay the specified time period requiring the Commission to act under the Bylaw or to deny a decision until payment is made.

**6.0 Performance Guarantees**

**6.1 Security**

The Commission may require the applicant to furnish a performance guarantee in the form of a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. Security amounts will be set so that funds will be adequate to comply with the Order of Conditions, repair damage to wetlands, and to permanently stabilize the work site and all soils. Security shall be determined on a site-by-site basis.

**6.2 Covenant**

The Commission may require the applicant to secure the performance and observance of conditions imposed on the project by a conservation restriction, easement or other covenant

enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town whereby the permit conditions shall be performed or observed before any lot may be conveyed other than by mortgage deed.

### **6.3 Reduction of Security**

The sum of any required performance guarantee, or the amount of any deposit held hereunder may be reduced from time to time by the Commission in whole or in part.

### **6.4 Release of Performance Guarantee**

Upon completion of the work specified in the permit, security for the performance of which was given by deposit or covenant, the applicant shall notify the Commission that the work is complete with documentation that the work was completed as specified, and request the release of the performance guarantee. The Commission shall return the deposit to the person who furnished it, or release the covenant, as appropriate within 60 days of determining satisfactory completion of the work.

### **6.5 Default**

If the applicant fails to complete the work secured by the performance guarantee by the deadline stated therein, the deposit of money may be applied, in whole or in part, by and upon a vote of the Commission, for the benefit of the Town of South Hadley to the extent of the reasonable cost to the Town of completing such construction or installation as specified in the agreement. Any excess deposits, including any interest accrued thereon, that are not required for completion of such construction or installation shall be returned to the applicant.

## **7.0 Enforcement**

### **7.1 Violations**

When the Commission determines that an activity has occurred or is occurring in violation of the Bylaw or a Permit issued hereunder, the Commission may issue a Notice of Violation, or take any other action authorized by law. It shall be a violation of the Bylaw and these Regulations to (a) fail to comply with or to observe the Conditions in a permit, (b) fail to complete approved work described in a permit by the expiration date of the Order of Conditions, (c) fail to obtain a valid permit before conducting any activity subject to regulation under the Bylaw, (d) cause, suffer or allow any illegal work or activity, (e) fail to comply with a Notice of Violation and/or (f) fail or refuse to remove illegal fill or to restore any illegally altered area to its previous condition. Each day that any of the foregoing violations continues shall be considered a separate offense.

### **7.2 Form of Notice of Violation**

A Notice of Violation may be either a Violation Notice (letter) or an Enforcement Order. A Violation Notice is a formal letter sent to a property owner or contractor suspected to have violated the Bylaw, requesting the person to stop the activity and contact the commission to determine if there is a problem and how to deal with it. It does not carry any legal force, but puts the person on notice and starts a paper trail that could lead to an Enforcement Order if the problem is not resolved. An Enforcement Order is a legal document (DEP WPA Form 9) used

for known violations that are serious because they are continuing to damage a resource area, are repeat violations by the same individual, or are flagrant violations. When the activity involves a violation of the WPA as well as Bylaw, the DEP can step in under the Enforcement Order to assist in enforcement and issue fines for wetland violations under the WPA.

**7.3 Process for Issuing a Notice of Violation**

A Notice of Violation in the form of a Violation Notice (letter) may be issued by the Conservation Administrator upon approval from the Commission Chair or Vice-Chair. It does not need to be signed or ratified by the Commission. A Notice of Violation in the form of an Enforcement Order is issued by the Commission and must be signed by a majority of the Commission. In a situation requiring immediate action, a Notice of Violation-Enforcement Order may be signed by the Chair or Vice-Chair, but must be ratified by majority vote of a quorum of the members at the next meeting of the Commission. The Enforcement Order may also be amended by a majority of the Commission at a public meeting. Failure to ratify the Enforcement Order may render it void. Because of the importance of getting Commission ratification of an Enforcement Order when signed by only one member, the Commission will post and hold a public meeting within 5 business days to review and vote to ratify such Enforcement Order.

**7.4 Request for Hearing**

Any person aggrieved by the issuance of a Notice of Violation may request a hearing by making a written request delivered to the Conservation Commission office within seven (7) days of its receipt.

**7.5 Fines**

If a fine or an adjustment of fine for a violation is contemplated, the Commission will discuss this matter at a Public Meeting. The property owner will be given at least forty-eight (48) hours notice in writing of the date, time, and place of the public meeting, by certified mail, return receipt requested or hand delivery. If a majority of the Commission present at the meeting finds, by a preponderance of the evidence, that a violation has occurred then the property owner may be fined not more than one-hundred dollars (\$100) per offense per day. Each violation may be considered a separate offense. Each day the violation continues constitutes a separate violation under the Bylaw.

**7.5.1 Violation Fine Schedule**

The following fines may be levied by the Conservation Commission for violation of the Wetland Bylaw and Regulations.

<b>SUBJECT</b>	<b>FINE</b>
Violation in 100' Buffer Zone and inner 100' Riverfront Area: Failure to obtain an Order of Conditions or Negative Determination permitting activity.	\$ 50. – 1st Offense \$100. – 2nd and subsequent Offenses

Violation in following Resource Areas: any freshwater wetland, vernal pool, water body, or isolated land subject to flooding. Failure to obtain an Order of Conditions or Negative Determination permitting activity.	\$100. – 1st and subsequent Offenses
Failure to record Order of Conditions	\$25.
Failure to post DEP file number on property	\$25.
Failure to comply with mitigation measures by deadlines and/or as indicated in Enforcement Order	\$100. – 1st and subsequent Offenses
Failure to stop activity in 100' Buffer Zone, or Bylaw Resource Areas as directed in Enforcement Order or Notice of Violation, or as ordered by Police Officer, other officer having police powers, or Commission member	\$ 100. – 1st and subsequent Offenses
Failure to comply with general or special condition contained in Order of Conditions	\$50. – 1st Offense \$100. – 2nd and subsequent Offenses

## **8.0 Severability**

The invalidity of any section or provision of these rules and regulations shall not invalidate any other section or portion thereof, nor shall it invalidate any permit or determination which previously has been issued.

## **9.0 Effective Date**

These Regulations shall take effect upon the date of adoption by the Conservation Commission.

**APPENDICES**

**APPENDIX A        SOURCES AND REFERENCES**

**APPENDIX B        APPLICATIONS CHECKLISTS**

**APPENDIX C        BYLAW ADMINISTRATIVE FORMS**

**APPENDIX D        VERNAL POOL MAP**

**APPENDIX E        STREAMS AND RIVERS MAP**

## APPENDIX A SOURCES AND REFERENCES

### Wetlands Laws and Regulations

Massachusetts NHESP Guidelines for the Certification of Vernal Pool Habitat, 2010, viewable at: [http://www.mass.gov/dfwele/dfw/nhesp/vernal\\_pools/pdf/vpcert.pdf](http://www.mass.gov/dfwele/dfw/nhesp/vernal_pools/pdf/vpcert.pdf)

Massachusetts Wetlands Protection Act M.G.L. Chapter 131 section 40, viewable at: <http://www.mass.gov/dep/water/laws/ch131s40.pdf>

Massachusetts Wetlands Protection Act Regulations 310 CMR 10.54, viewable at: <http://www.mass.gov/dep/service/regulations/310cmr10a.pdf>

South Hadley Non-Zoning Wetlands Bylaw, General Town Bylaw Article XV, viewable at: [http://www.southhadley.org/Pages/SouthHadleyMA\\_Conservation/wetlands](http://www.southhadley.org/Pages/SouthHadleyMA_Conservation/wetlands)

### Wetland Vegetation and Delineation

Delineating Bordering Vegetated Wetlands under the Massachusetts Wetlands Protection Act by Scott Jackson. 1995. Massachusetts Department of Environmental Protection Division of Wetlands and Waterways, Boston MA. Viewable at: <http://www.mass.gov/dep/water/laws/bvwmanua.pdf>

Guide to Inland Vegetated Wetlands in Massachusetts by M.A. DiPinto and R. McCollum. 1988. Massachusetts Department of Environmental Quality Engineering Division of Wetlands and Waterways, Boston MA.

Interpreting Wetland Indicator Status for Plant List: <http://plants.usda.gov/wetinfo.html>

U.S. Fish & Wildlife Service's National List of Plant Species that Occur in Wetlands: 1988 National Summary: <http://www.fws.gov/pacific/ecoservices/habcon/pdf/National%20List%20of%20Plant%20Species%201988.pdf>

### Hydric Soils

Field Indicators for Identifying Hydric Soils in New England (New England Hydric Soils Technical Committee, 2004. 3<sup>rd</sup> ed. New England Interstate Water Pollution Control Commission, Lowell MA), viewable at: [http://www.neiwpcc.org/neiwpcc\\_docs/V3\\_one\\_page\\_per\\_page.pdf](http://www.neiwpcc.org/neiwpcc_docs/V3_one_page_per_page.pdf)

**Supplement to Field Indicators for Identifying Hydric Soils in New England**, by David P. Rocque, ME Department of Agriculture (New England Hydric Soils Technical Committee, 2004. 3<sup>rd</sup> ed. New England Interstate Water Pollution Control Commission, Lowell MA), viewable at: [http://www.neiwpcc.org/neiwpcc\\_docs/V3\\_Supplement.pdf](http://www.neiwpcc.org/neiwpcc_docs/V3_Supplement.pdf)

### **Buffer Zones**

**Buffer Zones and Beyond** by Lynn Boyd. 2001. University of Massachusetts Department of Natural Resources Conservation, Amherst MA. Viewable at: [http://www.umass.edu/nrec/pdf\\_files/final\\_project.pdf](http://www.umass.edu/nrec/pdf_files/final_project.pdf)

### **Town & City Bylaws and Regulations referred to in writing these Regulations**

Acton Wetland Protection Bylaw Rules and Regulations, 2004  
Amesbury Wetlands Protection Bylaw, 1999  
Amherst Wetlands Protection Bylaw, 1999  
Attleboro Wetlands Protection Ordinance, 2001  
Barnstable Wetlands Protection Ordinance, 1987  
Belchertown Wetland Regulations, 2006  
Beverly Wetlands Protection Regulations, 2003  
Boxborough Wetland Bylaw, 1984  
Boxford Wetlands Protection Bylaw Regulations, 1997 & 2004  
Brewster Wetland Regulations, 2003  
Chelmsford Wetlands Chapter 187, 1999  
Concord Wetlands Bylaw, 2009  
Framingham Wetlands Protection Regulations, 2006  
Greenfield Wetlands Protection Bylaw, 2001  
Groton Wetlands Protection Bylaw, 2003  
Groveland Wetland Protection Bylaw & Regulations, 1995  
Hamilton Conservation Bylaw Regulation, 2004  
Harvard Rules and Regulations for the Administration of the Wetlands Bylaw, 2001  
Holliston Wetlands Administration Bylaw Regulations, 2005  
Holyoke Wetlands Protection Ordinance Regulations, 2005  
Lexington Wetland Protection Bylaw, 2002  
Longmeadow Regulations for General Wetlands Bylaw, 1990 and Rules, 1992  
Lowell Wetlands Ordinance, 1988  
MACC model Wetlands Protection Bylaw Regulations, 2006  
Manchester-by-the-Sea Wetlands Regulations, 2002  
Marlboro Wetland Setback Policy, 2004  
Maynard Wetlands Protection Regulations, 2002 & 2004  
Natick Wetlands Protection Bylaw, 2000  
Needham General Wetlands Bylaw, 2000  
North Andover Wetlands Protection Regulations, 2003

North Reading Rules and Regulations, 2001  
Northampton Wetlands Protection Ordinance, 1990  
Norwell Wetlands Protection, 2002  
Pelham Regulations to Wetlands Bylaw, 1988  
Pepperell Wetlands Protection Bylaw, 2002  
Springfield Wetland Protection Regulations, 1993  
Sturbridge Regulations for Administering the Sturbridge Wetland Bylaw, 2004  
Sudbury Wetlands Administration Bylaw Regulations, 2006  
Sutton Wetland and Riverfront District Bylaw, 2000  
Swansea Rules and Regulations under the Wetlands Protection Bylaw, 2004  
Wellesley Wetlands Protection Bylaw and Regulations, 2004  
West Tisbury Wetlands Protection Bylaw, no date  
Westfield Wetland Protection Ordinance, 1993  
Westford Non-zoning Wetlands Bylaw, 2003  
Westminster Wetlands Bylaw, 2004  
Westwood Wetlands Protection Bylaw, 2000  
Worcester Wetlands Protection Ordinance & Wetlands Protection Regulations, 2007

## **APPENDIX B APPLICATIONS CHECKLISTS**

### **For Requests for Determination:**

The proponent shall submit two copies of the completed Request for Determination of Applicability form and the Application for Wetlands Permit to the Conservation Commission. This application shall include at a minimum the following information:

- 1) An 8.5" x 11" section of the USGS Quadrangle Map at its original scale outlining the location of the proposed activity
- 2) Plan showing existing and proposed structures on the lot, location of proposed work, and distance to wetlands or other resource areas to be protected
- 3) Check made out to Town of South Hadley for Bylaw filing fee
- 4) List of abutters to be notified about the Public Meeting by the applicant

In addition to the above, the Commission may require the following information:

- 5) Verification of compliance with Title 5 Massachusetts Sanitary Code;
- 6) Any other information which the South Hadley Conservation Commission deems necessary to reach a determination.

### **For Notices of Intent:**

The proponent shall submit at least six copies of the completed Notice of Intent form to the Conservation Commission. Copies of the Notice of Intent may also be necessary for the Planning Board, Board of Health, Building Inspector and Department of Public Works. The Commission shall determine how many additional copies are needed, and the form they may take (digital or paper). The Commission shall require submission of separate checks made payable to the Town of South Hadley for filing fees under the WPA and the Bylaw Regulations, and a list of abutters from the assessor's office.

The Notice of Intent application shall include the following information:

#### Existing Conditions

- 1) Topography, soils, and geology description
- 2) Description of vegetation types, such as upland or wetlands community types and plant species list
- 3) An 8.5" x 11" section of the USGS Quadrangle Map at its original scale outlining the location of the proposed activity

#### Proposed Conditions

- 1) Description of activities, construction sequencing and estimated timetable. Include description of future phases and cumulative impact on resource areas.
- 2) Description of how work will comply with the WPA and Bylaw
- 3) A written description of the methodology used to delineate the wetland and a list of plant species used in the delineation
- 4) Description of indirect and direct impacts, both temporary and permanent, on wetland resource areas
- 5) Description of soil erosion, sediment control plan, and mitigation plans for any proposed impacts to resource areas

- 6) Details of mitigation plans for activities in the buffer zone to limit long term indirect impacts to adjacent resource areas
- 7) Description of storm water management plan, including existing and proposed drainage structures
- 8) Wetlands creation or restoration plan, including existing and proposed contours at one-foot intervals , and plans showing proposed grading, stockpiling, planting (indicate source of plants), and timetable for completion
- 9) Description of method and timetable for permanent monumentation of the wetland boundaries and/or Conservation Zone

### Site Plan

The applicant shall submit a site plan, at a scale of 1 inch equals not more than 40 feet (except upon request of a different scale by the Conservation Commission), showing the following items:

- 1) Location and extent of all existing and proposed structures, roadways, paved areas, septic systems, wells, tanks and utility easements
- 2) Boundaries of all wetland resource areas within 100 feet of the property boundary. The wetland boundaries shall be marked with individually numbered flagging tape and their locations identified on the plans.
- 3) Delineation of the 100-foot Buffer Zone and 50-foot Conservation Zone
- 4) Vernal Pools as identified in the field and from NHESP mapping
- 5) Delineation of limit of work
- 6) When excavation, fill or other construction is proposed, existing and proposed contours (in contrasting symbols) shall be shown in feet above sea level or relative to a datum with intervals no greater than two feet. Date of ground survey shall be given
- 7) A delineation of all alterations proposed in or having an impact on wetlands
- 8) Locations and basement floor elevations of all building structures proposed in Bordering Land Subject to Flooding
- 9) Existing and proposed location, rim elevation and invert elevation of all catch basins, drains, culverts, and other drainage structures on-site
- 10) Details and locations for all temporary erosion controls proposed
- 11) Proposed permanent pollution control devices on-site, such as: hooded catch basins, flow dissipaters, or vegetative buffers
- 12) Cross-sections showing existing and proposed slope, elevations, bank and bottom conditions of each watercourse to be altered. Locations of cross sections shall be specified.
- 13) Proposed location of any fill material which will be stored on site
- 14) A single sheet plan detailing all wetland resource areas within the project boundaries, with an accompanying list of the wetland resource areas by type and size.
- 15) Stamp and signature on the plan by a Professional Engineer registered in Massachusetts.

### Technical Data

The technical data shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed and shall include:

- 1) Descriptions of any alterations to the 100-year flood storage capacity of the site. If a change of flood storage capacity is proposed, demonstrate compensatory storage at every stage in the flood plain.

- 2) Soil characteristics in representative portions of the site proposed for alteration, including soil logs with deep observation holes and percolation tests and date and location of tests
- 3) Stormwater management plan and calculations of runoff characteristics with summary explanations for pre and post development
- 4) Hydrographs that illustrate runoff characteristics before and after the proposed activity
- 5) Work completion schedule including phased construction of large projects
- 6) An erosion control plan shall be submitted describing all methods to control erosion and siltation on site during construction and until the site is stabilized

In addition to the above, the Commission may require the following information:

- 1) Wildlife habitat analysis prepared in accordance with 310 CMR 10.60
- 2) Certification of compliance with Title 5, Massachusetts Sanitary Code
- 3) Water quality analysis (pre and post construction) of surface water
- 4) Maximum ground water elevation for projects that include excavation within the buffer zone. The calendar dates of measurement, samplings and percolation tests shall be included for projects with septic systems.
- 5) Land Cover maps showing types of vegetation, impervious cover, etc.
- 6) Landscaping plans, showing use of native plants
- 7) Provisions for preventing potential sources of pollution such as fertilizer, pesticides, petroleum products, heavy metals, etc. from impacting the wetlands
- 8) Dates when all wetlands-related field work was conducted
- 9) Maintenance plans and reporting schedules for
  - a. All stormwater management structures including detention and retention ponds
  - b. Replication resource areas
- 10) Any other information which the Commission deems necessary to reach a decision

#### **For Documentation of Violations**

All filings associated with a Notice of Violation shall include an accurate plan that clearly and explicitly shows all jurisdictional resource areas on the property and the area(s) of disturbance, including an explicit tabulation of the size of the disturbance. The Commission may require a stamped engineering plan.

#### **For Certificates of Compliance**

Upon completion of a project, the applicant shall submit the following to the Commission to receive a Certificate of Compliance.

- 1) A letter from the applicant requesting a partial or complete Certificate of Compliance
- 2) A written statement from a registered professional engineer of the Commonwealth certifying that the work has been conducted as shown on the plans and referenced documents, and as conditioned by the Commission
- 3) An as-built plan prepared and stamped by a registered professional engineer of the Commonwealth, for the public record. The plan shall depict in detail, the post-development conditions of the project and must depict the permanent monumentation of the resource areas as required in the Order of Conditions.
- 4) A copy of any Conservation Restrictions and Deed Restrictions regarding the property and project, and proof that they have been recorded in the Hampshire County Registry of Deeds

**APPENDIX C  
BYLAW ADMINISTRATIVE FORMS**

**See attached:**

**Application for Conservation Permit (ACP)**

**Request for Waiver**

# Application for Conservation Permit (ACP)

## South Hadley Wetlands Protection Bylaw & Regulations

1. **Applicant:** Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_  
Email \_\_\_\_\_

2. **Project Location:** Street \_\_\_\_\_

3. **This application is filed along with:** \_\_\_\_\_ Notice of Intent  
\_\_\_\_\_ Request for Determination of Applicability  
\_\_\_\_\_ Other (e.g., ANRAD, ANOI, Amendment)  
\_\_\_\_\_ Proposed work is outside WPA jurisdiction; no other application

4. **Work is proposed in the following Resource Areas:** \_\_\_\_\_ Bank \_\_\_\_\_ Water & Land under said waters  
\_\_\_\_\_ Lakes & Ponds \_\_\_\_\_ Riverfront Area  
\_\_\_\_\_ Streams & Rivers \_\_\_\_\_ Vernal Pool  
\_\_\_\_\_ 100 yr Flood Zone \_\_\_\_\_ WAIVER FORM COMPLETED  
\_\_\_\_\_ Freshwater Wetland

5. **Work is proposed in the following No Alteration Zones:**  
\_\_\_\_\_ Wetland Resource Area  
\_\_\_\_\_ 50 Foot Conservation Zone  
\_\_\_\_\_ WAIVER FORM COMPLETED

6. **Work: 100' Buffer Zone Only** \_\_\_\_\_

7. **Project Description:**  
**Existing conditions where work will occur:** \_\_\_\_\_ Lawn or landscaped area \_\_\_\_\_ Wetland Resource Area  
\_\_\_\_\_ Wooded or natural area \_\_\_\_\_ Other: \_\_\_\_\_  
\_\_\_\_\_ Impervious (e.g., driveway)

**Proposed work:** \_\_\_\_\_

**Equipment to be used:** \_\_\_\_\_

**Erosion control to be used:** \_\_\_\_\_

**8. Project Impact**

**Buffer Zone Setback:** If the project involves work in the buffer zone only, what is the shortest distance between project disturbance and the wetland resource area? \_\_\_\_\_ feet

**Tree Cutting:** Will trees be removed within ConCom jurisdiction? (Y/N) \_\_\_\_\_

**Tree Cutting:** List number and approximate diameter of tree(s) to be removed:

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**Fill and Grading:** How much fill will be removed? \_\_\_\_\_ cu yds

**Fill and Grading:** How much fill will be brought in? \_\_\_\_\_ cu yds

**Fill and Grading:** How will site be stabilized during construction?

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**Fill and Grading:** How will final grade differ from existing?

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**9. Describe any exemptions in the WPA or bylaw that allows proposed activity:**

**10. Describe any mitigating measures proposed.** Use additional page(s) if necessary.

**11. Local Filing Fee\*:** \_\_\_\_\_ \$ \_\_\_\_\_ **Request for Determination of Applicability**  
\_\_\_\_\_ \$ \_\_\_\_\_ **Other:** \_\_\_\_\_

*\*This fee structure is detailed in the Bylaw Regulations. **Make check payable to the Town of South Hadley.***

**12. Statement of Applicant:** I hereby certify under the penalties of perjury that this application and all supporting plans and documents are true and complete to the best of my knowledge, and that these have been prepared in conformance with the requirements of the South Hadley Wetlands Bylaw and supporting regulations. I further certify that all abutters and other parties have been notified of this application as required by South Hadley Wetlands Bylaw Regulations. I understand that I may be asked to pay for a consultant to review my application for the Commission.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Landowner's Signature (if different):** \_\_\_\_\_

# Request for Waiver

## From South Hadley Wetlands Bylaw and Regulations

1. Applicant Name \_\_\_\_\_ Phone: \_\_\_\_\_  
Address \_\_\_\_\_  
Email \_\_\_\_\_

2. Owner Name \_\_\_\_\_ Phone: \_\_\_\_\_  
(if different) Address \_\_\_\_\_  
Email \_\_\_\_\_

3. Project Location Street \_\_\_\_\_

4. DEP File Number 288-\_\_\_\_\_

5. I hereby request a waiver from the prohibition on alterations in the 50-foot Conservation Zone.

6. Reason(s) for the waiver request are:

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7. Proposed mitigation for the work within the Conservation Zone:

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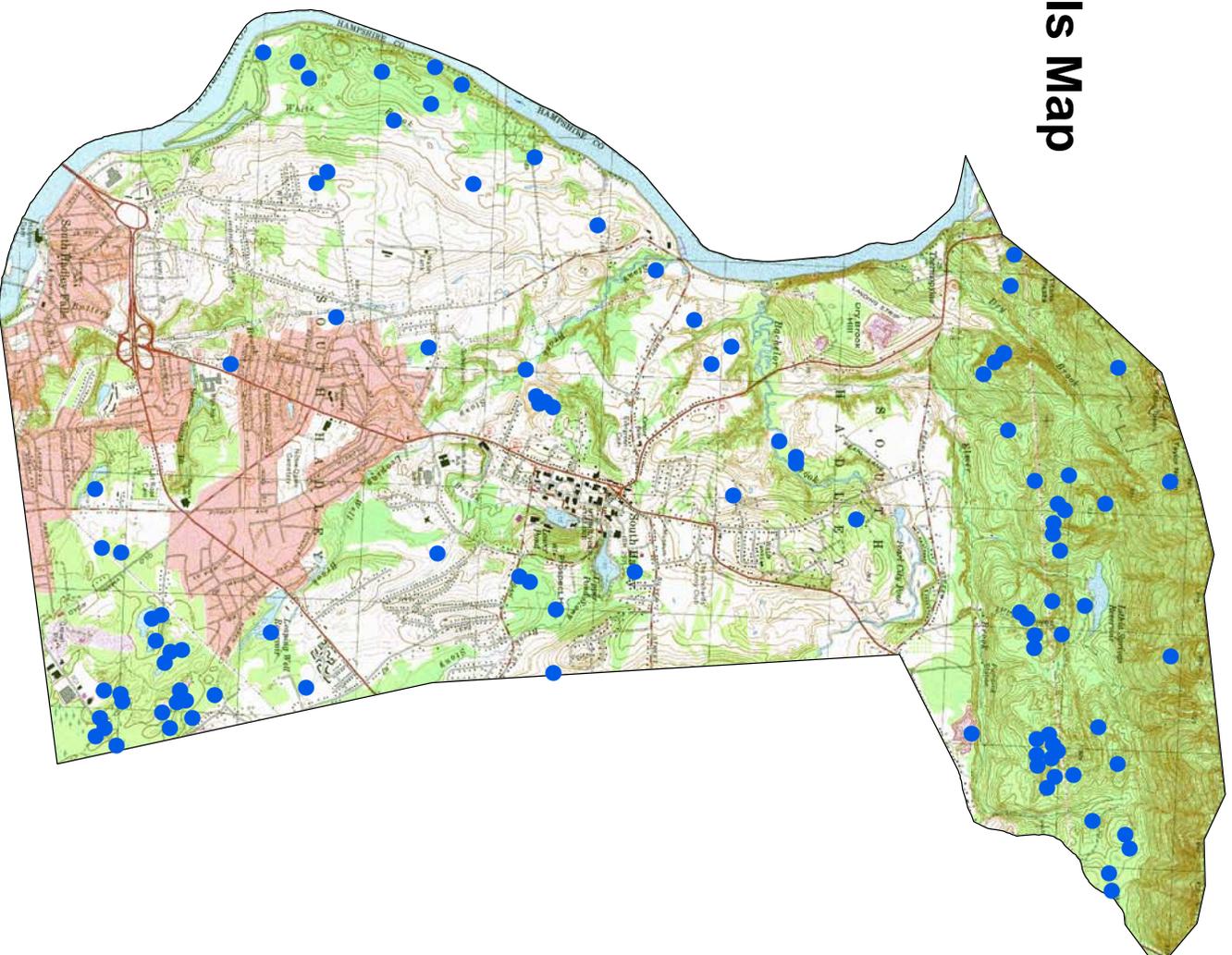
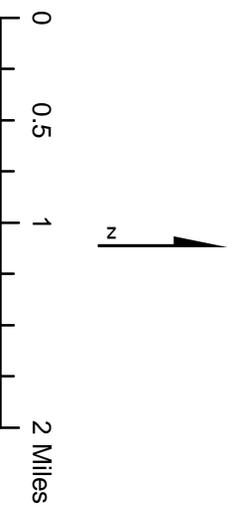
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Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Appendix D

## South Hadley Vernal Pools Map

Note to users:  
This map shows both certified and potentially certifiable vernal pools as blue dots. The size of the dot does not represent the size or shape of the vernal pool.



GIS Data Sources:  
SH Conservation Commission  
Mass GIS

South Hadley Conservation Commission  
December 2016

**APPENDIX E**  
**STREAMS AND RIVERS MAP**

To be included at a later date.