

Wetlands Mitigation Policy



Sudbury Wetlands Administration Bylaw April 27, 2015

- **My project meets the Performance Standards of both the Wetlands Protection Act and the Sudbury Wetlands Bylaw. Do I need to provide Mitigation?**

YES, if your project proposes work in any wetland or upland resource area. Performance Standards are a threshold of alteration of a protected resource that may be permitted only after the project has demonstrated that alteration to protected resource areas have been avoided and minimized to the full extent possible. Mitigation is replacement of all values and functions of the altered resource areas for unavoidable, permissible adverse impacts.

- **What is considered acceptable mitigation?**

Under the Sudbury Wetland Bylaw and sections of the WPA, approval of a project is at the discretion of the Commission. In using this discretion, the Commission requires mitigation that will result in no net loss of protected resource area values and functions.

- **How do I determine the extent of mitigation required?**

Mitigation based on square footage should be a minimum of 2:1 when a square footage measurement is applicable. However, the goal of mitigation is to replace lost values and functions so square footage is most often not a relevant measurement.



- **What is considered acceptable mitigation?**

Depending on the extent of resource areas altered by the project, acceptable mitigation involves mitigation that is sufficient to replace the lost values and functions of that area. This can include restoration of degraded resource areas; enhancement of existing resource areas; establishment of new resource areas, or permanent protection of existing like areas.



WETLANDS POLICY # DRAFT 4/9/15 DD
SUDBURY WETLANDS ADMINISTRATION BYLAW
DEFINITION AND REQUIREMENTS OF *MITIGATION*

The Sudbury Wetlands Administration Bylaw (SWAB) requires mitigation be provided for all alteration to any protected wetland or upland resource area. Mitigation is *not* provided simply by meeting the performance standards of the Bylaw or its Regulations for work in these resource areas. Through this policy, the Sudbury Conservation Commission defines the term *mitigation* as used in the SWAB and further clarifies the intent and requirements for applicants. This Policy is intended to provide guidance regarding the exercise of discretion under the SWAB Bylaw and Regulations.

It is important to realize that meeting the performance standards (under both the Wetlands Protection Act and the Sudbury Wetlands Administration Bylaw) does not necessarily mean that wetland and/or upland values and functions have been avoided or minimized. It simply means that the project has not triggered unauthorized thresholds of alteration. The requirement for mitigation is intended to offset alteration to resource values and functions for activities below the allowable thresholds. The degree of mitigation offered will play a major factor in the Commission's decision whether or not to allow discretionary resource areas alterations.

Mitigation as used in the SWAB follows, in large part, the definition of mitigation as used by the USEPA under Section 404 of the Clean Water Act.

Mitigation refers to the restoration, establishment, enhancement, and/or preservation of wetlands, streams, adjacent uplands, or other resource areas of the SWAB, conducted specifically for the purpose of offsetting authorized impacts to these resources. The fundamental objective of mitigation is to offset environmental losses resulting from unavoidable impacts to wetland and upland resource areas of the Town of Sudbury. Mitigation enters the analysis only after a proposed project has incorporated all appropriate and practicable means to first avoid and minimize adverse impacts to protected resources.

The Sudbury Conservation Commission will strive to avoid adverse impacts and offset unavoidable adverse impacts to existing wetland and upland resources, and will strive to achieve a goal of no overall net loss of values and functions with the Town.

Similar to the mitigation required by the EPA, mitigation under the SWAB can occur through several methods. The Commission first makes a determination that potential impacts have been avoided to the maximum extent practicable; remaining unavoidable impacts will then be mitigated to the extent appropriate and practicable by requiring steps to minimize impacts and compensate for altered or lost protected resource values.

Avoidance: allows permit issuance for only the least environmentally damaging practicable alternative.

Minimization: states that appropriate and practicable steps to minimize the adverse impacts will be required through project modifications and permit conditions.

Mitigation: appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required.

In determining mitigation, the functional values lost by the resource to be impacted must be considered. Generally, in-kind mitigation is preferable to out-of-kind. There is continued uncertainty regarding the success of wetland creation or other habitat development. Therefore, in determining the nature and extent of habitat development of this type, careful consideration should be given to its likelihood of success. Because the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, restoration or preservation should be the first options considered.

In determining appropriate and practicable measures to offset unavoidable impact, such measures should be appropriate to the scope and degree of those impacts and practicable in terms of cost, existing technology, and logistics in light of overall project purposes.

Monitoring is an important aspect of mitigation, especially in areas of scientific uncertainty. Monitoring should be directed toward determining whether permit conditions are complied with and whether the purpose intended to be served by the conditions are actually achieved.

Mitigation requirements shall be part of the Special Conditions of all SWAB permits. This ensures legal enforceability of the mitigation conditions and enhances the level of compliance. If the mitigation plan necessary to ensure compliance with the Bylaw & Regulations is not reasonably implementable or enforceable, the permit shall be denied.