

MILTON CONSERVATION COMMISSION

Regulations - General Wetland Bylaw

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REGULATIONS ADOPTED BY THE MILTON CONSERVATION COMMISSION PURSUANT TO THE TOWN OF MILTON BYLAWS CHAPTER 15 - GENERAL WETLANDS BYLAW

SECTION 1. INTRODUCTION

These regulations are promulgated by the Milton Conservation Commission (the “Commission”) pursuant to the authority granted to it under Town of Milton General Bylaws Chapter 15, the General Wetlands Bylaw, Section V (“the Bylaw”). These regulations shall complement the Bylaw and shall have the force of law upon their effective date. All persons dealing with the Commission are urged to familiarize themselves with both the Bylaw and these regulations in order to foster the efficient and expeditious conduct of matters before the commission.

SECTION 2. PURPOSE

The Bylaw establishes a public review and decision-making process by which activities affecting interests protected by the General Wetlands Bylaw are to be regulated in order to contribute to the protection of interests described in Section I of the Bylaw.

The purpose of these regulations is to define and clarify that process by establishing uniform procedures and standards by which the Commission may carry out its responsibilities under the Bylaw.

SECTION 3. DEFINITIONS

Abutter any person filing an application with the conservation commission shall at the same time give written notification thereof, by delivery in hand or certified mail, return receipt requested, to all abutters within one-hundred feet of the property line of the land where the activity is proposed, at the mailing addresses shown on the most recent applicable tax list of the assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a body of water. Said notification shall be at the applicant’s expense, and shall state where copies of the notice of intention may be examined and obtained and where information regarding the date, time and place of the public hearing may be obtained. Proof of such notification, with a copy of the notice mailed or delivered, shall be filed with the conservation commission.

Applicant shall mean a person who has submitted a written application to the Commission or a person on whose behalf such a request or notice is filed.

Business Days shall mean the days Monday through Friday exclusive of Massachusetts legal holidays.

Burden of Proof is defined in Section VI of the Bylaw.

Protected Resource Area shall mean any area listed in the second paragraph of Section I of the Bylaw.

SECTION 4. PROCEDURES

In all proceedings before the Commission the Applicant shall have the burden of proof with respect to any and all action which the Applicant requests the Commission to take.

(A) Distribution

All materials provided in support of an application to the Commission shall be submitted to each member of the Commission, plus two copies to the Conservation Administrator and one copy to the Town Engineer and Building Commissioner at least eight business days for an initial application (or at least five business days for all other information) prior to the scheduled hearing at which the Applicant sends Commission such materials. Materials submitted to the Milton Conservation Commission less than five days before the next scheduled public hearing may be considered at the discretion of the Milton Conservation Commission.

(B) Determination of Applicability

Any person who desires a determination as to whether the Bylaw applies to any land or work to be performed thereon may submit a written request to the Commission. Two copies of the request and all supporting information shall be sent by regular mail (not certified) or hand delivered to the Conservation Administrator, with copies to the individual members of the Commission, Town Engineer, and Building Commissioner shall be in the form required under M.G.L. Ch. 131, S. 40 and 310 CMR 10.00 and the Bylaw and shall include such additional information as the Commission may require to aid in the evaluation.

Within 21 days of receipt of the complete request, the Commission shall issue a Determination of Applicability. Notice, of the time and place of the public meeting at which the determination will be made shall be given by the Commission at Applicant's expense not fewer than five business days prior to such meeting by publication in a newspaper of general circulation in Milton. Notification to Abutters by hand delivery or certified mailing (return receipt requested) to all abutters at Applicant's expense not fewer than five business days prior to such meeting. Proof of notification to Abutters shall be furnished to the Commission at the time of the hearing. Said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the owner. Said determination shall be valid for three years from the date of issuance.

(C) Notice of Intent

(1) Filing Procedure

Any person who proposes to do work that will remove, fill, dredge, build upon, or alter any Protected Resource Area shall submit to the Commission a Notice of Intent, consisting of application materials required for a Notice of Intent under M.G.L. Ch. 131, s.40 and 310 CMR 10.00 and containing such additional materials as the Commission may require to fully describe the proposed activity and its effect. Each such notice shall be accompanied by a filing fee in accordance with the fee schedule set forth in Section 5 hereof. Two copies of the notice and all supporting information shall be sent by regular mail (not certified) or by hand delivery to the Conservation Administrator with copies to the individual members of the Commission and the Town Engineer.

If the Notice of Intent is deemed by the Commission to be insufficient to describe fully the proposed activity and its effect on the environment, the Commission may, at its discretion:

- (a) notify the Applicant, by certified mail within 15 days of receipt of the notice, of the additional information that will be necessary to render the notice sufficiently complete for acceptance;
- (b) inform the Applicant at or prior to the public hearing of the additional information required, and offer the Applicant the opportunity to continue the public hearing so that the additional information can be submitted for review; (c) or deny the application on the basis of insufficient information.

(2) Public Hearing

A public hearing shall be held by the Commission within 21 days of the receipt of said Notice. Notice, in form satisfactory to the Commission, of the time and place of said hearing shall be given by the Applicant at the expense of the Applicant not fewer than five business days prior to such hearing by publication in a newspaper of general circulation in Milton and by hand delivery or certified mailing (return receipt requested) to all abutters.

Public hearings may be continued as follows:

- (a) without the consent of the Applicant, to a date, announced at the hearing, within 21 days of receipt of the Notice of Intent;
- (b) with the consent of the Applicant, to an agreed-upon date, which shall be announced at the hearing; or
- (c) with the consent of the Applicant, for a period not to exceed 30 days after the submission of a specified action. If the Commission determines it to be appropriate, the date, time and place of said continued hearing shall also be publicized and notice shall be sent to any person who so requests in writing.

(D) Orders of Conditions

(1) Issuance of Order

Within 21 days of the close of the public hearing, or within such further time as the Commission and the Applicant shall agree on, the Commission shall either:

- (a) make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or alter, is not significant to any of the interests identified in the Bylaw, and shall so notify the applicant; or
- (b) make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill dredge, build upon, or alter, is significant to one or more of the interests identified in the Bylaw, and shall issue an Order of Conditions for the protection of said interest(s).

The Order of Conditions shall impose such conditions as are necessary to meet the performance standards set forth in Section 6 of these regulations and such additional conditions as are necessary for the protection of those areas found to be significant to one or more of the interests identified in the Bylaw. The Order shall prohibit any work or any portion thereof that cannot be conditioned to meet such standards.

The Order shall be signed by a majority of the Conservation Commission members entitled to vote thereon. The Order shall be valid for a period of three (3) years. The Order may be in form similar to or identical to that required under M.G.L. Ch. 131, Section 40 and 310 CMR 10.00.

Prior to the commencement of any work permitted or required by the Order or within 10 days of issuance of the Order (which ever comes first), the applicant shall ensure that the Order be recorded in the Norfolk Registry of Deeds or Land Court within the chain of the title of the affected property. In the Case of registered land, the final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the work is to be done. In the case of registered land, the final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall also be sent to the Commission prior to commencement of any work. If work is undertaken without the Applicant first recording the Order, the Commission may issue an Enforcement Order, revoke the Order, and/or may itself record the Order of Conditions.

(2) Extensions

The Commission may extend an Order for one or more periods of up to three years each. The request for an extension shall be made to the commission at least 30 days prior to expiration of the Order.

The Commission may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work in the following circumstances:

- (a) where no work has begun on the project within a period of two years from the date of issuance of the Order, except where such failure is due to unavoidable delays, such as appeals, in the obtaining of other necessary permits;
- (b) where new information, not available at the time the Order was issued, has become available and indicates that the Order is not adequate to protect the interests identified in the Bylaw;
- (c) where incomplete work is causing damage to the interests identified in the Bylaw; or
- (d) where work has been done in violation of the Order or these regulations.

The Extension shall be recorded in the Land Court or the Registry of Deeds, as described in Section 4(D)(1). If work is undertaken without the applicant so recording the Extension, the Commission may issue an Enforcement Order, revoke the Extension, and/or may itself record the Extension.

(E) Amendments

(1) Changes in Submitted Plans

If, at any time after a Determination of Applicability or Order of Conditions has been issued, there is a change in the proposed activity, the person on whose behalf the work is being done, in the case of a Determination, or the applicant, in the case of an Order, must notify the Commission, in writing, of the proposed changes. No work associated with these changes shall be done on the subject area until the Commission has reviewed the changes and approved them.

(2) The Commission shall review all proposed changes and determine either:

- (A) that the changes represent a substantial departure from the original proposal and that the potential impacts of the new proposal on the interests identified in the Bylaw are sufficiently different from those of the original proposal as to require the filing of a new Request for Determination or Notice of Intent;
- (B) that the changes involve a substantial departure from the original proposal, but that the Commission will consider amending the original Determination or Order following submission of information on the proposed changes and their potential impacts on the interests identified in the Bylaw and following a public meeting or hearing and notice as required in Sections 4(B) and 4(C) above; or

(C) that the changes represent an insignificant change in the original proposal and will cause no significant difference in the impact of the activity on the interests identified in the Bylaw, in which case the person proposing these changes may proceed in conformance with them.

The person making this request shall be notified by the Commission of its decision within 21 days of receipt of the request and supporting information.

(F) Certificates of Compliance

Upon written request by the applicant, the Commission shall issue a Certificate of Compliance within 21 days of receipt thereof provided that the activity or portions thereof described in the Notice of Intent and accompanying plans have been completed in compliance with plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor, a written statement by such a professional person certifying, under oath, compliance with the plans and Order and setting forth what deviation, if any, exists from the plans approved in the Order shall accompany the request for a Certificate of Compliance.

Prior to the issuance of a Certificate of Compliance, a site inspection may be made by the Commission or its agents, in the presence of the applicant or the applicant's agent.

If the Commission determines, after review and inspection, that the work has not been performed in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of the receipt of the request, shall be in writing, and shall specify the reasons for denial.

If the final order contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Order.

The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds as described in Section 4(D)(1).

SECTION 5. FEES

(A) Notice of Intent

(References in subparagraphs (1), (2), (3) and (4) are the amount of land in common ownership)

(1) up to two (2) acres	\$200.00
(2) two (2) or more acres but not more than ten acres	\$200.00 plus \$100 for each acre over two
(3) more than ten acres	\$1,000.00 plus \$100 for each acre over ten
(4) Subdivisions (roads & utilities only)	\$2,000 plus \$100 for each acre over ten

(B) Abbreviated Notice of Intent \$200.00

(C) Request for Determination of Applicability \$100.00

(D) Extensions of Order of Conditions \$100.00

(E) All Others \$100.00

(F) Notice after Enforcement \$200.00 in addition to normal application fee

(G) Certificate of Compliance \$0.00 if before permit expires; \$250 if after permit expires

(1) Re-Issue a Certificate of Compliance \$100.00

(H) In addition, the applicant shall agree in writing, if requested by the Commission, to reimburse the Commission for the costs and expenses of any expert consultant, if deemed necessary by a majority of the Commission, to review the submission, to inspect and report with respect to the property which is the subject matter of the submission, and/or to inspect and report concerning the alteration and construction itself.

(I) The foregoing fees shall be in addition to such filing fee as may from time to time be provided under M.G.L. Ch 131, Section 40 for proceedings under the state and regulations.

SECTION 6. PERFORMANCE STANDARDS

(A) Incorporation of State Standards

Applicants seeking Commission action under the Bylaw shall meet, at a minimum, all applicable state Wetland Protection Act standards. The standards of 310 CMR 10.00 are therefore herein incorporated by reference. The Commission may also find that protection of the interests identified in the Bylaw require that an applicant meet additional standards. Failure to meet both the state standards and such additional standards as may be required by the Commission will result in the Commission's denial of an application. By setting forth in this Section 6 certain specific standards, the Commission does not intend to limit or restrict the adoption of additional or different standards.

(B) Erosion/Siltation Prevention

When an Order of Conditions requires erosion and siltation prevention measures prior to, during, or after construction, unless otherwise specifically ordered by the Commission, the applicable standard shall be as set forth in a specification on file with the Conservation Agent at Town Hall for double rows of firmly staked haybales and/or filter fabric fence backed by a single row of haybales, both firmly staked and partially buried.

(C) Catch Basins/Oil Separators

When an Order of Conditions requires catch basins to be equipped with oil separators, unless otherwise specifically ordered by the Commission, the applicable options shall be those described at pp. 44-48, Runoff and Recharge, Metropolitan Area Planning Council, December 1983 or the Department of Environmental Protection Mega Manual. Applicant shall submit to the Commission in writing for approval, prior to construction, the oil separator design which applicant proposes to use.

(D) Resource Area Flagging/Plotting

The applicant shall cause wetland or other protected resource areas to be marked by numbered flags in the field and the location of said flags shall be plotted onto plan(s) submitted to the Commission. Corners of structures, of parking areas, of driveways, or of other principal features of the proposed activity shall be appropriately marked in the field by stakes or otherwise. With the submission to the Commission, applicant shall furnish the certification of the person who performed the flagging and plotting that the boundary indicated by flagging in the field and by plotting on the plan(s) is a true and correct boundary of the wetland or other protected resource area indicated. Copies of such plan(s) shall be furnished to those to whom copies of submissions to the Commission are required by Sections 4 of these regulations. Half-size copies of the plan(s) will be sufficient for individual members of the Commission.

SECTION 7. ENFORCEMENT

When the Commission determines that an activity is in violation of the Bylaw, these regulations, or a final Order of Conditions, the Commission may issue an Enforcement Order. Violations include, but are not limited to:

- (a) failure to comply with a final Order, such as failure to observe a particular condition or time period specified in the Order;
- (b) failure to complete work described in a final Order, when such failure causes damage to the interests identified in the Bylaw; or
- (c) failure to obtain a valid Order of Conditions or Extension prior to conducting an activity subject to regulation under the Bylaw.
- (d) any person who violates any provision of the Bylaw.

An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission, provided said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

SECTION 8. SECURITY

The Commission may require that the performance and observance of any Order of Conditions be secured by one or both of the following methods.

(A) By a bond (with surety acceptable to the Commission) or deposit of money, or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all actions specified in the Order of Conditions; and the Commission may require that the applicant specify the time within which such construction shall be completed.

The penal sum of any such bond or deposit shall bear a reasonable relationship to the expected costs necessary to complete the work. Such amount or amounts may be from time to time reduced as is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.

(B) By a conservation restriction, easement or other convert covenant, executed and duly recorded by the owner of record, running with the land whereby such conservation measures, as are stated in the Order of Conditions, shall be provided before any lot may be built upon or conveyed.

In the case of a bond or deposit, the same shall be delivered to the Commission and, in the case of a covenant, be recorded in the Registry of Deeds by the Applicant within 14 days of the issuing of the Order of Conditions.

SECTION 9. WAIVER OF REGULATIONS

Strict compliance with these rules and regulations may be waived when, in the judgment of the Conservation Commission, such action would serve a substantial public interest or when strict compliance would result in severe economic hardship far greater in magnitude than the public interest to be served. In the latter case, the Commission may require that compensatory or mitigating measures be taken, even at an off-site location, to protect the interests protected by the Bylaw.

SECTION 10. EFFECTIVE DATE

These rules and regulations shall take effect upon adoption and shall apply to all filings with the Commission on or after that date and any procedures or work conducted after that date even if pursuant to an Order of Conditions issued prior to said effective date.