

# WETLANDS BYLAWS

## Chapter 15 Wetlands

(Updated through 2006 Annual Meeting)

### **SECTION I. Application.**

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

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, freshwater wetland, vernal pool, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, aquifer or upon or within one hundred feet of lands bordering on the ocean or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to tidal action, coastal storm flowage, flood or inundation, or within one hundred feet of the 100-year storm line, or upon or within 200 feet of the mean annual high-water line of a perennial stream unless exempted by the Rivers Protection Act (st. 1996, c. 258), other than in the course of maintaining, repairing or replacing but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and basic telecommunication services, or, in the course of practicing agriculture, forestry or the maintenance of property, essentially in its existing condition, so long as these activities are not detrimental to the interests protected by this Bylaw without filing written application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this Bylaw.

Such application may be identical in form to those filed pursuant to Massachusetts General Laws Ch. 131, Sect. 40, shall be sent by certified mail to the Milton Conservation Commission (the “Commission”) and must be filed concurrently with or after applications for all other variances and approvals required by the Zoning Bylaw, the Subdivision Control Law or any other Bylaw or regulation. The Commission shall set a filing fee by regulation, but no filing fee is required when the Town of Milton files an application for a permit. Copies of the application shall be sent at the same time, by certified mail, to the Town Engineer, the Board of Selectmen, the Building Commissioner, the Planning Board, the Board of Health and to each member of the Commission at his/her residence. When the person requesting a Determination of Applicability is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person.

## **SECTION II. Hearing.**

The Commission shall hold a public hearing on the application within twenty-one days of its receipt. Notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation (Milton) and by mailing a notice to the applicant, the Town Engineer, the Board of Health, Board of Selectmen, the Building Commissioner, Planning Board and to such other persons as the Commission may by regulation determine. The Commission, its agents, officers and employees, may enter upon privately owned land for the purpose of performing their duties under this Bylaw.

## **SECTION II A. Permit and Conditions.**

If, after the public hearing, the Commission determines that the area which is the subject of the application is probably significant to the interests protected by this Bylaw, the Commission shall, within twenty-one days of such hearings, or such further time as the Commission and the applicant shall agree upon, issue or deny a permit for the work requested. Such permits shall be in a form pursuant to Massachusetts General Laws Chapter 131, Section 40. If it issues a permit after making such determination, the Commission shall impose such conditions as it determines are necessary or desirable for protection of those interests, and all work shall be done in accordance with those conditions. If the Commission determines that the area which is the subject of the application is not significant to the interest protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one days of the public hearing. Permits shall expire three years from the date of issuance, unless renewed prior to expiration, and once initiated, all work shall be completed prior to expiration.

## **SECTION III. Emergency Projects.**

This Bylaw shall not apply to any emergency project as defined in Massachusetts General Laws Ch. 131, Sect. 40.

## **SECTION IV. Pre-Acquisition Violation.**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person if such compliance occurs or restoration commences within one year following the date of acquisition of the real estate by such person.

## **SECTION V. Regulations.**

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

## **SECTION VI. Burden of Proof**

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interest protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interest protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

## **SECTION VII. Definitions.**

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

- (a) The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agencies, public or quasi-public corporations or bodies, the Town of Milton, and any other legal entity, its legal representatives, agents or assigns.
- (b) The term "alter" shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:
  - (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
  - (2) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentary patterns, flow patterns and flood retention characteristics;
  - (3) Drainage or other disturbance of water level or water table;
  - (4) Dumping, discharging or filling with any material which may degrade water quality;
  - (5) Driving of piles, erection of buildings or structures of any kind;
  - (6) Placing of obstructions whether or not they interfere with the flow of water;
  - (7) Destruction of plant life, including cutting of trees;
  - (8) Changing of water temperature, biochemical oxygen demand or other physical, biological, or chemical characteristics of the water;
  - (9) Any activity, change or work which pollutes any stream or body of water, whether located in or out of the Town of Milton.
- (c) The term "vernal pool" shall include, in addition to scientific definitions found in the laws and regulations of the state Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, driveways, or roadways, which, except in years of drought, is free of adult predatory fish populations, holds water for a minimum of two consecutive months during the spring and/or summer, and exhibits evidence of vernal pool species as required for certification by the Massachusetts Natural Heritage Program (MNHP), or any successor organization. Certification by MNHP is not required. The boundary of the vernal pool shall be the mean annual high water line defining the depression.

(d) All other terms shall be defined pursuant to Massachusetts General Laws Ch. 131, Sect. 40 and any regulations promulgated thereunder.

(e) The Commission may adopt additional definitions not inconsistent with this Section VII in its regulations promulgated pursuant to Section V of this Bylaw.

### **SECTION VIII. Security.**

The Commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

- (a) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Milton;
- (a) By a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

### **SECTION IX. Enforcement.**

Any person who violates any provision of this Bylaw or of any condition or a permit issued pursuant to it shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense. If the person violates more than one provision of this Bylaw or any condition or permit issued thereunder, each provision, condition, or permit so violated shall constitute a separate offense. If in the estimation of the Commission, corrective work is required to protect the environment, and the applicant fails to perform said corrective work within a reasonable period of time as set by the Commission, the Commission may order the same to be performed by a party to be determined by the Commission. The landowner shall be required to reimburse the Town for all costs incurred. These costs will be in addition to the fines described above. This Bylaw may be enforced pursuant to Massachusetts General Laws. Ch. 40, Sec. 21D by a Town police officer or other officer having police powers. Fines issued and costs assessed by the Commission shall constitute a municipal lien. Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action as may be necessary to enforce this bylaw and permits issued pursuant to it.

### **SECTION X.**

The Commission may, if a majority of its members deem it necessary in order to make a decision before issuing a permit, order investigation, engineering, hydrogeological or other review of the filing and/or the site. No investigation or engineering, hydrogeological or other study and review shall commence until such time as the applicant has agreed in writing, to the specified study and/or review costs and terms of payment. Selection of a consultant to perform a required study shall be subject to approval of the Commission. Each permit issued under this article shall be held by the Commission or its designated agent until such time as the Commission is in receipt of a statement by the consultant that the fee has been paid or other satisfactory arrangements has been made. Prior to receipt of a permit under this article, the applicant shall pay the associated costs of investigation, engineering, hydrogeological, or other review which is deemed necessary by a majority of the Commission members in order for the Commission to make a decision to issue said permit.

## **SECTION XI. Non-Disturbance Zone.**

In order to preserve the quality of certain wetland resources and serve the interests protected by this Bylaw, it is necessary to restrict or limit activities adjacent to any bank, land under water bodies and waterways, vernal pools, and bordering vegetated wetlands, (collectively “resource areas”). To achieve these objectives, a Zone of Non-Disturbance (the “Zone”) is hereby established to create a boundary or buffer between the activity proposed and the resource area to be protected.

- (a) The Zone shall extend a distance of twenty-five (25) feet from the edge of the resource area on or adjacent to any proposed to be altered except for vernal pools, where the zone is one hundred (100) feet.
- (b) No person shall engage in any activity within a Zone that alters the Zone or any land, water, animal life within the Zone.
- (c) Notwithstanding subsection (b) above, a person may engage in water-dependent activities within the Zone (including, but not limited to, construction, maintenance and repair of marinas, docks and wharves) without seeking relief from this Section XI.
- (d) The Commission may grant relief from this Section XI only if the Commission finds that the granting of such relief will not have a significant adverse impact upon the interests protected by this Bylaw. Such a finding requires an affirmative vote of a majority of the quorum present for the vote.

**And to act on anything relating thereto.**

**Submitted by the Conservation Commission.**