

TOWN OF MILLIS  
ARTICLE XIX  
WETLANDS PROTECTION BYLAW

Section 1. - Membership

The Town shall have a Conservation Commission consisting of seven (7) members appointed by the Board of Selectmen for a term of three years each and so appointed no more than three (3) nor less than two (2) shall expire in any one year.

Section 2. - Purpose

The Conservation Commission shall have the duties and powers specified in the Massachusetts General Laws, including, but not limited to, Chapter 40, Sections 5 and 8C as amended, and Chapter 131, Section 40 as amended. Such duties and powers include, but are not limited to, the following:

- A. The promotion and development of natural resources and protection of watershed resources of the Town;
- B. The advertising, preparation and distribution of books, maps, charts, plans and pamphlets which, in its judgment, it deems necessary for its work;
- C. The receiving of gifts, bequests of devices or personal property or interests in real property in the name of the Town subject to the approval of the Selectmen;
- D. The acquisition, in the name of the Town, by option, purchase, lease or otherwise the fee in such land or water rights, conservation restrictions, easements of other contractual rights as may be necessary to acquire, maintain, improve, protect, limit the future use of or otherwise conserve and properly utilize open spaces in land and water uses within the Town and the management and control of same;
- E. The regulation and protection of wetlands, related water resources and adjoining land areas in the Town of Millis, including the authority to regulate or prohibit the removal, filling, dredging or altering of any area likely to have a significant effect upon public or private water supply, groundwater, flood control, storm drainage prevention, erosion, prevention of pollution, wildlife habitat or recreation.

Section 3. - Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: land within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp; land within 100 feet of any bank, beach, dune or flat; any lake, river, pond, stream or estuary, or any land under said waters.

No person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, wet meadow, bog or swamp or lands bordering on any estuary, creek, river, stream, pond or lake, or any land subject to flooding, 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, drainage, telephone, telegraphs and the telecommunications service, without filing written notice of his intention so to remove, fill, dredge or alter and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Such notice shall be sent by

certified mail or hand delivered to the Millis Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment. The same notice, plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, Section 40, and 310 C.M.R. 10 et. Seq., as amended, may be accepted as fulfilling the requirements of this bylaw. The said commission, in its discretion, may hear any oral presentation under this bylaw at the same public hearing required to be held under the provisions of said Chapter 313, Section 40, of the Massachusetts General Laws.

Section 4. - Application for Permits and Requests for Determinations

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment, including, but not limited to, all information normally required in a building permit application and copies of all applications for approval from the Town of Millis, the Commonwealth of Massachusetts or the United States Government relating to work subject to this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission shall accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

At the time of application or request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is an addition to that required by the Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

When reviewing an application for permit, the Commission may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of the project's significant effect upon the values the Commission is authorized to protect, all as set forth in this article. The Commission may require that applicants pay the cost of engaging an outside consultant to assist the Commission in the review of the application. The Commission may also require, as a condition of approval, payment covering the cost of this hiring of an outside consultant to inspect work to insure compliance with the previously granted permit.

Outside consultants shall be acceptable to the Commission. The standards of qualification shall consist of Massachusetts certification or license in the field at issue or references mutually acceptable to the Commission and the applicant, showing expertise and experience in the field at issue.

The consultant shall be paid directly by the applicant, who shall be responsible for any and all costs usual and customary for the services performed by the consultant.

Section 5. - Notice and Hearings

Any person filing an application or a request for determination with the Commission shall, at the same time, give written notice thereof, by certified mail or hand delivery, to the Inspector of Buildings of the Town of Millis. The notice shall include a general description of the

proposed work to be performed and state that an application has been filed with the Conservation Commission.

The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the Town of Millis.

The Commission shall commence the public hearing within 21 days from the receipt of a completed application or request for determination. An application shall not be deemed complete unless the filing fee is paid.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon.

The Commission may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, and deemed necessary by the Commission in its discretion. In the event the applicant objects to continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

#### Section 6. - Permits, Determinations and Conditions

If the Commission after a public hearing determines that the activities which are subject of the application are likely to have a significant effect upon the values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specification, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant effects upon the values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance. Any permit may be renewed for additional one year periods, provided that a request for renewal is received in writing by the Commission thirty (30) days prior to expiration.

For good cause the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and written notice to the holder of the permit.

The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act.

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded at the registry of deeds or, if the land affected thereby is registered land, in the section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded.

Section 7. - Regulations

After public notice and public hearing, the Commission shall promulgate or amend 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 8. - Enforcement

The Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or samplings as the Commission deems necessary.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

Any person who violates any provisions of this bylaw, regulations thereunder, shall be punished by a fine of not more than two hundred dollars (\$200). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Chapter 40, Section 21D.

Section 9. - Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Section 10. - Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and Home Rule Statutes, independent of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and regulations thereunder.

Section 11. - Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

Section 12. - Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw:

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 agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
- C. Drainage or other disturbance of water level or water table;
- D. Dumping, discharging or filling with any material which may degrade water quality;
- E. Placing of fill or removal of material which would alter elevation;
- F. Driving of piles, erection or repair of buildings, or structures of any kind;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life including cutting of trees;
- I. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- K. Application of pesticides or herbicides.

Except as otherwise provided in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, or act in any manner relating thereto.