TOWN OF MILLIS

WETLANDS PROTECTION

RULES AND REGULATIONS

PROMULGATED UNDER

ARTICLE XIX
WETLANDS PROTECTION BYLAW

SECTION 7

July 23, 2007

(EFFECTIVE DATE – AUGUST 6, 2007)
(AMENDED JULY 18, 2011 – EFFECTIVE AUGUST 5, 2011)
(AMENDED NOVEMBER 17, 2014 – EFFECTIVE DECEMBER 5, 2014)

TOWN OF MILLIS
WETLANDS PROTECTION BYLAW
RULES AND REGULATIONS

SECTION 1
GENERAL PROVISIONS

1.1 AUTHORITY

These rules and regulations are promulgated by the Conservation Commission of the Town of Millis pursuant to the authority granted it under Section 7 of the Town of Millis, Article XIX, Wetlands Protection Bylaw, hereinafter referred to as the "Bylaw". These rules and regulations shall complement the Bylaw and shall have the force of law upon their effective date.

The intent of the Wetlands Protection Bylaw and these rules and regulations is to supplement the state review under Massachusetts General Laws, Chapter 131 §40 (The Wetlands Protection Act) and its regulations (310 CMR 10.00), and to provide protection of additional resource areas not covered under the Wetlands Protection Act, including Vegetated Wetland(s) and the Buffer Zone(s).

1.2 PURPOSE AND PROTECTED INTERESTS AND VALUES

The purpose of these rules and regulations is to define and clarify that process by establishing performance standards and uniform procedures by which the Millis Conservation Commission, hereinafter referred to as the "Commission", may carry out its responsibilities under the Bylaw. These rules and regulations set forth uniform standards and procedures for activities and work conducted in the regulated Wetland Resource Area(s) and Adjacent Upland Resource Area(s) (referenced under Section 2.E of the Bylaw), and for the filing and review of applications under the Bylaw. Adjacent Upland Resource Area(s) is also referred to as Buffer Zone(s) under the Bylaw and these Rules and Regulations.

Wetland(s) and Adjacent Upland Resource Area(s) contribute to a number of public interests and values and are therefore protected by the Bylaw. These interests and values include, but are not limited to, the following:

- Public and private water supply
- Groundwater and groundwater supply
- Surface water protection
- Flooding and Flood control
- Land subject to flooding

- Erosion and sedimentation control
- Storm drainage/damage prevention
- Water and soil pollution prevention
- Fisheries and Freshwater shellfish
- Wildlife and wildlife habitat
- Protection of endangered and threatened species
- Vernal pools and vernal pool habitat
- Passive recreation

The regulation and protection of Wetland Resource Areas and Adjacent Upland Resource Areas in the Town shall include the authority for the Commission to regulate or prohibit the removal, filling, dredging, or alteration of any area that is likely to have a significant or cumulative adverse effect upon one or more of the protected interests and values as defined herein.

The protection of the quality of the surface water; the quality and quantity of the groundwater; and the groundwater water recharge and discharge areas for existing or potential water supplies are interests and values that are part of the promotion and development of natural resources and protection of watershed resources of the Town of Millis.

1.3 JURISDICITON

In accordance with the above Purpose and Protected Interests and Values, no person shall remove, fill, dredge, discharge into, or otherwise alter any Wetland Resource Area(s) or Adjacent Upland Resource Area(s) of the Town of Millis, as defined herein and under the Bylaw, without an Order of Conditions or a Determination of Applicability from the Commission.

The following Wetland Resource Areas or Adjacent Upland Resource Areas are subject to protection and regulation under the Bylaw:

(1) Any freshwater wetland, including marsh, wet meadow, bog, or swamp;
(2) Any intermittent or perennial river, stream or creek;
(3) Any lake, pond or estuary;
(4) Any bank, beach, dune, or flat of the Wetland Resource Areas identified in 1.3 (2) and (3);
(5) Any land subject to flooding or inundation by groundwater or surface water;
(6) All lands within 100 feet of the Wetland Resource Areas identified in 1.3 (1) through (5), (Defined as Adjacent Upland Resource Area or Buffer Zone);
(7) All lands within 200 feet of a perennial river or stream, (Defined as Riverfront Area);

(8) Land under any of the Wetland Resource Areas identified in 1.3 (2) and (3); and

(9) Any vernal pool or pool of water having vernal pool properties or characteristics.

Adjacent Upland Resource Areas are presumed to be important for the protection of wetland resources. Any activities undertaken in close proximity to wetland resources may have significant or cumulative adverse impacts upon the protected interests and values as a consequence of construction, or over time, as a consequence of daily operations or functions. These adverse impacts from construction or new daily operations or functions can include, but not limited to, erosion, siltation, loss of groundwater recharge, loss of vegetative and tree cover, poor water quality, and harm to wildlife and wildlife habitats. Consequently, any Adjacent Upland Resource Area is deemed to be a regulated Resource Area, as identified under Section 3 of the Bylaw.

1.4 ADJACENT UPLAND RESOURCE AREA PERFORMANCE STANDARDS

1.4.1 To protect the interests and values of the Adjacent Upland Resource Area(s) (or Buffer Zone(s)), construction activities and placement of permanent structures within said Resource Area(s) are regulated.

(1) No structures shall be placed within the inner 50-foot of the Buffer Zone(s) from the edge of a wetland resource area. A strip of continuous, undisturbed vegetative cover shall be maintained. Permanently placed stone granite bounds, 6” x 6” x 4’- 0” long mounted with a single railing of pressure treated timber at 2’- 0” above ground surface, shall be placed to delineate and demarcate this undisturbed protected zone. Mounting details will be provided by the Commission.

If site condition warrants, as determined by the Commission, the Commission may waive the requirement for the demarcation railing with stone granite bounds or allow for an alternative method of delineation and demarcation.

(2) For new lots formed and/or new subdivision roads approved after the effective date of these rules and regulations, it is presumed that alteration to the outer 50-foot of the Buffer Zone area(s) can be avoided. If a project proposes alteration within this buffer, the Applicant must present a vigorous Alternatives Analysis showing that the proposed project avoids alteration to the fullest extent and has minimized impacts. Any permanent structure so placed within this outer 50-foot portion of the Buffer Zone(s) would cover an area no greater than 30 percent of the calculated area of this outer 50-foot of the Buffer Zone(s) that is within the subject individual property. Mitigation for any and all Buffer Zone Alteration is required.

(3) For projects on undeveloped lots in existence prior to the effective date of these rules and regulations, the Applicant must present strong evidence that a

reasonable effort has been made to avoid and minimize impacts to the outer 50-foot area of the buffer. Any permanent structure so placed within this outer 50-foot portion of the Buffer Zone(s) would cover an area no greater than 30 percent of the calculated area of this outer 50-foot of the Buffer Zone(s) that is within the subject individual property. Mitigation for any and all Buffer Zone Alteration may be required.

(4) For projects on lots with existing structures, the Applicant must minimize work within the Buffer Zone and present strong evidence that a larger intrusion into the Buffer Zone will still secure the protection of the interests and values of the Bylaw. Addition of any permanent structure within the outer 50-foot of the Buffer Zone, combined with the existing structure(s), would cover an area no greater than 35 percent of the calculated area of this outer 50-foot of the Buffer Zone(s) that is within the subject individual property. Addition of any new permanent structure within the inner 50-foot of the Buffer Zone is not permitted.

(a) Maintenance of existing structure(s) within the Buffer Zone is permitted as long as the activities will not cause degradation or diminish the interests and values of the resources that are protected by the Bylaw.

(b) Prior to commencement of maintenance work to existing structure(s) within the Buffer Zone, the property owner shall contact the Commission to ensure that proposed maintenance activities would not violate the Bylaw.

1.4.2 Alternatives Analysis

In evaluating whether the applicant meets the alternatives as set forth in Subsection 1.4.1 (2) of these Rules and Regulations, any self-imposed hardship shall not be considered. The Commission views any adjacent properties located nearby, which are under common ownership or previously owned and sold within the past 5 years, as part of a cumulative Resource Area subject to impact. The applicant or property owner is advised to prevent situations where they have created their own hardship by not carefully considering all likely impacts to regulated areas subject to the Bylaw and these Rules and Regulations. It is incumbent upon the applicant to plan appropriately and not fragment or phase any portion of the development without careful consideration of avoidance of impacting any regulated Resource Areas.

In a residential subdivision of any size, the inability to develop all proposed or conceptual lots in conformance with the Bylaw and these Regulations shall not be considered a hardship.

1.4.3 Retaining Walls within the Buffer Zone **(Added July 18, 2011)**

Any proposed retaining walls to be constructed within the Buffer Zone, submitted for review and approval, shall be designed and shown on a plan stamped by a professional structural engineer registered in the Commonwealth of Massachusetts.

1.5 INSPECTION AND REVIEW OF WETLAND RESOURCE AREA

The Commission reserves the authority to require the applicant to schedule its project review such that it will accommodate, at minimum, one inspection of the Wetland Resource Area boundary by the Commission during the growing season, defined herein as beginning on April 15 and ending on October 30 of each year. At least two weeks prior to a proposed site inspection, the applicant shall arrange to meet with the Commission at a mutually agreed upon location, date, and time. The inspection schedule requirement shall not be waived if the applicant or its representative fails to appear at the designated site on the date and time of the scheduled site inspection. An additional fee in accordance with the fee schedule will be required from the applicant in order to reschedule the inspection with the Commission.

1.6 WAIVERS FROM RULES AND REGULATIONS

Strict compliance with these Rules and Regulations may be waived when, in the judgment of the Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a Waiver must be submitted to the Commission in writing. The Waiver shall be presented at the time of filing. The Commission shall require the applicant to submit a written justification stating why a Waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw.

1.7 ADVICE FROM TOWN STAFF

Any advice, opinion, or information given to an applicant by a Commission member, or by any agency, officer, or employee of the Town, shall be considered advisory only and not binding on the Commission.

SECTION 2
FILING REQUIREMENTS

2.1 TIME PERIODS

All time periods of ten days or less specified in the Bylaw or in these Rules and Regulations shall be considered business days only. Time periods of more than ten days shall be considered calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day to follow.

(1) Timeframes for Submission of Documentation

In order to insure adequate and proper review by the Commission, staff, and the public, all requested documentation, including forms, narrative descriptions, plans, maps, tables, charts, reports, etc., must be submitted to the Commission **at least two (2) calendar weeks prior** to the scheduled public hearing. Documentation submitted by the applicant six days or less before a scheduled continuation of the public hearing may be excluded from said hearing or held for discussion at a subsequently scheduled hearing, if, in the opinion of the Commission, the Commission and its staff or the public have not had adequate or sufficient time to properly consider said material.

2.2 DETERMINATIONS OF APPLICABILITY

Any person who is proposing to undertake an activity and desires to know what is required of them may arrange a preliminary discussion by contacting the Commission and arranging a time at a public hearing.

(1) Filing Procedures

The Request for Determination of Applicability shall include sufficient information to enable the Commission to find and view the area and to determine whether the proposed Work will alter an area subject to protection under the Bylaw. At a minimum, the information shall include the following:

(a) Form 1 (Wetland Protection Act, M.G.L. Chapter 131, S. 40)

(b) Such Plans, prepared and stamped by a Registered Professional Engineer and/or Registered Professional Land Surveyor, as are needed to locate and inspect the area and to determine whether the proposed Work may significantly alter an area subject to protection. The requirement that Plans be stamped by a registered professional engineer and/or registered professional land surveyor may be waived by the Commission or its agent, if it is deemed unnecessary. These Plans shall show:

(i) All Wetlands on the site that are within 100 feet of the edge of proposed activities.

(ii) Riverfront Areas including inner and outer riparian zones.

(iii) 50-foot and 100-foot Buffer Zone lines.

(iv) Wetland protection setbacks (see Subsection 3.2 and Subsection 3.3).

(v) Erosion and sedimentation control/prevention devices and method of maintenance.

(vi) The edge of disturbance, if different from the erosion control/prevention devices.

(vii) Location of stockpiled materials, if any.

(viii) Flood Zone Line(s) demarcating area(s) subject to flooding.

(ix) Well Protection Zone(s)

(c) Copy of document(s) demonstrating qualification of wetlands scientist(s) responsible for identifying and delineating the wetland resource area(s). **(Added 11/17/14)**

(2) In order to clarify the review process for the Commission and/or its agent, all Wetlands within 100 feet of the edge of Activity shall be marked with numbered flagging tape by certified wetlands scientist(s), which will correspond to the edge of Wetlands as shown and numbered on the submitted Plans. Flagging may be performed during the wintertime. However, the Commission will only review in the springtime for accuracy of the flagging. Springtime is defined herein as beginning on April 15.

(3) Said Request for Determination of Applicability shall be sent by certified mail or hand-delivered to the Commission. If necessary, the Commission and/or its agent may require that additional information be submitted to aid in the evaluation. If all data required by the Commission and/or its agent is not received, the filing shall not be considered complete, a public hearing shall not be scheduled and the Applicant shall be notified.

At the public hearing the Commission will determine:

<u>Positively</u>: That the area or Activity is subject to the jurisdiction of the Bylaw and requires the filing of a Notice of Intent; or

Negatively: That the area or Activity is not subject to the jurisdiction of the Bylaw, or that the interests and values protected by the Bylaw are fully protected by the project as proposed.

2.3 NOTICE OF INTENT

(1) Filing Procedures

Written Application shall be filed with the Commission to perform Activities regulated by the Bylaw affecting protected Resource Area(s). The Applicant shall provide the Commission with nine (9) copies of the filing, and provide the Town Clerk and the Massachusetts Department of Environmental Protection (DEP) with one copy each. The Application shall include such information and Plans as are deemed necessary by the Commission to describe proposed Activities and their effects on area(s) subject to protection. No Activities shall commence without receiving, recording, and complying with an Order of Conditions issued pursuant to the Bylaw, and receiving a file number from DEP.

The Commission may accept the Notice of Intent and Plans filed under the Massachusetts Wetland Protect Act, hereinafter referred to as the "Act", as the Application and Plans under the Bylaw. The filing shall, at a **minimum**, include four copies of the following:

(a) WPA Form 3 – Notice of Intent (Wetland Protection Act, M.G.L. Chapter 131, S. 40)

(b) Such Plans and Specifications as are required of the Applicant under the Act, and as specified in Section 2.2 (1) (b) and Section 2.2 (2) of these Rules and Regulations.

(c) A list of Abutters from the most recent tax list of the Town and certified by the Town Assessors.

(d) A detailed sequence of construction.

(e) A detailed plan of wetland replacement or restoration, if the project proposes a Wetland Alteration.

(2) In order to clarify the review process for the Commission and/or its agent, all wetlands within 100 feet of the edge of proposed Activities shall be marked with numbered flagging tape by certified wetlands scientist(s), which will correspond to the edge of wetlands as shown and numbered on the submitted Plans. Flagging may be performed during the wintertime. However, the Commission will only review in the springtime for accuracy of the flagging. Springtime is defined herein as beginning on April 15. **(Amended 11/17/14)**

(3) When a person filing an Application is other than the owner, the Application, the notice of the hearing, and the findings shall be sent by the Applicant to the owner as well, and the Applicant shall supply the Commission with the name and current address of the owner.

(4) Any person filing a Notice of Intent under the Bylaw shall also notify by certified mail all Abutters of the filing of such Notice of Intent. Such notice shall clearly identify the land on which the Work is to be done and describe the general nature of the Work. Notice shall include where Plans may be reviewed. A list of all Abutters so notified and proof of such notification shall be filed with the Commission prior to the opening of the public hearing. If proof of said notification is not presented to the Commission, the public hearing shall not be opened. Said notification of Abutters should be sent not less than eight (8) business days prior to the scheduled hearing. For example, when a hearing is scheduled for a regular Monday hearing, said notification should be sent, at the latest, by Wednesday of the second week prior to the day of the meeting. **(Amended 11/17/14)**

(5) Exhibit Plan(s), 8 ½ by 11 inches, shall be filed with the Application. The Exhibit Plan(s) shall be filed and recorded along with the Order of Conditions in the Registry of Deeds or Land Court, whichever is applicable.

2.4 EXTENSION

The Commission may extend an Order of Conditions for additional one-year periods. Written requests for an Extension shall be made not less than thirty days prior to the expiration of said Order of Conditions. Said Extension shall be recorded in the Registry of Deeds or Land Court, whichever is applicable.

The Commission may deny a request for Extension under the following circumstances:

(1) Where no Work has begun on the project, except where such failure is due to unavoidable delay, such as appeals in obtaining other necessary permits.

(2) Where new information, not available at the time of original filing, has become available and indicates the Order of Conditions is insufficient to protect the Resource Area(s) that is subject to protection.

(3) Where Work has been done in violation of the Order of Conditions.

2.5 CERTIFICATE OF COMPLIANCE

After all Work is completed and in accordance with the conditions as stipulated in the Order of Conditions, a request for a Certificate of Compliance shall be made in writing on the appropriate form(s) to the Commission. The Commission will act on the request within 21 days of receipt of such a request.

(1) Prior to issuance of the Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent. The Applicant shall be notified prior to the inspection and may be requested to be present at the inspection, if that is deemed to be desirable by the Commission. The site inspection will be preformed by the Commission between the period of April 15 and October 30, inclusive, of each year. Site inspection outside this time period will only be performed at the discretion of the Commission when weather permitting.

(2) If the Commission determines after review and inspection that the Work has not been done in compliance with the Order of Conditions, it shall refuse to issue said Certificate of Compliance and the reasons for denial shall be specified in writing to the Applicant.

(3) A partial Certificate of Compliance (COC) may be issued by the Commission, if all of the regulated Work under the Order of Conditions is not completed and the Commission determined that a partial COC is beneficial to the interest of all involved parties. The partial COC shall state as to what portion(s) of the Work it applies and what is still outstanding. A collateral fund will be held until the work is completed. The monetary amount of the collateral fund shall be determined at the hearing commensurate with the work to be completed.

(4) The Certificate of Compliance, if issued, shall be recorded by the Applicant in the Land Court or Registry of Deeds, whichever is applicable.

2.6 FEE SCHEDULE AND CONSULTANT FEES

Permit fees are payable at the time of application and are non-refundable. Fees shall be calculated by the Commission or its agent according to the Fee Schedule, as adopted and published by the Commission. Town projects are exempt from fees. These fees are in addition to and separate from those fees required by the DEP.

2.6.1 Outside Consultant(s) and Consultant Fees

Upon receipt of an Abbreviated Notice of Resource Area Delineation, Request for Determination of Applicability, Notice of Intent, or at any point in its deliberations, the Commission may deem it necessary to obtain expert engineering or other outside consultant services in order to reach a final decision on the Application. The specific

consultant services may include, but are not limited to, Resource Area survey and delineation; analysis of interests and values at the Resource Area(s); hydrogeological and drainage analysis; impacts on municipal conservation lands; and environmental or land use laws. The outside consultant(s) shall be chosen by, and report only to, the Commission.

In such instances the Commission shall notify the Applicant of this need and shall provide the opportunity for the Application to be amended or withdrawn. Should an Applicant choose to proceed, the Commission shall require the Applicant to pay the reasonable costs and expenses for these consulting services. This fee is called the Consultant Fee. The exercise of discretion by the Commission in making its determination to require the payment of a Consultant Fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

The Commission shall give written notice or oral notice at a public hearing to the Applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the estimated amount of the fee to be charged to the Applicant, and a request for payment of said fee amount. Such notice shall be deemed to have been given on the date it is mailed or delivered at the public hearing. No such cost or expenses shall be incurred by the Applicant if the Application or request is withdrawn within five days of the date notice is given. The fee amount must be received prior to the initiation of consulting services. The Commission may request additional Consultant Fees, if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the Applicant to pay the Consultant Fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application.

Funds received by the Commission pursuant to this section shall be deposited with the municipal treasurer, who shall establish a special account for this purpose, consistent with the terms and provisions of G. L. c. 44, §53G. Expenditures from this special account may be made at the direction of the Commission without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a Consultant Fee for project review has been or will be collected from the Applicant. Accrued interest may also be spent for this purpose.

At the completion of the Commission's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the Applicant or the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Commission with documentation establishing such succession in interest.

Any Applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Commission has mailed or hand-delivered notice to the Applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not process the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Commission shall stand.

Alternatively, the Commission may, at its discretion, accept and select the outside consultant(s) from a list of at least three qualified individuals or firms that are provided by the Applicant. The standards of qualification shall include an educational degree, Massachusetts certification or license, or three or more years of practice in the field plus references that are acceptable to the Commission, showing expertise and experience in the area of specialization applicable to the proposed Activity.

SECTION 3
CONSTRUCTION STANDARDS AND RESTRICTIONS

3.1 SEQUENCE OF CONSTRUCTION

As required by Section 2.3 (1) (d), the Applicant shall provide a detailed sequence of construction to the Commission, as part of the standard filing requirements, detailing in what order the project's construction will follow. Said sequence shall be followed by the Applicant, unless amended and approved by the Commission.

3.2 WETLAND SETBACKS FOR NEW ACTIVITIES

In order to protect and preserve the public interests and values of the wetlands and waterways of the Town of Millis, activities in Wetland(s) and Adjacent Upland Resource Area(s) should be avoided to the full extent practicable. The following are the **minimum** distances (setbacks) of activity from the edge of Wetland(s) or Vernal Pools(s). No activity shall be allowed within these setbacks except as provided below, or as provided in Section 1.4 of these rules and regulations. These setbacks are the **minimum** and may be extended further by the Commission, if deemed necessary for the protection of the interests and values of the Bylaw.

The setbacks shall be as follows:

(1) 0-foot setback for wetland-dependent structures such as drain outfalls, weirs, etc.

(2) 50-foot chemical free area, within which no fertilizers, herbicides, pesticides or other chemical maintenance substances shall be used.

(3) 75-foot no-build setback to the edge of driveways.

(4) 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials.

(5) 100-foot setback of undisturbed natural vegetation to the mean high water line for vernal pools.

3.3 WETLAND SETBACKS FOR EXISTING STRUCTURES

Work associated with pre-existing structures or activities not presently in compliance with Section 3.2 may not increase the degree of "non-conformance" of those structures or activities. No new activity shall be commenced and no new structure shall be located closer to the edge of a Wetland Resource Area than existing non-conforming like

Activities or structures. However, the Commission may permit new like Activity or structures as close to the Wetland Resource Area as the existing like Activity or structure, if the Commission finds such Activity or structure will not affect the interests and values provided for in the Bylaw any more adversely than the existing Activity or structure.

3.4 EROSION PREVENTION

Erosion control measures shall be provided to intercept runoff from disturbed area(s) and prevent siltation in Wetland Resource Area(s). The purpose of installing a silt prevention barrier between the proposed limit of disturbance and the edge of Wetland(s) is to intercept sediment-laden runoff by reducing runoff velocity and allowing suspended sediments to "settle out" before entering the Wetland Resource Area(s). Such sediments shall be removed and sediment barriers monitored and replaced when deemed necessary by the Commission or its agent.

3.5 EROSION PREVENTION INSTALLATION

Proposed location of the silt prevention devices, silt fence and/or hay bales, shall be shown on the Plans submitted in the Wetland filing furnished by the Applicant for Commission review and approval. Erosion prevention devices shall be installed prior to the commencement of Activities on the site.

3.6 STORAGE OF FILL

If any Fill is to be stored on site, it shall be stored outside of the Buffer Zone and/or it shall be surrounded by hay bales to prevent erosion. The location of said Fill shall appear on the Plans submitted to the Commission pursuant to Notice of Intent requirements. If the Commission determines that the proposed location of Fill threatens the areas subject to protection, it may require the Applicant to store said Fill in a different location or to remove it completely from the site.

3.7 CONSTRUCTION DEBRIS

There shall be no disposal or burial of construction debris such as scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc. within 100 feet of a Wetland, unless approved by the Commission under the filing. Illegal disposal of said debris shall result in a stop work order, fine, required removal of said debris, or all of the above. The Commission may allow the creation of a spoils area, which would be required to be designated on the project Plans, if it is proven that it will not harm areas subject to protection.

SECTION 4
WETLAND REPLACEMENT

4.1 WETLAND REPLACEMENT

Wetland that is proposed to be altered will in all instances require, **at a minimum**, a replacement equal to 1.5 times the wetland to be altered, preferably the replacement shall be hydrologically connected to the Wetland proposed to be altered. Replacement shall mean to put back in proper place, or to provide an equivalent quality of function and value to the satisfaction of the Commission.

4.2 REQUIREMENTS

Projects involving Wetland Filling and/or permanent Alterations shall meet the requirements of 310 CMR, 10.60 (3) and 10.55 (4) of the Act and the following requirements of these rules and regulations:

(1) The proposed Replacement Area design must be submitted to the Commission for approval as part of the submittal of the project Notice of Intent. Applicants are advised to appear before the Commission for preliminary discussion, comments, and review prior to submittal of the Replacement Plan with the Notice of Intent.

(2) The Replacement Area must be shown to sufficiently duplicate the functions of the Wetland that is proposed to be altered.

(3) The Replacement Area shall be constructed, to the fullest extent possible, immediately after Alteration of the existing Wetland and during the same growing season.

(4) The proposed Replacement Area must be clearly flagged for Commission site inspection before the Notice of Intent filing shall be considered complete, and said flagging shall be numerically coded and correspondingly shown on the Plans, according to Section 2.3 (1) (b).

(5) The Notice of Intent submittal for a Replacement Area shall include a detailed plan of the proposed replacement showing:

(a) Cross-section with indication of groundwater level, soil profile and thickness of organic soil in the existing and proposed Wetlands.

(b) Details of plant species, including species found in the area to be altered. Indicate the number, types, and locations of species to be introduced into the Replacement Area.

(c) Detail of stabilization plans for banks of the Replacement Area.

(d) Wildlife Habitat diversity plan.

(6) Construction of the Replacement Area shall, in general, follow all requirements as set forth in Section 3, Construction Standards and Restrictions of these Rules and Regulations.

(7) If, after three growing seasons, the Commission determines that the Replacement Area has not satisfactorily developed into a Wetland, the Applicant or Owner may be required to submit new Plans to successfully replace said Wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory Replacement Area has been completed at the end of a three-year period.

SECTION 5
TERMS AND DEFINITIONS

Except as provided in this Section, the definition of terms used in these Regulations shall be as set forth in the Bylaw or in the Wetlands Protection Act, MGL c. 131, §40, and the Regulations thereto, 310 CMR 10.00 et seq.

5.1 **Abutter** shall mean any owner(s) and any resident(s) of property (defined as land with a mailing address as shown on the most recent applicable tax list of the assessors) located within three hundred (300) feet of any property line of the applicant's proposed project area. This definition shall include, but is not limited to: any owner(s) and any resident(s) of property located directly opposite (on any public or private street or way) and within 300 feet of said proposed project area; and any owner(s) and any resident(s) of property in another municipality that is located within 300 feet of any property line of the applicant's proposed project area. This distance may be reduced to one hundred (100) feet subject to the approval of the Commission after review and deliberation of supportive documentation for the reduction. Applicant shall provide and evaluate merits for the 300-foot waiver, and submit documentation for a determination prior to submission of the Notice of Intent application. **(Amended 11/17/14)**

5.2 **Abbreviated Notice of Resource Area Delineation** shall mean the written notice filed by any person to identify, define, and establish the limits of Resource Area(s) within a property. The Commission shall provide written response certifying the identified limits of Resource Area(s).

5.3 **Activity** shall mean any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, construction, reconstruction, or expansion of any buildings or structures; the driving of piles; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage, and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land, or of the physical, biological, or chemical characteristics of water.

5.4 **Adjacent Upland Resource Area** shall mean any land within one hundred (100) feet of a Wetland Resource Area or within two hundred (200) feet of a River or Perennial Stream as defined in 310 CMR 10.00. Adjacent Upland Resource Areas are presumed to be important to the protection of Wetland Resource Areas as defined herein, because activities undertaken in close proximity to a wetland resource have a high likelihood of adverse impacts on the resource - either immediately (as a direct consequence of an activity) or over time (from the cumulative effect of repeated occurrences of an activity).

5.5 **Adverse impact** shall mean any alteration, by construction or any other activity, of a resource area protected under this bylaw, or under M.G.L. c. 131, sec. 40 and regulations hereunder. This definition can include, without limitation, the following alterations: erosion; siltation; decreased groundwater recharge capacity; decreased water quality; degradation or loss of wildlife habitat.

5.6 **Bank** shall mean that portion of the land surface, which normally abuts and confines a stream, river, pond, or lake. The lower boundary of a Bank is the mean annual low flow level, and the upper boundary of a Bank is the first observable break in the slope or the mean annual flood level, whichever is higher.

5.7 **Bordering Land Subject to Flooding** shall mean land within the 100-year flood plain, as mapped by the Federal Emergency Management Agency. This area is presumed significant to flood control and storm damage protection.

5.8 **Buffer Zone** shall mean that area of land extending 100 feet horizontally outward from the boundary of any resource area specified in the Bylaw. Also referred to as Adjacent Upland Resource Area.

5.9 **Certificate of Compliance** shall mean a written determination by the Conservation Commission that the proposed work or a portion thereof has been completed in accordance with a pertinent Permit.

5.10 **Creek** shall mean any small stream or any intermittent tributary to any brook, river or stream.

5.11 **Cumulative Adverse Effect** shall mean an effect on a wetland or buffer zone resource area(s) that is significant when considered in combination with other activities that have occurred, are occurring simultaneously or that are reasonably likely to occur within that resource area(s), whether such other activities have occurred or are contemplated as a separate phase of the same project or activities, or as a result of unrelated projects or activities.

5.12 **Date of Issuance** shall mean the date a Permit, Determination, or Certificate of Compliance is mailed, as evidenced by a postmark or the date it is hand delivered.

5.13 **Determination of Applicability** shall mean a written finding by the Commission as to whether a site or the activity proposed thereon is subject to the jurisdiction of the Bylaw.

5.14 **Exhibit Plan** is an 8 ½" by 11" site plan that depicts the limits of Wetland Resource Area(s), buffer zone(s), structure(s), roadway(s), defining features, demarcation railing with stone granite bounds, and ground contours within the property, which is to be filed and recorded along with the Order of Conditions.

5.15 **Fill** shall mean to deposit any material so as to raise an elevation, either temporarily or permanently.

5.16 **Flood control** shall mean the prevention or reduction of flooding and/or flood damage.

5.17 **Flooding** shall be defined as a local and temporary inundation of water or a rise in the surface of a body of water such that it covers land not usually under water.

5.18 **Groundwater** shall mean water below the earth's surface in the zone of saturation.

5.19 **Inner 50-Foot** shall mean the area within the horizontal distance of 50 feet from the edge of a defined Wetland Resource Area. Referred to as the Inner 50-foot of the Buffer Zone.

5.20 **Interest** shall mean the wetland values (collectively, the "interests and values" protected by the Bylaw) specified in Section 1.2 of these regulations.

5.21 **Intermittent Stream** shall mean a defined channel with a hydraulic gradient through which water flows during part of the year and which either flows out of, into, or within a wetland resource under this Bylaw. A portion may flow through a culvert or under a bridge. The Commission recognizes two types of intermittent streams:

- Type I – Stream segments in which continuous standing water disappears for at least five (5) but not more than thirty (30) consecutive days annually.

- Type II – Streams in which continuous standing water disappears for more than thirty (30) consecutive days annually.

For Type I intermittent stream, based on specific functions and values of the resource, the Commission may use protection guidelines adopted for the 100-foot riverfront area for a perennial stream.

5.22 **Lake** shall mean any open body of fresh water with a surface area of 10 acres or more, and shall include great ponds.

5.23 **Land Subject to Flooding** shall mean, in addition to land so defined under 310 CMR 10.57, land within Zone B as designated on the August 1985 FEMA Flood Insurance Rate Map ("FIRM") and associated study report for the Town of Millis (or any future revisions thereto). To protect the interest of the wetland resource areas within the Town of Millis, any and all restrictions applicable to protection of the wetland resource areas within the limits of a 100-year flood zone apply also to land designed as Zone B on the FIRM. **(Amended July 18, 2011)**

5.24 **Notice of Intent** shall mean the written notice filed by any person intending to remove, fill, dredge, or alter an Area Subject to Protection under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, S. 40 and the Bylaw.

5.25 **Order of Conditions** shall mean the document issued by the Commission containing conditions, which regulate or prohibit certain activities under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, S. 40 and the Bylaw.

5.26 **Outer 50-Foot** shall mean the area between the horizontal distance of 50 feet and 100 feet from the edge of a defined Wetland Resource Area. Referred to as the Outer 50-foot of the Buffer Zone.

5.27 **Permanent Structure** shall mean anything that creates an impervious footprint on the ground surface, such as buildings of any kind, patios, concrete slabs, or asphalt pavement. Furthermore, specific to protecting the interest of the resource areas within the Town of Millis, any would-be temporary structures that resulted in creating an impervious footprint on the ground surface for more than 3 months shall be considered and treated as permanent structures in the evaluation of an application. (**Amended July 18, 2011)**

5.28 **Permit** shall mean the document issued by the Conservation Commission containing conditions, which regulate or prohibit an activity under the Bylaw. The Conservation Commission in an appropriate case may combine the permit or other action on an application issued under the Bylaw with the Order of Conditions issued under the Wetlands Protection Act, MGL c. 131 § 40.

5.29 **Plans** shall mean such data, maps, engineering drawings, calculations, specifications, schedules, and other materials deemed necessary by the Commission to describe the site and/or the work, to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the interests of the Bylaw.

5.30 **Pond** shall mean any open body of water, either naturally occurring or man-made by impoundment, with a surface area observed or recorded within the last ten years of at least 5,000 square feet, and which is never without standing water due to natural causes except during periods of extended drought.

5.31 **Endangered and Threatened Species** shall include, without limitation, all vertebrate and invertebrate animal species and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by said Division.

5.32 **Remove** shall mean the act or process of taking away or moving any type of materials thereby changing the land elevation or topography, either temporarily or permanently.

5.33 **Request for Determination of Applicability** shall mean the written notice filed by any person desiring to know whether a proposed activity or activities within an area may be subject to protection under the Bylaw. The Commission will provide a written finding of the determination.

5.34 **River** shall mean a natural stream of water that empties into any lake, pond or other river or stream, and has a continuous or intermittent flow.

5.35 **Significant** shall mean to play a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provisions or protection, as appropriate, of that interest.

5.36 **Storm drainage/damage prevention** shall mean the prevention of damage caused by water from storms including, but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice.

5.37 **Stream** shall mean a body of running water including brooks and creeks, whether continuous or intermittent, moving in a definite channel in the ground.

5.38 **Vegetated Wetland** shall mean any area where the soils are annually saturated (hydric) or where at least 50 percent of the plant community consists of wetland plant species. Vegetated Wetlands include bogs, marshes, wet meadows, and swamps. **(Amended July 18, 2011)**

5.39 **Vernal Pool** shall mean any confined basin or depression (except those in existing lawns, gardens, landscaped areas, or driveways) that, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer; is free of adult predatory 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 Massachusetts Division of Fisheries and Wildlife.

5.40 **Vernal Pool Habitat** shall mean the Adjacent Upland Resource Area associated with a Vernal Pool, which shall extend one hundred (100) feet outward from the mean annual high-water line defining the basin or depression, or one-half the distance between the Vernal Pool and any existing house foundation, whichever is smaller. In either case, the Adjacent Upland Resource Area for Vernal Pools shall not extend over existing lawns, gardens, or other landscaped or developed areas.

5.41 **Water supply** shall mean any source or volume of surface or groundwater demonstrated to be in any use or demonstrated to have a potential for use.

5.42 **Wildlife** shall mean all mammals, birds, fish, reptiles, amphibians, and invertebrate animal species including, but not limited to, any state- or federally-listed endangered or threatened species, or species of special concern.

5.43 **Wildlife habitat** shall mean areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.