

Chapter XXVIII  
Wetlands Protection By-Law

Section 1.0 *Purpose.*

The purpose of this Chapter is to protect the wetlands, related water sources, and adjoining land areas in the Town of Mendon by controlling activities deemed by the Conservation Commission likely to have an adverse effect, immediate or cumulative, upon wetland values, including but not limited to the following: protection of public or private water supply, protection of groundwater, flood control, erosion and sediment control, storm damage prevention, prevention of water pollution, fisheries, wildlife habitat, rare species habitat and recreational value, (collectively the “Resource Area values protected by this By-Law”). Presumptions of significance contained in 310.CMR 10.00 shall extend to said values.

Section 2.0 *Definitions.* *Definitions under this By-Law are consistent with the Wetlands Protection Act and Regulations (310 CMR 10.00) unless otherwise defined below.*

Section 2.1 *Alter* means, without limitation, the following actions when undertaken upon or affecting any of the areas subject to protection under the By-Law and listed in Section 3.0 of these regulations:

- a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing the 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 that would alter elevation;
- f. Driving of piles, erection, expansion or repair of buildings, or structures of any kind;
- g. Placement of obstructions or objects in water;
- h. Destruction of plant life including cutting or trimming of trees and shrubs;
- i. Changing temperature, biochemical oxygen demand, or other physical or chemical characteristics of any waters;
- j. Any activities, changes, or work which would cause or tend to contribute to pollution of any body of water or groundwater; and
- k. Incremental activities which have, or may have, a cumulative adverse impact on the Resource Areas protected by the By-Law.

Section 2.2 *Area Subject to Flooding* means depressions or closed basins that serve as ponding areas for runoff, snowmelt, heavy precipitation, or high groundwater that has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body as defined in Wetlands Protection Act Regulations (310 CMR 10.57).

Section 2.3 *Area Subject to Protection* means any area specified in Section 3.0 and is used synonymously with the term “Resource Area”.

Section 2.4 *Buffer Zone* means that area of land extending 100 feet horizontally from the boundary of a Resource Area specified in Section 3.0 a.

Section 2.5 *Isolated Wetlands* are wet meadows, marshes, swamps, and bogs where the topography is typically low and flat and where soils are annually saturated such that groundwater or flowing or standing surface water provides a significant part of the supporting substrate for a plant community. Isolated wetlands are generally found within depressions and do not border rivers, streams, lakes or other bodies of water or wetlands. The boundary of isolated wetlands is the line within which the vegetation community is substantially characterized by wetland indicator species and within which hydric soils or other indicators of wetland hydrology are present. When vegetation appears to have been altered or is absent, the boundary line is the line within which hydric soils and/or indicators of wetland hydrology are present.

Section 2.6 *No Build Zone* means that portion of the Buffer Zone up gradient of the No Disturb Zone and extending to a line 50 feet from the Resource Area. No buildings or structures shall be permitted in the no build zone.

Section 2.7 *No Disturb Zone* means that portion of the Buffer Zone which extends 25 feet from the edge of the Resource Area. No regulated activity shall be permitted in the no disturb zone.

Section 2.8 *Obstructions or Objects in Water* means, but is not limited to, debris, dams, weirs, sluice gates, docks, bulkheads, pilings, and floats.

Section 2.9 *Pond* means any open body of fresh water at least 2000 square feet or larger which has standing water due to natural causes throughout the year during most years. Man-made retention or detention basins, swimming pools, lined fishponds, and waste water treatment lagoons shall not be considered ponds.

Section 2.10 *Rare Species Habitat* means those areas providing habitat for species of wildlife and /or plants listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife.

Section 2.11 *Resource Area* means any area specified in Section 3.0 and is synonymous with Area Subject to Protection under the By-Law.

Section 2.12 *River* means any naturally flowing body of water that empties to any ocean, lake, pond, or river, and which flows throughout the year.

Section 2.13 *Riverfront Area* means the area within 200 feet of rivers includes perennial streams, lakes or ponds.

Section 2.14 *Stream* means any body of running water, including brooks and creeks, which move in a definite channel in the ground due to the hydrologic gradient and which flows within, into or out of an area subject to protection. A portion of a stream may flow through a culvert or beneath a bridge. A stream may be intermittent (does not flow throughout the year) or perennial (flows throughout the year most years). A stream is located down gradient of and is hydrologically connected to a wetland.

Section 2.15 *Vernal Pool* means, in addition to scientific definitions found in 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, or landscaped areas, which in most years holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibians, reptiles, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The Mendon Conservation Commission has the

discretionary authority to protect a vernal pool when it is shown to provide vernal pool wildlife habitat function despite the lack of official certification by the state.

Section 2.16 *Wetland* is defined in the Wetlands Protection Act, MGL Ch. 131, Sec. 40.

Section 3.0 *Jurisdiction*. Except as permitted by the Conservation Commission or as provided in this Chapter, no person shall commence to remove, fill dredge, build upon, degrade, discharge into, impact, or otherwise alter the following Resource Areas:

- a. Any freshwater wetlands or any land within 100 feet of freshwater wetlands, including marshes, wet meadows, bogs, swamps, isolated wetlands, vernal pools, banks, or intermittent streams.
- b. Any land within 100 feet of the areas set forth in Section 3. a above;
- c. Any river, perennial stream, lake, or pond greater than 20,000 square feet in size;
- d. Any land within 200 feet of the water bodies set forth in this Section 3.0 c. above;
- e. Any land under any of the waterbodies set forth in this Section 3.0 a and c above; and
- f. Any land subject to flooding or inundation by ground water, surface water, or storm flowage.

Collectively all such wetland Resource Areas and lands abutting any of the aforesaid Resource Areas shall be deemed to be Resource Areas protected by this By-Law whether or not they border surface water.

Section 4.0 *No Disturb Zone*. Except as otherwise provided in this By-Law, no activity is permitted within 25 feet of the delineated edge of Wetland Resource Areas. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Alterations typically result from extension of lawn, depositing yard waste and clearing of vegetation.

Section 5.0 *No Build Zone*. There shall be a No-Build Zone with a minimum depth of 50 feet measured horizontally from the border of any Resource Area, except as otherwise specifically provided in these regulations. Prohibited activities include but are not limited to, construction of any structure, installation of any impervious surface, and any work requiring a building permit. Fences, swing sets and similar play structures may be permitted with the approval of the depth where there are site-specific conditions that, if altered, would not result in degradation of a Resource Area.

Section 6.0 *Vernal Pools*. The boundary of the Resource Area for Vernal Pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas. Unless compelling evidence is provided to the contrary, no project or activity shall have an adverse effect on a Vernal Pool by altering its topography, soil structure, plant community, composition, hydrologic regime and/or water quality.

Section 7.0 *Exceptions*.

- a. The application and permit required by the By-Law shall not be required for 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 to provide electric, gas, water telephone, telegraph or other telecommunications services, or sanitary or storm sewers, provided that written notice has been given to the commission prior to the commencement of work.

- b. The application and permit required by the By-Law shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04. The question of whether land is “land in agricultural use” as defined under the Wetlands Protection Act may be subject to a Request for Determination by the Commission.
- c. The application and permit required by the By-Law shall not be required for emergency projects necessary for the protection of the health and safety of the citizens of Mendon, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or by the Town. Emergency projects shall be any projects certified to be an emergency by the Conservation Commission or its agent.
- d. The applications and permits required by this By-Law shall not be required for existing structures or work in existence prior to the date of adoption of the By-Law.
- e. The application and permit required by the By-Law shall not be required for any minor activities within the buffer zone or riverfront area, provided they meet the requirements outlined herein. Minor activities include but are not limited to:
  - i. Unpaved pedestrian walkways for private use;
  - ii. Plantings of native species of trees, shrubs, or groundcover, but excluding turf lawns;
  - iii. The conversion of impervious to vegetated surfaces, provided erosion controls and sedimentation controls are implemented during construction;
  - iv. Fencing, stonewalls, and stacks of cordwood provided they will not constitute a barrier to wildlife movement and fences to contain livestock are located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
  - v. Mowing of lawns and pruning of pre-existing landscaped areas;
  - vi. Vista pruning, provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther;
  - vii. Conversion of lawn to uses accessory to existing single family houses, such as decks, sheds, patios, pools, and gardens, provided the activity is located 100 feet from the mean high water line within a riverfront area or 50 feet from other resource areas, and erosion and sedimentation controls are implemented during construction;

- viii. Removal of dead or dying trees that pose a hazard to structures or public safety;
- ix. Repair of existing structures provided the footprint of the structure does not change and erosion and sedimentation controls are implemented during construction; and,
- x. Activities that are temporary in nature, having negligible impacts, and are necessary for planning and design purposes (e.g. installation of monitoring wells, exploratory borings, sediment sampling and surveying) provided that erosion and sedimentation controls are implemented.

Other than stated in this section, the exceptions provided under the Wetland Protection Act (G.L. Ch. 131 Sec. 40) and regulations (310 CMR 10.00) shall not apply under this By-Law.

**Section 8.0 Waiver.** The Mendon Conservation Commission, by majority vote, may waive strict compliance with the requirements of this By-Law or the rules and/or regulations promulgated hereunder, where;

- a. Such action is allowed by federal, state, and local statutes
- b. Is in the public interest, and
- c. Is not inconsistent with the purpose and intent of this by-law.

**Section 9.0 Procedure.**

- a. Request for Determination of Applicability (RDA). The applicant shall submit an RDA to the Conservation Commission if work is in the buffer zone.
  - i. The Conservation Commission will then determine if the work is within a Resource Area. Common activities include, but are not limited to, installing an above or in-ground pool, shed, garage or addition. A determination will be made within 21 days and sent to the Building Department
- b. Notice of Intent (NOI). If the Conservation Commission determines that the work area is within a Resource Area, the applicant must file a Notice of Intent with the Conservation Commission and the Department of Environmental Protection (DEP). The NOI filing shall include the following:
  - i. A complete and accurate description of the site, including the type and boundaries of Resource Areas protected under the Wetlands Protection Act and this By-Law;
  - ii. The proposed work, including all measures and designs proposed to meet the performance standards described in the Wetlands Protection Act Regulations, 310 Code of Massachusetts Regulations (CM R) 10.00 for each applicable resource area;
  - iii. Two copies of the NOI filing which must be received two weeks prior to the public hearing date;
  - iv. Two sets of plans and;

- v. A check made out to the Town of Mendon in the amount specified for the project type per the Wetlands Filing Fee Calculation Sheet. This will pay for the public hearing notice that will be placed in the Milford Daily News. Payment is required at the public hearing. The Conservation Commission Administrative Clerk will notify the applicant of the amount once the ad has run in the newspaper.
  - vi. The Commission shall commence the public hearing within 21 days from the receipt of a completed permit application, unless an extension is authorized in writing by the applicant.
- c. Order of Conditions. The Commission, after public hearing, may issue or deny an Order of Conditions, i.e., a permit, for the activities requested. If it issues an Order of Conditions, the Commission shall impose conditions that it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected Resource Areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities. The Commission is empowered to deny a request for an Order of Conditions for failure to meet the requirements of this ordinance; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the Resource Area values protected by this ordinance; and where no conditions are adequate to protect those values. Lands within twenty-five (25') feet of Resource Areas protected by this By-Law are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.
- i. If the project is approved, an Order of Conditions, will be issued based on the findings within 21 days from the date of completion of the hearing.
    - a. Orders of Condition shall be filed and registered at the Worcester County Registry of Deeds by the applicant.
    - b. A copy of the registered Order must be given to the Conservation Commission.
    - c. The Order is valid for three years. It may be extended for up to three years if a valid Order is in effect.
    - d. The Order of Conditions and Extension Permit must be recorded with the Worcester County Registry of Deeds. A

copy of the registered Order and the Extension Permit must be given to the Conservation Commission.

d. *Certificate of Compliance.* Once the work is completed, the applicant or his engineer must request a Certificate of Compliance. The engineer shall submit an As Built drawing as well as confirm in writing that the work has been completed in accordance with the Order. The majority of the Commission must sign and issue either a partial or complete Certificate of Compliance. It is the applicant's responsibility to record the Certificate of Compliance with the Worcester County Registry of Deeds. The applicant must provide the Conservation Commission with a copy of the recorded Certificate. There will be a fee of \$50 for re-issuance of Certificates of Compliance.

#### Section 10 *Fees.*

- a. At the time of a permit application, Request for Determination of Applicability, Notice of Resource Delineation, or other request, the applicant shall pay the filing fee, as specified in the Regulations of the Commission, to the Town of Mendon to be put into an account established pursuant to G.L. c. 44, Sec. 53 G, which account may be drawn upon by the Commission as necessary to carry out the provisions of this by-law. Accordingly, the combined filing fees of all applicants are pooled for uses directly related to the By-Law, including salaries, administration, office supplies, enforcement, postage, and miscellaneous costs.
- b. The Commission, in its discretion, is authorized to require an applicant to pay a consultant fee for the reasonable costs and expenses borne by the Commission in its consideration of the application. These expenses may include, but are not limited to, Resource Area survey and delineation, analysis of Resource Area values, including wildlife habitat evaluations, hydrogeological and drainage analysis, and hydric soil testing. Consultant fees may be deposited into the same account as described above.
- c. These fees are in addition to those required by the Massachusetts Wetlands Protection Act.

Section 11 *Right of Entry.* The Commission or its agent may enter upon privately owned property for the purpose of carrying out its duties under this By-Law and may make or cause to be made such examination or survey as deemed necessary.

Section 12 *Self Imposed Hardship.* The Commission views any adjacent properties or properties located nearby, which are under common ownership, as part of a cumulative Resource Area impact, such that the maximum 5,000 square feet of alteration that may be allowed under certain conditions under the Wetlands Protection Act, or the proposed degree of alteration of the Resource Area under the By-Law applies to the entire area. 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 areas subject to the Wetlands Protection Act or the By-Law. In the case of limited project proposals, proposed roadways or driveways shall be designed to provide access to all areas of the proposed site without relying upon the possibility of future wetlands crossings. The

Commission shall consider any future crossings or impacts proposed to be self-imposed and will not grant further crossings or alterations in subsequent filings on a lot-by-lot basis for any project.

### Section 13 *Enforcement.*

The Commission shall have the authority to enforce this By-Law, its regulations and orders by violation notices, enforcement orders and non-criminal citations under MGL Ch. 40 s. 21 D. Any person who violates provisions of this By-Law may be ordered to restore the property to its original condition or take other action deemed necessary to remedy such violations, or may be fined or both.

- a. **Criminal and Civil Penalties.** Any person who violates any provision of this Bylaw, valid regulation, or the terms or conditions in any permit or order prescribed or issued hereunder, shall be subject to a fine not to exceed \$300.00 for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- b. **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town of Mendon may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.. 40, s. 21D. The Conservation Commission of the Town of Mendon shall be the enforcing entity. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- c. The Commission may seek remedies authorized under the Wetlands Protection Act including instituting a civil action seeking injunctive relief, penalties up to \$25,000 per day, and access to the site. The Commission may also seek under the Act criminal enforcement including penalties up to \$25,000.00 dollars per day. The Commission may also seek enforcement by the Massachusetts Department of Environmental Protection, which may include investigation and enforcement by the Attorney General, and/or administrative penalties.

Section 14 *Burden of Proof.* The applicant for an Order of Conditions 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 Resource Area protected by this By-Law. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant an Order of Conditions with conditions.

Section 15 *Violations Defined.* Each day a violation exists constitutes a separate violation. Violations include, but are not limited to:

- a. Refusal or failure to comply with a local wetlands permit;
- b. Failure or refusal to observe a particular condition or time specified in a local wetlands permit;

- c. Refusal or failure to complete work described in a local wetlands permit, whether or not such failure causes damage to the interests protected by the ordinance; and
- d. Refusal or failure to obtain a valid local wetlands permit prior to conducting an activity subject to regulation under the By-Law

Section 16 *Appeals*. A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, s. 4.

Section 17 *Severability*. If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

Section 18 *Rules and Regulations*. The Commission shall be authorized to promulgate Rules and Regulations (“Regulations”) to effectuate the purposes of this Bylaw at a meeting for which one week’s notice has been provided in a newspaper of general circulation in the Town. Such Regulations shall take effect upon filing with the Town Clerk. Failure by the Commission to promulgate such 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. The Commission may waive any provision of its rules and regulations when it is not deemed appropriate to enforce them.