

City of Marlborough  
Conservation Commission  
140 Main St.  
Marlborough, MA 01752  
**30' WETLANDS SETBACK NO DISTURB POLICY**

Unless proven otherwise by the applicant, the Conservation Commission shall presume that any proposed activity within **30 ft.** of any wetland will have a significant adverse impact on the wetland and shall not be permitted.

**Purpose of Policy**

The Conservation Commission has found that activity in the **30 ft.** buffer zone bordering wetland resource areas poses a serious threat to such areas. As a result, the Conservation Commission strongly discourages such activity within **30 ft.** of wetland boundaries. This undisturbed zone will provide a minimum buffer to prevent negative impacts on wetlands.

**Basis of Policy**

Scientific research, and the Conservation Commission's own experience in reviewing a wide variety of projects, demonstrates that alteration or construction activities within the buffer zone consistently result in destructive effects on the wetlands themselves. These include, but are not limited to, disturbance of natural vegetation along the wetland boundary, run-off of pollutants, fill materials, and other substances into the wetlands, stockpiling or dumping of materials or debris which migrate over time into the wetlands, and disturbance of wildlife habitat, such as nesting sites and corridors which are important to wetland species. The Conservation Commission has also noted a tendency on the part of many project proponents to design the project so that it goes to the absolute limit of the wetland boundary. Particularly given the difficulty which often arises in defining that boundary, in most instances it is vital to protect an adjacent section of the buffer zone and prevent the inevitable destructive impacts on the wetlands which go to the boundary.

**The Policy**

As used herein:

**"Alteration"** shall mean any removal (grading, filling and /or excavation) of vegetative cover, soil or other naturally occurring materials.

**"Construction"** shall mean the construction of any permanent or temporary structure or building, including, without limitation, any residential or commercial building, garage, shed, barn, tennis court, deck, swimming pool, parking area, driveway, **fence**, or landscaping project.

In acting upon Notices of Intent and Determination of Applicability, the Conservation Commission will presume that any **alteration or construction** within **30 ft.** of a wetland boundary would have a significant adverse impact on the wetlands, and such **alteration or construction** shall not be permitted unless the applicant demonstrates that (1) such activity would not have such an impact, or (2) public benefits, such as health or safety, outweighs any such impact, or (3) the activity involves the maintenance of existing structures, or (4) the activity is the installation of the stormwater outlet structure (5) the activity is related to installation of a

woods trail and/or footbridge crossing. The applicant will have the burden of proof by clear and convincing evidence on this issue. Factors to be considered by the Conservation Commission in determining whether the applicant has met this burden shall include, but are not limited to, the following:

1. Slope of the buffer zone
2. Type and structure of vegetation, soil type and hydrology in the buffer zone
3. Degree and scale of past alterations in the buffer zone
4. Ecological integrity of the adjacent wetlands
5. Importance of the buffer zone to wildlife utilizing the wetland
6. Any ecological benefits arising from the proposed activity, such as removal of exotic vegetation or creation of enhanced wildlife habitat
7. Any public benefits arising from the proposed activity
8. Alternatives have been considered and in the judgment of the Commission no practical alternative is available. However, restoration or plantings in the zone may be required, to help define and protect the remainder of the buffer zone.
9. Project scope and design minimized the work in close proximity to resource area
10. Project will not lead to encroachment on the resource area after the project is completed
11. Commission may impose a wider undisturbed buffer zone to ensure protection of wetland resource areas if the project involves: sensitive habitats, steep slopes, highly erodible soils, extensive disturbed area or hydraulic conditions likely to promote significant erosion

Applicants wishing to rebut the presumption set forth in this policy shall provide the Conservation Commission with the following information, together with any additional relevant information which the Conservation Commission may require:

1. A cross-sectional profile of elevation changes in any area of the buffer zone within **30 ft.** of a wetland which would be disturbed by the proposed activity.
2. A list of all vascular plant species occurring in the **30 ft.** area of the buffer zone and adjacent wetland areas including data on relative abundance of each species.
3. A wildlife habitat evaluation of the 30 ft. area of the buffer zone and adjacent wetlands including data on observed wildlife utilization of such area, such as bird use, occurrence of fish, reptiles, amphibians and mammals.
4. A description of the nature of any public or ecological benefits which may arise from the proposed activities.
5. A photograph of the area to be disturbed.

It is the Conservation Commission's policy, where it has discretion, to prohibit any activity **within 30' of the** wetlands except where there are exceptional circumstances, where no other practical alternative exists, and where satisfactory replication takes place prior to any **alteration or construction**. Activity within the 100 ft. buffer zone will continue to be reviewed on an individual case basis.

**Existing Conditions**

Maintenance (but, no further alteration or expansion) of yards which existed on or before 8/1/96, within the **30 ft.** buffer will be permitted, however homeowners are encouraged to maintain natural vegetation within 30 ft. of the wetland edge to help improve the water quality of wetlands and streams. A list of wetland vegetation which could enhance wildlife and water quality can be obtained from the Conservation Office at City Hall. The Commission encourages homeowners to allow a natural vegetation buffer to establish itself along the edge of streams, ponds and wetlands for improved habitat and filtering.

Further, the use of herbicides/pesticides, inorganic fertilizers (excluding lime or other organic soil treatments) where labels indicate they are toxic to aquatic organisms, which may alter the adjacent resource area, should not be used adjacent to wetlands. It is likely that the use of these chemicals over time will have an impact on the adjacent wetlands.

The maintenance and replacement of existing fences and walls which fall within the 30' wetland buffer zone is permissible, however, notice to the Conservation Officer for review and approval must be sought. If work extends beyond "maintenance" as described above, the applicant will need to file for a wetland permit from the Conservation Commission and no new work will be permitted within the 30' buffer zone.

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Adopted by unanimous vote of the Marlborough Conservation Commission 2-17-2022; further amended on 12-15-2022