

**Town of Scituate  
Conservation Commission  
781-545-8721**

*Informational Brochure*

**THE WETLANDS PROTECTION ACT  
Chapter 131 section 40  
A SUMMARY**



**What is the Wetlands Protection Act?**

The Massachusetts Wetlands Protection Act (GL Ch. 131, sec. 40; the Act) prohibits any filling, excavation, or other alteration of the land surface, water levels, or vegetation in wetlands, floodplains, or other water resource areas, regardless of ownership, **without a permit** from the local Conservation Commission.

**What is a wetland?**

Legally the term "wetland" includes not only areas we typically think of as wetlands, such as salt and cattail marshes, but also intermittent streams and other areas that may be dry for a significant portion of the year. The Act specifically regulates activities in or near "bordering vegetated wetlands" (BVWs) - marshes, swamps and bogs adjacent to waterbodies and coastal beaches, banks and floodplains.

**What is a floodplain (inland and coastal)?**

A **inland** floodplain is an area that experiences surface flooding following storms, prolonged rainfall or snowmelt. Three types of floodplain areas are protected under the state Act. The more common are coastal areas and those bordering streams that flood during the 100-year statistical flood. The less common areas are isolated depressions that flood at least once a year to an average depth of 6" and to a volume of one-quarter acre-foot (10,890 cubic feet).

**Coastal** floodplains are areas subject to coastal storm flowage and are identified on the Federal Insurance Management Maps (FIRM) as A and V zones.

### **What other areas are protected?**

In addition to Bordering Vegetative Wetland and floodplains the Act also covers banks, dunes, beaches, and land under rivers, streams, lakes and ponds. Technical definitions are found in the law and its accompanying regulations (310 CMR 10). Many wetland resource areas are defined for the most part by the abundance of wetland plants and also by their water regime or hydrology, others are characterized by their geomorphology and soils.

### **Why are wetlands, floodplains and other water resource areas important?**

Over half of this country's original wetland acreage has been lost to agricultural and urban development. The cost of this loss in degraded water quality, increased storm damage, and depleted fish and wildlife populations has been well documented.

Left in their natural state, wetlands provide many free services to the community. Low areas provide floodways to channel storm and other flood waters and act as buffers to prevent damage to nearby roads and buildings. These functions minimize the need for extensive engineering systems and seawalls. Wetlands provide temporary storage of flood waters, allowing floods to recede slowly and, in fresh water wetlands, recharging groundwater aquifers.

Directly or indirectly, wetlands are often sources of public or private water supply. In addition, a wetland can purify the water it receives. Wetlands serve as natural settling ponds whose soils and vegetation trap sediments which bind, and in some cases, chemically break down pollutants into non-toxic compounds. For example, the sediments under marsh vegetation absorb chlorinated hydrocarbons and heavy metals such as lead, copper, and iron. Wetlands also retain nitrogen and phosphorus compounds which, in large amounts, can lead to nuisance plant growth in fresh or coastal waters.

Wetlands and their related buffer zones are essential to wildlife - providing food, nesting areas and protective cover. Shellfish beds and commercial and recreational fisheries are dependent on good water quality and healthy coastal and inland wetlands.

Floodplains are protected because they provide "storage" for flood waters. Any alteration of the land that reduces this storage capacity will displace floodwaters and cause greater flooding elsewhere.

Banks protected under the Act serve as buffers for landowners against storm damage. Vegetated banks bind the soil, preventing erosion caused by wave or surface water flow. Beaches, dunes, and coastal banks are dynamic systems that are continually shifting. In addition to prevention of storm damage, coastal banks and dunes can naturally replenish beaches.

### **What activities are prohibited in wetlands, floodplains and other resource areas?**

Under the Act no one may "remove, fill, dredge, or alter" any wetland, floodplain, bank, land under a water body, or land within 100 feet of a wetland, **without a permit** from the Conservation Commission.

The interests protected under the Act are Flood Control, Prevention of Storm Damage, Prevention of Pollution, Fisheries, Shellfisheries, Groundwater, Public or Private Water Supply and Wildlife Habitat.

The term "alter" is defined to include any destruction of vegetation, any change in drainage characteristics or flow patterns, or any change in the water table or water quality. The regulations prohibit most destruction of wetlands and require replacement of flood storage lost when floodplains are filled.

### **What must I do if I want to conduct a regulated activity in or near a wetland or floodplain?**

First you should contact your Conservation Commission for further information on the law and how it applies to the particular project you have in mind. Regulations issued under the Act should also be consulted, because they contain specific standards that you must incorporate into your project design. Your project must meet these standards to be approved. Local bylaws and ordinances should also be reviewed.

For small projects located only in the 100 foot wetlands buffer zone, you may submit a Request for Determination of Applicability Form. If the project is determined (at a public hearing) to have no wetlands impacts, you will be given permission to proceed as soon as a ten-day appeal period passes.

If the project does impact the wetlands, the next step is to submit a formal application known as a Notice of Intent to the Conservation Commission. The Commission will set a time within 21 days for a public hearing on your project and will advertise the hearing in the local paper at your expense. Once the hearing is closed, the Commission must issue its decision, known as an Order of Conditions, within 21 days.

You may appeal the Order of Conditions within 10 days. Abutters, 10 residents in the community, or DEP, can also appeal within the 10 day period. Under the state Act, appeal is first to the regional office of DEP which will issue what is known as a Superseding Order. Further appeal of this Order is to the Boston office of DEP, and then to Superior Court.

### **What are the penalties for violating the law?**

*Violations are punishable by a maximum fine of \$25,000 and/or not more than two years of imprisonment. In addition, a landowner is usually required to restore illegally altered land to its original condition.*

### **How can I get more information?**

Contact the Conservation Commission (through your Town Hall), or an attorney, consulting engineer or scientist. If you wish to read the law, the Wetlands Protection Act may be found in your town library. The Act and regulations are available from the Massachusetts Association of Conservation Commissions (MACC) or the State House Bookstore. MACC also provides numerous explanatory publications. Links to it and all other regulations can be found on the Town's web site at [WWW.TOWN.SCITUATE.MA.US](http://WWW.TOWN.SCITUATE.MA.US).

### **How can I find out if my property lies in or near a wetland, floodplain or other resource area?**

Some areas, such as streams, ponds, wooded swamps, bogs and cattail marshes, are easily recognizable. Distinguishing other wetland and water resource areas may be more difficult and require the services of a botanist or wetland scientist. The Conservation Commission can assist you in identifying areas of wetland on your property. If you wish to develop your land, the wetlands on or near your property must be mapped, and there are a number of engineering firms and wetlands consultants that will provide this service for a fee.

Floodplain maps issued by the Federal Emergency Management Agency (FEMA) in Boston under the national flood insurance program show the floodplains associated with major streams. Unfortunately, the maps are not complete, and many floodplain areas are not indicated. If your property lies near a stream or in a low-lying area there is a chance that part of it is flood-prone. In some cases this elevation must be calculated by a professional engineer.

To determine if an area is wetland, or if some activity is regulated by the Commission, a landowner or other interested party may submit a form known as a Request for Determination of Applicability to the Commission. The Commission is bound to hold a publicly advertised meeting with 21 days to discuss the matter and issue a decision.

Normal maintenance and improvement of land currently in agricultural use is exempt from the provisions of this Act. Preparation of new land for agricultural use is not exempt. Certain "limited" projects, such as repairs to some utility facilities and constructing a driveway to uplands where no alternative access is available, may be approved within a resource area with conditions to protect the interest of the Act.