

The Massachusetts Wetlands Protection Act

How it Protects Our Wetlands, Floodplains and Riverfront Areas

What Property Owners Need to Know



*Spencer
Conservation Commission*

**Massachusetts Association of
Conservation Commissions**

What is the Wetlands Protection Act?

The Massachusetts Wetlands Protection Act (General Laws Chapter 131, §40; the Act) protects important water-related lands such as wetlands ("swamps"), floodplains, riverfront areas, and other areas from destruction or alteration. Most work proposed to be done in those areas requires a permit from the local conservation commission. The Act became law in 1972. Regulations for the Act (310 CMR 10.00), and related guidance and policy documents, are issued by the Massachusetts Department of Environmental Protection (MassDEP).

Many cities and towns have adopted local zoning or non-zoning wetland ordinances or bylaws that are stricter than the Act. Applications for work in wetland resource areas covered by state and local wetland laws are usually processed together by the conservation commission.

What wetlands are protected?

Wetlands are land areas that contain surface water all or part of the time, as well as some adjacent land areas. Legally the term includes not only areas we typically think of as wetlands, such as cattail marshes or red maple swamps, but also intermittent streams, floodplains, and other areas that may be dry for a significant portion of the year. The Act specifically regulates activities in or near these areas.

The most commonly regulated wetlands are bordering vegetated wetlands (BVWs), which are wetlands that share a border with a stream, pond or lake.

A floodplain is a type of wetland resource area that floods following storms, prolonged rainfall or snowmelt. Three types of floodplain areas are protected under the Act: coastal areas, areas bordering rivers and streams, and certain isolated depressions that flood at least once a year. The first two areas are defined by the 100-year floodplain - the upper boundary of the area which floods on average once every 100 years.

In addition to BVWs and floodplains, the Act also covers banks, dunes, beaches, vernal pools, land under lakes and ponds, and riverfront area (land under or within 200-feet of rivers and streams that flow year round). Technical definitions are found in the Act and its accompanying regulations.

Many wetland resource areas are defined by an abundance of wetland plants, hydrology, or soil type. Riverfront resource areas (land within 200 feet of rivers) are in most cases measured from the top of the bank of the river or stream.

Why are wetlands and other water resource areas important?

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

In their natural state, wetlands provide many free services to the community. Low areas serve as flood ways to convey storm and other flood waters safely away, and act as buffers to prevent damage to nearby roads and buildings. Naturally forested riverfront areas slow flood waters and trap sediment and debris. These functions minimize the need for extensive (and often expensive) engineered flood management systems and seawalls. Wetlands also provide temporary storage of floodwaters, allowing floods to recede slowly and, in fresh water wetlands, to recharge groundwater.

Directly or indirectly, wetlands are often sources of public or private drinking water supply. In addition, wetlands and vegetated riverfront lands help to purify the waters they receive from highway or agricultural runoff and other sources. They serve as natural settling areas where soils and vegetation trap sediments that bind and, in some cases, break down pollutants into nontoxic compounds. For example, the sediments under marsh vegetation

absorb lead, copper and iron. Wetlands and riverfront lands retain nitrogen and phosphorus compounds which otherwise would foster nuisance plant growth and degrade fresh and coastal waters.

Wetlands are valuable to wildlife, providing food, breeding areas and protective cover. Naturally vegetated riverfront lands also provide essential travel corridors for many species. 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 floodwaters. Any alteration of the land that reduces flood storage capacity may displace floodwaters and cause greater flooding elsewhere. Unfortunately there are too many examples of houses flooded and even lives lost through the cumulative effect of many people filling in floodplains over the years. Floodplains are also valuable wildlife habitat.

Banks serve as buffers against storm damage. Vegetated banks bind the soil, preventing erosion caused by water flow.

Beaches, dunes, and riverbanks are dynamic systems that are continually shifting. In addition to preventing storm damage, coastal banks and dunes can naturally replenish beaches. Left in an undisturbed state, banks and dunes provide the same replenishment as truckloads of sand, but at much less cost. Construction near banks and dunes must be planned carefully to allow this natural shifting to occur.

What activities are prohibited in wetlands, riverfront areas, and other wetland resource areas?

Under the Act no one may "remove, fill dredge, or alter" any wetland, floodplain, bank, land under a water body, land within 100 feet of a wetland, or land within 200 feet of a perennial stream or river (25 feet for a few urban rivers), without a permit (known as an Order of Conditions) from the local conservation commission that protects the wetland "interests"

identified in the Act. The "interests" or values protected by the Act are flood control; prevention of storm damage; prevention of pollution; as well as protection of: fisheries; shellfish; groundwater; public or private water supply; and wildlife habitat. The term "alter" is defined to include any destruction of vegetation, or change in drainage characteristics or water flow patterns, or any change in the water table or water quality. The wetland regulations prohibit most destruction of wetlands and naturally vegetated riverfront lands, and require replacement of flood storage loss when floodplains are filled.

What activities are allowed?

Most activities, such as construction, landscaping, and grading, require a permit. Some activities, such as normal maintenance, are allowed without a permit.

Normal maintenance and improvement of land currently in agricultural use is exempt from the provisions of the Act. Preparation of new land for agricultural use is not exempt. Silviculture harvesting is exempt if the landowner has obtained a forest cutting permit from the Department of Conservation and Recreation's regional forester.

How can I find out if my property is in or near a wetland resource area?

Some areas, such as rivers, streams, ponds, wooded swamps, bogs and cattail marshes, are easily recognizable. Your conservation commission may be able to assist you in identifying wetlands on your property. Distinguishing and delineating some wetland and water resource areas can be difficult and may require the services of a botanist or wetland scientist. If you wish to develop your land, the wetlands, floodplains or other regulated areas on or near your property must be mapped; there are many engineering firms and wetlands consultants that provide that service.

Floodplain maps issued by the Federal Emergency Management Agency (FEMA) under the national

flood insurance program show the floodplains associated with major streams. Unfortunately, the maps are not always complete or up to date, and floodplain areas are not always indicated. If your property lies near a stream or in a low-lying area, there is a chance that part of it is sometimes flooded. In most cases a civil engineer or hydrologist must calculate the flood elevation.

What must I do if I want to conduct a regulated activity in or near any of the resource areas protected by the Act?

Contact your conservation commission for further information on the law and how it applies to the particular project. Regulations issued under the Act should also be consulted because they contain specific performance standards that your project must meet to be approved. Local wetland bylaws/ordinances should also be reviewed.

For small projects located entirely in the 100-foot wetlands buffer zone (but not within 200-feet of a perennial stream or river) you may submit a Request for Determination of Applicability (RDA) with a plan, sketch or other description of the work to be done, showing any measures you plan to take to protect nearby wetlands from alteration. If the project is determined to have no wetlands impact, you will be given permission to proceed as soon as a 10-day appeal period passes. Certain small projects are exempt.

If the project may impact wetlands, banks, dunes, lands within 200-feet of a river or perennial stream or other resource areas, you should submit a formal application known as a "Notice of Intent" (NOI) to the conservation commission. This is a formal presentation carefully prepared, usually with the assistance of a civil engineer and wetlands consultant, according to the standards and criteria defined in the Act and Regulations, and showing in detail all aspects of the proposed project. The commission will set a time for a public hearing on your project and will advertise the hearing in the local paper at your expense. Once the

hearing is completed and closed, the commission must issue its decision, known as an "Order of Conditions," within 21 days.

You may also submit an "Abbreviated Notice of Resource Area Delineation" (ANRAD) if you are just seeking clarification of boundaries.

You may appeal an Order of Conditions issued under the Act within 10 days. Abutters, 10 residents of the community, and MassDEP can also appeal within the 10-day period.

What are the penalties for violating the law?

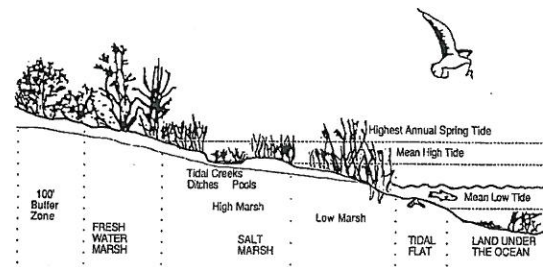
Violations are punishable by a maximum fine of \$25,000 and/or not more than two years of imprisonment. In addition, a landowner is usually required to restore illegally altered land to its original condition.

How can I get more information?

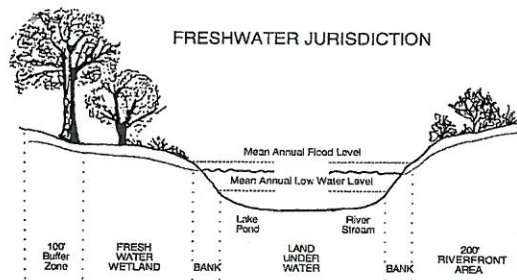
Contact your local conservation commission (through Town or City Hall), the regional office of MassDEP, or an attorney, consulting civil engineer, or wetlands scientist. If you wish to read the law, the Wetlands Protection Act and the associated regulations may be found in your town library, on the MassDEP web site (www.mass.gov/eea/agencies/massdep/), or purchased from the Massachusetts Association of Conservation Commissions (MACC) or the State House Bookstore.



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