

SECTION 7-300
Wetlands Protection

§ 7-301. Scope; definitions; permits and approvals; enforcement.

(a) Purpose and authority. The purpose of this section is to protect the wetlands, related water resources and adjoining land areas in the Town of Weymouth by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values deemed important to the community, including but not limited to the following (collectively, the "resource area values" protected by this section):

1. Public or private water supply.
2. Groundwater.
3. Flood control.
4. Erosion and sedimentation control.
5. Storm damage prevention, including coastal storm flowage.
6. Water quality.
7. Water pollution control.
8. Fisheries.
9. Shellfish.
10. Wildlife habitat.
11. Rare species habitat, including rare plant species.
12. Aquaculture.
13. Recreation.
14. Aesthetics.
15. Historical and archaeological preservation.

Authority. This section is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.

(b) Jurisdiction. Except as permitted by the Conservation Commission or as provided in this section, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas (collectively, the "resource areas protected by this ordinance"):

1. Any freshwater or coastal wetland, riverine wetland, marsh, wet meadow, bog, swamp or kettle hole, whether bordering on surface waters or isolated, or whether annual or seasonal;
2. Any bank, beach or dune;
3. Any ocean, bay or estuary;
4. Any reservoir, lake, pond of any size, vernal pool, river, stream or creek, whether intermittent or continuous, natural or man-made;
5. Any land under the aforesaid waters;
6. Any land subject to flooding or inundation by groundwater or surface water;
7. Any land subject to tidal action, coastal storm flowage or flooding at or below the one-hundred-year storm line;
8. Any land within 100 feet of any of the aforesaid resource areas (the "buffer zone");
9. Riverfront area.

(c) Definitions. The following definitions shall apply in the interpretation and implementation of this section:

AESTHETICS — The natural scenery and appearance of any area visually accessible to the public.

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this section:

1. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
2. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics;
3. Drainage or other disturbance of water level or water table;

4. Dumping, discharging or filling with any material which may degrade water quality;
5. Placing of fill or removal of material which would alter elevation;
6. Driving of piles, erection or repair of buildings or structures of any kind;
7. Placing of obstructions or objects in water;
8. Destruction of plant life, including cutting of trees;
9. Changing temperature, biochemical oxygen demand or other physical, biological or chemical characteristics of any waters;
10. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
11. Application of pesticides or herbicides;
12. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this section.

ANRAD — Abbreviated notice of resource area delineation.

BANK — Includes the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

DATE OF ISSUANCE — The date an order of conditions, modification or extension of an order or any written decision of the Commission is mailed, as evidenced by a postmark, certified mail card or the date it is hand delivered.

DOA — Determination of applicability.

LAND IN AGRICULTURAL USE — Land within resource areas presently and primarily used in producing or raising agricultural commodities for commercial purposes, including land used in a customary and necessary manner to produce such commodities, such as existing access roads and irrigation systems. Such land may lie inactive up to five consecutive years unless it is under a contract with federal or state agencies for a longer term.

NOI — Notice of intent.

ORAD — Order of resource area delineation.

POND — The term "pond" shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

PERSON — Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town ordinances, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

RARE SPECIES — Includes, without limitation, all vertebrate and invertebrate animal and 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 the Division.

RFD — Request for determination.

REGULATIONS — Local regulations promulgated by the Weymouth Conservation Commission under § 7-301(q) of the Code of Ordinances.

RIVERFRONT AREA — The area of land between a river's mean annual high water line and a parallel line located 200 feet away (25 feet in areas specified in the Rivers Protection Act) measured horizontally outward from the river's mean annual high water line. There is no buffer zone to the riverfront area. The riverfront area may include or overlap other resource areas and/or their buffer zones.

VERNAL POOL — Includes a confined basin depression which, at least in most years, holds water for a minimum of two months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

Except as otherwise provided in this section or in regulations of the Commission, the definitions of terms in this section shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.

(d) Conditional exceptions.

1. Public services. The application and permit required by this section 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 telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

2. Agriculture. The application and permit required by this section shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
3. Emergency projects.
 - a. The application and permit required by this section shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that, within 21 days of completion of an emergency project, a report is submitted to the Commission describing how the work was performed so as to contribute to the resource area values protected by this section. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
 - b. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, MGL c. 131,

§ 40, and regulations, 310 CMR 10.00, shall not apply under this section.

(e) Request for determination of applicability.

1. Any person desiring to know whether or not a proposed activity or an area is subject to this section may, in writing, request a determination from the Commission. Such a request for determination (RFD) shall include such information and plans as are deemed necessary by the Commission or specified in the regulations of the Commission.
2. The Commission may accept as the RFD under this section the request for determination of applicability form used under the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
3. At the time of the filing of an RFD, the applicant shall pay a filing fee specified in the regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
4. Upon receipt of an RFD, the Commission is authorized under Subsection (i) of this section to require an applicant to pay a fee for the reasonable costs and expenses of any expert consultant deemed necessary by the Commission to review the RFD. The fee shall be specified in the regulations of the Commission.
5. The Commission may waive the filing fee and consultant fee for an RFD filed by a state or federal agency. The Town is exempt from the filing fee and the Commission may waive the consultant fee.
6. Any person filing an RFD with the Commission at the same time shall give written notice thereof, by certified mail, return receipt requested, or by hand delivery, to all abutters at their mailing addresses shown on the most recent applicable tax list of the Assessors, including owners of land directly opposite on any public or private street or way. The notice to abutters shall enclose a copy of the RFD or shall state where copies may be examined and obtained by the abutter. An affidavit of the person providing such notice, with a copy of the notice, shall be filed with the Commission. If the person making the request is not the owner of the area subject to the

request, the RFD shall include a certification that the owner has been provided a copy of the RFD.

7. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission at the expense of the person making the request, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the Town, and by mailing a notice to the person making the request, the owner of the area subject to the request and Town boards and officials as prescribed in this section.
 8. Within 21 days after the date of receipt of the RFD, unless an extension is authorized in writing by the applicant, the Commission shall hold a public hearing on said request. Within 21 days of the close of the public hearing or any continuances thereof, the Commission shall issue a determination of applicability (DOA). The DOA shall be signed by a majority of the Commission, and copies shall be sent by the Commission to the person making the request and to the owner of the area subject to the DOA. The Commission may use as the DOA the form used under the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
 9. A DOA shall be valid for three years from the date of issuance.
- (f) Applications for permits:
1. A written application shall be filed with the Commission to perform activities regulated by this section affecting the resource areas protected by this section. No activities may commence without receiving and complying with a DOA, permit ("order of conditions") or order of resource area delineation (ORAD) issued pursuant to this section.
 2. The permit application ("notice of intent" or NOI) or abbreviated notice of resource area delineation (ANRAD) may in part be the form filed pursuant to the Wetlands Protection Act, MGL c. 131, § 40, and the regulations, 310 CMR 10.00. The NOI or ANRAD shall include such information and plans as are deemed necessary by the Commission to describe the proposed activities and their effects on the resource areas protected by this section. The Commission shall establish in its regulations the minimum submittal requirements for an NOI.

3. At the time of filing an NOI, an ANRAD, or applying for an extension or modification of an order of conditions, or for a certificate of compliance for work completed under an order of conditions, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
4. Upon receipt of an NOI, an ANRAD, or a request for an extension or modification of an order of conditions, or for a certificate of compliance, the Commission is authorized pursuant to § 3-305 of these ordinances and Subsection (i) of this section, to require an applicant to pay a fee for the reasonable costs and expenses to be borne by the Commission for expert consultant services deemed necessary by the Commission to come to a final decision on the application or request.
5. The Commission may waive the filing fee and consultant fee for applications and requests filed by a state or federal agency. The Town is exempt from the filing fee and the Commission may waive the consultant fee.

(g) Notice and hearings.

1. Any person filing an NOI, an ANRAD, or request for an extension or modification of an order of conditions shall provide written notice to abutters pursuant to the requirements of the Wetlands Protection Act, MGL c. 131, § 40, and as implemented by the Department of Environmental Protection in guidance documents or its regulations, 310 CMR 10.00.
2. Notice of the time and place of the public hearing shall be given by the Commission at the expense of the applicant not less than five days prior to the hearing by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant and to the Town officials and boards and adjoining municipalities specified in Subsection (h) of this section.
3. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request, unless an extension is authorized in writing by the applicant.
4. Whenever possible, the Commission shall combine its hearing under this section with the hearing conducted under the

Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.

5. The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant, or from others deemed necessary by the Commission in its discretion, or to obtain comments and recommendations of the Boards and officials listed in Subsection (h). If an agreed-upon date cannot be announced at the public hearing, then the date, time and place of the continued public hearing shall be publicized in accordance with Subsection (g)(1) and (2).
6. The Commission shall issue its order of conditions, amended order of conditions or decision on an extension of an order of conditions or order of resource area delineation (ORAD), in writing, within 21 days of the close of the public hearing, unless an extension of time is authorized in writing by the applicant.
7. The order of conditions, modification or extension of an order of conditions, or ORAD must be approved by a majority of the Commission eligible to vote on the application or request. To be eligible to vote, a Commission member must be present during the entire public hearing and at all continuances of the public hearing on the application or request.
8. The order of conditions, modification or extension of an order or ORAD shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant, agent or attorney.

(h) Coordination with other boards.

1. Any person filing an RFD, NOI, ANRAD, or request for an amendment of an order of conditions with the Commission shall submit a project submittal form (available from the Weymouth Conservation Commission) no later than 14 days prior to the public hearing, by certified mail, return receipt requested, or by hand delivery, to the Mayor, Town Council, Department of Community Planning and Development, Board of Appeals, Health Department, Town Engineer and Inspector of Buildings. If so requested by a Weymouth office or department herein listed, the applicant shall provide a full copy of its submittal. The project submittal form shall inform the boards and officials that, under the provision of this

section, they have 14 days in which to file advisory comments and recommendations with the Commission and the applicant.

2. Any person filing an RFD, NOI, ANRAD, or request for an amendment of an order of conditions with the Commission shall provide a copy thereof, along with the project submittal form, to the Conservation Commission of the adjoining municipality, if the RFD, NOI, ANRAD, or request pertains to property within 300 feet of that municipality.
3. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

(i) Consultant fees.

1. Upon receipt of an RFD, NOI, ANRAD, request for an extension or modification of a permit, request for issuance of a certificate of compliance, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses to be borne by the Commission for specific expert consultant services deemed necessary by the Commission to come to a final decision on the application or request. This fee is called a consultant fee.
2. The specific consultant services may include, but are not limited to, survey and delineation, analysis of resource area functions, performing or verifying the accuracy of wildlife habitat evaluations, hydrogeologic and drainage analyses and environmental or land use law. The Commission may require the payment of a consultant fee at any point in its deliberations prior to a final decision. 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 consultants would be necessary for the making of an objective decision. The Commission shall consult with

the Town Solicitor and shall retain no environmental law or land use law consultant except with the express approval of the Town Solicitor.

- 3. The applicant shall pay the fee to be put into a revolving fund, which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings. The revolving fund must be authorized by a separate vote of the Town Council meeting in accordance with the State's revolving fund statute, MGL c. 44, § 53E 1/2.
- 4. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant aggrieved by the imposition of or size of the consultant fee or any act related thereto, may appeal in accordance with Subsection (o) of this section.
- 5. Consultant fees. The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

Project Cost	Maximum Fee
Up to \$100,000	\$2,500
\$100,001 to \$500,000	\$3,500
\$500,001 to \$1,000,000	\$5,000
\$1,000,001 to \$1,500,000	\$7,500
\$1,500,001 to \$2,000,000	\$10,000

NOTE: Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged at an additional maximum fee of \$2,500 per increment.

The "project cost" means the estimated entire cost of the project, including, but not limited to, building construction, site preparation, landscaping and all site improvements. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

- (j) Burden of proof. The applicant for an order of conditions or modification of an order of conditions shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application or request will not have unacceptable significant or cumulative effect upon the resource area values protected by this section. Failure to provide adequate

evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

(k) Permits and conditions.

1. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this section, the Commission, within 21 days of the close of the hearing, shall approve or deny a permit for the activities requested. If it approves a permit, the Commission shall impose conditions that the Commission 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.
2. The Commission is empowered to deny a permit for failure to meet the requirements of this section 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 section; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
3. To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design and monitoring to assure success, because of the high likelihood of failure of replication.

4. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit for a period up to five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for one or more periods of up to one year each, provided that a request for a renewal is received in writing by the Commission 30 days prior to the expiration date. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely or until standing protection is in place, and shall apply to all current and subsequent owners of the land.
 5. For good cause, the Commission may revoke or modify a permit, determination, or order issued under this section after notice to the holder of the permit, determination, or order, notice to the public, abutters and Town boards, pursuant to Subsection (g)(1) and (2), and a public hearing.
 6. The Commission may combine the permit issued under this section with the order of conditions issued under the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
 7. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds, or if the land affected is registered land in the Land Court, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.
- (l) Security. As part of a permit issued under this section, and in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:
1. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the permit;

2. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

(m) Certificate of compliance.

1. Upon completion of work approved by an order of conditions, an applicant shall file a written request with the Commission for a certificate of compliance certifying that the work or portions thereof have been completed in compliance with the order of conditions. If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth any deviation from the plans approved in the order shall accompany the request for a certificate of compliance.
2. A certificate of compliance shall be issued by the Commission within 21 days of receipt of the request.
3. Prior to any decision on the request, the Commission shall conduct a site inspection in the presence of the applicant or the applicant's representative.
4. If the Commission determines after review and inspection that the work has not been done in compliance with the order of conditions, it may refuse to issue a certificate of compliance. Such refusal shall be in writing and shall specify the reasons for denial. The Commission may issue a partial certificate of compliance specifying what work has been completed in compliance with the order of conditions.
5. If the order of conditions contains requirements which continue past the completion of work, such as maintenance or monitoring, the certificate of compliance shall specify which conditions shall continue.
6. The certificate of compliance shall be recorded in the Registry of Deeds, or if the land affected is registered land, in the Land Court. Certification of recording shall be sent to the Commission. Upon failure of the applicant to record, the Commission may do so at the applicant's expense.

(n) Enforcement.

1. No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this section, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this section.
2. The Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this section and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the Constitutions and laws of the United States and the Commonwealth of Massachusetts.
3. The Commission shall have authority to enforce this section, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates provisions of this section may be ordered to restore the property to its original condition and take other actions deemed necessary to remedy such violations or may be fined, or both.
4. Upon request of the Commission, the Mayor and the Town Solicitor shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
5. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
6. Any person who violates any provision of this section or regulations, permits or administrative orders issued thereunder shall be punished by a fine of \$300 per day or portion of a day. Each day or portion thereof during which a violation continues or unauthorized fill or other alteration remains in place shall constitute a separate offense, and each provision of the ordinance, regulations, permits or administrative orders violated shall constitute a separate offense once the first notice of violation has been given.
7. As an alternative to criminal prosecution under § 1-110 of these ordinances, the Conservation Commission and its agents may issue citations under the noncriminal disposition

procedure set forth in MGL c. 40, § 21 D, and § 1-109 of these ordinances.

8. If a civil fine for a violation is contemplated, the Commission shall hold a public hearing to discuss the alleged violation and to give the landowner and/or violator an opportunity to respond to the evidence and circumstances. The landowner and/or violator shall be given at least 48 hours' notice in writing of the date, time and place of the hearing, by certified mail or hand delivery. The fine is payable to the Town of Weymouth within 21 days and shall be placed in the consultant fee revolving fund for use by the Commission.
- (o) Appeals. A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.
 - (p) Relation to the Wetlands Protection Act. This section is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
 - (q) Regulations. After public notice and public hearing, the Commission shall promulgate regulations to effectuate the purposes of this section. 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 section.
 - (r) Severability. The invalidity of any subsection or provision of this section shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.