



Westport Conservation Commission
Town Hall Annex
856 Main Road
Westport, MA 02790

TO:

Understanding Wetland Protection in Westport



This aerial photograph, taken 2005, shows the Head of the East Branch of Westport River. The red dots are state certified vernal pools.

Who oversees wetland protection in Westport?

In Massachusetts, the Conservation Commission administers the state Wetlands Protection Act and wetland regulations. The Commission also oversees the development of and updates to the Westport Open Space Plan, helps conserve land, and can act as the custodian for those properties.

The Westport Conservation Commission is made up of 7 volunteer members appointed by the Westport Board of Selectmen. A Conservation Professional and Clerk staff the Commission. The Westport Conservation Commission meets every other Tuesday at 7:00 P.M. in the Westport Town Hall Annex. Conservation Commission hearings are televised on the local cable access channel and are open to the public.

What is the purpose of the state Wetlands Protection Act?

The purpose of the Wetlands Protection Act is to:

- 1) Protect public and private water supplies, groundwater quality, fisheries, shellfish, and wildlife habitat; and
- 2) Prevent and manage pollution, flooding, erosion and sediment runoff, and storm damage; and
- 3) To achieve these goals, projects located very near or within wetlands **always** require the filing of a permit application called a **"Notice of Intent" (or NOI)** and the issuance of an **"Order of Conditions"** (a permit) so that the Conservation Commission can direct how the work should proceed in order to avoid or minimize impacts to wetland resources.

If a planned activity is anywhere within 100 feet of the vegetated wetland (the buffer zone), or within 200 feet of a river or perennial stream, the applicant still needs to submit a form called a **"Request for Determination of Applicability" (or RDA)** to determine whether the applicant must submit the NOI permit application. Failure to obtain a required wetlands permit can result in enforcement action and fines.

One of the most important aspects of wetland protection, and one of the most common problems faced by property owners, is recognizing the boundary of wetlands on a property. You do not have to have standing water to have a wetland because both vegetation and soil types define wetlands.

If you have any question about whether you are near a wetland, within the 100 foot buffer, or within the 200 foot riverfront area, please call the Conservation Commission office and we will be happy to guide you. If you hire a consultant to mark the wetland boundary, keep in mind that one of the most important roles of Conservation Commissions is to review and accept or change this proposed wetland boundary line based on specific regulatory criteria, which in turn can affect whether or not you need a wetlands permit.



"If it's gray, stay away"

If the soil beneath the black topsoil is gray or white, or mottled that way, you are probably in a wetland, and you should consider locating your project elsewhere.

What is the River Protection Act?

In 1997 the state's Wetland Protection Act was amended by the River Protection Act to create a resource area 200 feet from rivers and streams that in many respects is treated like other wetland resource areas. In this "Riverfront Area," the law also limits alterations not to exceed the greater of 5,000 square feet or 10% of the lot for pre-existing lots.

Rivers protected under the Act are defined as any river or perennial stream. In the case of Westport, the entire boundary of the East and West Branch of the Westport Rivers and all the contributing perennial tributaries are considered part of Westport's riverfront area.

In plain terms, if you are within 200 feet (in the Riverfront Area) of any of these rivers and streams, you will need to obtain a wetlands permit, unless your activity is on the list of exemptions. Because the list of exempted activity is considerable, and many types of lots are "grandfathered" by the law, a more general rule is that many projects within 100 feet of the riverfront may be prohibited (e.g. new septic systems), or restricted in some way, or will require a permit. Because of the complexity of the law, and the large number of

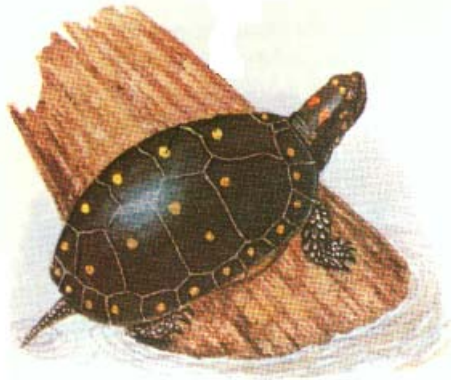
properties affected in Westport, you should call the Conservation Commission before you undertake any activity.

Why are the wetland regulations so complex?

All regulations, whether written for Building Inspectors, Health Departments, or Conservation Commissions, are written to be understood by those most likely to use them. For wetland regulations, the most likely users of the regulations are builders, engineers and environmental consultants. Still, it is true that at all levels of government, environmental regulations have become lengthier with detailed and specific criteria and “performance standards.” This trend has occurred in part to reduce litigation and charges that decisions are either “arbitrary or capricious,” and to ensure that regulations are effective, and “stand up in court.” It also reduces subjective determinations of what is “good” or “bad” for the environment, and minimizes differences in professional judgment. Detailed regulations make clear at the outset what is, or is not, allowed, and helps ensure that all applicants are treated equally.

Who needs a wetland permit, and how does the permitting process work?

Construction activity, land clearing, or other activity within the 100-foot “buffer zone” of either surface water or vegetated wetlands, or within the 200-foot riverfront area may require a wetland permit. To determine if you need to submit the **NOI** form, you could



Applicants should consult with the Conservation Commission, or the Massachusetts Natural Heritage and Endangered Species program to determine if the property contains any rare or endangered species, or if the site contains a vernal pool (a springtime pool of water where frogs and salamanders lay eggs).

call the Conservation Commission office for guidance, but generally you should file the **RDA** form with the town to provide you with added legal protection.

In the RDA the applicant describes the proposed activity and the proximity of wetlands. Generally, the town’s conservation agent will visit the site and report to the Conservation Commission at a public hearing. For very small projects, or project in the 100 foot buffer zone that are not expected to alter wetlands, the Commission will issue a “negative determination,” which means that applicant does not require a formal wetlands permit. The proposed work may then proceed. If the Commission makes a “positive determination” that wetlands or other resource areas will likely be affected, then the applicant must file the **NOI**.

Typically, the engineer or builder prepares the necessary site plans and engineering drawings required by the building department, and also completes the NOI application. Often a wetland biologist will also be hired to place markers on the property showing the boundary of the wetland vegetation (referred to as “flagging the wetlands”). The Commission will hold a public hearing on the Notice of Intent, decide whether they agree with the proposed wetland boundary, and may recommend changes in the proposed designs or plans to minimize impacts to wetlands, wildlife, or to prevent pollution or flooding. These changes are incorporated in the Commission’s “**Order of Conditions**” (or OOC) which is the permit giving the terms of permission for the applicant to proceed with their project. Only rarely does a Conservation Commission deny a project.

What are the permit requirements?

If you have received an **Order Of Conditions (OOC)** for a project, you will need to wait 10 days for the appeal period to lapse before beginning any work. In addition, you will need to register the OOC at the Bristol County Registry of Deeds in New Bedford and provide proof to the Conservation Office in order to validate your permit. You must also install a sign with the permit number (SE 80 – xxx) on the property, install any required erosion control barriers and follow all other conditions included in the permit. Generally, the Conservation Agent should also be called for an inspection of the erosion control barriers before construction work begins.

What is the fee for a permit application?

Generally, application fees start at \$55.00 to \$110.00, plus the legal ad fee, depending upon the type of project. The Commission may also charge a consultant fee to hire an engineer or technical reviewers for certain types of larger or more complex projects, such as those that will alter a wetland, a coastal bank or discharge pollutants to surface or groundwater; construction of any stormwater control facility, or water control structure; or the construction of a dock.

How are Conservation Commission decisions appealed?

Appeals can be made to the state Department of Environmental Protection (DEP) on Conservation Commission RDAs or permits (OOCs). Those allowed to appeal to DEP include the applicant, abutters, other aggrieved parties, or 10 concerned citizens. While it is relatively easy to file an appeal with DEP (e.g. no lawyer is required and fees are modest), appeals tend to be successful only if the appellant clearly identifies what sections of the state wetland regulations they believe were not upheld.

How is applying for a dock or pier different than other wetland permits?

Applications for docks and piers require several additional permits. These include a Chapter 91 Waterways License from the Massachusetts DEP, and a wetlands filling permit by the US Army Corps of Engineers. These additional permits and approvals are separate and independent from the permits and approvals of the Conservation Commission. Applicants considering a dock or pier should obtain appropriate legal and engineering advice.

Land Conservation and Protection

Besides administration of the state and local wetland regulations, Conservation Commissions are authorized under state law to promote and protect natural resources and watershed resources in their town. Activities include preparing conservation and passive outdoor recreation plans, and acquiring land to meet the conservation and passive recreation needs of their town. Commissions may also receive gifts of land, and Town Meeting may appropriate funds for the acquisition of conservation lands. The Conservation Commission is responsible for protecting these public lands,

and is authorized under law to adopt rules and regulations governing the use of conservation land and wetlands under its control, and prescribe penalties for violations of those regulations.

Where can I obtain wetlands application forms?

Some forms can be obtained at the Conservation Office. All the forms are on line at the state Department of Environmental Protection website at:
<http://www.mass.gov/dep/water/approvals/wforms.htm>

What do I do in an emergency situation?

If you think your project is an emergency, please contact the Conservation Agent at 508-636-1019 within 24 hours.

What should I do if I see a violation?

Please contact the Conservation Agent. You may also call the state Environmental Strike Force at (617) 556-1000 or 1-888-VIOLATE (1-888-846-5283).

What can I do to protect my land?

If you have land that you want to protect, if you would like to restrict development of your land, or if you would like to lower your taxes on unbuildable or open space property, please come and see us and we will be happy to help you.



This fact sheet was prepared by the Buzzards Bay National Estuary Program at the request of the Westport Conservation Commission. More information about Town of Westport can be obtained at:
www.westport-ma.com and
www.buzzardsbay.org/westport.htm.

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