

# A Guide to the Wetland Protection Act in Nahant

## What does the Conservation Commission do?

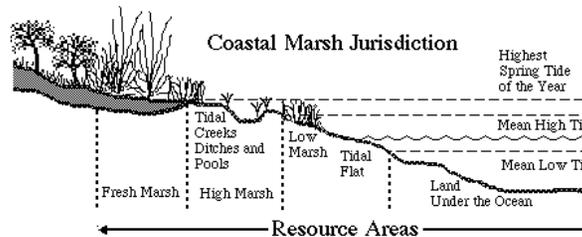
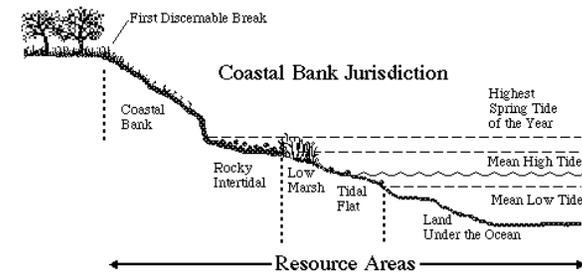
The Nahant Conservation Commission was established to protect the town's natural resources in a regulatory and advisory manner. The Commission is responsible for administering the Massachusetts Wetland Protection Act (Massachusetts General Law, Chapter 1312, section 40), acting in an advisory capacity with regard to the Nahant Floodplains Zoning Bylaw (Annual Town Meeting, 1979), environmental planning, accepting gifts of land and money for conservation purposes, acquiring grant money for town acquisition of open space and advising other town boards on environmental concerns.

## What is a wetland?

Essentially, the Wetland Protection Act covers any wet area where the groundwater level is at or near the surface of the ground for a long enough period during the year to support a community of wetland-type vegetation. Wet areas include any salt or fresh-water marsh, meadow, swamp or bog. There are the classic wetlands described in the Massachusetts Department of Environmental Quality Engineering (D.E.Q.E.) regulations as "Bordering Vegetated Wetlands." To be protected under the Act, these wet areas must border any one of a list of water bodies, including ponds, marshes, estuaries or the ocean.

Areas subject to protection under the act cover much more than land where you might get your feet wet. Also included are all related areas such as banks, dunes, beaches and flats. All of these protected areas are called Resource Areas. Resource areas are also protected by a surrounding 100-foot Buffer Zone in which work involving any alterations to this existing area is regulated.

The Act also covers work on Land Subject to Flooding as well as Land Subject to Coastal Storm Flowage. Generally, the regulations apply to two types of floodplains: those lands bordering directly on bodies of water and those lands subject to flooding, called "Isolated Land Subject to Flooding," which do not border bodies of water.



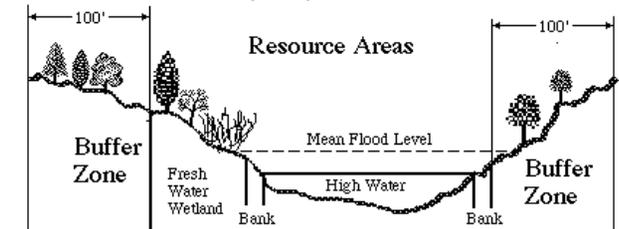
## Why are wetlands important?

Left in their natural state, wetlands provide many free services to the town. These low areas provide floodways to channel storm waters and act as a buffer to prevent storm damage to nearby roads and buildings. These functions minimize the need for extensive engineered systems and seawalls. Wetlands provide temporary storage of flood waters, allowing floods to slowly recede and, in fresh water wetlands recharging the groundwater aquifer. Directly or indirectly, some Resource Areas serve as sources of public or private water supply. In addition, the wetland can purify the water it receives. Wetlands provide natural settling ponds whose vegetation traps 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. The wetland also retains nitrogen and phosphorus compounds which in large amounts can lead to nuisance plant growth in fresh or coastal waters.

High coastal banks act as buffers for homeowners against storm damage. Vegetated banks bind the soil, preventing erosion caused by wave and surface water flow. In a severe storm, however, banks will erode, losing some sediment that is carried off to replenish the down-drift beaches. Dunes also can naturally replenish

beaches. Both banks and dunes, left in an undisturbed state, perform the same services as do truckloads of sand, but at much less cost. Beaches, dunes and coastal banks are dynamic systems that are continuously shifting. Our construction activities must be planned carefully in these areas in order to allow this shifting to occur.

Wetlands are valuable to wildlife as a food source, nesting area and protective cover. The presence of wildlife provides recreation for hunters, bird watchers, artists and photographers. Shellfish beds and commercial and recreational fisheries are dependent on healthy estuaries and salt marshes. Who can deny the recreational value of a beach, or the aesthetic value in a vista of undisturbed open space?



Freshwater Jurisdiction

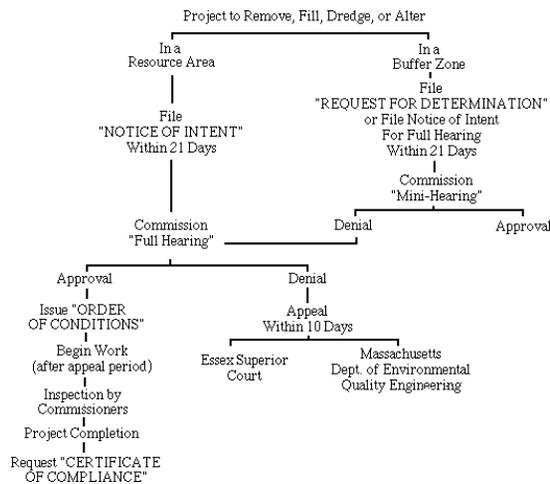
The resource areas protected in the Wetland Protection Act and the local bylaw provide us with many free services when they are allowed to remain in their natural state. The Conservation Commission is obligated to study carefully any proposed alterations of wetlands to balance the benefits to a few against the potential harm to the community as a whole

## What is the Wetland Protection Act?

The Wetland protection act (M.G.L. ch. 131, s. 40) was enacted to safeguard wetlands, associated Resource Areas, and floodplains from overdevelopment. Nahant expanded the local control of activities within these Resources Areas by developing the Nahant Floodplain Zoning Bylaw.

The Conservation Commission holds its hearing simultaneously under both the Massachusetts Wetland Protection Act and the Nahant Floodplain Zoning Bylaw. Although the two laws are similar, the local bylaw identifies additional interests. The combined state and local interests cover the areas of Flood Control, Storm Damage, Prevention of Pollution, Public

or Private Water Supply, Groundwater, Marine Fisheries, Shellfish, Wildlife, Erosion, Recreation and Aesthetics. Neither the Act nor the local bylaw prohibit activities within wetland Resource Areas, but each Resource Area is presumed to be significant to one or more of the particular interests mentioned above. This presumption of significance may be overcome by good evidence supplied by the applicant. Resource areas are protected in the regulations by performance standards. Performance standards are environmental criteria that must be met to minimize the impact of the project on the Resource Areas. If the standards can be met, or if the presumptions of significance can be overcome the proposed project can be approved.



### How does the Wetland Protection Act work?

The state and local laws regulate any activities that involve filling, dredging, excavating or altering in or near a wetland or water body. This covers virtually any construction activity including site preparation, from the building of shopping malls to the addition of a deck to a house. It covers alterations such as the removal of trees or bushes, vista pruning, or the changing of land contours that could affect nearby wetlands or water bodies.

For work outside the resource areas but within a 100-foot Buffer Zone around a Bordering Vegetated Wetland, bank, dune, or a beach, the Commission exercises advisory jurisdiction. In the Buffer Zone, the owner has the option of filing a "Request for Determination" in order to show the Conservation

Commission that through engineering and operational safeguards the work will not alter a Resource Area. If the Commission agrees, it will issue a "Negative Determination," permitting the work as presented. If the Commission decides that the work will alter a Resource Area, it will issue a "Positive Determination" and require a full hearing and the filing of a "Notice of Intent".

A "Notice of Intent" must be filed for work in any Resource Area. This form requires a detailed description of the planned activity. The applicant must show that if the Resource Area will be altered, the benefits will outweigh the damage. The Commission will then issue an "Order of Conditions" based on the performance standards. These performance standards free the Commission from making case-by-case determinations of significance and allow the Commission to treat all applicants fairly and consistently. The Order of Conditions is filed with the land court and DEQE and is separate from any building permit.

Beyond Resource Areas and outside the 100-foot Buffer Zone, the Commission exercises no jurisdiction over work unless that work actually alters a Resource Area. This "after-the-fact" jurisdiction forces the Conservation Commission to ask for structural changes after development has been completed and damaging ecological alterations to the Resource Area have become obvious.

When any construction activity is proposed, the owner must analyze the site for its environmental constraints (soil, air, and water) at the same time as the financial and engineering constraints are being reviewed. It is advisable to consult with the Conservation Commission informally and in advance of an undertaking in order to avoid time-consuming complications. Guidance on the wetland regulations is available in the preamble to the State and Local Regulations, in a guidebook on administering the regulations, and from the Conservation Commission Administrator at the Town Hall, or from a Conservation Commission member.

Knowing the procedures and policies under the Wetlands Protection Act will give the applicant a better understanding of the regulations that guide the decisions of the Conservation Commission and will

enable an applicant to design the project to comply with the wetlands regulations. Such knowledge and understanding will assist the applicant to secure the approval of a project while at the same time preserve the invaluable services provided by the wetlands.

### Glossary

*The Act:* The Wetland Protection Act, M.G.L. Ch. 131, s.40 complemented by the regulations, 310 C.M.R. 10.00.

*Interests Protected in the Act:* Flood Control, Storm Damage, Prevention of Pollution, Marine Fisheries, Shellfisheries, Groundwater, Public or Private Water Supply, and Wildlife Habitats.

*Activities Subject to Jurisdiction Under the Act:* Activities within any wetland Resource Area; within 100 feet of any wetland Resource Area (the Buffer Zone); within Land Subject to Flooding; and within Land Subject to Coastal Storm Flowage.

*Alter:* To change the condition of any area subject to protection under the Act (310 C.M.R., s.10.04)

*Buffer Zone:* 100-foot radius from any wetland Resource Area.

*D.E.Q.E.:* The Massachusetts Department of Environmental Quality Engineering administers the Wetland Protection Act and Regulations on the state level and reviews local decisions pursuant to this Act.

*Nahant Floodplains Zoning Bylaw:* Adopted 1979 to complement the state law and in some cases extends the authority of the local Commission.

*Interests Protected under the Bylaw:* Health, safety and welfare of the general public who are planning projects in the Towns floodplain or who may be affected by such projects (Floodplains designation of those areas classified by A, B or C in the FEMA floodplain map dated 1985 and/or those areas designated as velocity zones).

*Resource Area:* Any landform protected under the Massachusetts Wetland Protection Act or Nahant Floodplain Zoning Bylaw such as a Marsh, Swamp, Bog, Beach, Dune, bank bordering on the Ocean, an Estuary, Pond, Creek, Ditch or areas classified as A, B, C or V on the FEMA map.

*Significant:* means plays a role. A resource area is significant to an interest identified in the Act when it plays a role in the provision or protection, as appropriate, of the interest. (310 C.M.R., s.10.04)

Further information is available by writing or calling:

Nahant Conservation Commission

Town Hall, Nahant, MA 01908\

617-581-0018

or contact any of the commissioners

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