

**New Marlborough Conservation Commission
Frequently Asked Questions**

Question: How do I know if my project requires a permit from the Conservation Commission?

Answer: If your proposed project would occur within an area protected under the Massachusetts Wetlands Protection Act, or what is referred to as a “buffer zone,” it most likely will require permitting.

Question: What are the protected areas?

Answer: In general, terms, lakes, ponds, intermittent streams, riverfront areas, land subject to flooding and bordering vegetated wetland (BVW). These are define under “Frequently Used Terms.”

Question: How do I know if my proposed project is within a BVW or its buffer zone?

Answer: It can be complicated! If you are uncertain, the first step is to speak with a member of the Conservation Commission. A commission member, or representative, can walk your site with you and provide guidance as to whether a probable bordering vegetated wetland should be delineated by an experienced wetland biologist.

Question: How would I locate a wetland biologist?

Answer: While the commission cannot make specific recommendations, it can provide you with a list of wetland consultants who work in this area and have presented applications to the commission.

Question: What if my project falls within the Area of Critical Environmental Concern?

Answer: It means that there is an additional layer protection, which most notably does not permit the alternation and replacement of bordering vegetated wetland, which is permitted in other areas under the Wetlands Protection Act.

Questions: What about vernal pools?

Answer: Vernal pools receive special protection under the Wetlands Protection Act, the 401 Water Quality Certification Program, forestry and Title 5 (septic) regulations when certified through the Mass. Division of Fisheries and Wildlife’s Natural Heritage and Endangered Species Program: <https://www.mass.gov/info-details/vernal-pool-protection>

Question: Do all projects within protected wetlands or a buffer zone require permitting?

Answer: There are some exemptions under the Wetlands Protection Act’s regulations, 310 CMR 10. They include pruning of landscaping areas, planting of trees and shrubs, and some temporary activities such as installation of monitoring wells, sediment sampling, surveying and exploratory boring. If you in doubt, call the Conservation Commission at 413-229-8278.

Question: If I determine that my project will fall within a protected wetland, or its buffer zone, and is not an exempt activity, what is the next step?

Answer: A member of the commission, or a wetland consultant, can guide you as to what application process is required. For Minor buffer-zone projects that will not alter a protected resource area, a Request for Determination of Applicability (RDA), **DEP Form 1**, can be submitted.

Question: How do I determine whether my project is a “minor,” buffer-zone project?

Answer: Call the commission at the above number and ask for guidance. The regulations allow the commission discretion in evaluating a buffer-zone project, based upon the project itself, its proximity to the wetland area, and the site – its topography, specifically slope, soil conditions and other factors.

Question: What is required if my project isn’t “minor,” or if it cannot be accomplished without altering a wetland resource area?

Answer: The commission will require a Notice of Intent (NOI) **DEP Form 3**, be submitted.

Question: Will I be able to complete the application forms myself?

Answer: The RDA, Form 1, is relatively uncomplicated. If you have questions, a member of the commission can provide guidance. Professional assistance may be required with the NOI, Form 3, which is more complex, depending on the wetlands on site and the proposed activity.

Question: Will I be required to hire a professional?

Answer: Depending upon your site, and the complexity of the proposed project, you may wish to engage a professional – architect, engineer, land surveyor, sanitarian wetland scientist or hydrologist – to assist you. In addition, supporting materials from a professional may be required by the commission if it determines that the complexity of the project warrants the specialized expertise.

Question: Are there other requirements?

Answer: With any application, the commission requires a plan, to scale (not more than 1" = 5-feet), showing the proposed activity and its proximity to the wetland resource area(s). In most cases, the plan also should depict topography (grade/contours) and all proposed activity, including trees proposed for removal; excavation for lines to connect water and septic lines to structure(s); decks, patios and any ancillary structures. In addition, you should provide a narrative with a clear description of the proposed activity, on a separate sheet of paper if the “project description: section of the form doesn’t provide adequate space.

For a complex project, the commission may require two plans, depicting pre- and post-construction conditions.

Commission members will visit the site prior to the hearing.

Question: How much does this process cost?

Answer: The commission will require to be reimbursed for the cost of the advertisement ad placed in the local newspaper, cost varies on the size of ad placed, checks are made payable to the Town of New Marlborough, and addressed to the attention of the Conservation Commission. In the case of a Notice of Intent (NOI), Form 3, additional fees are required, payable to the Mass DEP and to the Town of New Marlborough. The instructions for Form 3, provide details to help you calculate the fee, which varies according to the size and complexity of the project.

Question: Do I need to notify my neighbors about my application?

Answer: Notices of Intents (NOI) require an abutter notification, by certified mail. Information on this requirement can be found in the instructions to the NOI, Form 3.

Question: How long does it take to obtain approval?

Answer: That depends on several factors. If the project is relatively minor and complete materials are submitted to the commission, the project can generally be advertised and the public hearing held with two to three weeks of submission. If all requisite information is available to the commission, it can close the hearing and render a decision at that time. There is a 10-business-day appeal period after the decision is issued. Complex projects can take longer; depending upon the information required by the commission and possible jurisdiction under other regulatory authorities, e.g. DEP's 401 Water Quality Certification, Army of Corps of Engineers, and the Natural Heritage and Endangered Species Program.

Question: Where can I find more information about the wetlands Protection Act and its regulations?

Answer: The Wetlands Protection Act is Massachusetts General Law (M.G.L.), Chapter 131, Section 40, and is available in its entirety at the following website: <https://malegislature.gov/Laws/GeneralLaws> The Wetlands Protection Act's Regulations, 310 CMR 10.00, are available at the Massachusetts Department of Environmental Protection's website, <https://www.mass.gov/wetlands-protection>

Question: Can I appeal a decision by the commission?

Answer: Any decisions made by the Conservation Commission related to permitting under the Wetlands Protection Act may be appealed to the DEP within ten business days of the commission decision and sent to DEP.

However, only the following persons may appeal a permit:

1. The applicant;
2. The owner, if not the applicant;
3. Any person aggrieved by and RDA Determination or an NOI Order of Conditions;
4. Any owner of land abutting the land which work is to be done;
5. Any ten residents of the town where the land is located;
6. The Massachusetts Department of Environmental Protection.

Question: What happens if a property owner starts work within a wetland without a permit, or fails to follow the conditions of the permit?

Answer: The Conservation Commission can issue an enforcement order, ceasing all work on the site and requiring that the site be brought into compliance. The Department of Environmental Protection can impose fines, under the Wetlands Protection Act, of as much as \$25,000 per offense.

Question: What do I do when my project is completed?

Answer: If you submitted a Notice of Intent (NOI), it required that the Order of Conditions you received be filed with the Registry of Deeds, and that a copy of the filing documentation be submitted to the Conservation Commission. When your project is completed, you can notify the commission and request, using the Request for a Certificate of Compliance, Form 8a. The commission will visit the site and, if you have complied with the Order of Conditions, issue a Certificate of Compliance (Form 8b) which you file with the Registry of Deeds.