

## Chapter 196

### WETLANDS PROTECTION

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Plymouth 4-5-1989 by Art. 29 (Art. 26 of the Bylaw Compilation). Amendments noted where applicable.]

#### GENERAL REFERENCES

Eminent domain takings – See Ch. 59.  
Fees for inspections and reviews – See Ch. 67, Art. I.  
Soil removal – See Ch. 154.

#### § 196-1. Purpose; wetland functions and values.

The purpose of this chapter is to protect and preserve the shores, rivers, ponds, wetlands, other water bodies and related water resources in the Town of Plymouth by controlling activities deemed by the Conservation Commission to have significant or cumulative impact upon the wetland functions and values. The wetland functions and values include, but are not limited to, the following:

- A. Flood storage capacity, storm damage prevention, erosion and sedimentation control, prevention of water pollution and prevention of improper waste disposal, to protect the health and safety of persons and property.
- B. Protection of groundwater aquifers, public and private water supplies and water recharge areas, to maintain and preserve water resources.

- C. Protection of fisheries, shellfish, wildlife habitats and endangered plant species (as specified by the Massachusetts Natural Heritage Program), agricultural and aquacultural values and aesthetic and recreational values, to assure a stable quality of life.
- D. Control of floodwater and runoff, to assure the continuation of the natural flow pattern of the watercourses.

### § 196-2. Relation to Wetlands Protection Act.

- A. A permit and application shall not be required for permits or extensions legally issued under MGL c. 131, § 40 before the acceptance of this chapter. Any legally issued permit or extension which will expire without having been substantially initiated will require a review by the Conservation Commission for its applicability under this chapter.
- B. Unless otherwise stated in this chapter or in the rules and regulations promulgated under this chapter, the definitions, procedures and performance standards of the Wetlands Protection Act, MGL c. 131, § 40, and associated regulations, 310 CMR 10.00, where applicable, shall apply.

### § 196-3. Definitions.

- A. As used in this chapter, the following terms shall have the meanings indicated:

**AESTHETICS** -- Retention or improvement of natural conditions, including natural lighting, sounds, odors, significant trees and viewshed, as at the time are experienced by the general public from public ways, including waterways. Activities in or within 100 feet of any resource area shall not have significant effects on aesthetic values. This definition and the corresponding wetland value are not sufficient in and of themselves to deny a project and may not restrict the architecture of a structure, except as it applies to viewshed.

**AQUACULTURE** -- The growing, raising, breeding, storing or producing of specified aquatic or marine organisms at specified locations for commercial, municipal or scientific purposes, as approved by appropriate agencies. Organisms in aquacultural use include, but are not limited to, shellfish, such as oysters, quahogs, clams, lobsters, mussels, scallops and crabs; finfish, such as trout, eel, herring, salmon, smelt and bass; amphibians, such as frogs; reptiles, such as turtles; seaweeds, such as irish moss and dulse; edible freshwater plants, such as watercress; and plankton grown as a food source for other organisms. Activities in or within 100 feet of a resource area shall not have a significant effect on existing permitted aquaculture. Notwithstanding this definition, new or expanded aquacultural activities shall not have a significant effect on the other wetlands values set forth in § 196-1 of this chapter.

## EROSION AND SEDIMENTATION CONTROL:

- (1) **EROSION CONTROL** -- The ability of the wetland to buffer forces or processes which would threaten or cause to be threatened the stability of landforms and the soil and/or vegetation associated with wetlands and adjoining land areas, in particular, coastal and inland banks. Erosion can be caused by a wearing away of the surface soil or by undermining the interior portion of the landform. Activities in or within 100 feet of resource areas shall not have a significant effect on natural erosion processes.
- (2) **SEDIMENTATION CONTROL** -- The ability of wetlands to settle out sediments and other waterpower material by reducing water flow by passing it through vegetation or by diffusing flow and reducing velocity. Activities in or within 100 feet of resource areas shall not accelerate or impede the rate of natural sedimentation significantly.

**NORMAL MAINTENANCE AND IMPROVEMENT** -- As this may change from time to time for agricultural and aquacultural use, a specific definition shall be promulgated in the regulations using information provided by the University of Massachusetts Cooperative Extension Service and the United States Department of Agriculture Soil Conservation Service.

**PERSON** -- Any individual, group of individuals, association, partnership, corporation, company, business, organization, trust or estate; the commonwealth or a political subdivision thereof; and, in so far as permissible under state law, any administrative agency, public or quasi-public corporation or body or any other legal entity or its legal representative, agents or assigns.

**RECREATION** -- Any leisure activity or sport taking place in, on or within 100 feet of a resource area which is dependent on the resource area and its values, directly or indirectly, for its conduct and enjoyment. Recreational activities include, but are not limited to, the following: noncommercial fishing and shellfishing, hunting, boating, swimming, walking, painting, birdwatching and aesthetic enjoyment. Structures and activities in or within 100 feet of a resource area shall not have a significant effect on public recreational values. Notwithstanding this definition, new or expanded recreational activities shall not have a significant effect on other wetlands values identified in § 196-1 of this chapter.

**UNVEGETATED WETLAND RESOURCE AREAS** -- Coastal areas, such as flats and unvegetated intertidal areas; coastal and freshwater beaches, dunes and banks; and land subject to flooding; also, inland areas subject to flooding which do not support wetland vegetation but which store at least  $\frac{1}{4}$  acre-feet of water to an average depth of six inches at least once a year and land areas two feet or less vertically above the high-water mark of any lake or pond. This definition does not include swimming pools, artificially lined ponds or pools, wastewater lagoons, stormwater runoff basins or drainage swales, the construction of which may be regulated but which do not themselves constitute regulated areas unless such areas revert to vegetated wetlands.

**VEGETATED WETLAND** -- Any area of at least 500 square feet where surface or ground water, or ice, at or near the surface of the ground supports a plant community dominated (at least 50%) by wetland species.

## WETLANDS:

- (1) Areas comprised of poorly drained or plastic soils, including but not limited to clays, muck, peat or bog, in which the depth to the water table is six inches or less during the period between February and May during most years and as described in the Wetlands Act, MGL c. 131, § 40.
- (2) **[Amended 4-9-2012 ATM by Art. 32]** In addition, barrier beaches, tidal flats and areas subject to flooding by the one hundred-year tidal flood determined by the Federal Emergency Management Agency and designated as ~~Zones A, A1-A30 and V1-V30 and Zone B on the Town of Plymouth, Massachusetts, Flood Insurance Rate Maps and the Flood Boundary and Floodway Maps~~; Zones A, AE, AO, and VE within the Town of Plymouth on the Plymouth County, Massachusetts Flood Insurance Rate Maps as amended, on file with the Town Clerk, and related documents, except as provided in §§ 196-6 and 196-7 or as permitted by the Conservation Commission in § 196-8.

WETLANDS REPLICATION -- The creation of a wetland, surface water body or other resource area to compensate for the filling or other loss or displacement of all or part of an existing wetland, surface water body or other resource area.

- B. Other definitions shall be set forth by public notice and hearing in regulations promulgated in accordance with this chapter. If regulations are not promulgated or definitions are not set forth in said regulation, then the definitions set forth in MGL c. 131, § 40 shall apply.

**§ 196-4. Jurisdiction. [Amended 4-9-2012 ATM by Art. 32]**

No person shall remove, fill, dredge or alter within 100 feet of the following resource areas: a surface water body, vegetated wetland or unvegetated wetland; any bank, freshwater wetland, coastal wetland, coastal bank, beach, dune, flat, marsh, meadow, bog, swamp or isolated land subject to flooding; lands adjoining the ocean; any estuary, creek, river, stream (whether intermittent or continuous, natural or man-made), pond or lake; any land under said waters; or any land subject to tidal action, coastal action, coastal storm flowage or flooding, as defined by the Federal Emergency Management Agency ~~and designated as Zones A, A1-A30 and V1-V30 and Zone B on the Town of Plymouth, Massachusetts, Flood Insurance Rate Maps and the Flood Boundary and Floodway Maps~~, within the Town of Plymouth on the Plymouth County, Massachusetts Flood Insurance Rate Maps as amended, on file with the Town Clerk, and related documents, except as provided in §§ 196-6 and 196-7 or as permitted by the Conservation Commission in § 196-8.

**§ 196-5. Adoption of regulations and fee schedule. [Amended 6-11-2007 ATM by Art. 26]**

- A. After public notice and public hearing, the Commission shall promulgate rules, regulations, performance standards, design specifications and policy guidelines to accomplish the purposes of this chapter. These regulations shall be consistent with the terms of this chapter. The Commission may amend the rules and regulations after public notice and public hearing. ~~These rules, regulations,~~

~~design specifications and policy guidelines or amendments adopted by the Commission must be approved by a vote of Town Meeting.~~

- B. Following a public hearing, the Commission may adopt a fee schedule, subject to final approval by the Board of Selectmen.
- C. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

#### § 196-6. Exceptions.

- A. The permit and application required by this chapter shall not be required for the maintenance, repair or replacement (but resulting in no substantial change or enlargement) of an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone and telecommunications services, sewage collection and traffic control and other activities that are incidental to flood- or mosquito-control work performed by or under the direction of an authorized government agency, provided that written notice is given within 48 hours prior to commencement of work to the Conservation Commission, and provided that the work conforms to performance standards, design specifications, policy guidelines and any other regulations adopted by the Conservation Commission.
- B. A permit and application shall not be required for the normal maintenance and improvement of land or waters in an existing agricultural or aquacultural use or for normal maintenance and improvement of drainage and flooding systems of cranberry bogs, 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. Expansion of existing uses in these areas or new nonagricultural uses in these areas will require a permit.
- C. A permit and application shall not be required for orders of conditions or extensions thereof legally issued under MGL c. 131, § 40 before the effective date of this chapter. Any such order of conditions or extension thereof which expires prior to commencement of work authorized thereunder shall be reviewed by the Commission to determine the applicability of this chapter.

#### § 196-7. Emergencies.

The permit required by this chapter shall not apply to emergency projects necessary for the protection of wetlands values or the health and safety of the public, provided that the work is ordered or performed by an agency of the federal government, the commonwealth or a political subdivision thereof. For this work, advance notice, oral or written, must be given to the Commission prior to the commencement of work. The Commission or its agent must certify the work to be an emergency project. The work must be performed only for the time and place

certified by the Commission for the limited purposes necessary to abate the emergency, but in no instance shall the emergency period exceed 30 days. All emergency work must conform to the performance standards, design specifications, policy guidelines and other regulations adopted by the Commission. Within 21 days of the commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in this chapter. 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.

**§ 196-8. Notice of intent; public hearing; action by Commission.**

- A. A notice of intent (hereinafter referred to as a "notice") shall be filed with the Commission to perform any activity regulated by this chapter, including such plans as may be necessary to describe such proposed activity, the ultimate use of the land and its effect on the environment. The Commission may require data, information and plans under this chapter in addition to the information required of a notice. No activities regulated hereunder shall commence without a permit issued pursuant to this chapter.
- B. At the time of filing the notice, the applicant shall pay a fee specified in the regulations of the Commission and adopted under § 196-5 of this chapter.
- C. Any person presenting any matter to the Commission may be required, as outlined in Chapter 67, Fees, Article I, Inspections and Reviews, of this Code, as amended, to provide an initial deposit as determined by the Commission to reimburse the town for all direct costs of project review.
- D. The Commission shall conduct a public hearing on any notice. Written notification of the hearing shall be given by the Commission at the expense of the applicant at least five days prior to the hearing by mailing a copy thereof to all abutters and abutters to abutters within 100 feet of the property and to the Planning Board and to the Board of Health and by publishing notice in a newspaper of general circulation in Plymouth. A list of abutters entitled to notice according to the current Assessor's records shall be submitted with the aforementioned notice by the applicant.
- E. The Commission shall commence the public hearing within 30 days from receipt of the complete notice and list of abutters.
- F. The Commission, in an appropriate case, may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40, unless otherwise promulgated in the regulations adopted under § 196-5 of this chapter.
- G. For reasons announced by the Commission at any hearing, the Commission shall have the authority to continue or postpone the hearing to a date announced at the hearing, either for receipt of additional information offered by the applicant or

others or for information required of the applicant deemed necessary by the Commission in its discretion.

- H. The Commission shall issue its decision, in writing, within 30 days of the close of the public hearing thereon. Failure of the Commission to act within 30 days of the close of the public hearing, or failure of the Commission to commence the public hearing within 30 days of a completed notice of submission, shall be deemed an approval of the notice.
- I. The Commission is empowered to deny permission for any removal, dredging, filling or altering of subject wetlands within the town if, in its judgment, such denial is necessary to preserve the health, safety and welfare of individuals or the community or protect subject wetlands in accordance with the purpose of this chapter. Due consideration shall be given to possible effects of the proposal on all values to be protected under this chapter and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.
- J. The Commission shall be authorized to make a determination as to whether or not this chapter applies to a specific situation, prior to the filing of a written notice of intent under the provisions hereof, within 30 days of the receipt of a written request from any person desiring such determination sent by certified mail or hand delivered. Failure to act within 30 days of the request for determination shall be deemed as a nonsignificant determination.
- K. The Commission will require a signed agreement by the petitioner to allow its agents, officers and employees to enter upon the land upon which the proposed work is to be done in response to the request for a determination or for the purpose of carrying out its duties under this chapter and may make or cause to be made such examination or survey of the land as deemed necessary by the Commission.
- L. The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the wetland functions and values protected by this chapter. Failure to provide evidence to the Commission supporting a determination that the proposed work will not harm the interest protected by this chapter shall be sufficient cause for the Commission to issue a denial.
- M. If work is not completed or commenced to the satisfaction of the Commission within three years of the issuance of a permit, the permit shall expire, and no work may be done on the site without filing a new notice of intent, unless otherwise noted in the permit or as described in Subsection N. **[Amended 4-12-1994 ATM by Art. 29]**
- N. An extension permit for one or more periods of up to three years each may be granted at the Commission's discretion if the applicant requests such an extension at least 30 days prior to the expiration of the permit. **[Amended 4-12-1994 ATM by Art. 29]**

- O. No work proposed in any notice shall be undertaken until the final order, determination or notification with respect to such work has been recorded in the Registry of Deeds or, if applicable, in the Registry Section of the Land Court.
- P. The Commission may, in its discretion, after hearing, amend or revoke any permit which it deems to be not satisfactorily complying with the conditions set by the Commission. In case of emergency, the Commission may issue a cease and desist order without prior hearing, provided that the Commission shall hold a hearing within seven days after issuance of any such order.

#### **§ 196-9. Security.**

- A. The Commission may require the establishment of an escrow account or other security running to the municipality and sufficient as to form and surety, in the opinion of the Commission's counsel, to secure faithful and satisfactory performance of work required by any permit, in such sums and upon such conditions as the Commission may require.
- B. Notwithstanding the above, the amount of such escrow account or security shall not exceed the estimated cost, including inflation, of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security shall be as detailed in MGL c. 41, § 81U. The Commission may, at its discretion, accept as security 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 the Town of Plymouth, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

#### **§ 196-10. Wetlands replication.**

In order to protect the values inherent in wetland areas, it is the intent of this chapter to preserve wetlands, surface water bodies and other resource areas as functioning natural ecosystems. Filling of wetlands is therefore prohibited except when mitigated by wetlands replication as permitted in this section. At its discretion, the Conservation Commission may permit activities involving wetlands replication that do not harm the wetlands values protected under this chapter.

- A. Wetlands replication in order to make lands buildable, such as by fulfilling septic system setbacks, flood elevation requirements, drainage systems or other construction setbacks, or to achieve lot area requirements is prohibited. Replication is prohibited in areas providing habitat for existing rare or endangered wildlife and plant species as listed by the Massachusetts Natural Heritage Program.
- B. Replication may be permitted to provide access to otherwise buildable uplands. Replication may also be permitted when an overriding public purpose can be demonstrated. The creation of new wetlands may be permitted, without any concomitant wetlands filling, when the applicant can demonstrate that such creation will not harm existing wetlands or their values. Purposes for creating new wetlands include, but are not limited to, the absorption of stormwater runoff, improvement of wildlife habitat, stabilization of unvegetated intertidal areas or aesthetic, experimental or scientific purposes.
- C. No more than 5,000 square feet of any wetland may be filled in accordance with this section, unless specified below. Replication must maintain all of the original wetland values. Unvegetated wetlands whose only values to be protected are storm damage prevention and flood control may be filled and replicated to any extent, provided that the values of storm damage prevention and flood control are preserved.
- D. The replicated wetland must be at least equal in size to the wetland that is to be filled and must be properly vegetated. The Commission, in its discretion, shall limit the square footage to be filled and order vegetation and/or other conditions it may deem appropriate for the site. When a person owns abutting properties, any application within properties for wetland replication submitted within the same five years shall be treated as one proposal for the purposes of evaluating wetlands replication, and the combined area shall not exceed the maximum allowed by the Commission for the original proposal.
- E. Because replication is a process experimental in nature and subject to failure, the Commission may require any applicant requesting wetland replication to conduct a scientific monitoring program to last for a time period as determined by the Commission, but not to exceed five years. The Commission shall review the results of the program to determine whether or not additional monitoring is necessary.
- F. The applicant shall provide an escrow bond, as outlined in § 196-9, for the duration of the monitoring period plus one year to cover correction of any deficiencies revealed by the monitoring program. Said bond shall, at a minimum, be equal to the initial cost of the replication.

**§ 196-11. Enforcement; violations and penalties.**

- A. The Commission may have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Upon the request of the Commission, the Board of Selectmen and Town Counsel will take appropriate action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
- B. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- C. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine as provided for in MGL c. 40, § 21. Each provision of the chapter, regulations or permit violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, MGL c. 131, § 40. The fine for each offense under noncriminal disposition shall be \$50 per day.
- D. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D.
- E. Preacquisition violation. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this chapter or in violation of any permit issued pursuant to this chapter shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

**§ 196-12. Severability.**

The invalidity of any section or provision of this chapter shall not invalidate any permit or determination which previously has been issued.