

CODE OF THE TOWN OF BREWSTER, MASSACHUSETTS UPDATED 01-01-2013
PART II GENERAL LEGISLATION /Chapter 172, Wetlands Protection
History, Adopted 12 – 10 – 1984 Special Town Meeting Article 26. Amendments noted
where applicable.

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§ 172-1 Purpose.

[Amended 10-19-1987 STM, Art. 29]

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town by prior review and control of activities deemed by the Conservation Commission to have or be likely to have an effect or cumulative effect upon wetland values, including but not limited to the following: public water supply, private water supply, groundwater and groundwater quality, water quality in the numerous ponds of the Town, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, shellfish, wildlife and wildlife habitat, aesthetics and historic values (collectively, the "interests protected by this chapter"). This chapter is further intended to provide a means for review and correction of activities performed by any person in violation of any provision contained herein.

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§ 172-2 Applicability.

[Amended 10-19-1987 STM, Art. 29]

A.

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, alter or build upon or within any of the following resource areas:

(1)

On or within 100 feet of any bank, beach, dune or flat.

(2)

On or within 100 feet of any freshwater wetland, coastal wetland, vernal pool, marsh, meadow, bog or swamp.

[Amended 11-13-2017 FYTM, Art. 14]

(3)

Upon or within 100 feet of any lake, pond, river, stream, estuary or the ocean.

(4)

Upon any land under said waters.

- (5) Upon or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.
- (6) Upon any land subject to flooding or inundation by tidal action or coastal storm flowage.
- (7) Upon any land within a riverfront area.
[Added 11-13-2017 FYTM, Art. 14]

B.

Any activity proposed or undertaken outside any area specified above shall be subject to regulation under this chapter if, in the judgment of the Conservation Commission or its agent, said activity may result or has resulted in the removing, filling, altering or building upon any area specified above.

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§ 172-3 Exemptions.

A.

The permit and application required by this chapter shall not be required for maintaining, repairing or replacing an existing and lawfully located structure or facility which is used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to the commencement of work that the structure or facility will not be, in the opinion of the Conservation Commission, substantially changed or enlarged, and provided that any work done conforms to the performance standards and design specifications in regulations adopted by the Conservation Commission.

B.

The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or 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 adequate notice, oral or written, has been given to the Conservation Commission prior to the commencement of work or within 24 hours after commencement, provided that the Conservation Commission certifies the work as an emergency project, and provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purpose necessary to abate the emergency. Within 21 days of commencement of an emergency project, a permit application shall be filed with the Conservation Commission for review as provided in this chapter.

C. Other than stated in this section, the exemptions provided in the Wetlands Protection Act and the regulations promulgated thereunder shall not apply.

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§ 172-4 Application for permit; request for determination.

A.

Application for permit.

(1)

Written application shall be filed with the Conservation Commission to perform any work which will or which, in the opinion of the Conservation Commission, may affect resource areas within the jurisdiction of this chapter. Upon the petition of any 10 registered voters of the Town the Commission shall require any work commenced within the jurisdiction of this chapter without a permit to be ordered stopped, and shall require a written application as provided in this section. The application shall include such plans as are deemed necessary by the Conservation Commission to describe the proposed activities and their effects on the environment. No work or alteration shall commence without receiving and complying with a permit issued pursuant to this chapter.

(2)

The application and plans shall contain data as required by this chapter and any regulations adopted pursuant thereto by the Conservation Commission.

(3)

The Conservation Commission may require application and plans under this chapter in addition to the notice of intent and plans filed pursuant to the Wetlands Protection Act, MGL c. 131, § 40.
[Amended 5-12-1986 ATM, Art. 60]

(4)

At the time of application, the applicant shall pay a filing fee specified in the regulations of the Conservation Commission promulgated pursuant to this chapter.

B.

Request for determination. Any person desiring to know whether or not proposed work or an area is subject to this chapter may request a determination, in writing, from the Conservation Commission. Such a request for determination shall contain data and plans as specified by the regulations of the Conservation Commission promulgated pursuant to this chapter.
[Amended 5-8-1989 ATM, Art. 33]

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§ 172-5 Notice; hearing.

A.

Notice. Any person filing an application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all abutters and abutters to abutters within 300 feet of the lot which is the subject of such application or request for determination, according to the most recent records of the Assessor, and to all other persons as the Conservation Commission shall in writing require. The notice shall enclose a copy of the application or request with plans or shall state where copies may be examined and obtained by abutters. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

[Amended 5-12-1986 ATM, Art. 60; 5-8-1989 ATM, Art. 33]

B.

Hearing.

(1)

The Commission shall conduct a public hearing on any application or request for determination, with written notice, published at the expense of the applicant five working days prior to the hearing in a newspaper of general circulation in the Town.

[Amended 5-12-1986 ATM, Art. 60]

(2)

The Commission shall commence the public hearing on any application or request for determination within 21 days from receipt.

(3)

The Commission shall issue its permit or other action or determination, in writing, within 21 days of the close of the public hearing thereon or within 21 days of the close of any continuances of the prior public hearings.

(4)

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.

(5)

For reasons announced by the Conservation Commission at the hearing, the Commission shall have authority to continue or postpone the hearing to a date certain 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 Conservation Commission in its discretion.

(6)

The Conservation Commission shall take action on the application at the continuance date, provided that the applicant has complied in all respects with

the request of the Conservation Commission for further information pursuant to this section, unless further continuances are consented to by the applicant.
[Amended 5-12-1986 ATM, Art. 60]

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§ 172-6 Coordination with other boards.
[Amended 10-19-1987 STM, Art. 29]

A.

Any person filing a permit application or a request for determination with the Commission shall, if requested in writing by the Conservation Commission or its agent, provide a copy thereof at the same time, by certified mail or hand delivery, to the Select Board, Planning Board, Board of Appeals, Board of Health and Building Inspector, who shall, if requested by the Conservation Commission in writing or by 10 registered voters of the Town, file written comments and recommendation with the Commission.
[Amended 11-13-2017 FYTM, Art. 13]

B.

The Commission shall not take final action until such Boards and officials have had 14 days from the receipt of notice to file said written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission.

C.

The coordination sought by this section can be achieved in part through the staff review process. For actions subject to that process, none of the timing limitations of § 172-5 shall commence to run until staff review process has been completed.
[Added 5-14-1990 STM, Art. 12; amended 5-2-2011 ATM, Art. 32]

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§ 172-7 Action by Commission; permits.

A.

Action by Commission. if the Commission, after a public hearing, determines that the area which is the subject of the application is likely to be significant to the interests protected by this chapter, the Commission, within 21 days of the close of the hearing or a continuance thereof, shall issue or deny a permit for the work requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those interests, and all work shall be done in accordance with those conditions. If the area is deemed not likely to be significant to the interests protected by this chapter, the Commission shall so inform the applicant that the work does not require a permit.

B.

Permits.

- (1) Permits shall expire three years from the date of issuance. Any permit may be renewed for up to additional three-year periods, provided that a request for an extension is received, in writing, by the Commission 30 days prior to expiration of the permit.
[Amended 5-5-1997 ATM, Art. 26; 11-13-2006 FYTM, Art. 18; 12-3-2018 FYTM, Art. 8]
- (2) For good cause, the Commission may revoke or modify a permit issued under this chapter.
- (3) The Conservation Commission shall issue permits under this section in addition to any order of conditions issued under the Wetlands Protection Act.



§ 172-8 Promulgation of regulations.

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Public notice shall include publication of all proposed regulations in a newspaper of general circulation in the Town not less than 21 days prior to public hearing. 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. At a minimum, these regulations shall define key terms in this chapter not inconsistent with this chapter.



§ 172-9 Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter.

ALTER

Includes, without limitation, the following actions when undertaken in resource areas subject to this chapter:

- A. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- C. Drainage or other disturbance of water level or water table.
- D. Dumping, discharging or filling with any material.
- E. Placing of fill or removal of material.
- F.

- Driving of piles, erection of buildings or structures of any kind.
- G. Placing of obstructions or objects in water.
- H. Destruction of plant life, including cutting of trees.
- I. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- J. Any activities, changes or work which pollute in any way any body of water or groundwater.

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 bylaws, administrative agencies, public or quasi-public corporations or bodies, this municipality and any other legal entity, its legal representatives, agents or assigns.



§ 172-10 Security.

[Amended 5-12-1986 ATM, Art. 60]

As part of a permit issued under this chapter, in addition to any security required by any other Town or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder shall be secured, wholly or in part, by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Commission.
- B. 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 and members of the public, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.



§ 172-11 Enforcement; violations and penalties.

- A. 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 chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

- B. The Police Department and the Conservation Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission or upon written request of any 10 residents of the commonwealth, the Select Board and the Town Counsel 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.
[Amended 11-13-2017 FYTM, Art. 13]
- 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. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Conservation Commission in enforcement.
- F. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.



§ 172-12 Burden of proof.

The applicant for a permit shall have the burden of proving by clear and convincing evidence that the work proposed in the application will not harm the interests protected by this chapter. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this chapter shall be sufficient cause for the Commission to deny a permit.



§ 172-13 Relation to Wetlands Protection Act.

This chapter 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 thereunder.



§ 172-14 Severability.

- A.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any order of conditions which previously have been issued.

B.

If any court of the commonwealth shall invalidate any provision of this chapter or any regulation promulgated thereunder, the Conservation Commission shall present to the next Town Meeting after such invalidation, amendments to this chapter which are designed to comply with any court decision invalidating such provision and shall amend the regulations pursuant to § 172-8 to comply with such decision.

[Amended 5-12-1986 ATM, Art. 60]