

Town of Rehoboth

CONSERVATION COMMISSION

ADMINISTRATIVE REGULATIONS

PAGE	REGULATION
1	INQUIRIES
1	MEETING/ADVERTISEMENT DEADLINE
2/3	ENFORCEMENT ACTION
3	PUBLIC FORUM
3	ENFORCEMENT ORDER ISSUANCE
3	ANRAD POLICY
4	HAY BALE POLICY
4	UTILITIES
4	PARTICIPATION
4	ASSOCIATE MEMBERS
5	ABBREVIATED NOTICES OF RESOURCE AREA DELINEATION
6	HIRING OF OUTSIDE CONSULTANTS
7	OVERCOMING THE PRESUMPTION OF A PERENNIAL STREAM
8/9	APPLICATION SUPPLEMENTS
9	RESOURCE AREA FLAGS
9	PROPERTY / PROPOSED WORK STAKE POLICY
9	SITE VISIT PROTOCOL
10	WETLAND BOUNDARY / BUFFER SIGN POLICY
11	WETLAND BOUNDARY SIGN

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OFFICE OF THE TOWN CLERK
REHOBOTH, MA

Originally adopted January 9, 2001
Amended through April 2, 2019


Filed with the Town Clerk

INQUIRIES

Regulation Adopted January 9, 2001

With respect to inquiries made in person, by phone, fax, mail, email, or other form of direct, indirect, or electronic means concerning possible activities within, or adjacent to, resource areas falling under the jurisdiction of the Rehoboth Conservation Commission, the following actions shall be taken:

If the information is received anonymously, the Commission, its members, and/or its agents, MAY, in the interest of protecting the wetland resource areas identified in 310 CMR 10.0 and the interests they serve, attempt to ascertain the nature of said activities.

If the identity of the author of such an inquiry is provided to the Commission, the Commission, its members, and/or its agents, SHALL, in the interest of protecting the wetland resource areas identified in 310 CMR 10.0 and the interests they serve, attempt to ascertain the nature of said activities. Furthermore, the identity of the author shall be entered into a log, and said log shall be made available for review during normal daily business hours at the Commission's office by any individual who so requests. Logs shall be maintained for a period of six months. Identities of authors of inquiries shall not be disclosed at regular meetings of the Commission without the consent of the author. Additionally, if so, requested by the identified author, the Commission, its members, and/or its agents, SHALL inform the author as to the disposition of the inquiry.

APPLICATION AND REVISION DEADLINES

Regulation Adopted June 18, 2002, amended July 18, 2006

With respect to submissions, made in person or by mail, of applications for Notices of Intent, Abbreviated Notices of Resource Area Delineation or Requests for Determination of Applicability the following policy shall apply:

All completed submissions must be received in the Conservation Office no later than 3:00 PM of the Thursday prior to the advertising date for the Legal Advertisement. Any submission received after that time will be placed on the agenda for the following meeting.

All legal advertisements must be published at least five (5) business days prior to the public hearing or meeting, not counting the day of the meeting. Advertisements are generally published in the Taunton Daily Gazette on the Tuesday prior to the meeting.

For example:

Conservation Meeting:	July 18, 2006 – Tuesday
Advertisement published:	July 11, 2006 – Tuesday
Submission deadline:	July 6, 2006 by 3:00 PM – Thursday

With respect to revised plans or additional information, all submissions must be received at least one week prior to the next scheduled meeting of the Commission.

PUBLIC FORUM

Regulation Adopted June 18, 2002

In order to ensure an opportunity for participation for all commissioners and landowners, all decisions, agreements, and determinations requiring action by a majority of the Conservation Commission shall be arrived at in a public forum.

ENFORCEMENT ACTION

Regulation Adopted April 2, 2019

Administrative Procedure for Enforcement

The following guidelines outline the response that the Commission and/or its agents will take to violations or apparent violations of the Massachusetts Wetlands Protection Act, the Act:

1. Step 1: Informal Contact. Contact the violator or property owner to arrange a meeting (on site, in office, or at a Commission meeting) or visit the property to speak informally with the violator or property owner. Discuss with the contact the site activity, the legal requirements, and possible remedial action. If full cooperation and agreement is achieved, Commission may issue a Restoration Enforcement Order (see below). If cooperation is not achieved, then the Commission will proceed to the next steps.
2. Step 2: Document Site Access, including a written notation to the file that identifies who visited the site and when, and who authorized access. If consent has not been obtained, it is very important to document attempts to gain access and the landowner's response.
3. Step 3: Violation Letter. If informal contact cannot be made, send a violation (form) letter, informing violator and/or property owner of the wetlands protection laws and the apparent violation. A cease and desist may be issued, a requirement to prevent further damage, and a request for the owner to attend the Commission's next meeting. A violation letter, issued under the Act, will constitute a warning that a public hearing will be held.
4. Step 4: Administrative Hearing. When the Commission determines that an activity could be in violation of the Act, the Commission shall hold a public hearing to give the property owner, or owner's representative, an opportunity to respond to the evidence and circumstances. The Commission will then consider whether a violation actually occurred and, if so, whether the landowner will be issued an Enforcement Order or Restoration Enforcement Order for the violation. During public hearings, site observations should be reduced to a memorandum and documents should be entered into the record in such a manner that the applicant and other participants are aware of their contents and have an opportunity to respond to them. It should be noted that since Commissioners frequently have specialized knowledge of the site of the violation or the area from site visits, previous proceedings, other documentary materials, or merely general experience, they can rely on those sources of knowledge to some extent.
5. Step 5: Enforcement Order. Failing an adequate response to Step 3: Violation Letter, or for serious violations, the Commission may issue an Enforcement Order under the Act in lieu of or in addition to an Enforcement Order under the Bylaw. If only one document is issued pursuant to both the Act, each law should be cited on the document's face. All Enforcement Orders and letters should be directed toward restoration rather than toward the filing of plans or a NOI. If further enforcement action is required, it should be because of failure to restore illegally altered land to its original condition rather than for the responsible party's failure to submit plans or a

NOI. In a situation requiring immediate action, an Enforcement Order may be signed and issued by a single member or agent of the Commission, as long as said Order is ratified by a majority of the Commission at their next scheduled meeting. The Enforcement Order should be sent by certified mail, return receipt requested, or by hand delivery to each of the named parties. If it is hand delivered, the individual who delivered the document should sign the Order and either obtain a receipt or draft an affidavit documenting service for the files. Any time an Enforcement Order is amended, the Amended Order should also be properly served on the violator.

6. Step 6: Restoration Order. If full cooperation and agreement is achieved, the Commission may issue a Restoration Order, setting forth specific requirements for the restoration of the site to its original condition within a specified time period. This Order would require a detailed Restoration Plan, including specific dates for submissions, construction, and compliance milestones. If the compliance milestones are not met, then a formal Enforcement Order may be issued, per Step 5, above.

Regulation Adopted July 16, 2002, amended July 18, 2006

Any Commission correspondence associated with enforcement actions, either current or pending, shall be forwarded to the Board of Selectmen and other relevant departments including but not limited to the Zoning Enforcement Officer/Building Inspector, Board of Health and Planning Board.

ENFORCEMENT ORDER ISSUANCE

Revised Adopted June 18, 2002, amended April 2, 2019

Pursuant to 310 CMR 10.08 (3), it is the policy of the Commission that a single member of the Commission, or agent acting on the Commission's behalf, may issue an Enforcement Order only if, in the opinion of the issuer, a resource area is being damaged or is in danger of being damaged prior to the next scheduled meeting. The Commission shall endorse and/or revise said issuance at their next scheduled meeting, or failing said endorsement the Order shall expire, and notice of said expiration shall be sent via certified mail to the issuee.

ANRAD POLICY

Regulation adopted November 23, 2004

Any delineation greater than 600 aggregate linear feet will require the filing of an Abbreviated Notice of Resource Area Delineation (ANRAD) application with the Commission.

HAY BALE POLICY

Regulation adopted July 18, 2006: amended December 4, 2018

Where siltation control is necessary to protect any of the eight interests of the Act, it shall be in the form of staked hay bales and shall be duly noted on all site plans. Siltation control shall encompass all wetland replication areas on both wetland and upland sides. The haybale line shall be depicted on the plans as the Limit of Disturbance.

UTILITIES

Regulation adopted July 18, 2006

When applicable, site plans shall depict utilities to be installed either under or above ground.

PARTICIPATION

Regulation adopted July 18, 2006

A record of participation – made available to the Board of Selectmen and to the public upon request – shall be maintained for Commissioners (regular and associate) and staff. The participation record shall record attendance at all public meetings and inspections and education efforts undertaken by the members during their appointment. Members are expected to attend a minimum of 50% of all regularly scheduled public meetings and 50% of all regularly scheduled site visits.

ASSOCIATE MEMBERS

Regulation adopted July 18, 2006

The Commission is always seeking new and talented individuals to contribute by serving as Associate Members. Associates are appointed by the Commission to serve and contribute in the same capacity as members with the exception of the ability to vote.

After a minimum term of three months as Associate member, the voting members of the Commission may recommend to the Board of Selectmen he/she be appointed a permanent member. Recommendation will be based on meeting and site walk participation and knowledge or contribution which enriches the Commission to better serve the residents of the Town of Rehoboth.

ABBREVIATED NOTICES OF RESOURCE AREA DELINEATION

Regulation adopted July 18, 2006

All ANRAD applications must include a complete and accurate description of the site including but not limited to: structures, changes in topography, and resource areas not being reviewed. Pole numbers for location in the field must be depicted on the plan.

The Commission shall make every effort to review an ANRAD filing associated with a single-family house without hiring an outside consultant. The Commission shall make every effort to make costs associated with the review of an ANRAD by a consultant reasonable and affordable.

ANRAD filings that meet any of the following criteria may be subject to a consultant review payable by the applicant:

- a) wetlands area is not dominated by wetland indicator vegetation with an indicator category of FACW or wetter
- b) Bordering Vegetated Wetlands is not abrupt or discrete
- c) plant communities have been altered
- d) soil has been disturbed
- e) when determining a mean annual high-water line
- f) when determining a flood zone boundary

The Commission may require additional supporting materials to be prepared by other professionals including, but not limited to a registered landscape architect, registered land surveyor, environmental scientist, geologist, botanist, or hydrologist as warranted by the complexity of the project.

The Commission may require soil test results including but not limited to when:

- a) wetlands area vegetation is transitional or not dominated by wetland indicator vegetation with an indicator category of FACW or wetter
- b) Bordering Vegetated Wetlands boundary is discrete or not abrupt
- c) plant community has been altered or site has been disturbed

The Commission encourages the submission of DEP Bordering Vegetated Wetlands Field Data Forms when filing for an ANRAD or delineating a Bordering Vegetated Wetland. For delineations of areas other than Bordering Vegetated Wetlands, the Commission encourages the use of a narrative to explain the other methods of delineation and any appropriate data forms.

HIRING OF OUTSIDE CONSULTANTS

Regulation adopted July 18, 2006

As provided by MGL Ch. 40 § 8C and Ch. 44 § 53G, the Rehoboth Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 § 40), the Conservation Commission Act (GL Ch. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the Rehoboth Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 §53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Agent.

The Conservation Commission shall select consultants on a revolving basis from a list made available to the public. The Commission shall make every effort to avoid selecting a consultant that may have a conflict of interest, if so, advised by the applicant in a timely manner.

The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered.

The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary, review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.

The applicant may appeal the selection of the outside consultant to the Rehoboth Board of Selectmen pursuant to MGL Ch. Ch. 44 § 53G, who may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications.

OVERCOMING THE PRESUMPTION OF A PERENNIAL STREAM

Regulation adopted July 18, 2006: amended February 10, 2009

Pursuant to 310 CMR 10.58 (2)(a)(1)(d), the Rehoboth Conservation Commission shall find that any stream is intermittent based upon documented field observation from a competent source that the stream is not flowing. Sources determined competent by the Commission shall be any persons that adhere to the entirety of this policy.

The Commission shall not consider overcoming the presumption of a perennial stream until written notification is made to the Commission requesting verification that a stream is not flowing. Sufficient information must be submitted, including contact information for the proponent and their representative (if applicable), the address or Assessors Map/Lot, stream name if known, the portion of the property being observed, directions to the area of observation, etc.

The Conservation Agent or a Commissioner shall be notified verbally or in writing of each of the four days of no-flow conditions being observed by the proponent, allowing two (2) business-days notice for guaranteed inspection by the Commissioners and/or its Agent. It is recommended that the proponent accompany the Commissioner or Agent to the site or provide site plans depicting the observed portion of the stream. The Agent or Commissioner shall personally observe at least one of the four days and at their discretion will observe the additional three days.

The Commission shall not make a determination until a Notice of Intent or Abbreviated Notice of Resource Area Delineation is properly submitted with documented field observations no later than thirty (30) days after the last documented no-flow day. The determination shall be good for three years unless an extension of the determination is requested by the applicant prior to its expiration and approved by the Commission.

Documented field observation shall include all of the following:

- a) Field notes describing the no-flow conditions that occurred over four days in any consecutive 12-month period, during a non-drought period on a stream not significantly affected by drawdown from withdrawals of water supply wells, direct withdrawals, impoundments, or other man-made flow reductions or diversions;
- b) Photographic observation (date-stamped or otherwise clearly indicating the days) of the no-flow conditions made at least once per day, over four days in any consecutive 12-month period;
- c) Statement from the competent source signed under the penalties of perjury attesting to the authenticity and veracity of the field notes, photographs and any other credible evidence.

APPLICATION SUPPLEMENTS

Regulation adopted August 1, 2006: amended February 10, 2009

FOR ALL APPLICATIONS to the Commission, the following is required for an application to be considered complete:

1. TWELVE copies of the site plan, plans MUST be in color with the following color codes:
 - Green – BVW
 - Yellow – Buffer zones
 - Orange – Erosion control
 - Blue – MAHW / River
 - Pink – Riparian Zone
 - Purple – Flood plain
2. TWO COPIES of the application.
3. If the lot is undeveloped, please identify the lot with a sign or other easily identifiable description to mark the lot for the Conservation Commission.

FOR NOI AND ANRAD APPLICATIONS to the Commission, the following is required for an application **to be considered complete**:

1. Site plans must be:
 - a. No smaller than 18" x 24"
 - b. Folded (**not rolled**)
 - c. Scale no greater than 1" = 30'
 - d. Prepared and stamped by a registered professional engineer or registered professional land surveyor
 - e. Must depict and include utility pole on plan(s)
2. Abutters list certified by the Rehoboth Assessors Office identifying, "all abutters within one-hundred feet of the property line of the land where the activity is proposed including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a body of water." *MGL Ch. 131 Section §40*

Regulation Adopted April 2, 2019

FOR RDA AND AS-BUILTS FOR A COC to the Commission, the following is required for an application **to be considered complete**:

1. Plan sheets shall be of a minimum size of 11" X 17"
2. Locate property lines on drawing
3. Identify the street the property has frontage on and show it on the drawing
4. Show plat and lot numbers on drawing

5. A North arrow
6. An approximate scale (i.e. 1" = 20, 1" = 40', etc.) shall be shown on the drawing
7. Identify wetlands from either wetland's biologist or best available information
8. Identify ant natural flowing water courses on drawing
9. Locate all structures on site, if any, place on drawing
10. Locate on-site waste disposal systems on drawing
11. Identify abutters plat and numbers

RESOURCE AREA FLAGS

Regulation adopted August 1, 2006

Wetland flags depicting the edge of any resource area shall be placed no further than 25' from one another along the same delineation.

PROPERTY / PROPOSED WORK STAKE POLICY

Regulation adopted February 10, 2009

All applicants filing a Request for Determination or a Notice of Intent with the Conservation Commission are required to have the property staked the Sunday prior to the Conservation Commission's next scheduled Public Meeting. The Conservation Commission will require that all proposed work; i.e. house, septic well, garage, etc. be staked in the field prior to the site visit. Failure to do so may result in the public hearing or public meeting being continued.

SITE VISIT PROTOCOL

Regulation Adopted February 10, 2009:

The office will prepare the site visit list, the list shall be composed of Name, Address, reason for site visit and whether or not the Commissioners have permission to enter the property. If anything changes for the site visits listed, the Commissioners will receive a phone call from the office no later than the Friday before site visits are to be conducted. All properties on the site visit list may be notified in writing of the date and approximate time the Commission will be out on the property.

WETLAND BOUNDARY/BUFFER SIGNS POLICY

Regulation adopted February 10, 2009

The Rehoboth Conservation Commission may require the applicant/developer to install wetland boundary/buffer signs in order to prevent encroachment into a protected wetland resource area. Wetland markers shall be placed every fifty (50') feet along, or as the Conservation Commission deems necessary the limit of disturbance and shown as such on the site plan.

The sign shall face away from the wetland resource area and must be placed on posts installed securely in the ground. Posts can be metal or wood. If wooden posts are used, they must be at least 2" x 2" in size and be made of pressure treated wood. Posts must extend a minimum of three feet above ground and be sunk at least two feet below ground.

The cost of the signs shall be borne by the applicant/developer or their successors in interest, as will all maintenance and possible replacement of the signs.

The applicant/developer shall be responsible for submitting a letter of certification of the sign installation to the Conservation Commission Office prior to the issuance of an Authorization to Proceed (ATP)

The following company has the template for the boundary/buffer signs that may be required by the Rehoboth Conservation Commission:

Perma-Line Corp. of New England
132 Court Street, P.O. Box 4515
Brockton, MA 02303
Phone – 508-588-6240
Fax – 508-587-2110

(PICTURE OF SIGN ON NEXT PAGE)

WETLAND BUFFER/ BOUNDARY



**REHOBOTH CONSERVATION COMMISSION
DO NOT REMOVE**