

Town of Salisbury Conservation Commission Rules and Policies

1. Introduction and Purpose.

A. Introduction. These rules and policies are promulgated by the Town of Salisbury Conservation Commission pursuant to the authority granted to it under the 1989 Town of Salisbury Town Charter and in keeping with the interests listed in MGL Chapter 131§40 of the Massachusetts Wetlands Protection Act (Act).

B. Purpose.

(1) To set up rules and policies for procedures and submission requirements and deadlines and a town fee structure.

(2) The purpose of these rules and policies is to define and clarify that process by establishing standard definitions and uniform procedures by which the Salisbury Conservation Commission may carry out its responsibilities under the Act.

2. Statement of jurisdiction.

A. Areas subject to protection under the Act. The following areas are subject to protection under the Act:

- (1) Any freshwater wetland, coastal wetland, marsh, wet meadow, bog, swamp, bank, beach, dune, flat, forestry areas or alteration of land elevation.
- (2) Any land within 100 feet of any of the areas set forth in Subsection A(1) above.
- (3) Any river, pond, stream, estuary, watercourse, or the ocean.
- (4) Any land under any of the water bodies set forth in Subsection A(3) above.
- (5) Any land within 100 feet of the water bodies set forth in Subsection A(3) above.
- (6) Any land subject to flooding or inundation by groundwater, surface water, or tidal action.
- (7) Any land within 100 feet of any land subject to flooding or inundation as set forth in Subsection A(6) above.
- (8) Any land subject to coastal storm flowage.

3. Burden of going forward and burden of proof.

A. The applicant shall have the burden of going forward by providing at least some credible evidence from a competent source in support of all matters asserted by the applicant in accordance with his or her burden of proof pursuant to Subsection B below.

B. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not harm the interests protected by this Act. Failure to meet the burden of proof shall be cause for the Commission to deny the application for a permit along with any work or activity proposed therein.

4. Procedures.

A. Time periods. All time periods of 10 days or less specified in the Act and these rules and policies shall be computed using business days only (Monday through Friday and non-holidays). In the case of a determination or application for permit such period shall commence on the first day after the date of issuance and shall end at the close of business on the 10th business day thereafter. All other time periods specified in the Act and these rules and policies shall be computed on the basis of calendar days (every day is counted), unless the last day shall be the next business day following.

B. Actions by Conservation Commission. Where the Act states that a particular action (except receipt of a request for determination or application for permit) is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of

the members then in office. Where the Act states that a permit or notification shall be issued by the Conservation Commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in the order to sign said permit or notification, provided they met pursuant to the Open Meeting Law, MGL c. 39, §§ 23A to 23C, when voting on the matter.

C. Fee Schedule and Submission Deadlines

Application Type	Deadline for Submission¹ (Calendar Days before meeting)	Legal Ad²	Fee Amount (*Flat fee ** Variable fee)
Request for Determination*	14	Yes	\$25
NOI/ANOI**	14	Yes	Category 1 - \$50 Category 2 - \$100 Category 3 - \$300 Category 4 - \$400 Category 5 - \$1.50/linear foot, no less than \$50, no more than \$1000 Category 6 - \$.80/linear foot, no less than \$50, no more than \$100 for a single-family home, or more than \$1000 for any other type of project
ANRAD**	14	Yes	\$1/linear foot (no limit)
Certificate of Compliance*	7	No	\$25
Extension*	7	No	\$100
Amendment**	14	Yes	1 st - \$50 2 nd - \$75 3 rd - \$100 4 th - \$125
After the Fact/ Late Fees**	N/A	N/A	200% of fees
Emergency Certification		No	None

¹ Any new or requested information is due seven (7) calendar days before the next meeting. Information submitted after this deadline will be distributed for the following meeting.

² Applicant is responsible for all expenses associated with abutter notification and legal advertisements.

D. Determinations of Applicability.

(1) Request for determination.

(a) Any person who desires a determination as to whether the Act applies to a site or to an activity that may affect an area subject to protection under the Act may submit to the Commission by certified mail or hand delivery a request for determination of applicability, WPA Form 1. (Forms and General Instructions are available at the office of the Conservation Commission.)

(b) Whenever possible, digital submissions of all plans should be provided to the Commission in a compatible file format (i.e. .pdf, .tif, etc.)

(c) 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 Applicant to the owner and the applicant shall supply the Commission with the name and current address of the owner.

(2) Determination of applicability.

(a) Within 21 days after date of receipt of a request for determination of applicability, the Commission shall hold a public hearing on the request. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission, at the expense of the person making the request, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the Town. Notice shall also be given in accordance with the Open Meeting Law, MGL c. 39, § 23B.

(b) At the public hearing the Commission will determine:

[1] Positively: that the area and the activity proposed thereon are subject to the jurisdiction of the Act and that the activity is deemed to affect one or more of the interests protected in the Act.

[2] Negatively: that the area in which the proposed activity is to take place is not within the jurisdiction of the Act or that the proposed activity is not deemed to affect one or more of the interests protected by the Act.

(c) The determination, WPA Form 1, shall be signed by a majority of the Commission and shall be sent by the Commission to the person making the request and the owner within 21 days of the close of the public hearing or any continuance thereof.

(d) A determination shall be valid for 3 years from date of issuance.

(e) In the event of a positive determination, an application for permit shall be filed and all of the procedures set forth in Subsection E shall apply.

E. Notices of Intent and Abbreviated Notices of Intent.

(1) Any person who proposes to do work that will remove, fill, dredge, build upon or alter any area subject to protection under the Act shall submit an application for permit (WPA Form 1 or 3) and other application materials in accordance with the submittal requirements set forth in the General Instructions for Completing Applications for Permits. (Forms and the General Instructions are available at the office of the Conservation Commission.)

(2) Any person filing an application for permit with the Commission under the Act at the same time shall give written notice thereof, by certified mail or hand delivered, to all abutters according to the most recent records of the Assessors, including those across a traveled way, and to all other persons as the Commission shall in writing require.

(3) When a person filing an application is other than the owner, the application, the notice of the hearing and the findings themselves shall be sent by the Applicant to the owner and the applicant shall supply the Commission with the name and current address of the owner.

(4) Whenever possible, digital submissions of all plans should be provided to the Commission in a compatible file format (i.e. .pdf, .tif, etc.).

(5) In the event that only a portion of a proposed project or activity lies within the area subject to protection under the Act, all aspects of the project must be described in the detail called for by the General Instructions and WPA Forms 1 or 3, provided also that in such circumstances the application for permit shall also contain a description and calculation of peak flow and estimated water quality characteristics of discharge from a point source (both closed and open channel) when the point of discharge falls within an area subject to protection under the Act.

(6) Notwithstanding the foregoing, when the Commission has determined that an activity outside the areas subject to protection under the Act has in fact altered an area subject to protection under the Act, it may require such plans, supporting calculations and other documentation as are necessary to describe the entire activity.

(7) A notice of intent may be rejected by the Commission if:

- (a) The filing is deemed incomplete;
- (b) Zoning review has not been completed by the zoning agent; or
- (c) A special permit or variance from the Zoning Board of Appeals is required and has not been obtained.

F. Public hearings on notices of intent and abbreviated notices of intent.

(1) A public hearing on an application for permit shall be held by the Commission within 21 days of receipt of the minimum submittal requirements set forth in the General Instructions and shall be advertised at the expense of the applicant five working days prior to the hearing in a newspaper of general circulation in the Town and in accordance with the requirements of the Open Meeting Law, MGL c. 39, § 23B. Notice of the hearing shall be mailed by the Commission to the applicant and to the owner if other than the applicant.

(2) Public hearings may be continued as follows:

- (a) Without the consent of the applicant to a date certain, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials;
- (b) With the consent of the applicant to an agreed-upon date, which shall be announced at the hearing; or
- (c) With the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action.

(3) The date, time and place of said continued hearing shall be publicized in accordance with the Act, and notice shall be sent to any person at the hearing who so requests in writing.

G. Orders of Conditions.

(1) Within 21 days of the close of the public hearing the Commission shall issue or deny the order of conditions on WPA Form 5.

(2) If the order is issued, it shall impose such conditions as are necessary for the protection of one or more of the interests identified in the Act. The permit shall prohibit any work or portion thereof that cannot be conditioned to protect said interests. The order shall impose conditions upon work or the portion thereof that will, in the judgment of the Commission, result in the removing, dredging, filling, building upon or altering of an area subject to protection under the Act. The order shall impose conditions setting limits on the quantity and quality of discharge from a point source (both closed and open channel) when said limits are necessary to protect the interests identified in the Act.

(3) If the order is denied, it shall be for one or more of the following reasons:

- (a) For failure to meet the requirements of the Act.
- (b) For failure to submit necessary information or plans requested by the Commission.
- (c) For failure to meet design specifications, performance standards or other requirements in these rules and policies.
- (d) For failure to avoid or prevent unacceptable or cumulative effects upon the resource values protected by the Act.
- (e) Where no conditions are adequate to safeguard the resource values protected by the Act.

- (4) An order shall be valid for three years from the date of its issuance.
- (5) The order shall be signed by a majority of the Commission and shall be mailed or hand delivered to the applicant, his agent or the owner of record.
- (6) A copy of the plans describing the work and the order shall be kept on file by the Commission and shall be available to the public at reasonable hours for the duration of the permit.
- (7) Prior to the commencement of any work permitted or required by the order, the order shall be recorded in the Registry of Deeds or the Land Court for the district in which the land is located within the chain of title of the affected property. In the case of recorded land, the permit shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be sent to the issuing authority on the form at the end of WPA Form 5. If work is undertaken without the applicant first recording the order, the issuing authority may issue an enforcement order (WPA Form 9) or may itself record the order.
- (8) For good cause the Commission may revoke or modify an order issued under the Act after public notice and public hearing and notice to the holder of the order.

H. Extensions to existing orders of conditions.

- (1) The Commission may extend an order of conditions for one or more periods of up to three years each. Requests for extension shall be made to the Commission in writing at least 30 days prior to the expiration of the order.
- (2) The issuing authority may deny the request for an extension and require the filing of a new notice of intent for the remaining work in the following circumstances:
 - (a) Where no work has begun on the project, except where such failure is due to an unavoidable delay, such as appeals, in the obtaining of other necessary permits;
 - (b) Where new information, not available at the time the order was issued, has become available and indicates that the order is not adequate to protect the interests identified in the Act;
 - (c) Where incomplete work is causing damage to the interests identified in the Act; or
 - (d) Where work has been done in violation of the order or these rules and policies.
- (3) If issued by the Conservation Commission, the extension permit shall be signed by a majority of the Commission.
- (4) The extension permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the issuing authority on the form at the end of WPA Form 7. If work is undertaken without the applicant so recording the extension permit, the Conservation Commission may issue an enforcement order (WPA Form 9) or may itself record the extension permit.

I. Certificates of Compliance.

- (1) Upon written request by the applicant, a certificate of compliance shall be issued by the Conservation Commission within 21 days of receipt thereof and shall certify on WPA Form 8B that the activity or portion thereof described in the application for permit and plans has been completed in compliance with the permit. If issued by the Conservation Commission, the certificate of compliance shall be signed by a majority of the Commission.
- (2) Prior to the issuance of a certificate of compliance, a site inspection shall be made by the Conservation Commission.
- (3) If the Conservation Commission determines, after review and inspection, that the work has not been done in compliance with the permit, it may refuse to issue a certificate of compliance. Such refusal shall be issued within 21 days of receipt of a request for a certificate of compliance, shall be in writing and shall specify the reasons for denial.
- (4) If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the permit shall accompany the request for a certificate of compliance.

(5) If the permit contains conditions which continue past the completion of the work, such as maintenance or monitoring, the condition shall continue. The certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the permit.

(6) The certificate of compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be sent to the issuing authority on the form at the end of WPA Form 8B. Upon failure of the applicant to so record, the issuing authority may do so.

5. Emergencies.

A. Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health and safety of the public and what agency of the commonwealth or subdivision thereof is to perform the project or order it to be performed.

B. The request may be written or oral but if oral must be confirmed by written notice within 24 hours of work commencement.

C. A majority of the Commission must certify the work as an emergency project to be performed only for the time and place certified by the Commission for the limited purpose of abating the emergency.

D. Within 21 days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in the Act and in this regulation.

E. An emergency certification shall be issued only for the protection of public health or safety.

F. The time limit for performance of emergency work shall not exceed 30 days from day of certification by the Commission.

6. Severability.

A. The invalidity of any section of these rules and policies shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

B. If any court of the commonwealth shall invalidate any provision of the Act or of these rules and policies, the Conservation Commission shall promulgate additional rules or policies or present at a duly noticed public hearing after such invalidated amendments to the Act or rules and policies which are designed to comply with any court decision invalidating such provision or regulation, as the case may be.

7. Effective date.

The effective date of these rules and policies shall be **March 5, 2009** and the provisions of these rules and policies shall apply to all filings submitted after that date.