

CONWAY CONSERVATION COMMISSION

POLICIES AND PROCEDURES

PREAMBLE

The purpose of these Policies and Procedures is to state how the Conway Conservation Commission (ConCom) will carry out its responsibilities to protect the wetlands, water resources, and adjoining land areas in the Town of Conway and implement the Massachusetts Wetlands Protection Act (M.G.L. c. 131 Sec. 40) and Regulations thereunder (310 CMR 10.00 et seq.).

ORGANIZATION

Members

The Commission shall have five members, who are appointed to 3-year terms by the town Selectboard. Members must be residents of Conway. When vacancies occur, the Commission will seek and recommend new members to be appointed by the Selectboard. New members shall receive a copy of the MA Wetlands Protection Act and the Environmental Handbook issued by the MA Association of Conservation Commissions, and are responsible for developing a familiarity with the appropriate rules and regulations adopted by the Commonwealth and the Town of Conway.

Officers

The Commission shall annually elect a Chair, a Secretary and a Treasurer from among its members. The two latter positions may be the same person. The Chair is the principal representative of the Commission and shall run all meetings and public hearings. When s/he cannot attend a meeting, another Commission member will serve as Acting Chair for that meeting. The Secretary is responsible for all meeting Minutes and maintenance of Commission files. The Treasurer is responsible for all financial matters, in particular the receipt of funds from applicants and insuring the payment of Commission bills by the Town. Officers shall be elected to one-year terms at the first meeting of the year, and serve until re-elected or a successor is elected.

Associate Members

The Commission may appoint Associate Members to represent it on other commissions and bodies, or carry out tasks at the Commission's direction (e.g., compliance monitoring). Associate Members may not vote or act on behalf of the Commission in an official capacity or take a course of action without authorization. Said members shall keep the Commission informed of matters discussed or decided by the other commissions or bodies.

Removal for Cause

A member may be removed if she or he is taking actions or making statements that are harmful to the Commission and the fulfillment of its mission. Members who are unable to attend meetings, who regularly fail to do so, or who are unable to handle their cases properly may be asked to step down.

Before recommending removal for cause, the Commission shall discuss the adverse actions or statements with the member and give her/him an opportunity to recommit to the Commission and its purpose. Lacking that commitment or recurrent adverse actions or statements, the Commission may then recommend removal of the member to the Selectboard.

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Financial Matters

The Commission shall develop an annual operating budget in January that is submitted to the Selectboard for approval and recommendation for approval at Town Meeting. Bills for expenses incurred by the Commission must be assigned an account number and approved for payment at a regular meeting. Approved bills are then given to the town Treasurer for payment. Out-of-pocket expenses for Commission business incurred by individual members, e.g., postage, will be reimbursed upon submission of a disbursement form with attached receipt. The Commission shall also bill applicants for reimbursable expenses, e.g., legal notices and consultant fees.

The Town shall maintain a separate “Wetlands Protection Fund” account for filing and consultant fees and any other monies provided by applicants for review of Notices of Intent or other applications. Consultants will bill the Town for their services, and these bills must be approved by the Commission prior to payment.

Annual Report

The Commission shall issue an Annual Report at Town Meeting to inform town residents of the projects and issues that have come before the Commission, and to report on the expenditure of funds and fund balances.

Open Meetings Law

All Commission meetings and communications will be conducted in accordance with the state Open Meetings Law. This specifically applies to use of email: the law states, “it is a violation to email to a quorum messages that can be considered invitations to reply in any medium, and would amount to deliberation on business that must occur only at proper meetings.” It is not a violation to use email to distribute materials, correspondence, agendas or reports so that ConCom members can prepare for upcoming meetings. Similarly, members may confer individually by email on issues and projects.

MACC Membership

The Commission maintains an annual membership in the MA Association of Conservation Commissions. This includes individual memberships for all ConCom members. When a new member is appointed, the Secretary shall inform MACC so that s/he will receive regular newsletter and other mailings.

MEETINGS

- The ConCom meets on the second and fourth Tuesday of the month, usually commencing at 7:30 PM and continuing until completion of business. All meetings are open to the public.
- The chairman may call a special meeting at her/his initiative or at the request of other members. A meeting notice shall be posted at both the Town Hall and the Town Office.
- Meetings may be cancelled, e.g., for lack of business or conflict with public holidays, and additional meetings may be scheduled as needed. Notice of such cancellations or additional meetings shall be posted in the Town Office, except last-minute cancellations due to weather or an emergency.
- To conduct business, a quorum consisting of at least three Commission members, must be present.
- The first order of business at each meeting shall be to confirm an agenda and approve the Minutes of the prior meeting.
- Minutes shall be taken for each meeting and placed in the Commission's files, with a copy given to the Town Clerk. It is the practice to distribute draft Minutes to ConCom members in advance by email for review.

FILING PROCEDURES

Requests for Determination (RDA)

- Any person who proposes to perform work within a Buffer Zone or Riverfront Area shall submit an RDA. Applicants may also file a Notice of Intent directly in lieu of filing an RDA
- Any person who desires a determination about whether M.G.L.c.131, §40 applies to a specific piece of land or to work that may affect an Area Subject to Protection under the Act, may also submit an RDA.
- Any person wishing to discuss a project or work with the Commission before filing an RDA or Notice of Intent should contact the ConCom to arrange for an opportunity to do so.
- The Commission may, of its own initiative, request the filing of an RDA by a landowner for work that it believes is within a jurisdictional area. The landowner shall be contacted by telephone or in person, in a manner to be perceived as helpful, not regulatory.
- Following receipt of an RDA, the Commission will appoint a member to serve as Case Manager. The Case Manager is responsible for scheduling a site visit and a public meeting with the applicant; preparing a site visit report; filing the legal notice with a designated local newspaper, which must appear at least five working days in advance of the meeting; and posting a meeting notice at the Town Hall and Town Office.
- At the public meeting, the ConCom shall determine 1) whether the project or work is in an area subject to its jurisdiction, 2) whether there will be impacts that require a detailed review under a Notice of Intent, and 3) whether the project or work is exempt from the requirements of the WPA. Based on the information in the RDA and gained from the site visit and public meeting, the Commission shall make a Determination of Applicability, usually at the public meeting, the specifics of which shall be recorded using WPA Form 2. The Determination may include conditions to protect the resource area.
- Such determination shall be valid for three years from the date of issuance, with the exception of plans required by the state Department of Agriculture for rights of way management which are valid throughout the effective duration of the plan. Applicants may request an extension 30 days before expiration of the determination. .
- The Case Manager will send or give the Determination of Applicability (WPA Form 2) to the applicant, with a copy to the Western Regional Office of the MA Department of Environmental Protection (MA DEP).
- The Commission shall make a determination within 21 days after receipt of the RDA.

Notices of Intent (NOI)

- For projects or work that receives a Positive Determination of Applicability, the applicant shall prepare and file a Notice of Intent (NOI) or Abbreviated Notice of Intent (ANOI) in accordance with 310 CMR, Section 10.05(4). If the area in question is known to contain protected species, a copy of the application shall be sent to the MA Endangered Species Program.
- The public notice requirement is the same as for RDAs. The Commission will conduct a site visit as needed. The aforementioned case manager shall continue his/her lead role.
- Once an application is determined to be complete, the Commission shall hold a public hearing within 21 days of receipt of a DEP file number, which is required for a complete NOI application.
- Unless a hearing is continued with the concurrence of the applicant, the Commission shall issue within 21 days of the close of the public hearing, an Order of Conditions (WPA Form 5) determination that:

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- 1) the proposed work is not significant to any of the interests identified in M.G.L.c.131, §40 and notify the applicant and MA DEP; OR
- 2) the area on which work is proposed to be done or the proposed work is significant to one or more of the interests identified in M.G.L.c.131, §40 and shall issue an Order of Conditions for the protection of said interests; OR
- 3) that bordering vegetated wetlands or other resource areas subject to jurisdiction have been identified and delineated, and shall issue an Order of Resource Area Delineation.

The applicant shall be given or sent the Order of Conditions, with a copy to the MA DEP and to the MA Endangered Specific Program, if appropriate.

Findings of Fact

Decisions by the Commission on RDA's and NOI's shall include findings of fact that explain the grounds for the decision, e.g., proposed work is within XXX feet of a BVW or Riverfront Area and will remove, fill, dredge or alter that area, and cites the relevant section of the WPA. This is especially important for Positive Determinations so that, should there be a challenge of the decision, the record backs up the Commission's decision. The Case Manager is responsible for drafting a finding for discussion by the Commission at the public meeting or hearing. Findings of fact shall be recorded in the Minutes of the meeting at which the decision is made.

SITE VISITS

Site visits provide an important opportunity for the Commission to see the Resource Area(s) potentially affected by proposed work or activity, and to gather information for the public meeting or hearing.

- Site visits will usually be held prior to a public meeting or hearing on an RDA or NOI, and shall be arranged with the permission of the landowner. All Commission members and the landowner/applicant shall be notified of site visits and asked to attend. Additional site visits may be scheduled as needed.
- As many members as possible, but not less than two, shall attend the site visit.
- No official site visits shall take place prior to receipt of an RDA or NOI.
- A site visit report shall be written and filed upon completion of every site visit. The report should include: date of the visit, name of the applicant and/or property owner, location, site visit attendees, brief project description, and a summary account of what was observed and/or discussed.

TITLE 5 – SEPTIC SYSTEMS

Repair or upgrading of failed septic systems within a jurisdictional area shall be allowed to proceed upon the receipt by the Commission of a complete set of plans for the repair signed by a licensed sanitary engineer. Substantial enlargement of an existing system in a resource area requires the filing of an RDA. Any and all new work proposed within a jurisdictional area shall require the filing of an RDA.

BUILDING PERMITS

Per the policy established by the Franklin County Cooperative Building inspection program, the Commission shall review all building permits that require excavation/digging. This review may be

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conducted by an individual Commission member, who shall report her/his action to the Commission at the next meeting. If the member is certain that the proposed project is clearly outside of a jurisdictional area, s/he may sign the building permit. If there is any question of jurisdiction, the member shall request that a RDA be filed. Any work undertaken within a jurisdictional area without a sign-off by the Commission shall be deemed an illegal activity and appropriate measures shall be taken regardless of the status of the building permit.

EMERGENCY ACTION

Emergency Certification for work within a jurisdictional area may be issued for the protection of public health and safety. A site visit is required, and the Certification shall include a description of the work that is to be allowed and shall not include work beyond that necessary to abate the emergency. A copy of the Certification shall be sent to the MA DEP. In a situation requiring immediate action, an emergency certification may be approved by a single ConCom member or agent of the Commission, and the certification must be ratified by a vote at the next scheduled Commission meeting.

ENFORCEMENT ORDERS

When the Commission determines that an activity is in violation of M.G.L.c.131, §40, 310 CMR 10.00 or a Final Order, the Commission may issue an Enforcement Order (WPA Form 9). The Order must be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single Commission member or agent of the Commission, if such Order is ratified by a majority of the members at the next scheduled Commission meeting.

FOREST CUTTING PLANS

The Commission reviews Forest Cutting Plans to determine whether a plan properly protects Resource and Riverfront Areas. Particular attention will be given to all stream crossings and areas bordering vegetated wetlands. Plans that meet the requirements of the Forest Cutting Practices Act, section 11.02(4) (304 CMR 11.00) may qualify for exemption from the Commission's jurisdictional requirements under the WPA.

HIRING OF OUTSIDE CONSULTANTS

As provided by MGL Ch. 44 § 53G, the Con Com may impose reasonable fees on the applicant for the employment of outside consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on any matter or application submitted to or before the Commission pursuant to the requirements of the Wetlands Protection Act (MGL Ch. 131 § 40) or the Conservation Commission Act (MGL Ch. 40 § 8C), as they may be amended or enacted from time to time. [Consultant hiring shall follow the appropriate bid or selection process required by state law.](#)

Specific consultant services may include but are not limited to: application and plan review, site inspections, resource area delineation review, analysis of resource area values, drainage/stormwater calculation review, wildlife habitat evaluation review, literature review on an issue, preparation of written review and recommendations, preparation of suggested Orders of Conditions, project compliance monitoring, file review and site inspection for Request for an Amended Order of Conditions or Request

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for an Extension or Request for Certificate of Compliance, review of impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission.

An applicant may appeal the Commission's selection of a consultant to the Selectboard based on either of these two grounds: the consultant selected has 1) a conflict of interest or 2) does not possess the minimum, required qualifications. The Selectboard must act within 30 days, or the consultant selection by the ConCom stands.

Funds received by the Commission pursuant to these rules shall be deposited in the "Wetlands Protection Fund" (see Financial Matters). 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 specific project or projects for which a consultant fee has been collected from the applicant. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest, and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The town Treasurer shall submit annually a report of said special account to the Selectboard for their review. Said report shall be published in the Conway Annual Report.

Upon submittal of a Request for Determination of Applicability, Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation, Request for an Amended Order of Conditions, Request for Extension, or a Request for a Certificate of Compliance, the Conservation Commission shall give written notice to the applicant of the Commission's decision to retain an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be paid by the applicant, and a request for payment of said fee in its entirety (in the event the total fee is unknown in advance, the applicant shall pay for a retainer and will be billed for services as they occur). Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

The fee or retainer must be received in its entirety prior to the initiation of consulting services. The Commission may require additional consultant fees if the 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. 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.

These rules are promulgated under MGL Ch. 40 § 8C.

WORK WITHIN THE BUFFER ZONE

There is a growing body of scientific evidence that areas reaching extending 100 feet or more from wetlands are important to the wetland resource characteristics and values. Problems with nutrient runoff, erosion, siltation, loss of groundwater recharge, poor water quality, vegetation change, and harm to wildlife habitat are greatly exacerbated by activities within 100 feet of wetlands, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the

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activities. Thus, in general, work and activity within 100 feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.

The Conservation Commission shall begin with the presumption that lands within 100-feet of a wetland resource area are presumed important to the protection of the resource area and are best left in an undisturbed and natural state. In order to best protect the values and functions of wetland resource areas within the Town, the applicant must show that work within this area will contribute to the protection of the interests of the Wetlands Protection Act (MGL Ch. 131 § 40), or that the area is not significant to the protection of any of the interests of the Act.

The Commission shall impose appropriate Orders of Condition when approving activities within the buffer zone to insure protection of the wetlands resource.

WINTER DELINEATIONS

(text to come)

ENDANGERED SPECIES

The Town of Conway provides critical habitat for a number of protected species, the location of which are mapped by the MA Endangered Species Program. The Conservation Commission shall inform applicants when there are known protected species on their property and consider their presence in the review of proposed work within a resource area. The Commission shall also inform the MA Endangered Species Program when work is approved under an RDA with conditions within a designated habitat area by copy of the RDA.

STREAM CROSSINGS

In order to preserve riparian habitat and mitigate the potential for flood damage that may be caused by development, the Commission shall promote adherence to the “Massachusetts River and Stream Crossing Standards: Technical Guidelines - 6 August 2004,” as may be amended, for all crossings of perennial and intermittent streams.

BIGELOW PROPERTY

The Commission has responsibility for the maintenance of the Bigelow property, approximately 2 acres located on Cemetery Hill Road. Under the terms of the Quitclaim Deed of gift, the property may only be used for passive (i.e., non-motorized) recreation. Maintenance includes but is not limited to annual mowing and periodic monitoring of use.

ADOPTION AND AMENDMENT

The ConCom may draft and add other policies as they are deemed appropriate. The Commission will hold a public hearing to accept comments on its draft rules/policies. The final rules/policies shall be

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adopted by a majority vote of the entire Commission at one of its regular meetings. Adopted rules shall be filed with the Town Clerk.

APPROVAL

Approved unanimously at a regular meeting of the Commission held April 25, 2006.