**How Does the Conservation Commission Do What It Does?**

(July, 2014)

The article in the last issue of the Goal Post explained that “the role of the Rowe Conservation Commission is to protect the water resources in Rowe by ensuring compliance with the state’s Wetlands Protection Act (MGL Chapter 131, section 40).” This article will explain how evaluation and permitting is done by the Conservation Commission.

If you are considering doing any construction, digging, cutting of trees, or other work:

* Within 200 feet of a perennial stream (generally running through the year).
* Within 100 feet of an intermittent stream (generally running, but not year-round).
* Within 100 feet of a wetland,
* Within 100 feet of a lake or pond
* Within a 100 year floodplain,

a permit may be required for such activity. The difference between perennial and intermittent streams is determined by referring to USGS quad maps – which the Commission has access to, and are accessible online on the DEP website.  Some minor activities may be exempt from these permitting requirements (examples are listed below).  The land within the areas listed above is always subject to the regulations - it is the activities that may be exempt. When in doubt, it is best to ask.

**Determination of Applicability:**

If you are not sure whether an area is subject to jurisdiction, or if the activity may not result in the alteration of a resource area, you should file Form 1 – Request for Determination. This Request asks one or more of the following questions: whether the area is subject to jurisdiction; whether the boundaries of the resource areas are correct; whether the proposed work is subject to jurisdiction; or whether the area/work is subject to a wetlands bylaw. After this Request is filed with the Commission, the Commission will schedule a site visit, and a public meeting. There is no fee associated with the Application itself, but the applicant will be required to pay for the required newspaper advertisement for the public meeting. If the Commission has enough information to make a determination, they will issue a Form 2 – Determination of Applicability. A negative determination is issued if the area is not subject to jurisdiction, or if the activity will not alter a resource area. A positive determination either confirms the wetland boundaries (if no work is proposed), or confirms that the work is subject to the Wetlands Protection Act, and a Notice of Intent will be required before the activity can start.

**Notice of Intent:**

If the proposed activity is in an area subject to jurisdiction, you should file Form 3 or 4 – Notice of Intent (or Abbreviated Notice of Intent). This process will take one month to several months. How long it takes depends on the complexity of the project, DEP review and issuance of file number, and the schedule of the Commission. In addition to the completed Notice of Intent, you will be required to also provide a set of plans (1”=50’ is standard); 8 ½” x 11” section of USGS topo map of the subject area; the correct filing fee; landowners permission and signature (if the landowner is not the applicant); proof of mailing to NHESP (if applicable); proof of abutter notification; and possibly proof of other permits (if applicable); and professional assessment (as needed).

**Order of Conditions:**

The Commission will issue an Order of Conditions in response to a Notice of Intent. This will either permit or deny the proposed activities; establish required conditions for the proposed work; ensure that performance standards are met; and resource area impacts are minimized. A project can be denied if it does not meet the performance standards or for lack of information. The Order of Conditions must be recorded at the Registry of Deeds, at the applicant or landowners expense.

**Appeals:**

Once an Order of Conditions (a permit) is issued, there is a 10 business day appeal period. The decision can be appealed by the applicant, landowner, abutter, aggrieved party, 10 local citizens, or DEP.

**Monitoring and Compliance:**

The Commission may require a pre-construction meeting; perform compliance inspections; and will make a final site visit before issuing a Certificate of Compliance. The Certificate of Compliance is requested by the applicant after the work has been completed. The Certificate is either issued or denied by the Commission (or DEP, if they issued a superseding Order of Conditions), and indicates that the work has been completed in compliance with an Order of conditions. It may also contain conditions, such as for ongoing maintenance or monitoring.

**Enforcement Orders:**

If the Commission discovers a violation of the Wetlands Protection Act, a single Commissioner may issue an Enforcement Order, which will be ratified by a majority of the Commission members at the next scheduled meeting. A copy of the Enforcement Order is filed with DEP. Also, if DEP discovers a violation, they may notify the Conservation Commission to take action, or they may take action independently.

**Other agencies involved:**

NHESP – National Heritage Endangered Species Program – oversees protection of habitat for endangered plants and animal species under the Massachusetts Endangered Species Act (MESA).

USACE – US Army Corps of Engineers – oversees structural activities in waterways of the US.

EPA – Environmental Protection Agency – oversees protection of wetlands other than floodplains or riverfront area.

**Exempt activities include:**

1. Unpaved pedestrian walkways for private use;
2. Fencing, stonewalls, stacks of firewood – as long as they do not act as a barrier to wildlife movement;
3. Vista pruning (must be certain distances from riverfront or BVW);
4. Planting of native tree species;
5. Conversion of impervious surfaces to vegetated surfaces;
6. Activities that are temporary in nature; and have negligible impacts.

The Commission has printed copies of Landscapers and the Massachusetts Wetlands Protection Act, which are available at the Town Hall. This is a good resource for basic information on the parameters of the Act, and responsibilities of the Commission.

For more information, ask one of the Commissioners, or consult the regulations (310 CMR 10.00 – 10.99) available on the internet.

Forms are available online at [www.mass.gov/dep](http://www.mass.gov/dep) under “Water Resources”, “Wetlands & Watersheds”, “Wetlands Protection”, “Permits & Forms”, “Wetlands and Waterways Forms”, and finally “Wetlands Protection Act Permits”.

The next article will be on the importance of vegetation to wetlands and resource areas.

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