



# KINGSTON CONSERVATION COMMISSION HANDBOOK

Approved: March 17, 2009

## INTRODUCTION

The Kingston Conservation Commission is charged with the enforcement of two basic sets of laws, as noted below, and the protection of a community's natural resources. It is a body of seven members, who are appointed for terms of three years by the Board of Selectmen.

The Commission administers and enforces state and local environmental statutes, bylaws and regulations aimed at protecting inland and coastal wetland resource areas. The Conservation Commission Act of 1957 also directs the Conservation Commission to coordinate the activities of unofficial bodies organized for resource protection.

The **Massachusetts Wetlands Protection Act, G.L. Ch. 131, § 40**, identifies and protects eight public interests served by wetlands; the protection of public and private water supply, the protection of ground water supply, flood control, storm damage prevention, prevention of pollution, protection of land containing shellfish, protection of fisheries, and protection of wildlife habitat. The Act requires that any one wishing to perform work that may affect wetlands must first apply for, and obtain, written permission from the Conservation Commission, which administers the Act locally.

The Commission also administers the **Kingston Wetland Protection Bylaw, Kingston G.L. Chapter 13**. This bylaw, adopted in 1977 and approved on February 17, 1978, regulates activities deemed to have a significant or cumulated effect on wetland values including the eight identified above under the state act, as well as erosion control / sedimentation control. It does so by requiring a permit to remove, fill, dredge, alter, or build upon or within 100 feet of a number of enumerated protected resource areas or within 200 feet of any river, stream or creek. The application process for obtaining a local permit is the same as for the state permit with both processes being reviewed through the local Conservation Commission.

By authority of the bylaw, the Commission has also adopted the Kingston Wetland Protection Regulations that set forth detailed requirements which further the interests of the bylaw. The regulations set out standards which provide to the Commission, as well as the public and those coming before the Commission, precise guidelines and limitations governing work within areas under the Commission's jurisdiction.

## OFFICE

The Conservation Commission office is located at 26 Evergreen Street, Kingston, MA 02364 in Room 106. The office hours are Monday thru Friday 8:30a.m. to 4:30p.m. unless otherwise noted.

The Commission's telephone number is 781-585-0537. An answering machine is available when staff is not. Any message left should include the property address and a return telephone number. The Commission's facsimile number is 781-585-0543.

The Conservation Commission staff is comprised of a Conservation Agent and Office Secretary.

## WEBSITE

The Conservation Commission also has information posted on the town website at [www.kingstonmass.org](http://www.kingstonmass.org), under Town Directory.

## MEETING SCHEDULE

The Commission **usually** meets the first and third Tuesday of every month beginning at 7:00p.m. Meetings are held at the Kingston Town Hall, 26 Evergreen Street, Kingston, MA in Room 203 unless otherwise noted.

## PUBLIC MEETINGS AND PUBLIC HEARINGS

The Commission conducts public meetings to consider applications, review documentation, hear testimony from interested parties, act on applications and discuss open space. The Commission's Agenda list the matters that will be considered. Agendas can be obtained from the Conservation Office and are available during public meetings.

Below is a list of the items routinely seen on the agenda:

**Abbreviated Notice of Resource Area Delineation** - The filing of an Abbreviated Notice of Resource Area Delineation is optional. The ANRAD provides a procedure for an applicant to confirm the delineation of Bordering Vegetated Wetlands (BVW). If an ANRAD is filed for a BVW delineation, confirmation of other resource areas may also be requested provided the other resource area boundaries are identified on the plans which accompany the BVW boundary delineation.

**Request for Determination of Applicability** – An RDA allows an applicant the option of seeking a determination on the applicability of the Wetlands Protection Act (the Act) or Wetlands Protection By-Law (the By-Law) to a proposed site or activity. The Commission may require the submission of WPA Form 4A (Abbreviated Notice of Resource Area Delineation) or WPA Form 3 (Notice of Intent).

**Notice of Intent** – The Massachusetts Wetlands Protection Act (General Law Chapter 131, Section 40) and the Town of Kingston Wetlands Protection By-Law (G.L. Chapter 13) prohibits the removal, dredging, filling, or altering within 100 feet of wetlands and 200 feet of perennial streams without permits. To obtain these two permits (Order of Conditions), you must submit an application to the Conservation Commission and the Department of Environmental Protection. The Notice of Intent application provides the Conservation Commission and the Department with a complete and accurate description of the site and proposed work.

**Amended Order of Conditions** – in which an applicant seeks to amend a previously issued (and unexpired) Order of Conditions. Just as with the Notice of Intent from which the original Order of Conditions were issued, an Amended Order of Conditions is subject to a Public Hearing.

**Continued Public Hearings** – in which the Commission continues to hear testimony on an open Abbreviated Notice of Resource of Resource Area Delineation, Request for Determination of Applicability, Notice of Intent, or a Request for Amendment / Deviation to Orders of Conditions.

**Orders of Conditions** – following the close of a Public Hearing on an application, the Commission may issue an Order of Conditions for work defining the scope of the permitted activity and setting out in detail the conditions placed on the activity to ensure that it protects resource areas and wetland interests under the Commission's jurisdiction. Alternately, the Commission may issue a denial of the project or activity. Orders of Conditions are openly debated and discussed between the Commissioners, and when appropriate, the staff. Orders are not open to public debate or comment, as at the point where they are discussed, the Public Hearing is closed. The Commission may seek feedback from the applicant on the clarity of the Orders to ensure that the applicant understands what activities are being permitted or prohibited by the Orders. No other comment is appropriate.

**Acceptance of a Revised Plan into the Files** – in which the Commission considers a minor modification to a previously permitted activity. Acceptance of a revised plan into the files differs from Amended Orders of Conditions in that the former proposes a change that is not significantly different, while the latter contemplates expansion of the work originally permitted. Acceptance of a revised plan into the files is not subject to a Public Hearing, but is discussed by the Commission during a public meeting.

**Requests for Extension** – in which an applicant seeks an extension of time in which to complete an activity permitted under Orders of Conditions. Orders of Conditions require that all work be completed within three years of issuance, but allows for extension of the Orders for one or more times for periods up to three years. Requests for Extensions should be applied for a minimum of 30 days prior to expiration of either the Orders or the previous extension. An extension request may be denied by the Commission and a new Notice of Intent required if no work has begun (except if there are unavoidable delays), new information (not available at the time the Order was issued) indicates the interests of the Wetlands Protection Act are not being protected by the Orders, incomplete work has led to damage to the interests of the Act, there is a violation of the Orders, Act or Regulations, or the Regulations have been amended and the existing Orders no longer comply with the regulations.

**Partial Certificates of Compliance** – in which an applicant seeks review by the Commission of certain aspects that have been completed of a previously permitted project. The applicant shall present a written statement which lists what has been satisfactorily completed.

**Full Certificates of Compliance** – in which an applicant seeks final review by the Commission of a previously permitted project to ensure that it complies with the requirement set out in the Orders of Conditions. The applicant is also required to submit an as-built plan.

**Other Agenda Items** – review of correspondence, agent updates or other business, approval of minutes, signing bills payable, discussion of enforcement issues, conducting informal meetings, or executive sessions,

Public Meetings and Public Hearings are not the same. Public Meetings are conducted so that the Commission may discuss matters affecting the interests of the public and the rights of individuals in an open forum open to the public. To act on a matter, a quorum of the Commission must be present. If a quorum is not present, the only action that can be taken is to continue to a date certain.

Public Hearings are conducted for the same overall reasons as the Public Meeting – to protect both the public interest and the rights of individuals – with the additional purpose of gathering relevant information from the applicant, interested parties and the public at large, and providing the Commission with the means of gathering the information necessary to develop an informed opinion and to issuing Determinations of Applicability, Notices of Resource Area Delineation, and Orders of Conditions that are fully supported by the appropriate facts, laws and science.

Public Meetings and Public Hearings held within Public Meetings are held in conformance with the Massachusetts Open Meetings Law, M.G.L. Ch. 39, §23A-C.

The Chairperson presides at Public Meetings and Public Hearings. In the absence of the Chairperson, the Vice Chairperson, or another Commissioner designated by the Chairperson presides. Public Hearings are conducted with an appropriate degree of formality. During the Public Hearing portion of the Public Meeting, the Commission follows the following format:

1. Chairperson reads the Public Hearing notice and all other correspondence received;
2. the applicant or his representative presents the proposal;
3. the Commissioners and Conservation Agent express questions or concerns, if any;
4. the public (abutters, interested parties, or others) present testimony or information;
5. the applicant is provided an opportunity to address any issues raised by the public and the Commission.

The basic format operates through the following procedures, and according to the following guidelines:

1. Presentation of Proposal

- A. For each Public Hearing, the Chairperson calls the hearing by reading the Public Hearing notice.
- B. The applicant, or the applicant's representative, presents the proposal to the Commission by describing the activity or project, its environmental impacts and its location to resource areas and buffer zones. The applicant may also address performance standards set out by the regulations for the resource area in question and explain how the proposal complies with those standards, or in what manner it does not.

## 2. The Commission

- A. The Chairperson opens the floor to the Commissioners who ask questions, express their concerns over potential impacts to the protected interests, and/or the adequacy of the information submitted. Individual Commissioners address their remarks to the applicant through the Chairperson.
- B. The Commission staff and/or technical consultants retained by the Commission will answer questions from the Commission, provide any additional information relevant to the applicants, and may provide a recommendation to the Commission.

## 3. Public Testimony or Information

- A. Interested parties, whether abutters, representatives of other entities, or the public, are invited to provide testimony or information, or proposed questions relevant to the project, to the resource area, to the protected interests arising by statute or regulation in relation to the resource area, and/or to the performance standards for such activities in such resource areas. Any questions must be directed to and through the Chairperson.

It is **impermissible** to directly interrogate the Commissioners or the applicant, or others attending the Hearing. If a member of the Public does not understand the proposal, this is the time to ask for clarification. The public is permitted through the Chairman to approach the Commission and view the plans that are under discussion.

When giving testimony or asking for information or clarification, the party in question should state their name, address and if appropriate, relationship to the project.

Public input should be limited to new information – if someone already has provided the same information to the Commission, it is unnecessary for it to be restated by another speaker. For the above reasons, it is helpful to the Commission, and often will have more impact, if comments or questions are submitted in writing, in advance if at all possible. Submission of written comments to the Conservation Commission during a Public Hearing also preserves appeal rights when a party is interested in appealing a local decision to the Department of Environmental Protection.

Comments and questions are welcomed at this part of the hearing. Those most helpful to assisting the Commission in fulfilling its mandate are those comments or questions that pertain to the proposal or resource areas that are the subject of the Public Hearing. Issues beyond the Commission's jurisdiction are not legally relevant and should be avoided.

## 4. The Applicant's Response

The Chairperson will ask whether the applicant wishes to address any of the issues raised, or provide any additional information based on the input outlined above. The applicant may provide additional comments or information at this time, or may request that the Commission continue the Hearing until a later date, in order to gather additional information for the Commission's consideration.

When considering a later date, the applicant and the representative(s) should be aware of the deadline for the receipt of additional information prior to their next scheduled continuation of a Public Hearing. Additional information must be submitted to the Conservation Office no later than one week prior to the continuation of the Public Hearing.

## 5. The Commission's Deliberations

The Commission then will deliberate and decide a course of action. The Commission should not be interrupted during deliberations.

The Commission will decide whether to grant a continuance and, if so, to a certain date. The Commission will resume a continued Hearing on the date specified, provided that the applicant submits the required additional information to the Commission's Office one week prior to the continuation to allow for staff analysis and public review. Continued Hearings will resume with the applicant presenting new information, and will proceed as outlined above.

A. The Commission will close a Public Hearing when:

1. The applicant has submitted sufficient information for the Commission to evaluate the proposal, and interested parties have had an opportunity to comment on all of the information submitted, including the receipt of a DEP file number.
2. The applicant chooses not to provide any further information and seeks to have the Commission consider the proposal based on the information it has received.
3. The applicant requests that the hearing be closed.

It can be difficult for Commissioners to hear those appearing before the Commission if people are engaging in conversation elsewhere in the room or in the corridor near the meeting room. Please take all private conversations down the hallway.

Please note that the Commission keeps minutes of its proceedings in accordance with state law. The person keeping the minutes must record the names of persons addressing the Commission, and those addressing the Commission may need to spell their names if the spelling is not obvious.

The files related to applications are available for public review at the Commission's office during normal business hours in advance of, and following the Public Meeting. They are not available for such review during the meeting, when such review would be distracting to Commissioners and staff, and would interfere with the orderly conduct of the Public Meeting.

Typically, the persons appearing before the Commission are professionals who are paid to attend the hearings on behalf of their client or employer. Such persons are expected to understand the rules and procedures of the Commission, and the relevancy of evidence, commentary, or questions submitted to the Commission.

It is not unusual for members of the public to appear before the Commission, especially in response to a notice that an activity is proposed on abutting or nearby property.

The Commission's staff is available to assist the public in understanding the applications under consideration by the Commission relative to resource areas and protected interests. The public may visit the Commission's office and examine the applications, the plans that are part of the application, and any other materials that may be related to the proposal.

Recognizing that non-professionals are not as familiar with the rules and procedures, the Chairperson is likely to allow them a little more leeway than might be permitted professional practicing before the Commission. Nevertheless, this 'Handbook of Information and Procedures'

is designed to inform everyone of the practices and procedures. The Chairperson may redirect anyone at any point if they go beyond what is appropriate under the Commission's rules of procedure.

## **RECORDING REQUIREMENTS**

### **Order of Resource Area Delineation (WPA Form 4B); Orders of Conditions (WPA Form 5 & KWPA Form 5)**

An Order of Conditions issued under M.G.L. Ch. 40, s. 8C and under Kingston Wetlands Protection By-law, G.L., Chapter 13 shall be recorded at the Plymouth County Registry of Deeds. An Order of Resource Area Delineation is only recorded if it was filed under a simplified review. No work shall be undertaken until the Order(s) has been recorded in the Registry of Deeds or the Land Court.

When recorded, a copy of the recording receipt shall be forwarded to the office of the Conservation Commission, for proof of recording prior to the commencement of work.

Once the applicant has received the recorded document from the Registry, a copy of the first sheet with the recording information printed shall be forwarded to the office of the Conservation Commission.

### **Extension Permit for Orders of Conditions (WPA Form 7 and KWPA Form 7)**

Extension Permits for Orders of Conditions issued under M.G.L. Ch. 40, s. 8C and under the Kingston Wetlands Protection By-law, G.L., Chapter 13 shall be recorded at the Plymouth County Registry of Deeds. No work shall be undertaken until the Extensions have been recorded in the Registry of Deeds or the Land Court.

When recorded, a copy of the recording receipt shall be forwarded to the office of the Conservation Commission, for proof of recording prior to the commencement or continuation of work.

Once the applicant has received the recorded document from the Registry, a copy of the first sheet with the recording information printed shall be forwarded to the office of the Conservation Commission.

### **Certificates of Compliance (WPA Form 8A and KWPA Form 8A)**

Upon completion of work permitted under Orders of Conditions, the applicant shall request Certificates of Compliance. Certificates of Compliance shall be recorded at the Plymouth County Registry of Deeds.

Once the applicant has received the recorded Certificates of Compliance from the Registry, a copy of the first sheet with the recording information printed shall be forwarded to the office of the Conservation Commission.