



**Falmouth Conservation Commission
59 Town Hall Square
Falmouth, MA 02540**

TO:

Understanding the Falmouth Wetland Bylaw and Regulations



Top: Wetlands along the edge of a road. Bottom: Certified vernal pools (as of 2002) in West and North Falmouth.

Understanding the Falmouth Wetland Bylaw and Regulations

Who oversees state and local wetland regulations in Falmouth?

In Massachusetts, implementation of the state wetland regulations is delegated to local Conservation Commissions. Municipal Conservation Commissions also oversee any local wetland bylaws and regulations that have been adopted. The Falmouth Conservation Commission is made up of 7 volunteer members appointed by the Falmouth Board of Selectmen. The Commission also has staff members to assist applicants and process permits.



The Falmouth Conservation Commission generally meets every Wednesday at Town Hall, or more often, as needed. The hearings are televised on the local cable access channel.

Why are the Falmouth Wetland Regulations different from those of the State of Massachusetts?

The Massachusetts Home Rule Amendment to the Constitution enables municipalities to adopt local bylaws and regulations that exceed state laws. Because of this organization of government, municipal Planning Boards, Boards of Health, and Conservation Commissions throughout Massachusetts often have bylaws and regulations that exceed the minimum requirements established by state laws. These local bylaws help municipalities better address special needs and concerns particular to their community. The Town of Falmouth adopted its current wetland bylaw in 1987, through Town Meeting,

What is the difference between the local wetland regulations and the wetland bylaw?

The purpose of the Falmouth Wetlands Protection Bylaw is to protect public and private water supplies, groundwater quality, fisheries, shellfish, and wildlife habitat; to prevent and manage pollution, flooding, erosion and sediment runoff, and storm damage; and to preserve agriculture, aesthetics, recreation, and aqua-

culture values. Like most wetland bylaws, the Falmouth Wetland Protection Bylaw enables the Conservation Commission to enact regulations that establish criteria and performance standards to meet these goals. These regulations are revised periodically, after public hearings are held, to help the Conservation Commission better address local concerns. The Falmouth regulations were last revised in 1998.

If Falmouth has its own wetland bylaw, do the state wetland regulations still apply?

Yes. Conservation Commissions must specifically approve or deny a project under the state regulations, and approve or deny a project under the local regulations. In fact, because local regulations are often more stringent than state regulations, it is not uncommon for a Commission to approve a project under the state regulations, but deny a project under local regulations. In a practical sense, applicants to any municipal board will develop plans and designs to meet the most stringent regulatory standard that may apply to their project.



The wetland plants living in the wet soils around ponds, rivers, vernal pools and bays are just one of the natural resources protected by wetland laws.

Why are the regulations so complex?

All regulations, whether written for Building Inspectors, Health Departments, or Conservation Commissions, are written to be understood by those most likely to use them. For wetland regulations, the most likely users of the regulations are engineers and environmental consultants. Stylistically, the Falmouth Wetland Regulations are written in the same legal code format as the state wetland regulations. Still, it is true

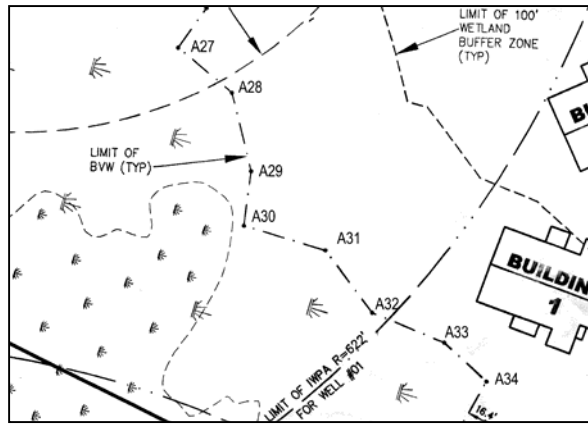
that at all levels of government, environmental regulations have become lengthier with detailed and specific criteria and “performance standards.” This trend has occurred in part to reduce litigation and charges that decisions are either “arbitrary or capricious,” and to ensure that regulations are effective, and “stand up in court.” It also reduces subjective determinations of what is “good” or “bad” for the environment, and minimizes differences in professional judgment. Detailed regulations make clear at the outset what is, or is not, allowed, and helps ensure that all applicants are treated equally.

Who needs a wetland permit, and how does the permitting process work?

Construction activity, land clearing, or other activity within the 100-foot “buffer zone” of either surface water or vegetated wetlands may require a wetland permit. To determine if you need a wetland permit, you should file a “Request for Determination of Applicability” with the town. The applicant describes the proposed activity and the proximity of wetlands in this short form. Generally, the town’s conservation agent will visit the site and report to the Conservation Commission at a public hearing. For very small projects, or projects that are not expected to alter wetlands, the Commission will issue a “negative determination,” which means that applicant does not require a wetlands permit. The proposed work may then proceed. If the Commission makes a “positive determination” that wetlands or their buffer areas will be affected or al-



Applicants should consult with the Conservation Commission, or the Massachusetts Natural Heritage and Endangered Species program to determine if the property contains any rare or endangered species, or if the site contains a vernal pool (a springtime pool of water where frogs and salamanders lay eggs).



The site plans of the proposed work that are submitted to the Building Department must include the locations of wetland boundary flags (placed by trained a wetlands biologist), the 100 foot wetland buffer zone, and any other wetland resources present. Conservation Commission members and staff will visit the site of the proposed work and determine whether the proposed wetland boundary meets the state and local regulations, which use the presence of wetland plant species and soil types to determine the wetlands boundary. The Commission may request the wetlands boundary be changed on a site plan.

tered, then either the state or local regulations apply, and the applicant must file the wetlands alteration permit form, which is called a “Notice of Intent.”

Typically, a Notice of Intent is completed by the engineer or builder preparing the necessary site plans and engineering drawings required by the building department. Often a wetland biologist will also be hired to place markers on the property showing the boundary of the wetland vegetation (referred to as “flagging the wetlands”). The Commission will hold a public hearing on the Notice of Intent, decide whether they agree with the proposed wetland boundary, and may recommend changes in the proposed designs or plans to minimize impacts to wetlands, wildlife, or to prevent pollution or flooding. These changes are incorporated in the Commission’s “Order of Conditions” which is the permit giving the terms of permission for the applicant to proceed with their project. Only rarely does a conservation commission deny a project.

What is the fee for a permit application?

Generally, local application fees range from \$35.00 to \$80.00 depending upon the type of project. Additional state application fees may apply. The commission may also charge a consultant fee to hire an engineer or

technical reviewers for certain types of larger projects. These projects include those that include alteration of 500 square feet or greater of either resource area, naturally vegetated buffer area, or land under water; 50 linear feet or greater of bank alteration to a coastal or inland waterway; projects with a discharge of any pollutants into or contributing to surface or groundwater of the resource area; construction of any stormwater control facility, or water control structure; or the construction of a dock.

How are Conservation Commission decisions appealed?

This dual regulatory process of state and local regulations results in two different appeal processes. Under the state regulations, an aggrieved party (for example, a dissatisfied applicant, an abutter, or 10 concerned citizens) can complete an appeal form and submit it to the Massachusetts Department of Environmental Protection. While it is relatively easy to file an appeal with DEP (e.g. no lawyer is required and fees are modest), appeals tend to be successful only if the appellant clearly identifies what sections of the state wetland regulations they believe were not upheld.

Appealing a decision under the local bylaw is more complex and costly because a lawsuit must be filed with the Barnstable County Superior Court. Generally, appeals of local bylaws require the services of an attorney. For both appeals, the appeal paperwork must be filed within the number of days specified in the regulation, or the aggrieved party will lose their legal standing.

How is applying for a dock or pier different than other wetland permits?

Applications for docks and piers require several additional permits. These include a Chapter 91 Waterways



Constructing a dock requires local, state, and federal permits.

License from the Massachusetts DEP, a wetlands filing permit by the US Army Corps of Engineers, and the work must be approved by the Falmouth Board of Selectmen. These additional permits and approvals are separate and independent from the permits and approvals of the Conservation Commission. Applicants considering a dock or pier should obtain appropriate legal and engineering advice.

Land Conservation and Protection

Besides administration of the state and local wetland regulations, Conservation Commissions are authorized under state law to promote and protect natural resources and watershed resources in their town. Activities include preparing conservation and passive outdoor recreation plans, and acquiring land to meet the conservation and passive recreation needs of their town. Commissions may also receive gifts of land, and town meeting may appropriate funds for the acquisition of conservation lands. The Conservation Commission is responsible for protecting these public lands, and is authorized under law to adopt rules and regulations governing the use of conservation land and wetlands under its control, and prescribe penalties for violations of those regulations.



The Conservation Commission staff will be happy to assist you.



This fact sheet was prepared by the Buzzards Bay Project National Estuary Program at the request of the Falmouth Conservation Commission. More information about Town of Falmouth regulations can be obtained at:

www.town.falmouth.ma.us and
www.buzzardsbay.org/falmouth.htm.

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