

SPENCER CONSERVATION COMMISSION

RULES AND REGULATIONS

Hearing: April 27, 2011
Adoption Voted: April 27, 2011
Signed: May 11, 2011

SECTION 1: General

1.1 Authority

These rules and regulations are promulgated by the Town of Spencer Conservation Commission under the authority of Articles 7 of the Spencer General Bylaws, Wetland Protection, and the Home Rule Amendment, Article LXXXIS (83), of the Constitution of the Commonwealth of Massachusetts, and shall have the force of law upon the effective date.

1.2 Jurisdiction. The Massachusetts Wetlands Protection Act Regulations sets up a one hundred (100) foot “Buffer” area around some resource areas. However, the Spencer Wetlands Bylaw regulates such “Buffers” as protected resource areas.

1.3 Purpose

The purpose of these regulations is to aid in the consistent, equitable, timely and effective administration of the Spencer Wetlands Bylaw.

1.4 Standards for Decision

1.4.1 Spencer Wetlands Bylaw sets forth a public review and decision making process to protect wetland *values* by controlling activities deemed likely to have a significant or cumulative impact on those values which are defined in the bylaw. Those values are:

- Provision and protection of public and private water supply
- Protection of groundwater quality and quantity
- Flood control
- Erosion control
- Storm damage control and prevention
- Prevention of pollution
- Habitat for wildlife
- Recreation
- Aesthetics.

1.4.2 It is the Conservation Commission’s responsibility to assess the significance and cumulative effect of proposed activity within the bylaw jurisdiction based on the material presented during a public hearing.

1.4.3 In all cases, the applicant bears the burden of showing by credible evidence that the activity or use proposed will not have significant or cumulative adverse effects on any of the values protected by the bylaw.

C) The Massachusetts Wetlands Protection Act Regulations contain presumptions of significance for each type of protected resource area. The Conservation Commission will apply those presumptions unless the applicant:

1.4.3.1 Provides sufficient creditable evidence rebutting the relevant presumption, and establishes that the resource area affected by the project is not significant to the bylaws values.

1.4.3.2 Shows that an engineering solution proposed will protect the bylaw values, or

1.4.3.3 Shows that the proposed project will improve a resource area that has suffered degradation.

1.4.4 The Conservation Commission must deliberate only in public session after the close of the hearing. The Conservation Commission is directed by the bylaw to write into each permit such conditions as are, in the Conservation Commission's judgment, necessary to protect wetland values.

1.5 Definitions (in addition to those published in Spencer Wetlands Bylaw).

Buffer is the 100 foot protected margin outward from the edge/boundary of the following :

of a freshwater wetland, marsh wet meadow, or bog;

of a bank;

of a body of water, lake, or pond;

of an intermittent stream;

of land under water; or

of land subject to flooding or inundation by surface water or groundwater.

River is defined by the Wetlands Protection Act, MGL Ch. 131, §40. A River is a natural flowing body of water that empties to any ocean, lake, or other river and which flows throughout the year. All perennial streams are "rivers" for the purposes of Spencer Wetlands Bylaw.

Riverfront Area is the area 200 feet out from the top of the bank of a River. Riverfront Area is NOT a buffer. It is itself a resource area, called "."

The Bylaw is Spencer General Bylaws, Article 7, Wetlands Protection.

A Spencer Wetlands Bylaw Protected Resource Area is an area protected by the Spencer Wetlands Bylaw as listed in section 3 of the Bylaw. These include all places:

- In or within one hundred (100) feet of any freshwater wetland, marsh, wet meadow, bog, or swamp;
- On a bank or within one hundred (100) feet of the top of any bank;

- In or within one hundred (100) feet of any body of water, lake, pond, or stream;
- Land under said waters;
- In or within one hundred (100) feet of any land subject to flooding or inundation by groundwater or surface water; or
- Within two hundred (200) feet of a river as defined by the Massachusetts Rivers Protection Act. M.G.L. Chapter 131, Section 40, and the Massachusetts Code of Regulations at 310 CMR 10.58.

Vernal Pool: A confined basin depression which holds water in most years for two or more continuous months between February and September; does not support adult fish populations and provides breeding habitat for salamanders, wood frogs other amphibians and invertebrates unique to such pools. It shall be presumed that pools having the above characteristics provide vernal pool habitat regardless of whether the site has been certified by the Massachusetts Natural Heritage & Endangered Species Program and regardless of whether the presumptive vernal pool overlaps or is contained within another protected resource area.

A Wetland is an area where water is at, above, or close below the ground surface for a significant portion of the year. Where water is below the surface its persistent proximity to the surface is shown by the presence of plants dependent on saturated or inundated conditions or by the presence of hydric soils. Wetlands include vernal pools.

1.6 Advice from Town Staff – Any advice, opinion, or information given to an Applicant by a Conservation Commission member, or by any agency, officer, or employee of the Town, shall be considered advisory only, and not binding on the Conservation Commission.

SECTION 2: Filing Requirements

2.1.All Filings

2.1.1 Any person who is proposing to undertake an activity and desires to know what is required of them may arrange a preliminary discussion by contacting the Conservation Office and arranging a time at a Conservation Commission meeting.

2.1.2 All materials submitted must be legible at the scale submitted.

2.1.3 Plan revisions must be supplied to the Conservation Commission no less than 7 days before the meeting of the Conservation Commission at which the plan is to be considered unless the Conservation Commission specifically allows an alternate time frame.

2.1.4 Applications must include sufficient information for the Conservation Commission to understand the project. This is to include information about activities, and existing and proposed site conditions. The Conservation Commission may require information about the procedures and sequence for the transitional work from the existing to proposed conditions. Application must include:

- A written description of the project. The description for simple projects may be short.
- A signed, dated, drawing, map or plan showing the location of the property, the work activity and the wetland boundaries. The map, plan, or drawing must:
 - Indicate the shortest distance from activity disturbance to each protected resource area.
 - Show all onsite protected resource areas and the type of each resource.
 - Show the limit of disturbance. For this purpose “disturbance” includes temporary disturbance.
 - Show and identify proposed erosion and sedimentation controls.

2.1.5. Public Notice. Spencer ODIS places the required public notice in a paper of general circulation in Spencer and pays for that notice from the application fees paid at the time of application. There is no separate charge for the newspaper publication. The Spencer New Leader is the paper of record for the Town of Spencer.

2.2 Request for Determination of Applicability

A Request for Determination of Applicability submission must include:

- All information listed in section 2.1 of these regulations.
- Two (2) copies of each drawing or document.

The use of Massachusetts DEP Request for Determination of Applicability Form with attachments as needed to supply adequate information is acceptable.

2.3 Notice of Intent

2.3.1 In addition to the requirements for all filings, Notice of Intent submissions must include:

2.3.1.1 Three (3) copies of all graphic plans, and three (3) copies of each form and its supporting documents.

- The drawing, map, graphic plan or plans depicting the project must:
 - Be at a scale of not more than 1 inch = 50 ft. (that is it can be 1 inch = 40 ft but may not be 1 inch = 56 feet or greater.) Plans extending over multiple sheets to show the whole project area must have a key sheet showing the layout of sheets.
 - Have a scale bar and north arrow.
 - Include existing and proposed topography. The contour interval used must be adequate to represent the changes accurately. This requirement may be modified by the Conservation Commission.
 - Show all storm water management or drainage structures that discharge or will discharge to a protected resource area or to the Town of Spencer drainage system. Such structures must be shown even if the discharge point is off site.

2.3.1.2 An Erosion and Sedimentation Plan. If the controls are to be moved as the project progresses, the movement strategy must be included in the written project description or as notes on the plan.

2.3.1.3. A copy of the EPA Construction General Permit Storm Water Pollution Prevention Plan, if that permit is required for the project. See (website) for information.

2.3.1.4 A locus plan showing the location of the project *and its relationship to offsite resource areas*.

2.3.1.5 A copy of the certified list of abutters. The list of abutters certified by the Board of Assessors used for notice given to abutters must have been certified no more than 30 days before the time at which the notices are mailed to the work-site property abutters submission of the Notice of Intent. Notice to abutters must be mailed by Certified Mail, Certificate of Mailing, or delivered by hand.

2.3.1.6 A copy of the Notice to Abutters.

2.3.1.7 An Affidavit attesting that the Notice to Abutters has been sent to every abutter on the certified list.

2.3.1.8 Checks for all fees involved; local bylaw inspection fee and the town portion of the Wetlands Protection Act Fee, if applicable. A separate check is required for each fee. (*We recommend* attaching to the Notice of Intent, a photocopy of all the checks written in connection with the application, including the check covering the Wetlands Protection Act fee portion sent to Boston.)

2.3.2 It is acceptable to use the Massachusetts DEP Notice of Intent Form with attachments. When both Spencer Wetlands Bylaw and Massachusetts Wetlands Protection Act (WPA) permits are required for a project the Conservation Commission allows simultaneous filing. For that purpose the Notice of Intent requirements for both laws must be included with each of the 3 copies of the application. The applicant is responsible for sending the appropriate WPA materials to Massachusetts Department of Environmental Protection.

SECTION 3. Rules for Hiring Outside Consultants under G.L. 44 § 53G

3.1 Purpose. As provided by G.L. Ch. 44 § 53G, the Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. Such services shall be deemed necessary by the Conservation Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of: the Wetlands Protection Act (G.L. Ch. 131 § 40), Spencer General Bylaws Article 7, Wetlands Protection, the Conservation Commission Act (G.L. 40 § 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Conservation Commission may also impose fees for other consultant services related to application review, permit conditioning and/or monitoring under any of the above-referenced laws or regulations.

3.2 Special Account. Funds received pursuant to these rules shall be deposited with the town treasurer, who shall establish a special account for each project for this purpose. Expenditures from these special accounts may be made at the direction of the Conservation Commission without further appropriation as provided in G.L. Ch. 44 § 53G. Expenditures from these accounts shall be made only in connection with the specific project for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.

3.3 Scope of Consultant Services. Specific consultant services may include, but are not limited to, resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, impacts on abutting lands, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Conservation Commission. The consultant shall be chosen by, and report only to, the Conservation Commission or its designated agent.

3.4 Notice. The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. 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.

3.5 Payment of Fee. The fee must be received prior to the initiation of consulting services. The Conservation Commission may request additional consultant fees if 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 Conservation Commission within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Conservation Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 (the regulations implementing G.L. Ch. 131 § 40, the Massachusetts Wetlands Protection Act) and Article 7 of the Spencer General Bylaws, Wetlands Protection and its regulations. An appeal stops the clock on review of the application. The countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant services identified as necessary by the Conservation Commission. The Conservation Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g., the questions it needs answered.

3.6 Appeals. The applicant may appeal the selection of the outside consultant to the selectboard, which may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such appeal must be in writing and received by the selectboard and a copy received by the Conservation Commission, so as to be received with ten (10) days of the date consultant fees were requested by the Conservation Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

3.7 Return of Unspent Fees. When the Conservation Commission's review of a project is completed and an Order of Conditions issued any balance in the special account attributable to application review shall be returned to the applicant within 30 days. When

the project is complete any balance in the special account attributable to necessary monitoring of construction or implementation of the project shall be returned within 30 days of issuance of a Certificate of Compliance. The excess amount, including interest, shall be paid to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Conservation Commission with appropriate documentation. A final report of said account shall be made available to the applicant or applicant's successor in interest.

SECTION 4. Wetlands Replication as a Permit Condition.

4.1 Replication Extent Section 16.1 of Spencer Wetlands bylaw directs the Conservation Commission to require replication or restoration for wetlands destroyed at a ratio of one and a half (1.5) times the original wetland area. When replication is a permit condition:

4.1.1 Unless waived by the Conservation Commission, a bond shall be posted sufficient to enable the Conservation Commission to complete the replication/restoration, should the applicant fail to fulfill the replication obligation.

4.1.2 Unless waived by the Conservation Commission, replication areas must be constructed and planted before other project work may start. If this condition is waived, the Conservation Commission shall require a construction sequence of the applicant and the project must proceed in that sequence.

4.1.3 Wetlands replication/restoration in excess of one hundred (100) square feet must be designed and monitored by a professional wetland scientist at the expense of the applicant.

4.2 Replication Function Notices of Intent proposing replication must identify the values and functions of the wetland which must be replicated. Compliance standards for the replication shall be specified and verified in terms of re-establishment of wetland functions, values and actual performance, in addition to how closely actual construction matches the replication plan. Failure to replicate function maybe cause, at the discretion of the Conservation Commission, to require additional work or modification.

SECTION 5 Erosion Controls

5.1 Erosion Controls must be maintained in functional condition at all times.

5.2 With prior permission of the Conservation Commission or its agent, erosion controls may be moved during project work to enhance function or minimize control material expense.

Section 6. Project Completion

6.1 No erosion control shall be removed until removal has been authorized by the Conservation Commission or its agent.

6.2 All non-biodegradable, temporary erosion controls (e.g. silt fence) used during construction must be removed from the site after the Final Inspection is completed and is deemed satisfactory by the Conservation Commission. A Certificate of Compliance may not be issued until this obligation has been fulfilled.

SPENCER CONSERVATION COMMISSION

_____, Chairman

