

Conservation Commissions and Commissioners in Massachusetts

(Adapted from MACC web materials)

In brief:

Conservation Commissioners are members of a 5- to 7-member Commission, appointed by the Select Board, pursuant to the *Conservation Commission Act* of 1957 (MGL Chapter 40 section 8C), the *Wetlands Protection Act* (MGL Chapter 131 section 40), the *Riverfront Protection Act* of 1996, and local Wetlands Bylaws, for "*promotion and development of natural resources...and protection of watershed resources.*" **The conservation commission is the official agency specifically charged with the protection of a community's natural resources.** The commission also advises other municipal officials and boards on conservation issues that relate to their areas of responsibility.

Thus the commission serves the community in a *regulatory capacity (to protect wetlands and water resources)* and in a *conservation capacity (for open space)* for the "*promotion and development of natural resources...and protection of watershed resources.*"

They are responsible for reviewing permits to do work in and near wetlands, flood plains, banks, riverfront areas, beaches, and surface waters; implementing the regulations administered by the Massachusetts Department of Environmental Protection, and Local Wetlands regulations. (This takes up most of the Commission time and effort.) This includes site visits and reviews, as well as review of specialized maps, discussions with applicants, environmental and construction professionals, and consultation with DEP representatives.

They are authorized to undertake planning, acquiring, and managing open space, and encouraging and monitoring conservation and agricultural preservation restrictions; to inventory the municipality's natural resources and to prepare relevant maps and plans; and to adopt rules and regulations for the use of conservation land. If the Local bylaw/ordinance gives it the power, the commission may adopt regulations to implement the bylaw/ordinance. (In Hampden, these responsibilities are undertaken in coordination with and under supervision of the Select Board).

There are no age, residency or knowledge requirements under the regulations, but commissioners must be **willing to study, learn, and become proficient by patience and work.** This requires the candidate's strong interest in and **commitment to open space and wetlands protection, no conflict of interest and the ability to relate well to others, even under stressful conditions.**

Conservation commissions are the municipal environmental agencies in Massachusetts. They are responsible for protecting the land, water, and biological resources of their communities.

Massachusetts invented the municipal conservation commission. In 1957, Rep. John Dolan of Ipswich filed a bill which became the **Conservation Commission Act** (G. L. Chapter 40 §8C). The new law enabled municipalities to establish conservation commissions through a town meeting or city council vote, something every city and town in the Commonwealth did by the 1980's.

The duties and responsibilities of a conservation commission are set forth in the Conservation Commission Act. The conservation commission is the official agency specifically charged with the protection of a community's natural resources. The commission also advises other municipal officials and boards on conservation issues that relate to their areas of responsibility.

In Massachusetts, conservation commissions' authority comes from several sources: the Conservation Commission Act (MGL Chapter 40 section 8C) for open space protection; the Wetlands Protection Act (MGL Chapter 131 section 40) for protecting wetlands and waterways (commissions have real power - they issue the permits); and the home rule provisions of the state constitution for non-zoning wetlands bylaws. All state statutes can be found in the Massachusetts General Laws at <https://malegislature.gov/Laws/GeneralLaws>

Some Features:

Conservation commissions are **volunteers** who sometimes work long hours to achieve community conservation goals.

Hampden's Conservation Commission meets at least once a month, with Special meetings as needed; site visits are conducted for each permit or determination; reading of Determination or (sometimes extensive) Permit Application materials and review of specific applicable regulations, as well as production of suggested Conditions Orders are done outside the meetings.

Commissioners in Hampden are **appointed by the select board**.

Conservation Commission members can play a supporting role in the choice of candidates to join the commission. Commissions have 3 to 7 members and serve 3-year terms.

The tasks of a commission require a great deal of study, learning, and thought by its members, who **become expert by patience and work**.

The Conservation has funds that can be used for members to attend workshops and classes to gain skills in understanding the regulations, identifying wetlands, etc.

There are *no* specific age, training, residency, citizenship, knowledge or experience requirements in Commonwealth rules (check local).

The overriding factors governing appointments should be a **candidate's interest in doing the conservation job needed by the town - open space and wetlands protection**. Since this goal requires a continual, firm commitment to conservation, *persons who have no conflict of interest and who relate well to others* should be selected.

An engineer, a biologist, a naturalist and a lawyer may prove especially helpful. Knowledge of soils is useful. For purposes of coordination of efforts, well-qualified individuals who are members of other boards may be appointed to serve a term.

Many or most conservation commissions have one or more permanent full-time employees, many of whom are conservation professionals providing invaluable support to the volunteer Commissioners. More than half of the commissions have some level of staffing.

*The first powers given to conservation commissions in the **Conservation Commission Act** focused on "**promotion and development of natural resources...and protection of watershed resources**."* Under these powers -

- a) Commissions *undertake planning, acquiring, and managing open space*, and encouraging and monitoring conservation and agricultural preservation restrictions.
- b) A commission may *accept gifts of money or land* with the approval of the city council or select board, thus avoiding the delays associated with obtaining town meeting approval.
- c) The Conservation Commission Act authorizes conservation commissions *to inventory the municipality's natural resources and to prepare relevant maps and plans*. Open Space and Recreation Plans are therefore coordinated by Commissions. These important documents are a prerequisite for securing Self-Help moneys for open space acquisition.
- d) Conservation commissions also have the authority to *adopt rules and regulations for the use of conservation land*. These regulations have the full force of law; they are not merely "guidelines."
- e) Today many conservation commissions devote much of their time reviewing wetlands permit applications (Notices of Intent and Determinations of Applicability) and issuing wetlands permits (Orders of Conditions). While this responsibility is vital, it often leaves inadequate time for open space protection and other matters. To compensate, many commissions or municipalities have created open space, land management, and other committees involving those members (and associate members) most interested in the commission's original mandate. (Hampden has a Ridgeline and Hillside Committee person, and a Storm-water Committee.)

In 1972, conservation commissions were given responsibility to **administer the Wetlands Protection Act** (G.L. Ch. 131 §40) in their community. *Thus the commission serves the community in a regulatory capacity (to protect wetlands) and in a conservation capacity (for open space).*

Under the Massachusetts Wetlands Protection Act, conservation commissions process over ten thousand applications every year for permits to do work in and near wetlands, flood plains, banks, riverfront areas, beaches, and surface waters. The requirements of the Wetlands Protection Act are set forth in regulations promulgated by the state Department of Environmental Protection (DEP). How to administer the Wetlands Protection Act is described in detail in *Protecting Wetlands and Open Space: MACC's Environmental Handbook for Massachusetts Conservation Commissioners*, and DEP provides a Circuit Rider who assists with understanding these regulations and DEP policies.

More than 210 Massachusetts municipalities, including Hampden, have adopted **non-zoning wetlands bylaws or ordinances** that provide extra protections to wetlands resources within their borders.

The state's highest court has approved the use of such municipal laws. Those local laws are administered by the local conservation commission. *If the bylaw/ordinance gives it the power, the commission may adopt regulations to implement the bylaw/ordinance.*

More recently, the **Rivers Protection Act of 1996**, a law that amends the Wetlands Protection Act, was added to provide protection to rivers - by regulating activities within a newly established wetland *resource area* known as *the Riverfront Area*,

for eight specific protection and prevention purposes: protection of water supply, groundwater, flood control, prevention of storm damage, pollution, and protection of shellfish, wildlife habitat, and fisheries.

Finally, the commission acts as a local coordinator/ cooperator for the **Natural Heritage & Endangered Species Program**,

which is responsible for the conservation and protection of hundreds of species that are not hunted, fished, trapped, or commercially harvested in the state, as well as the protection of the natural communities that make up their habitats.