



Norton Conservation Commission
70 East Main Street
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conservation@nortonmaus.com

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CONSERVATION COMMISSION POLICIES

1. A minimum 25-foot "No Disturbance Zone" shall be required for all projects. The No Disturbance Zone (NDZ) shall be left in its natural state and shall not be altered, including clearing, grubbing, or made into lawn; . The 25-foot no disturbance zone requirements shall be met for the entire length of the approved wetland boundary. The No Disturbance Zone shall be demarcated in the field with a visual barrier. A visual barrier shall consist of a post and rail fence with an aluminum marker stating "Buffer Zone, Do Not Disturb". The Commission may grant relief from portions of the 25-foot No Disturbance Zone requirement if there are significant attempts made to meet the requirement and a clear showing that the requirement cannot be met.

Posted with the Town Clerk May 30, 2001

Revised February 22, 2016, posted with Town Clerk February 23, 2016

2. The Commission adopted written rules for hiring outside consultants under MGL Chapter 44, Section 53G. Attached.

Posted with the Town Clerk October 21, 2003

3. In accordance with the Wetland Protection Act Regulations 310CMR10.05(4)(h) the Conservation Commission shall require that all wetland permit applications be submitted with supporting plans that are signed and stamped by the appropriate licensed professional for the appropriate task illustrated on a plan, eg. a Registered Professional Civil Engineer, Registered Land Surveyor, Sanitarian. Any application submitted to the Conservation Commission without a signed and stamped plan shall be deemed incomplete and rejected. The Conservation Commission reserves the right to accept an unsigned, unstamped plan, if extenuating circumstances arise.

Posted with the Town Clerk January 11, 2005, Revised July 23, 2018, posted with Town Clerk July 30, 2018

4. The Conservation Commission adopts the so-called Mullins Rule, with any future amendments, voted at the Special Town Meeting of February 7, 2007. In accordance with MGL Ch.39, Section 23D (attached) which provides that a member of a board, committee or commission holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to the member's absence from one session of such hearing, provided that certain conditions are met; and provided further that such acceptance shall be applicable to all adjudicatory hearings opened on or after the effective date of the vote taken hereunder.

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5. Policy Regarding the 100-year Floodplain at the Norton Reservoir

The extent of Bordering Land Subject to Flooding (BLSF, or the 100-year floodplain) around Norton Reservoir is 103.65-feet (NGVD 1929). All permit applications submitted to the Conservation Commission shall use 103.65 feet as the base flood elevation.

Background:

The 100-year floodplain is shown on the FEMA F.I.R.M. community panel number 25005C0127F dated July 7, 2009 as a Zone A but lacks a determined base flood elevation prepared by FEMA. In evaluating the hydraulic and hydrologic evaluation of the Norton Reservoir Dam for compliance with Office of Dam Safety Regulations, Pare determined the 100-year floodplain as the 105.1-foot contour elevation¹. This was based upon using 8.5 inches of rainfall in a 24-hr period using the Northeast Regional Climate Center's Extreme Precipitation for this area (considered to be more accurate rainfall data based on observations at Cornell University). The Wetland Protection Act Regulations (310 CMR 10.00) require the use of 7 inches of rain in a 24-hour period. Therefore, the calculations were redone in 2012 utilizing the 7-inch value yielding a base flood elevation of 103.65 feet².

Posted with the Town Clerk May 23, 2012

6. Policy Regarding the 100-year Floodplain at Mulberry Meadow Brook

Beals & Thomas provided hydrologic calculations in a letter dated February 27, 2019³ to support a BFE of ranging from 73 to 77 feet (NAVD88) along the Mulberry Meadow Brook within the existing cranberry bog.

Posted with the Town Clerk October 10, 2019

7. Policy Regarding precipitation frequencies and stormwater management calculations

Applicants should use the most recent rainfall data for stormwater management, culvert replacement and Isolated Land Subject to Flooding calculations. Most recent rainfall data is determined to be National Oceanic and Atmospheric Administration (NOAA) Atlas 14 (https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html).

- a. 2-yr storm=3.46 inches
- b. 5-yr storm=4.43 inches
- c. 10-yr storm=5.22 inches

¹ March 26, 2007 letter from Pare Corporation to Office of Dam Safety (Pare project no. 05142.00) and NOI application (DEP file no. 250-831) page 4: description.

² May 18, 2012 letter from Pare Corporation to Conservation Commission (Pare project no. 12137.00).

³ DEP#250-1036.



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d. 25-yr storm=6.32 inches

e. 50-yr storm=7.14 inches

f. 100-yr storm=8.02 inches

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**RULES FOR HIRING OUTSIDE CONSULTANTS
UNDER GL CH. 44 Sec. 53G**

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As provided by GL Ch. 44 Sec. 53G, the Norton Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission pursuant to the requirements of the Wetlands Protection Act (GL Ch. 131 Sec. 40), Conservation Commission Act (GL Ch. 40 Sec. 8C), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time.

Funds received by the Conservation Commission pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Conservation Commission without further appropriation as provided in GL Ch. 44 Sec. 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

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, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator.

The Conservation Commission shall give written notice to the applicant of the selection of an outside consultant, which 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 (5) days of the date notice is given.

The fee must be received in its entirety prior to the initiation of consulting services. The 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 Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal). The Commission shall state such in a letter to the applicant, copied to the DEP. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee.

The applicant may appeal the selection of the outside consultant to the selectboard, who may disqualify the outside consultant selected only 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 an appeal must be in writing and received by the selectboard and a copy received by the Conservation Commission, so as to be received within 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.



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Uniform procurement (G.L. Chapter 30B) requirements must be followed when hiring consultants. Procurements for less than \$5,000 simply need to be based on "sound business practices"; the Commission may select whom it wishes. Those from \$5,000 but less than \$25,000 require at least three written or oral quotes, though local requirements might be stiffer; the person or firm offering the lowest quote for the work needed must be selected. Be careful, therefore, whom you call for quotes.

Hiring of consultants may be subject to formal bidding requirements depending on the nature and cost of the services to be obtained. Commissions should consult with their municipal counsel or chief procurement officer about the applicability of any bidding requirements for a consultant contract, should find out if the municipality has any standard contract formats, and should consult with municipal counsel as to whether their consultants are subject to any State Ethics Act requirements or limitations.

The statute only requires that the fees be "reasonable". The Commission may include a consultant fee schedule such as that found in MACC's model wetlands bylaw - a schedule based on project cost. (See the *Environmental Handbook for Massachusetts Conservation Commissioners* Section 19.4.1, 2002 updates to the 1997 edition).

Appeals

The applicant can appeal only the choice of consultant and then only on the basis that the consultant has a conflict of interest or does not have the required qualifications. The work required of the consultant, or the amount of the fee, are not appealable. The appeal is to the local select board or city council, which must act within one month or the Commission's choice stands. The applicant has the right to pursue the matter in court, but again only regarding the choice of consultant.

When consultants are engaged relative to a Wetlands Protection Act filing, such an administrative appeal to the select board or city council stops the clock on the project until the appeal is resolved.

Refusal of Payment

If the applicant refuses payment of fees for the employment of outside consultants pursuant to a permit request, the permit application is administratively incomplete and the Commission should declare such and take no further action on the permit request until payment is rendered. Commissions with local wetlands bylaws also have the option of adopting regulations specifying that a permit request may be denied for lack of payment (see related article "Model Rules for Hiring Outside Consultants Under GL Ch. 44 § 53G").

Sally A. Zielski Ph.D. P.W.S.
Former MACC Executive Director
Member, Board of Directors

Employment of Outside Consultants

Text of Chapter 44 § 53G as
Amended by § 36 of Chapter 46
of the Acts of 2003

Notwithstanding the provisions of section fifty-three, any city or town that provides by rules promulgated under § 8C of chapter 40, § 9 or 12 of chapter 40A, § 21 of chapter 40B, § 81Q of chapter 41 or § 31 of chapter 111 for the imposition of reasonable fees for the employment of outside consultants may deposit such fees in a special account. Such rules shall provide for an administrative appeal from the selection of the outside consultant to the city council or town board of selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the city council or the town board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the municipality for their review. Said report shall be published in the city or town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.

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The General Laws of Massachusetts

Search the Laws

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNS AND DISTRICTS

CHAPTER 39. MUNICIPAL GOVERNMENT

TOWN MEETINGS

Chapter 39: Section 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification

Section 23D. (a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

(b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

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