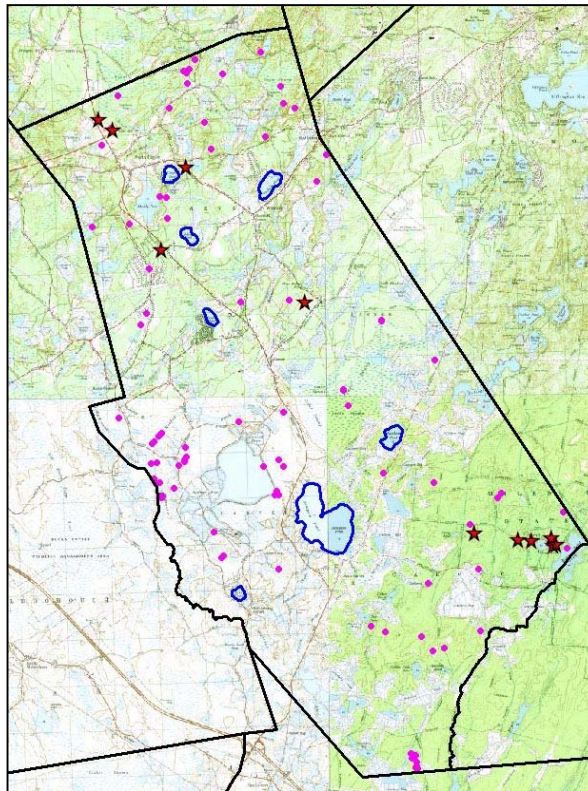




Carver Conservation Commission
108 Main Street
Carver, MA 02330

TO:

Understanding the Carver Wetland Bylaw and Regulations



Top: Wetlands in Carver. Bottom: Map of Carver showing Great Ponds (outlined in blue), certified vernal pools (red stars, as of 2003), and potential vernal pools (magenta dots from 2001 NHESP study.).

Understanding the Carver Wetland Bylaw and Regulations

What is the Conservation Commission, and what does it do?

In Massachusetts, the implementation of the state wetland law (M.G.L. Chapter 131, Section 40) and state wetland regulations (310 CMR 10.00) is delegated to municipal Conservation Commissions. These Conservation Commissions also oversee any local wetland bylaws and regulations that have been adopted.

In Carver, the Conservation Commission is made up of 7 volunteer members appointed by the Carver Town Manager, and is staffed by a part-time Conservation Agent and Secretary. The Commission oversees implementation of the state law and the Carver Wetlands Protection Bylaw. The Commission also oversees the development of and updates to the Carver Open Space Plan. The Carver Conservation Commission meets every first and third Wednesday of each month at 7:00 P.M. in Meeting Room 1 at the Carver Town Hall. The meetings are open to the public, and are also televised on the Carver Community Access Channel.

Why is the Carver Wetland Bylaw different from those of the State of Massachusetts' wetlands law?

The Massachusetts Home Rule Amendment to the Constitution enables municipalities to adopt local bylaws and regulations that exceed state laws. Because of this provision, 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 Carver adopted its current wetland bylaw in 1998, through Town Meeting. Town Meeting can revise the bylaw, but cannot change the state regulations. The bylaw can be downloaded at the town's website www.carverma.org/conservation.htm.

The purpose of the Carver Wetlands Protection Bylaw is to protect public and private water supplies, groundwater and surface water quality, fisheries, and wildlife habitat; to prevent and manage pollution, flooding, erosion and sediment runoff, and storm damage; to preserve agriculture, aesthetics, and recreation; and to protect rare plants and animals and riverfront areas. One of the most important provisions of the bylaw is that it prohibits the construction of a structure or impervious service within 65 feet of a wetland without a variance.

Like most wetland bylaws, the Carver Wetland Protection Bylaw enables the Conservation Commission to enact more specific regulations that establish criteria and performance standards to meet these goals. The Conservation Commission is now developing these supporting regulations.

If Carver 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 bylaw. In fact, because the local bylaws 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 the local bylaws. 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.

Why are wetland 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 the state wetland regulations, the most likely users of the regulations are engineers and environmental consultants. 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



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

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 help ensure that all applicants are treated fairly.

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 including cranberry bogs, and 200 feet from a river, may require a wetland permit. Structures or impervious surface within 65 feet of a wetland require a variance under the local bylaw.

To determine if you need a wetland permit, you should file a “Request for Determination of Applicability” with the town, and simultaneously submit the form to the Massachusetts Department of Environmental Protection (DEP) offices in Lakeville. The applicant describes the proposed activity and the proximity of wetlands in this short form. For very small projects, or projects that are not expected to alter wetlands, the Commission may issue a “negative determination,” that means that the 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 altered, then 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



Applicants should consult with the Commission, and 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). Photo: the spotted turtle, *Clemmys guttata*.

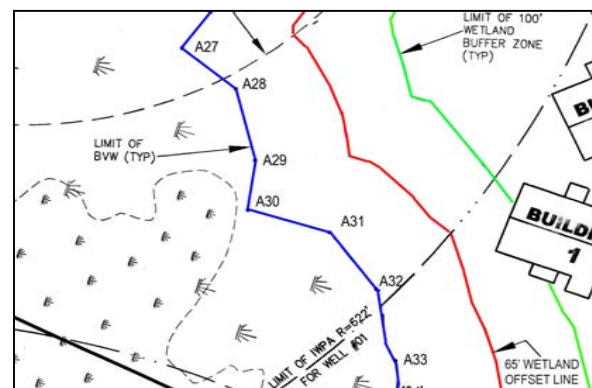
the proposed wetland boundary, and may recommend changes in the proposed designs or plans to minimize impacts to wetlands, wildlife, or to prevent pollution or flooding. These changes are incorporated in the Commission’s “Order of Conditions,” which is the permit giving the terms of permission for the applicant to proceed with his or her project. Only rarely does a Conservation Commission deny a project.

What is the fee for a permit application?

The cost for a Request for Determination of Applicability is \$25.00 and the cost of a Notice of Intent is \$50.00. Checks are made payable to the “Town of Carver.” Additional state fees are required with submission of the state forms. Contact the Massachusetts DEP at 508-946-2800. For all applications there is a newspaper notice publication fee made payable to “MPG Newspapers.” For large or complex projects the Conservation Commission may also charge a consultant fee to hire an engineer or other technical consultants.

Is my project subject to agricultural exemption?

For information about agricultural exemptions and how they may apply to your project, contact Natural Resources Conservation Services (NRCS/USDA) at 508-295-5151 ext. 2.



Site plans of proposed work near wetlands must include the locations of wetland boundary flags (placed by a trained wetlands biologist), the 100-foot wetland buffer zone, the 65-foot setback, 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. Boundaries are based on the presence of wetland plant species and soil types. The Commission may request the wetlands boundary be changed on a site plan.



Constructing a dock requires local, state, and federal permits. Docks on a Great Pond also require a DEP Chapter 91 license. Photo: snowy egret feeding.

How is applying for a dock different from other wetland permits?

Applications for docks require several additional permits. These include a Chapter 91 Waterways License from the Massachusetts DEP for projects on Great Ponds, and a wetlands filing permit from the US Army Corps of Engineers. The Great Ponds in Carver include Bates Pond, Cooper Pond, Dunham Pond, Johns Pond, Sampson Pond, Vaughn Pond (Crystal Lake), and Wenham Pond. These additional permits and approvals are separate and independent from the permits and approvals from the Conservation Commission. Applicants considering a dock should obtain appropriate legal and engineering advice.

How are Commission decisions appealed?

This dual regulatory process of state and local laws 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 an appeal must be filed with the Plymouth 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 his or her legal standing.

What do I do in an emergency situation?

If you think your project is an emergency, please contact the Conservation Agent at 508-866-3482 or 508-866-9403 within 24 hours of beginning the project.

What should I do if I see a violation?

Please contact the Conservation Agent. You may also call the state Environmental Strike Force at (617) 556-1000 or 1-888-VIOLATE (1-888-846-5283).

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 to prescribe penalties for violations of those regulations.



Pitcher plant in an old bog.

What can I do to protect my land?

If you have land that you want to protect, if you would like to restrict development of your land, or if you would like to lower your taxes on unbudible or open space property, please come and see us and we will be happy to help you.



This fact sheet was prepared by the Buzzards Bay Project National Estuary Program at the request of the Carver Conservation Commission. Photographs courtesy of Robert Conway. More information about Town of Carver Conservation Commission and the Carver Wetland Bylaw can be obtained at:

www.carverma.org/conservation.htm
www.buzzardsbay.org/wetlands.htm

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