

FOXBOROUGH CONSERVATION COMMISSION
ENFORCEMENT/RESTORATION ADMINISTRATIVE PROCEDURE
(Excerpt of Article IX Regulations, Section 7), approved 3/10/14

The following guidelines outline the response that the Commission and/or its manager will take to violations or apparent violations of the Act or the Bylaw:

Step 1: Review Commission Records and available resources/tools, including aerial photos.

Step 2: Respond Swiftly and Consistently to any violations, or apparent violations, that occur.

Step 3 and Continuing: Gather Evidence. Keeping in mind that the Commission bears the burden of proof in an enforcement case to prove each element of a violation (see *Step 7*, below).

Step 4: Informal Contact. Contact the violator or property owner to arrange a meeting (on site, in office, or at a Commission meeting) or visit the property to speak informally with the violator or property owner. Discuss with the contact the site activity, the legal requirements, and possible remedial action. If full cooperation and agreement is achieved, Commission may issue a Restoration Enforcement Order (see below). If cooperation is not achieved, then the Commission will proceed to the next steps.

Step 5: Document Site Access, including a written notation to the file that identifies who visited the site and when, and who authorized access. If consent has not been obtained, it is very important to document attempts to gain access and the landowner's response.

Step 6: Violation Letter. If informal contact cannot be made, send a violation (form) letter, informing violator and/or property owner of the wetlands protection laws and the apparent violation. Include a cease and desist request, a requirement to prevent further damage, and a request for the owner to attend the Commission's next meeting. A violation letter, issued under the Act, and/or under the Bylaw, will constitute a warning that a public hearing will be held.

Step 7: Administrative Hearing. When the Commission determines that an activity could be in violation of the Bylaw or Act, the Commission shall hold a public hearing to give the property owner, or owner's representative, an opportunity to respond to the evidence and circumstances. The Commission will then consider whether a violation actually occurred and, if so, whether the landowner will be issued an Enforcement Order or Restoration Enforcement Order for the violation.

During public hearings, site observations should be reduced to a memorandum and documents should be entered into the record in such a manner that the applicant and other participants are aware of their contents and have an opportunity to respond to them. It should be noted that since Commissioners frequently have specialized knowledge of the site of the violation or the area from site visits, previous proceedings, other documentary materials, or merely general experience, they can rely on those sources of knowledge to some extent.¹

Step 8: Enforcement Order. Failing an adequate response to *Step 6: Violation Letter*, or for serious violations, the Commission may issue an Enforcement Order under the Act in lieu of or in addition to an Enforcement Order under the Bylaw. If only one document is issued pursuant to both the Act and the Bylaw, each law should be cited on the document's face.

All Enforcement Orders and letters should be directed toward restoration rather than toward the filing of plans or a Notice of Intent. If further enforcement action is required, it should be because of failure to restore illegally altered land to its original condition rather than for the responsible party's failure to submit plans or a Notice of Intent¹.

In a situation requiring immediate action, an Enforcement Order may be signed and issued by a single member or agent of the Commission, as long as said Order is ratified by a majority of the Commission at their next scheduled meeting. The Enforcement Order should be sent by certified mail, return receipt requested, or by hand delivery to each of the named parties. If it is hand delivered, the individual who delivered the document should sign the Order and either obtain a receipt or draft an affidavit documenting service for the files. Any time an Enforcement Order is amended, the Amended Order should also be properly served on the violator.

Step 9: Restoration Order. If full cooperation and agreement is achieved, the Commission may issue a Restoration Order, setting forth specific requirements for the restoration of the site to its original condition within a specified time period. This Order would require a detailed Restoration Plan, including specific dates for submissions, construction, and compliance milestones. If the compliance milestones are not met, then a formal Enforcement Order may be issued, per *Step 8*, above.

¹ At least one court has noted that the Commission is not required either to ignore history or its own expertise in determining the likely impact of actions plaintiffs take.