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Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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MassDEP COVID-19 Wetlands FAQs for Conservation Commissions and Applicants

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Answers to questions raised by conservation commissions, their administrators/agents, and applicants about how the Wetlands Protection Act and its regulations will be implemented during the Coronavirus emergency. This list of questions and answers will be updated regularly.

Submissions to Conservation Commissions, MassDEP

Q: How can I submit my Notice of Intent to ensure the DEP regional office has received it?

A: Notices of Intent (“NOI”) and Requests for Determinations of Applicability (“RDA”), as well as other correspondence (e.g., an Abbreviated Notice of Resource Area Determination “ANRAD”) should be mailed to the relevant MassDEP Regional Office in accordance with the procedures described in the WPA Regulations. MassDEP’s [Guidance to Conservation Commissions and Applicants](#), originally posted on March 28, 2020, requests that NOIs and other required filings also be emailed to the appropriate regional office email address. This guidance has been updated with further clarification recommending use of eDEP for Orders (see 3.a.). Section 17 of Chapter 53 of the Acts of 2020 ([An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19](#), hereinafter referred to as the “Emergency Act”) does not change any of the requirements for filing with MassDEP under the Wetland Protection Act (“WPA”) statute or regulations.

Q: How can I submit my filing to the Conservation Commission (“ConCom” or “Commission”)?

A: MassDEP recommends that applicants contact the ConCom for guidance on the best method for submitting filings. Note that in accordance with the [Emergency Act](#), applicants may file electronically with the town or city clerk, either through a designated website or by email. To be considered “filed,” the clerk must certify receipt of the application and must certify receipt electronically if the application was filed electronically and the applicant requests electronic certification. This does not prevent municipalities from continuing to accept applications filed in accordance with the rules and practices that were in effect before the state of emergency.

Q: When hard copies of Orders of Condition (“OOCs”) and other Commission decisions are sent to MassDEP via certified mail, can several be bundled into one envelope or does each one need to be sent individually?

A: While delivery of Orders and Determinations is the subject of a current rulemaking, under the existing rules Conservation Commissions are not yet required to send Orders or Determinations to MassDEP via certified mail. They are only required to send copies via certified mail (or hand delivery) to the Applicant and mail Orders and Determinations to MassDEP by first class mail. If multiple Orders or Determinations are issued on the same day, they can be bundled into one envelope and mailed together. Orders or Determinations that are issued on different days must be sent by mail individually to MassDEP. The Regulations require that all Orders and Determinations must be mailed to MassDEP on the same day that they are mailed or hand-delivered to the applicant.

Q: If a complete NOI or RDA, or an Order of Conditions or Determination is already downloaded by the ConCom to an online storage platform (e.g. Google folder, Dropbox, etc.) can the ConCom send MassDEP the link rather than send an email attachment to the regional MassDEP email box?

A: MassDEP advises that Commissions send permit and determination applications and decisions as attachments to the appropriate regional MassDEP email box per the [Guidance to Conservation Commissions and Applicants](#).

Abutter Notification

Q: How do Applicants deal with abutter notification?

A: Applicants filing NOIs are required to notify abutters per the Wetlands Protection Act regulations at 310 CMR 10.05(4)(a). The Emergency Act does not provide regulatory relief on this matter. Applicants are encouraged to review the U.S. Postal Service (USPS) website to determine if there are online tools that allow for alternative means for certified mailing of notices, which may include commercial programs that allow persons to utilize Post Office services via the internet.

Public Hearings, Notices

Q: Can I conduct a public hearing remotely?

A: Yes. On March 12, 2020, the Baker-Polito Administration issued an [Order Suspending Certain Provisions of the Open Meeting Law](#), G.L. c. 30A s.20, and therefore open meeting law requirements have been temporarily revised to allow for remote meetings and hearings.

Q: Do ConComs have more than 21 days to schedule a hearing during the state of emergency declared in response to the Coronavirus? Also, do continued hearings have to be postponed during this period?

A: In accordance with the Emergency Act, if the filing of an application for a permit triggers a legal requirement to hold a hearing within a certain period of time, that deadline is suspended and the period of time during which the hearing must occur will not resume until 45 days after the end of the emergency (unless a later date is prescribed by law). For example, if a hearing must be held within 21 days of the filing of an application for a permit, that hearing must be held no later than 21 days after 45 days after the end of the state of emergency.

Any hearing on a permit that was opened before March 10, 2020, but was not concluded or was continued as of March 10, 2020, is tolled and may be continued until the first hearing date of the permit granting authority after the emergency, but must be held no later than 45 days after the end of the state of emergency (unless a later date is prescribed by law).

It is important to note that permit granting authorities are not required to postpone hearings until after the emergency and can choose to hold hearings in a fashion consistent with safety guidelines, such as conducting remote hearings using virtual meeting technology.

Q: How should newspaper noticing be conducted?

A: Conservation Commissions can submit electronic notices to newspapers for online or hardcopy publication in most, if not all, cases. Applicants should indicate in the notice the details that are required by 310 CMR 10.05(5)(a) based on the WPA statute and the Open Meeting Law. The WPA statute requires that the notice contain a listing of topics that the chair reasonably anticipates will be discussed at the meeting; information regarding date, time and place of the hearing. If the hearing is being held remotely, the details should be included in the newspaper notice. (Note also the [temporary revisions to Open Meeting Law requirements](#).)

Q: For a legal notice that must be sent for virtual meetings, is it acceptable to indicate the public hearing/meeting will be held virtually and refer to the ConCom's website for details?

A: The purpose of the legal notice is to ensure that any interested parties can participate in the Commission's hearing/meeting if they wish. Questions about public notices should be referred to Town Counsel.

Q: Do ConComs need to re-notify abutters or re-advertise to indicate a continued hearing will be via remote participation only? Can a notice on the Town Hall website as to where the meeting was to take place with details on where to get information suffice? Is it sufficient to post remote information on the agenda?

A: The chair of a permit granting authority can schedule or reschedule a hearing or decision deadline on a permit, regardless of whether a voting quorum is present at the time of the hearing or decision deadline to vote on the permit application. However, such deadlines cannot be rescheduled later than 45 days after the end of the state of emergency (unless a later date is prescribed by law). The chair must provide written notice of any rescheduled dates to the applicant at the applicant's address and to the public by posting on the town or city clerk's website. Physically posting hearing information at Town Hall will likely not be effective if the public is complying with social distancing. As much information as possible should be disseminated electronically. Further questions about public notices for rescheduled hearings should be referred to Town Counsel.

Site Inspections

Q: What are the best practices or guidance for site inspections? Can application review or pre-construction meetings be held? If so and to adhere to social distancing guidelines, can site inspections be conducted as a group or should they be conducted individually? Should site inspections be discontinued until the emergency declaration is lifted?

A: Site inspections, if necessary, should be conducted using appropriate social distancing and any other appropriate safety precautions established by the Commission in consultation with the local Board of Health prior to the inspection. If the applicant and ConCom can concur on continuing public hearings so that site inspections can be conducted once the emergency declaration is lifted, that is an acceptable option.

Electronic Signatures

Q: Are electronic signatures acceptable?

A: Yes. The [Massachusetts Uniform Electronic Transactions Act](#) provides that electronic signatures have the same legal effect as handwritten signatures, so as long as the relevant statute or regulation does not expressly require a handwritten signature and so long as the person "signing" electronically intends for their electronic signature to be considered the same as a handwritten signature. The use of language such as "in writing" in a statute or regulation does not mean that a handwritten signature is required. The WPA statute and regulations do not require a handwritten signature and therefore, electronic signatures would be acceptable. However, the WPA does require signatures of a majority of Conservation Commissioners so electronic signatures would need to be provided for each signatory for any Determination, Order, or Certificate of Compliance. Municipalities should check whether their municipal wetlands by-laws (if any) have language requiring a handwritten signature.

Q: Recently a ConCom voted to authorize its agent/administrator to sign decisions on behalf of a majority of the Commission. One way to do this is a delegation affidavit indicating the Commissioners' intent to sign. Since more than one Town Counsel has recommended its use specifically to address the WPA's need for a majority of Commissioners' signatures on each decision, is it acceptable to MassDEP? Once an agent has the Commission's delegation notarized and recorded, it seems like an unnecessary extra step to get electronic signatures while working remotely. Does this satisfy the statutory and regulatory requirements or is there another option for submission of decisions to MassDEP and the Registries of Deeds?

A: The WPA statute requires the order "...be signed by the mayor or a majority of the conservation commission or board of selectmen, as the case may be...". The Emergency Act does not waive this requirement and thus, the existing WPA requirements are still in effect. While the WPA requires the signature of the Commissioners, nothing in the WPA or the Wetlands Regulations prohibit an agent (or other administrative staff) from inserting the Conservation Commissioners' signatures so long as the relevant vote on the Conservation Commission's decision was duly taken in accord with 310 CMR 10.05(2) and the Open Meeting Law. Any conservation commission that wishes to delegate to the conservation agent the authority to insert the Commissioners' signatures onto the form should consult with Town Counsel to ensure their delegation procedure satisfies their Registry of Deeds.

Q: Are permits with multiple signature pages acceptable?

A: All that is required is signatures of a majority of the ConCom; electronic signatures are acceptable on a single or multiple pages. They should also confirm with Town Counsel whether there are requirements for “wet signatures” in the local by-law.

Appeals

Q: Can an appeal be accepted from an abutter that has passed the 10-day appeal period.

A: The ten-day appeal period for Determinations and Orders issued by a Conservation Commission has not been tolled for persons wishing to file an appeal. Therefore, upon issuance of a Determination or Order, an appeal by an abutter, applicant, 10 citizens or an aggrieved party must be made within 10 days of issuance. The one exception to this is that MassDEP’s deadline to intervene on its own behalf by requesting a Superseding Order or Determination is tolled until 45 days following termination of the state of emergency. Applicants who wish to proceed on a project, for which no appeal was received within the 10-day appeal, may request a letter from MassDEP indicating whether the Department plans to intervene by requesting a Superseding Order or Determination. An applicant wishing to request such a letter should contact the appropriate Regional Office.

Recording and the Registry

Q: How should applicants deal with recording documents at their Registry of Deeds (RoD)?

A: MassDEP advises questions about recording permits should be referred to the appropriate Registry of Deeds since RoD practices vary. In accordance with the Emergency Act, the requirement to record or register a permit for it to become or remain effective is suspended while the RoD or land court is closed or has restricted in-person access.

Extensions

Q: Does Chapter 53 of the Acts of 2020, section 17, extend permits already in existence? Does it extend all permits or only those that have expired?

A: Section 17 of the Emergency Act provides that permits issued by a municipality in effect as of March 10, 2020 will not expire during the emergency. Additionally, any deadlines or time periods for performing conditions in such permits will be suspended during the state of emergency.