

Right to Delay

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Issue Overview The state wetlands regulations state in Section 10.05 (Procedures): “Within 21 days after the date of receipt of the Request for a Determination of Applicability, the conservation commission shall issue a Determination of Applicability, Form 2.” If the conservation commission fails to make the determination in 21 days, the applicant may, within ten days, request determination by the state, which shall issue determination within 35 days. The state regulations state that “[u]pon a negative Determination of Applicability by a conservation commission or upon failure of a conservation commission to act within the 21 day time period, and where the Department has been requested to issue a Superseding Determination of Applicability but has failed to do so within 35 days, work may proceed at the owner’s risk upon notice to the Department and to the conservation commission.”

A few local bylaws/ordinances give the conservation commission authority to delay determination until the spring, especially in challenges to the presumption of vernal pool habitat. A few are explicit about the dates when delineation can be reviewed; for example, Boxford: “resource area boundary delineations shall be reviewed only between April 1 and December 1 of each year.”

Many bylaws/ordinances include a clause that gives the commission the right to continue a hearing to another date if additional information is required. The clause usually appears in sections titled “Notice and Hearings,” “Continuances of Hearings,” or “Burden of Proof.” The clauses sometimes include the phrase “without the consent of the applicant” and may not indicate a timeframe for the hearing to be decided. Many do specify that if an applicant objects to the postponement, the hearing shall be closed and the commission will act on information available.

Research Coding If the conservation commission delays as a matter of informal policy, the answer is coded as No. If the bylaw states that certification is not permitted in winter or when the temperature is below freezing, or gives the commission "authority to continue the hearing to a certain date...for reasons...which may include receipt of additional information", then coded as Yes. If a conservation agent indicated that the municipality had never delayed determination, but the researcher located the relevant language in the bylaw/ordinance or regulations, then the answer is coded as Yes. In a couple of cases, conservation commissions marked No on the survey, but the researcher left the answer as Yes when the relevant language appeared in the bylaw/ordinance or regulations.

Abington *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From § 171-4. Notice and hearings.
F. The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion.

Similar sections have been cited by other towns as the right to delay the determination of a resource area.

Acton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No Researcher spoke with Andrea Ristine, Acton Conservation Secretary, on 8/20/04. She stated that the commission has not delayed determination.

Researcher found reference for the right to delay a trial, but to a date that was agreed upon by both the applicant and Commission. Because this requires the applicant's consent, the answer field was left as 'no'.

Amesbury *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section V. Notice and Hearings,
"The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant of others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section VI."

(Town of Amesbury Wetlands Protection Bylaw)

Andover *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 6. Procedures, 3.d Public Hearing,
"A public hearing shall be held by the Conservation Commission within 21 days of the receipt of said Notice. Notice of the time and place of a hearing shall be given by the Conservation Commission at the expense of the applicant not less than 5 days prior to such hearing by publication in a newspaper of general circulation in Andover.

Public hearings may be continued as follows:

1. Without the consent of the applicant to a date, announced at the hearing, within 21 days of receipt of the Notice of Intent;
2. With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
3. With the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action. The date, time, and place of said continued hearing shall be publicized in accordance with M.G.L., c. 131, section 40."

(Town of Andover Conservation Commission Regulations, Adopted 2002)

Arlington *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The Commission has the right to delay a hearing for additional evidence. From Section 9 - Public Hearings,
"A.A public hearing shall be held by the Conservation Commission with 21 days of receipt of the complete Notice of Intent, and shall be advertised in accordance with the Bylaw and the requirements of the Open Meeting Law, M.G.L. c. 39, Section 23B.

B.Continued hearings.

(1) Public hearings may be continued as follows:

- (a) Without the consent of the applicant to a certain date announced at the hearing should the applicant or the applicant or the applicants representative fail to provide eight (8) copies of any written information or documents intended for discussion at a meeting/hearing less than ten (10) days prior to that scheduled meeting/hearing to the Commission office or Agent, or fail to deliver one copy to the home of each Commissioner and the Commission Office or Agent seven (7) days prior to said meeting/hearing.
- (b) Without the consent of the applicant to a certain date announced at the hearing either for receipt of additional information offered by the applicant or others or for information required of the applicant deemed necessary by the Conservation Commission at its discretion.
- (c) With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or

(d) With the consent of the applicant for a period not to exceed 21 days after the submission of a specified piece of information or the occurrence of a specified action.
(2) The date, time and place of said continued hearing shall be publicized in accordance with the Open Meeting Law, and notice shall be sent by the applicant to any person at the hearing who so requests in writing."

(Arlington REGULATIONS: WETLANDS PROTECTION, Revised Sept. 20, 2001)

Ashland *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No The researcher found no reference for the right to delay a public hearing or certification.

Attleboro *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From the City of Attleboro Wetlands Rules and Regulations:

4.7.4 Timing of Evidence Collection.
Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available. Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence. It is the Commission's intent that no applicant will be required to wait longer than 12 months for a vernal pool determination except in periods of Drought, in which case the Commission will make its determination as soon as it is practical or possible.

"The Commission shall have authority to continue the hearing to a certain date for reasons stated at the hearing, which may include the receipt of additional information from the applicant or others deemed necessary by the Commission or the comments and recommendations of the boards and officials listed in Section 18.1.7." From the City of Attleboro Wetlands Protection Ordinance. Section 18-1.6 (Adopted 2001).

"Upon receipt of a permit application, the Conservation Commission shall provide a copy of the public notice thereof to the Mayor, the planning board, the zoning board of appeals, the board of health, the department of public works, or the inspector of buildings. A copy of such notice will also be given to the Conservation Commission of an adjoining municipality if the application pertains to property within 300 feet of that municipality. The Commission shall ask such officials and boards to submit their comments and recommendations with respect to the application to the Commission within fourteen (14) days from their receipt of such notice. The Commission shall not take final action on the application until such fourteen (14) days have expired. The applicant shall have the right to receive any such comments and recommendations and respond them at a hearing before the Commission before final action is taken. The Commission shall take into account such comments and recommendations but shall not be bound by them." From the City of Attleboro Wetlands Protection Ordinance. Section 18-1.7 (Adopted 2001).

Auburn *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No The researcher did not find any reference to delay of delineation of resource areas, or the right of the commission to delay a public hearing.

On 10/25/04, the researcher spoke with the conservation administrator, and she said that the town has not had to delay, but that the DEP gives the town the authority to do so.

Avon *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Answer based on 6/28/04 phone conversation with Gene Guilbault, Avon Conservation Officer -- he said they do delay during a drought and the winter time from around November to March; there are circumstances where they may have to make a decision, but in general, he said they will delay.

From Section V. Notice & Hearings,
"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section 6. In the event the applicant objects to a continuance of postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Avon, Massachusetts, Wetlands Protection Bylaw)

Bedford *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 36.5 Notice and hearings,
"The Conservation Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Conservation Commission in its discretion, or comments and recommendations of boards and officials of the Town of Bedford. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Conservation Commission shall take action on such information as is available."

(Town of Bedford General Bylaw - Section 36, Wetlands Protection Bylaw ATM 1987)

Since this has been cited by others towns as the right to delay a determination of a resource area, researcher marked the answer as a 'yes'.

Beverly *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The City of Beverly Wetlands Protection Regulations, Section III(3)(2003) indicate that the Commission may delay certification of vernal pools. The City of Beverly Wetlands Protection Regulations, Section III(3)(2003, as amended) states the following:

"Many of the indicators of Vernal Pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood Frog chorusing only occurs between late March and late May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of Vernal Pool habitat the Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence."

Additionally, from Sec. 24.5 Hearings, Part D. Continuances,

"The Commission may continue a public hearing or public meeting in the following situations:

1. With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
2. Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others; and
3. Any application that expires would require refiling of the Notice of Intent."

(City of Beverly Wetlands Protection Ordinance)

Billerica *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Researcher spoke with Tony DaSilva, Assistant Conservation Agent in Billerica, on 8/5/04.

Mr. DaSilva stated that there is no official policy allowing for a delay, although the commission will avoid doing a certification in the middle of heavy snowfall.

From Section 7.3 Hearing Process,
"B. Continuation of Hearing.

The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials noted in Section 7.1.B of this by-law."

(Article XXII- Billerica Wetlands Protection By-Law, Adopted 2002)

This language has been cited by other towns as the right for the Commission to delay the determination of a resource area. Therefore, researcher marked the answer field 'yes'.

Blackstone *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The researcher found no reference for the right for the Commission to delay the determination of a resource area during certain times of the year.

However, from Section 119-8 Notice of filing required; public hearing,
"C. If the Commission determines that additional information is necessary, the hearing may be continued to a future date. if continuance is not agreed upon by the applicant, the hearing shall be closed and action shall be taken on such information as is available."

(Blackstone Code Chapter 119, Wetlands, Adopted 1986)

Similar sections have been cited by other towns as the right to delay the determination of a resource area.

Note: Survey received from Blackstone on 5/17/05 (completed by Philip Herr) marks this answer as "no."

Bolton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The conservation agent said (11/8/04) that in the past hearings had been continued during winter months and that if the drought made it difficult to determine land subject to flooding or inundation, the commission would likely delay the hearing. The agent then quoted Section 1.18/5 Notice and Hearings:

"Permit applications shall be filed with the Commission subject to the provisions and conditions of 310 CMR part 10.00 and the Commission may, in an appropriate case continue a public hearing for good cause and may combine its hearing under this Bylaw with the hearing conducted pursuant to the Wetlands Protection Act, M.G.L. Ch 131, Section 140 and Regulations, 310 CMR 10.00." From the Town of Bolton Wetlands Bylaws, Section 1.18.5.

Boxborough *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay*

certification of wetlands during dry seasons or winter months or for another reason?

Yes "If the Commission determines that additional information is necessary, the hearing may be continued to a future date for as many hearings as may be deemed necessary by the Commission" From the Town of Boxborough Regulations for the Wetlands Bylaws. Section 4.2, (Adopted 11/14/01).

Boxford *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Section 375-55C of the Boxford Wetlands Regulations reads: "Review Period. resource area boundary delineations shall be reviewed only between April 1 and December 1 of each year. Delineations may be reviewed at the sole discretion of the Commission or its agents between December 1st and April 1st, and shall be reviewed only when site conditions are such that the Commission or its agents believe they can adequately review the relevant resource area indicators (e.g. soils, vegetation, topography, hydrology)."

In addition, from Section 5 Public Notice and Hearing,
"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of other boards and officials. In the event the applicant objects to continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available. Any such continuance or postponement shall require approval by a majority of the Commission."

(Town of Boxford Wetlands Protection Bylaw Regulations, Adopted 1994, Amended 2004)

Braintree *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes According to Peter Lopolla, Director of Planning and Conservation, Braintree does not allow such delays. (7/6/04)

From Section V. Notice and Hearings, C Public Hearings,
"4. The Commission shall have the authority to continue a hearing for the following reasons:

- a. Failure to comply with the notice requirements,
- b. Lack of a quorum,
- c. To allow comment and recommendations for Town Boards and Officials and
- d. For additional information which is deemed pertinent to the Notice/Request ...

6. A hearing shall be closed by vote of the Commission when all pertinent information has been placed on the record and the Commission has determined that all of its questions have been answered."

(Braintree Wetlands Bylaw)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area and therefore, this researcher changed the answer field to 'yes'.

Bridgewater *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes "The Commission shall have authority to continue any hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant and deemed necessary by the Commission in its discretion or comments and recommendation of other Town boards and officials." From Town of Bridgewater Wetlands Bylaws. Section 5 (Adopted 1990).

Burlington

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

According to Randy Newell, Assistant Administrator, the Burlington wetland bylaw does not give the conservation commission authority to delay determination of wetlands resource areas. (7/23/04)

The researcher found no reference to such a right in the wetland bylaws.

Canton

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Bob Murphy, Conservation Agent, said on 8/31/04 that in order to make the determination using both soils AND vegetation, the conservation commission sometimes needs to wait until after the winter to make the determination.

From Section 1.05 Procedures, (5) Public Hearings,
"B. Public hearings may be continued as follows:

(1) Without the consent of the applicant to a certain date announced at the hearing either for receipt of additional information offered by the applicant or others or for information required of the applicant deemed necessary by the Conservation Commission as its discretion ..."

(Town of Canton Conservation Commission
Wetland Protection Bylaw Regulation, Adopted 1991)

Carlisle

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

Sylvia Willard, Carlisle conservation agent, on 7/30/04, said that Carlisle adheres to the state rules on the certification of wetlands.

Carver

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Sarah Hewins, conservation agent, (10/25/04) said that the Commission does have the right to determine the delineation of resource areas (for those areas which are season dependent).

From Section II. Filing Procedures, (B) Notice of Intent,

"(10) The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant and deemed necessary by the Commission in its discretion or by other town boards and officials, as appropriate."

(Town of Carver By-Laws, Wetlands Protection, Amended 2002)

Chelmsford

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes Trill Levine, Chelmsford Conservation Agent on 9/7/04 stated that Chelmsford allows delineations year-round.

From section 187-8. Public hearing,
"...If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date."

(Chelmsford Conservation Commission Wetlands Bylaw and Regulations)

This section has been cited by other towns as the right for the Commission to delay the determination of a resource area, and thus, the researcher changed the answer field to a 'yes'.

Cohasset *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Nancy Noonan, Cohasset Conservation Commission Secretary, (8/20/04) stated that the commission certifies wetlands year-round.

From Section 5. Notice and Hearings,
"The Commission shall have the authority to continue any hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of other Town boards and officials. If the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on the information than available to it."

(Article XIV Wetlands Protection Bylaw)

This wording has been cited by other towns as the right for a Commission to delay the determination of a resource area, and therefore, this researcher changed the answer field to 'yes'.

Danvers *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Kristan Tarricone, Planner, Danvers Dept of Planning and Human Services, wrote in an e-mail on 6/10/04:
"Section 1.05 (4) (b) give the Commission the right to continue a public hearing for the purposes of acquiring new or additional information. It does not specifically state that they may continue in a drought or during winter months. My experience here has shown that an applicant would rather wait out the winter to verify a VP than push the Commission to make a decision without adequate information because the applicant may end up with a denial of the Order of Conditions on the basis that the Commission did not have enough information to make an informed decision about the project."

Note that "Section 1.05(4)(b)" referenced above is from the Town of Danvers Wetlands By-law Regulations, Section 1.05(4)(b) (1999, Revised 2003).

Dedham *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Town of Dedham Conservation Commission Rules and Regulations , Section 12(a), (Adopted 1996, Amended 2002): "the commission need not act upon abbreviated notice of resource area delineation and notice of resource area delineation applications when in the opinion of the Commission, seasonal soil and vegetation conditions do not permit the accurate delineation of the Resource area."

From Section 7. Notice and Hearings,
"f) The Commission shall have the authority to continue the hearing to a date certain announced at the hearing for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 8 of this bylaw. In the event the applicant

objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Conservation Commission Rules and Regulations, Adopted 1996, Amended 2002)

Dighton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Charles Mallow, conservation agent, (11/4/04) said that delay has never been necessary.

From Section IV. Notice and Hearings,
"The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or other deemed necessary by the Commission."

(Dighton Regulations, By-Law and Policies)

Douglas *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The town of Douglas policy mentions the procedure if the ground is covered by snow. Policy #7,
"In the event that the verification of a wetland boundary cannot be determined because of snow cover: A Public Hearing held by the Conservation Commission may be continued with the consent of the Applicant, to a date (unknown at the time of hearing) within 21 days of receipt of additional information needed by the Commission or within 21 days of the date of the scheduled site walk in which the Commission was able to make a determination on the wetland delineation."

(Conservation Commission Town of Douglas Policy)

The Commission may delay a hearing if additional information is necessary. From Section 7,
"Failure to provide adequate evidence to the Conservation Commission supporting a determination that the proposed work will not harm the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence."

(Town of Douglas Wetland Bylaw, Adopted 1983)

Dover *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes According to the Rules and Regulations of the Dover Wetlands Bylaw, Section 263-5(4), "(4)Vernal Pools. All applicants shall certify to the existence and location or nonexistence of any Vernal Pools on the project site. Any area which any credible evidence suggests may be a Vernal Pool shall be presumed to be a Vernal Pool and afforded all the protections thereto, unless and until the Commission explicitly finds that such area is not a Vernal Pool based on either field examination(s) in the spring time or a detailed written analysis by an independent appropriately qualified wetlands professional. The credible evidence referred to in this provision may include testimony of 1 or more abutters or persons familiar with the site."

In addition, from § 181-6. Notice and hearings; fees and expenses:
"D.For reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available."

(Dover Wetlands Protection Bylaws, Chapter 181, Adopted 1986, Amended 1994)

Dracut

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

“The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reason stated at the herein which may include receipt of additional information from the applicant or other deemed necessary by the Commission in its discretion, or comments and recommendation of the board and official listed in VI.” From the Town of Dracut Wetlands Bylaw, Section V (Adopted 1993).

Dunstable

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Marilyn Pike, member of the Dunstable Conservation Commission, (11/08/04) said that they have put off determining resource areas because of frozen ground and lack of vegetation.

In addition, from Section 4: Public Hearing,

"If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date."

(General Wetlands Bylaw for the Town of Dunstable)

Duxbury

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

Person from the Conservation Commission said (11/17/04) that the Commission has delayed determinations due to snow cover but that it was unlikely the Commission would continue a hearing during a drought or dry season. The staff then reiterated that hydrological evidence was only one component used in the determination of a wetlands.

The researcher found no provision giving the Conservation Commission the right to continue a hearing.

Easton

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 503-9,

"B. Continued hearings.

(1) Public hearings may be continued as follows:

(a) Without the consent of the applicant to a certain date announced at the hearing for receipt of additional information offered by the applicant or others or for information required of the applicant deemed necessary by the Conservation Commission as its discretion ..."

(Easton Town Code, Article I General Provisions and Procedures)

This section has been cited by other towns as the right for a Commission to delay the determination of a resource area.

Foxborough

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

David Risch, Foxboro Conservation Agent, stated (9/9/04) that Foxboro allows year round collection and certification.

In addition, the researcher found no reference to this in the wetland bylaws and regulations.

Framingham *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes According to Michelle Grzenda, Framingham Conservation Administrator, a city or town conservation commission should be able to determine a wetland at almost any time of the year, excluding deep snow or permafrost conditions.

From Section 18.5 Notice of Hearings,

"The Conservation Commission shall have the authority to continue the hearing to a specific date, agreeable to the applicant, announced at the hearing without further notification, for reasons stated at the hearing. Those reasons may include, but are not limited to, requests from other boards, officials, or attendees. In the event that the applicant objects to a continuance, the hearing will be closed and the Conservation Commission will take action on available information."

(Framingham Wetlands Protection Bylaw, Adopted 1992)

This section states that the continuance will be agreeable to the applicant. However, in the case that the applicant objects, the hearing is closed and the Commission can take action.

Similar sections have been cited by other towns as the right to delay the determination of a resource area, and the researcher changed the answer field to 'yes'.

Franklin *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Rich Vacca, Franklin Conservation Agent, stated (8/3/04) that although it is a bit more difficult, delineation and certification can be done year round, even in the winter.

From Section 181-6. Notice and Hearings,

"H. The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion or comments and recommendations of the boards and officials listed in Section 181-7."

(Franklin Wetlands Bylaw, Adopted 1997)

The section has been cited by other towns as the right for the Commission to delay the determination of a resource area, and thus, this researcher changed the answer to 'yes'.

Freetown *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No No reference to the right of the Commission to delay the determination of resource areas.

Georgetown

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

The researcher did not find a provision giving the Commission explicit permission to delay the determination of a wetland on the basis of climatic or seasonal conditions. However, the Commission can continue a hearing to gather more information from the applicant.

"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion or comments and recommendations of boards and officials listed in § 161-6. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

Gloucester

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 12-18 Effect of insufficient information,
"If the commission finds that the information submitted by the applicant is not sufficient:
(1) To describe the site, the work or the effect of the work on the interests identified in section 12-10; or
(2) To sustain the burden of proof as to the protection of those interests, as described in section 12-10(3); then this finding shall be sufficient cause for the commission to deny a permit or; in the commission's discretion, to continue the hearing to another date to enable the applicant or others to submit additional information."

From the Gloucester Wetlands Ordinance, Section 12.18 (Adopted 1990, Amended 2000)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Grafton

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 5: Notice and Hearings,
B) (sixth paragraph)
"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of Boards and Officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Groton General Wetlands Protection By-Law, Article 26)

This section has been cited by other towns as the right for the Commission to delay the determination of a resource.

Groton

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

The conservation agent said (11/8/04) that vernal pools must be certified during the appropriate season and a drought could impact this process.

From Section 215-6. Notice and hearing,
"C. The Commission may, in the exercise of its reasonable discretion, continue the hearing from time to time to a date certain announced at said hearing for reasons stated, which reasons may include but are not limited to: curing any defect in notice; allowing additional testimony or documents as may be deemed necessary or appropriate by the Commission; and/or obtaining comments or recommendation of any municipal board or officer referred to in Section 215-4 above."

(Town of Groton Wetlands Protection Bylaw Chapter 215 Wetlands)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Groveland *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Wetlands can not be delineated during winter.

"Wetland boundary delineations shall be reviewed only between April 1 and December 1 of each year, unless the Commission grants a waiver on a particular site due to the low probability of error, or reserves the right to adjust the boundary during the growing season." From the Town of Groveland Wetlands Protection Regulations, X.3.

Further, from Section V. Notice and Hearings,

"The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section VI."

(Town of Groveland Wetland Protection Bylaw and Regulations, Adopted 1995)

Halifax *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes "The Commission shall have the authority to continue a hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 7. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available." From Halifax's Wetlands Protection Bylaw, Section "Notice and Hearings," (Adopted 1989).

Hamilton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Jim Hankin, Hamilton Conservation Administrator, (9-2-04) stated that the Hamilton Conservation Commission will occasionally request a delay until spring in order to perform a more accurate delineation. This is an informal policy.

From Section V. Notice of Intent,
"D. Public Hearing

The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. If additional data, or time to review data, is needed the Commission may vote to continue the public hearing to a time to be determined by the Commission."

(Town of Hamilton Conservation Bylaw Regulations)

This section has been cited by other towns as the right for the Commission to delay the determination of a resource area, and therefore, the researcher changed the answer field to a 'yes'.

Hanover *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

certification of wetlands during dry seasons or winter months or for another reason?

Yes Sandra D. MacFarlane, Hanover Conservation Secretary, (8/13/04) said that Hanover does not have a policy for delaying certification.

From Section 5. Notice and Hearings,
"The Commission shall have authority to continue any hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of other Town boards and officials. If the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Hanover Wetlands Protection Bylaw)

This language has been cited by previous towns as the right to delay the determination of a resource area and thus, the researcher marked the answer as 'yes'.

Hanson *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 5: Notice and Hearings,
(fifth paragraph)
"The Commission shall have authority to continue any hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or other information and plans required of the applicant deemed necessary by the Commission in its discretion, or for comments and recommendation of other Town boards and officials. If the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town Wetland Protection By-law with Rules and Regulations)

Similar sections have been cited by other towns as the right to delay the determination of a resource area.

Note: On survey received from Hanson on 4/28/05, the answer to this question is marked "no."

Harvard *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes "In the event that the Commission determines that snow cover, ice or other weather conditions prevent the verification of the wetland line the Commission shall continue the hearing to a date certain when the Determination can be made. In the case that the Applicant object [s] to a continuance or delay the hearing shall be closed and the Commission shall take action on the information available. The applicant will be required to present a check payable to The Harvard Post for the current cost of advertising the hearing. The applicant will be notified of the amount prior to the hearing." From the Harvard Rules and Regulations for the Administration of the Harvards Wetlands Bylaw, Section III (B) (Adopted 1996).

Haverhill

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

"The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or Request For Determination unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission, shall combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, Massachusetts General Law Ch. 131, s. 40, and Regulations, 6

310 CMR 10.00 in each instance where such a hearing is required. The Commission shall have authority to continue the hearing for up to 14 days to allow for full departmental review to a certain date announced at the hearing for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission or comments and recommendations of the boards, officials, and the applicant or his/her representative."

From the City of Haverhill Wetlands Protection Ordinance, Section V (Adopted 1996).

Survey received from Haverhill on 5/22/05 confirmed the answer as "no."

Hingham

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

According to W. Clifford Prentiss, Conservation Officer, Hingham Conservation Commission does not have the right to delay the determination at this time. (6/25/04)

The researcher did not find any reference to this right in the wetland bylaws or regulations.

Holbrook

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Town of Holbrook Code, Section 6, Wetlands Protection By-Laws

Section 6. Notice and Hearings

The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearings, which may include receipt of additional information offered by the applicant and others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section 9: If the land is snow covered or frozen on the date of a scheduled inspection to an extent which, in the judgment of the Commission prevents adequate inspection, the action required by the Commission may be postponed until such time as the ground is free of snow and thawed and new inspection(s) can be scheduled and completed. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

Holden

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Conservation agent, Pam Harding, (10/25/04) said that the Commission does have the right to delay resource area determination.

From Section V. Notice and Hearings,
(sixth paragraph)

"The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Sect. VI."

(Holden Conservation Commission Wetland Bylaws, Adopted 2001)

Holliston

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Section 3.5.2 of the Holliston Wetlands Regulations reads: "Timing of Evidence Collection:

Many of the indicators of vernal pool habitat are seasonal. For example: certain salamander egg clusters are only found between late March through late May. Wood frog chorusing only occurs between late March and April, and then is mostly at night. Consequently, failure to find evidence of breeding obligate species must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of vernal pool habitat the Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence."

(Town Of Holliston Wetlands Administration Bylaw Regulations, Adopted 2001)

From Section 5. Notice and Hearings,

"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, and deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Holliston Wetlands Administration Bylaw)

Hopkinton

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Hopkinton Wetlands Regulations Section 3.1.3 reads:

"Timing of Evidence Collection

Many of the indicators of vernal pool habitat are seasonal...Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented."

Further, from Section 10.2 Determining The Edge Of A Wetlands/Resource Area,

"Wetlands are defined in chapter 131 M.G.L. by plant life and vegetation and in some instances by soil analysis. The Conservation Commission or its consultant may not make a determination of a wetland/resource boundary when conditions prevent a visual examination (ex: snow cover or frozen ground). Requests for such determination may be deferred until conditions permit a visual examination and/or a soil test."

Additionally from Section 206-6 Public hearings and notifications,

"F. The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section 206-7."

(Town of Hopkinton General Bylaw, Adopted 1995, Amended 2003)

Ipswich

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

"Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not adversely affect the interest protected by this By-Law shall be sufficient cause for the Commission to deny a permit, or to grant a permit with conditions, or in the Commission's discretion to continue the hearing to another date to enable the applicant or others to present additional evidence. The Commission and the applicant may also mutually agree to continue the hearing." From Ipswich Wetlands Protection Bylaw, Section 8 (Adopted 1990).

Kingston

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

"The Commission may require an application that may impact a seasonal wetland or vernal pool to contain information collected or recorded during seasonal wet periods." From the Town of Kingston Wetlands Protection Regulation. 5.04.

Leicester

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

The researcher did not find any reference to the time of year in which the Commission may determine a resource area. In addition, the researcher did not find any reference for the right for the Commission to delay a trial indefinitely.

In response to "Does the commission have the right to delay the determination of a wetland resource area during winter months, in a dry season, or drought year?" Conservation Chair, Dianna Provencher responded "No."

Lexington

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Answer based on 6/29/04 phone conversation with Karen Mullins, Conservation Administrator -- This policy is not written down in the regulations. If the testing were done in the summer and the summer data sheets come before commission in winter and it is not possible to confirm them, then the commission will issue a continuance until possible to review it; if applicant does not consent to continued review, the Commission will say that they don't agree with wetlands boundary and deny the application, so the applicant would have to reapply.

6/16/04 Phone conversation with Linda Gaudet. She said that if there is too much snow on the ground, so that they can not make a determination, then they will postpone the hearings and until they can make a determination. She was unaware of any postponements because of dry conditions.

Lincoln

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Section 5. Notice and Hearings,

"The Commission shall have the authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant which are deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Lincoln Bylaws, Article XVIII)

This section has been cited by other towns as the right for the Commission to delay the determination of a resource area.

Littleton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No The researcher did not find any reference for the right of the Commission to delay in the bylaw.

Barbara Chapin, Littleton Conservation Administrator, on 8/31/04 said that the commission performs delineations when it believes that it can be done accurately - this is an informal policy.

Lowell *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Christine Thomas, Lowell Environmental Officer, (8/27/04) said that the commission can delineate a wetland year round, and that it is an informal policy to avoid delineation if there is snow cover.

From Section 5. Notice and Hearings,
"For reasons announced by the Commission at the hearing, the Commission shall have the authority to continue or postpone the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Wetlands Ordinance, Section 5-120 of the Code of the City of Lowell, MA)

This section has been cited by other towns as the right for the Commission to delay the determination of resource areas.

Lunenburg *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes "If the Commission finds that the information submitted by the applicant is not sufficient to describe the site, the work or the effect of the work on the interests identified in the By-law, it may issue an order prohibiting the work. The order shall specify the information which is lacking and why it is necessary." From the Lunenburg Wetlands Protection Bylaw and Regulations Part I, Section 10.05.6 (c) (Adopted 1983, Amended 1987).

Lynn *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section IV. Applications for Notice of Intents and Requests for Determination,

"The Commission shall have the authority to continue a hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in S. VI."

(Lynn Conservation Commission Wetlands Protection By-Laws, Rules and Regulations, Adopted 2000, Amended 2001)

This wording has been cited by previous towns as the right for the Commission to delay the determination of a resource area.

Manchester-by- *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 4.3,
"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans deemed necessary by the Commission to effectuate the purposes of this by-law, or comments and recommendations of boards and officials listed in Section 6."

(Manchester-by-the-Sea general By-Law, Amended 2003)

Since this section has been cited by other towns as the right for the Commission to delay the determination of a resource area, this researcher marked the answer field 'yes'.

Lisa Press, Manchester-by-the-Sea Conservation Administration, (8/19/04) said that the commission has not delayed since she came back on board. She added that it might happen if there were snow cover.

Mansfield *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No The researcher found no provisions granting the Commission the right to delay the certification of wetlands during a drought year, dry season, or winter month. The researcher also found no reference for the right for the Commission to delay a public hearing or public trial indefinitely.

Marblehead *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Sec. 1-25-105 Notice and Hearings (sixth paragraph),
"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the commission in its discretion, or comments and recommendations of boards and officials listed in section 1-25-106. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the commission shall take action on such information as is available."

(Chapter 1-25 (NOW CHAPTER 194) Wetlands Protection)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

The Town of Marblehead Wetlands Protection Bylaw, Section 2.6 (effective 2001) indicates that when delineating bordering vegetated wetlands provides an alternative method of delineation during the winter months if it is not possible to view vegetation.

Doug Saal, Marblehead Town Engineer on 6/28/04 indicated that the Town of Marblehead does not delay the certification of wetland resource areas during a particular time.

Marshfield

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

"For reasons announced by the Commission at the hearing, the Commission shall have authority to continue or postpone the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion." From the Town of Marshfield Wetlands Protection Bylaw, Section III.6 (Effective 9/18/03).

Maynard

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 5. Notice and Hearings,

"With the consent of the applicant the Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Maynard Wetlands Administration Bylaw, Adopted 1996, Amended 2003)

While the section says there needs to be the consent of the applicant, the final sentence indicates that the case may be closed and the Commission can take action. It is vague as to what this means, but the researcher concluded that the Commission may delay the public hearing because of the determination of a resource area.

Medfield

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 7. Burden of Proof,

"The applicant shall have the burden of showing that the work proposed in the application will not harm the interests protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence."

(Medfield Wetlands Bylaw, Rules and Regulations Article IX, Section 6, Adopted 1995)

This language has been cited by other towns as the right for the Commission to delay the determination of a resource area.

Medway

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

No reference to the right of the Commission to delay the determination of a resource area in the wetlands bylaws.

Merrimac

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 4.3 Notice of Intent,
"4.3.3 Public Hearings"

The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:
With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others."

(Town of Merrimac, Massachusetts, Wetlands Protection Regulations, Adopted 2004)

Methuen *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 12-6. Burden of Proof,
"Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this ordinance shall be sufficient to cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence."

(Methuen Wetlands Protection Ordinance, Chapter 12, M.C.M.)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Milford *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 5. Notice and Hearings,
"The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, and deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Milford Wetlands Administration Bylaw, Article XXX)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Millis *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 5. Notice and hearings,
"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, and deemed necessary by the Commission in its discretion. In the event the applicant objects to continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

Town of Millis, Article XIX, Wetlands Protection Bylaw (as amended 2004).

This wording has been cited as the right for a commission to delay the determination of a resource area in other towns.

Millville *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes 12-5-3. Continuation of Hearing. The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section 12-6 1.

(Town of Millville Wetland Protection Bylaw, Adopted 2003)

Milton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No The researcher found no reference to such a right in the bylaw.

Natick *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Conservation Agent Bob Bois (8/24/04) said: "We have not done that as long as I have been here."

From Section 2.5.6 Hearing and Burden of Proof,

"...The public hearing may be continued upon the request of the Applicant, or upon vote of the Commission, until such time that the Commission is satisfied that it has received sufficient evidence concerning all issues raised during the hearing to enable it to render a decision upon the application."

(Town of Natick Wetlands Protection Bylaw)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area, and thus, the researcher marked the answer field to 'yes'.

Needham *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 1.05 Procedures, (5) Public Hearings on Applications for Permit,
"(c) Public hearings may be continued as follows:

1 Without the consent of the applicant to a date certain, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, additional information deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials..."

(Needham Conservation Commission Wetland Buffer Zone Regulations and Policy)

This wording has been cited by previous towns as the right to delay a resource area determination.

Newbury *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No No reference in the bylaw to a right to delay determination of wetlands.

Newburyport Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No The researcher found no provisions giving the Commission the right to delay the certification of a wetland resource.

Newton Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

Norfolk Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes According to Marie Simpson, Norfolk Conservation Agent, (8/3/04) Norfolk refrains from certifying boundaries and wetlands between November 1 and May 15 of the following year. However, the Conservation Commission can waive this rule.

From Section E. Notice and Hearings,
"6) The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Article VII: Land Use and Resource Protection, Section 2. Wetlands Protection Bylaw)

North Andover Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes From Section 4.1.3 Public Meetings,
"The Commission may continue or adjourn a public meeting or public hearing in the following instances:
-With the consent of the applicant, to an agreed-upon date which shall be announced at the meeting/hearing; or
-Without the consent of the applicant, to a specific date for the reasons stated at the meeting/hearing, including but not limited to receipt of additional information from the applicant or others."

(North Andover Wetlands Protection Regulations, Adopted 1998, Amended 2003)

North Reading Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes From Section 196-5. Notice and hearings, B(5),
"The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 196-6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(North Reading General Wetlands Bylaw)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Kathy at the Conservation Commission commented that she thinks they have delayed in the past for a couple of months to do a study at a certain time of the year.

Northborough *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 6-04-060 Notice;hearings
"B. Hearings...
(5)The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6-04-070. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Northborough Chapter 6-04 Wetlands)

Northbridge *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Bob Anderson, member of the Conservation Commission, (10/25/04) said that the Commission can delay the determination of a resource area during certain times of the year.

In addition, from Section 7-705. Notice and Hearings,
"F. The commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the commission in its discretion, or comments and recommendations of boards and officials listed in s.7-706. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed, and the commission shall take action on such information as is available."

(Town of Northbridge Wetlands Protection By-Law, Section 7-700)

Norwell *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes NORWELL WETLANDS BYLAW REGULATIONS
6.1.0 Request for Determination of Applicability (RDA)

Any person desiring to know whether or not a proposed activity or an area is subject to the Norwell Wetlands Bylaw may in writing request a determination from the Commission. A Request for Determination of Applicability (RDA) shall be filed with the Norwell Conservation Commission prior to altering existing conditions or conducting any work within any Resource Area or Buffer Zone. This submission shall be made on the form and

according to instructions provided by the Town of Norwell, Section 7 of these Regulations, and required by 310 CMR 10.05(3)(a)(b) with the following additions: (1) the 50foot No Build Zone will also be shown. The Conservation Commission may hold a public meeting on requests under both Town and State regulations at the same time. The Conservation Commission will render a positive or negative Determination of Applicability.

The Commission shall have the authority to continue the meeting to a certain date announced at the meeting, for reasons stated at the meeting, which may include timely receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion to make a determination, including comments, recommendations, or action of the other Town boards and Town officials.

If a positive determination is made by the Conservation Commission upon a Request for Determination, a Notice of Intent under the Norwell Wetland Bylaw must be filed if the applicant wishes to proceed with the project. If a negative Determination is made by the Conservation Commission upon a Request for Determination, no Notice of Intent under the Norwell Wetland Bylaw need be filed. In either case, the Applicant shall not commence work until a Determination has been issued by the Commission and all appeal periods have elapsed or in the event of an appeal all appeals finally concluded.

Norwood *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No No reference in the bylaw to delay.

According to Al Goetz, Norwood Conservation Commission Administrator, (6/30/04) they can delineate wetlands at any time, except when there is deep snow cover.

Peabody *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Sec. 32-18 Continuation of Public Hearing,
"The Commission shall have the authority to continue any hearing for good cause, to a certain date announced at the hearing, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, including the DEP, or information and plans required of the applicant deemed necessary by the Commission. In addition, when there is snow on the ground and/or the ground is frozen the Commission may continue a gearing until the snow melts and/or the ground thaws if it determines that accurate wetland delineation is not possible otherwise."

(Chapter 32 Wetlands and Rivers Protection Regulations, Adopted 1986)

Pepperell *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No The bylaw includes no mention of delaying the determination of resource areas and section 6 of the bylaw explicitly states "[u]nless otherwise stated in this Bylaw the areas of jurisdiction, definitions, provisions, procedures, and performance standards of the Wetlands Protection Act (M.G.L. Ch 131) and Regulations (310 CMR 10.00) shall continue to apply."

(Town of Pepperell Wetlands Protection Bylaw)

Survey received from Pepperell Conservation Commission (completed by Ellen Fisher, Conservation Administrator) in May 2004:

"As a general practice, we delay reviews of delineations when snow cover would make such reviews difficult/impossible. So far, our applicants have not objected."

Plainville *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes "Any hearing held under section 23 may be continued for a reasonable time to produce information which the Commission deems necessary to make a decision on the impact of the project. As an alternative to continuance, or after failure or refusal by the applicant to produce additional information as requested, the Commission may deny the project." From the Submission Guidelines for Town of Plainville Wetland Protection Bylaw, Section 2.9.

Plymouth *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Conservation contact Michelle Turner said that the Commission has delayed the determination in the past and does have the right to "wait until spring" to determine the presence of a vernal pool or resource area. (2004)

From Section VIII. Notice of Intent,

"G. For reasons announced by the Commission at any hearing, the Commission shall have the authority to continue or postpone the hearing to a date announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion."

(Rules and Regulations for Plymouth Wetlands Protection Bylaw, Article #27, Adopted 1999, Amended 2001)

Quincy *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 5: Notice and Hearings,
"The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event that the applicant objects to continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Quincy Wetlands Protection Ordinance)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Reading *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes According to Fran Fink, the regulation allows the continuation of a public hearing without having an applicant agree to it. Fink said that there have been delays because of snow during the winter.

Researcher also located the following information:

Town of Reading Wetlands Protection Regulations, SECTION 3 PERFORMANCE STANDARDS FOR RESOURCE AREAS, Subsection J: Vernal Pools, 2002:

"If the Commission determines that a vernal pool having characteristics set forth in the preceding subsections 3.J.1, 3.J.3, 3.J.4, and 3.J.5 is present in or within 100 feet of a proposed work area, the vernal pool and the land within one hundred feet of the vernal pool shall be presumed to provide significant vernal pool habitat functions. This presumption may be overcome only upon a clear showing by the applicant during the public hearing of sufficient credible evidence for the Commission to determine that the pool does not function as vernal pool habitat. Evaluation of vernal pool habitat functions normally requires observations during and after the springtime breeding season. It is strongly advised that applicants survey sites for potential vernal pool habitat and request a site inspection by the Commission in the springtime prior to filing a Request for Determination, a Notice of Intent, or an Abbreviated Notice of Resource Area Delineation, to avoid postponement until springtime verification can be accomplished."

Revere

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

The researcher found no reference to such a right in the wetlands bylaws.

Rockland

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

The researcher found no reference to the right to delay a public hearing in the wetland bylaws.

Rockport

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

On 10/25/04, the conservation agent, Suzanne O'Connell, wrote in an email:

"5) The Commission does not currently have a "right to delay the determination of a resource area" however would presumably exercise judgment when making these determinations."

From Section IV. Notice and Hearings,
(sixth paragraph)

"The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials."

(Rockport Code of By-Laws, Section A: Wetlands)

Rowley

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

"The Commission shall commence the public hearing within 21 days from the receipt of the following complete permit applications unless an extension is authorized, in writing by the applicant: Request for Determination of Applicability (RDA), Notice of Intent (NOI), Abbreviated Notice of Resource Area Determination (ANRAD), Request of Certificate of Compliance, Request for Extension Order. The Commission shall have authority to continue the hearing to the next time available at a public hearing, the date of which shall be announced at the hearing, for reason stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission. At its discretion, the Commission may open or continue a hearing in the event of non-attendance by an applicant or representative at a scheduled hearing." From the Town of Rowley Wetlands Protection Bylaw, Section VII (B) (Adopted 2003).

Survey received from Rowley on 5/17/05 (completed by Brew Baeslach):

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

"No"

Salem *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

No

Salisbury *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 4.1 - Notice and Hearings (of the by-law), sixth paragraph,
"The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of other local or state boards and officials. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Salisbury Conservation By-Law, Adopted 1989).

Saugus *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes 6/23/04 email response from Mr. Dame:

"I don't think it does specifically but we have delayed determinations in the past with no argument from applicant"

Town of Saugus Bylaws, 508.08, Section 5 - Applications and Hearings for Permits and Requests for Determination:
"B... The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing. Such reasons may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed above. The Commission shall issue its Order of Conditions within twenty-one (21) days of the close of the public hearing thereon unless the applicant authorizes an extension in writing."

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Scituate *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 10.05 Procedures, (2) Notice of Intent,
(a) Filing Procedures and explanations,
"(7) After the NPO or Abbreviated NOI has been reviewed, on-site inspection conducted, if needed, and Wetland hearing held, the Commission will issue an Order of Conditions within 21 days from the date of the close of the hearing. Prior to closing a hearing, continuances may be requested by the applicant or the Commission."

(Town of Scituate Code of Bylaws SECTION 30770, Wetlands Protection Rules and Regulations, Amended 2003)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area. Thus, this researcher changed the answer field to a 'yes'.

Seekonk

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

On 10/21/04, the researcher spoke to the Conservation Agent, Ms. Bernadette DeBlander, and she said although this has not happened since she has been there (since 2001), she was sure that the Commission could delay determination if they deemed necessary. Ms. DeBlancer did mention, however, the town uses the dry pool method for vernal pools so that this can be completed at any time of year.

From Section 5: Notice and Hearings (sixth paragraph),

"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments, and recommendations of boards and officials list in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Seekonk Conservation Commission By Laws, Adopted 1980, Amended 2003)

Sharon

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From RULES AND REGULATIONS OF THE SHARON CONSERVATION COMMISSION, Section 2.27. "Delineation of a Resource Area (other than pursuant to an Abbreviated Notice of Resource Area Delineation) approved by the Commission without a project proposal is for planning purposes only and does not constitute final Resource Area boundary delineation. Final approval of a Request for Resource Area Delineation during periods of the year other than the growing season may be delayed or denied by the Commission."

Sherborn

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 5.5.3 Continuances,

"Hearings may be continued at the request of the applicant or Commission. If a hearing is to be continued to allow preparation of revised plans, the project must be re-staked in accordance with changes made and all revised plans must be received seven (7) days before the continued hearing."

(Town of Sherborn Wetland Regulations, Adopted 1994, Amended 2001)

Shirley

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

The researcher found no reference to limiting the time of year in which the Commission may make resource area delineations. In addition, the researcher found no reference for the right of the Commission to delay or postpone a trial indefinitely.

Southborough

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 6.B Hearings,

"5. The Commission shall have the authority to continue the hearing to a certain date announced at the hearing or to an unspecified date, for reasons stated at the hearing. The reasons may include:

- a) receipt of additional information offered by the applicant or others,
- b) an opportunity for the Commission to conduct an on-site inspection, with or without the applicant of the property,

c)information and plans required of the applicant, deemed necessary by the Commission in its discretion,
d)snow cover preventing ground from being seen and wetland flagging from being verified by the Commission,
e)or comments and recommendations of Boards and Officials listed in Section 7.
In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Southborough Wetlands Regulations, Adopted 2002)

Similar sections have cited this section as the right for the Commission to delay the determination of a resource area.

Stoneham *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section V. Notice and Hearings,
"The Commission shall have the authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in Section VI."

(Stoneham, Massachusetts, Wetland Bylaw)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Stow *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Stow Conservation Administrator Pat Perry o(8/26/04) said that the Commission does wetland certification year-round, although they will avoid doing a certification/delineation in snow.

From Section. 6 Burden of Proof,
"Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will contribute to the interested protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence. Due consideration shall be given to any demonstrated hardship of the petitioner by reason of a denial, as brought forth at the public hearing. (amended 5/21/03)."

(Town of Stow, Regulations Wetland Protection Bylaw, Adopted 1987, Amended 1990)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Answer marked on survey received from Stow on 3/28/05:

"No But we do."

Sudbury *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Debbie Dineen, Sudbury Conservation Coordinator, (8/13/04) said that Section 2.2.2 of the Sudbury Wetland Regulations addresses this when it states:
"Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence."

Sutton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The bylaws and regulations state that the Commission can delay the determination of a vernal pool. On 10/21/04, Mark Briggs, member of the Conservation Commission, said he thought that this would apply to all resource areas. The researcher did not find reference to this in relation to other resource areas. Mr. Briggs then said that it should be possible to complete determination of all other resource areas anytime during the year, weather-permitting.

From Section 2.2 Jurisdiction Over Presumption Of a Vernal Pool Habitat. "2.1.2 Timing of Evidence Collection
Many of the indicators of vernal pool species habitat are seasonal... Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period is consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence and information."

From Section 7 Permits and Conditions,
"Failure to provide adequate evidence or information to the Commission supporting a determination that the work will not harm the interests protected in this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another mutually acceptable date to enable the applicant or others to present additional related information or evidence."

(Sutton Wetlands and Riverfront District Administration Bylaw and its Rules and Regulations, Adopted 1983, Adopted 2000)

Swansea *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes The Commission may delay a hearing.
From Section 3.04 Notice of Intent, I. Hearings,
"The Commission shall conduct a public hearing within 21 days of the receipt of a completed Notice of Intent. If more information is needed or the Commission needs to conduct an on-site inspection, the Commission may continue the hearing for the receipt of the requested information or to conduct the on-site inspection. Thereafter, the hearing may be continued with the mutual agreement of the Commission and the applicant. Upon receipt of all information requested, the Commission shall close the hearing."

(Rules and Regulations Under the Swansea Wetlands Protection Bylaw)

Taunton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Cristine O'Diaga, Conservation Agent, (11/1/04) said that she did not think the Commission can require a delay, but can "deny without prejudice" which makes the applicant either go through appeal process or resubmit the application during a new season. Ms. Diaga added that this has been the topic of discussion recently, and the Commission was able to postpone the delineation of a resource area.

From Section III Permitting, 4. Public Hearing,
"The Commission shall hold a public hearing on the Notice of Intent and shall issue a written decision within twenty-one days after the close of the public hearing. Prior to the close of a public hearing, all data deemed pertinent to the decision must be submitted and reviewed by the Commission. If additional data, or time to review data, is needed, the Commission may vote to continue the public hearing."

(City of Taunton Conservation Ordinance Regulations)

Tewksbury**Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?****Yes**

From Section 18.04.60 Notice and hearings,

"The Commission shall have the authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant, requester or others, information and plans required of the applicant or requester deemed necessary by the Commission in its discretion, or the comments and recommendations of the boards listed in Section 18.04.080. However, if the applicant or requester objects to a continuance, the hearing shall be closed and Commission shall take action on such evidence as is then available."

(Wetland Protection By-Law, Adopted 2004)

This section has been cited by other towns as the right to delay the determination of a resource area.

Topsfield**Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?****Yes**

Topsfield Wetland Regulation 10-3.1 reads: "Wetland boundary delineations shall be reviewed only between April 15 and October 1 of each year, unless the Commission grants a waiver due to the low probability of error on a particular site, or reserves the right to adjust the boundary during growing season."

In addition section 62-8 Burden of Proof,

"...Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not adversely affect the interests protected by this By-Law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or in the Commission's discretion to continue the hearing to another date to enable the applicant or others to present additional evidence. The Commission and the applicant may also mutually agree to continue the hearing. (Art. 58, 5/2/89~8)"

(Chapter LXII General Wetlands Bylaw)

Townsend**Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?****Yes**

From Section 138-6. Burden of Proof,

"The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed by him or her in the notice of intention will not cause significant harm to the interests sought to be protected by this by-law. Failure to provide the Conservation Commission with adequate evidence for it to determine that the proposed work does not probably cause significant harm to the interests sought to be protected by this by-law shall be sufficient cause for the Conservation Commission to deny such permit or to grant such permit with such conditions as it deems reasonably necessary or desirable to carry out the purposes of this by-law, or to postpone the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as seem to the Commission to be just."

(Townsend Wetlands Bylaw, Adopted 1983, Amended 1987)

Tyngsborough**Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?****Yes**

"The Commission shall have authority to continue the hearing to a certain date, time and place announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments or recommendations of the boards and officials listed in section 6." From the Tyngsboro Wetlands Protection Bylaw, Section 5.3 (Effective 10/8/02).

Upton *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes According to Margaret Carroll, conservation chair, (11/9/04) the Commission may wait until spring for vernal pool determination, or if there are frozen soils and lack of vegetation.

In addition, from Section V. Notice and Hearings,
"The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in Section VI."

(Town of Upton Proposed Wetlands Protection Bylaw, Adopted 2004)

Walpole *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 5. Notice of Hearing,
"The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed by the Commission and the Commission shall take action on such information as is available."

(Article XXIV, Town of Walpole Wetland Protection By-Law)

This section has been cited by other towns as the right to delay the determination of a resource area.

Watertown *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes From Section 5. Notice and hearings,
"For reasons announced by the Commission at the hearing, the Commission shall have the authority to continue the hearing to a certain date announced at the hearing. Such reasons may include receipt of additional information offered by the applicant or others or information or plans required from the applicant or others, deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event that the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available."

(Rules and Regulations for the Administration of the Watertown Wetlands Ordinance of 1987, Adopted 1989)

This has been cited a reason to answer 'yes' in previous towns.

Wayland *Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?*

Yes Town of Wayland, Wetlands and Water Resources Bylaw Chapter 194 Rules and Regulations Part A, Section 2 (Adopted 2004)

Resource Area Delineations: Applications for Notices of Resource Area Delineation (ANRAD) are encouraged to be submitted between the months of May and October and shall not be finalized between the months of November through April of any given year.

Wellesley

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

No

The researcher found no reference to the right to such a delay in the wetlands bylaw.

Peter Keenan, Conservation Administrator, confirmed that Wellesley does not delay determination of wetlands due to dry seasons, droughts or winter. He said that determination is based on vegetation and soil, and that does not change in that time period. (7/28/04)

Wenham

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 5. Notice and Hearings,
"For reasons stated at the hearing, which may include a request from a Town Board of inspector named in Section 4, the Commission may continue the hearing to a date certain, announced at the hearing, or to a date within twenty-eight (28) days of receipt of information deemed necessary by the Commission."

(Town of Wenham Water Resources Protection Bylaw, Amended 1996)

This section has been cited by other towns as the right for the Commission to delay the determination of a resource area.

West Bridgewater

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 6.2 Public Hearings,
"6.2.5 The Commission shall have authority to continue the hearing for reasons stated at the hearing which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 7. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(West Bridgewater Conservation Commission, Wetland Protection bylaw plus Rules and Regulations)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Westford

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 171-6. Notice and hearings,
C. Hearings,
"(5) The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Westford Non-Zoning Wetlands Bylaw, Chapter 171, Adopted 1987)

This section has been cited by other towns as the right for the Commission to delay the determination of a resource area.

Westwood

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 5. Notice and Hearings,
"...The Commission shall have the authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the Applicant or others, information and plans required of the Applicant, reasons deemed necessary by the Commission in its discretion. In the event the Applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Westwood Wetlands Protection Bylaw, Article 18)

This language has been cited by other towns as the right of the Commission to delay the determination of a resource area.

Weymouth

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section F. Notice and hearings,
"5. The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons states at the hearing, which may include receipt of additional information from the applicant, of from others deemed necessary by the Commission in its discretion, or to obtain comments and recommendations of the boards and officials listed in (G). If an agreed-upon date cannot be announced at the public hearing, then the date, time and place of the continued public hearing shall be publicized in accordance with section F, 1, and 2."

(Town of Weymouth, Chapter 7 - Wetlands Protection)

Similar sections have been cited by other towns as the right for the Commission to delay the determination of a resource area.

Winchester

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

Ms. Vreeland said they do not need to delay during drought because they can still test the hydrolic soils. When there is snow on the ground, they do not test.

From Section 7. Notice and Hearings,
"7.4 The Commission shall have the authority to continue the hearing to a new date for reasons stated at the hearing, which may include, but are not limited to, receipt of additional information offered by the applicant or other; information and plans required by the commission; or comments and recommendations of town boards and officials."

(Winchester Wetlands Bylaw, Adopted 1987)

This wording has been cited by other towns as the right to delay resource determination.

Winthrop

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 138-6 Notices and hearings,
"The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant deemed necessary by the Commission in its discretion or comments and recommendations of boards and officials. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed, and the Commission shall take action on such information as is available."

(Town of Winthrop Bylaws, Chapter 138 Wetlands, Adopted 1993)

Woburn

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

According to Theresa Murphy, Woburn Conservation Administrator, (7/2/04) with the consent of the applicant, the Conservation Commission may delay determination or certification. However, it does not come up very often. The few times that they have delayed, it has been during the winter months.

From section 7-5 Notice and hearings,

"For reasons announced by the Commission at the hearing, the Commission shall have the authority to continue or postpone the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as in available."

(Title 7 Wetlands Protection and Conservation)

Worcester

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 5: Notice and Hearings

"(f) The Commission shall have the authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6 herein. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available. If a continued hearing is postponed more than thirty-five (35) days due to a lack of quorum for the Conservation Commission, the project shall be deemed a constructive grant approval under this ordinance by the Commission."

(City of Worcester Wetlands Protection Ordinance and Wetlands Protection Regulations, Adopted September 1990)

Wrentham

Does the wetlands bylaw/ordinance give the Conservation Commission the right to delay certification of wetlands during dry seasons or winter months or for another reason?

Yes

From Section 6: Notice and Hearings,

"The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearings, which may include receipt of additional information offered by the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of local, State or Federal Regulatory agencies. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available."

(Town of Wrentham Wetlands Protection Bylaw, Article 16, Adopted 1999)
