

**Montague Conservation Commission
Consultant Review Fee Regulation**

Adopted December 11, 2003 following public hearing

Need for outside expertise

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

Notification of Applicant and Assessment of Fees

The Commission shall provide the applicant with written notice of the need for an outside consultant, a description of services required, the name, address and credentials of the consultant selected by the Commission, the fee to be charged and a request for payment of said fee in full within ten (10) business days of making a determination that an outside consultant is required. Notice shall be hand-delivered or sent by certified mail, with a copy delivered to the Town Clerk. Notice shall be deemed to have been given on the date it is mailed or delivered. No costs or expenses for an outside consultant shall be incurred by the applicant if the application or request for which the consultant is required is withdrawn within five (5) business days of the date notice of the need for an outside consultant is given.

The fee must be received in its entirety prior to the initiation of consulting services. Applicants are advised to make a written request for a continuance of any issues pending before the Commission to allow adequate time for the consultant to provide the Commission with the information it requires. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment; or failure to request a continuance to allow time for the consultant to provide the Commission with the required information shall be cause for the Commission to issue a positive determination of applicability or issue a denial based on insufficient information. The Commission shall state any such finding in a letter to the applicant and shall send a copy of said finding to the DEP.

If review funds charged are insufficient to cover the costs of review, the Board may determine by majority vote that additional fees are necessary. Notification of the need for additional fees shall be given and payment received in the same manner as that for the initial fee.

Types of Consultants and Qualifications

Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, wildlife habitat studies, construction monitoring, evaluation of impacts on municipal conservation lands, and interpretation of environmental or land use law. The consultant shall be chosen by the Commission, and report only to the Commission and/or its Agent.

All consultants engaged pursuant to this regulation must meet the following minimum qualifications: an educational degree in or related to the field at issue or at least three years of practice in the field at issue or a related field.

Appeal of Consultant Selection

An applicant may appeal the selection of an outside consultant selected by the Conservation Commission to the Board of Selectmen within ten (10) business days of the time that notice of selection is given. Grounds for appeal are limited to claims that the consultant selected by the Commission has a conflict of interest or does not possess the minimum qualifications. Appeals shall be filed with the Town Clerk with copies given to the Commission and the Board of Selectmen.

The required time limits for action upon an application by the Commission shall be extended by the duration of the administrative appeal. In the event that the Board of Selectmen does not make a decision within one month, defined as thirty one (31) calendar days following the filing of the appeal, the selection made by the Commission shall stand.

Such administrative appeals shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this regulation.

Administration of Fees

Fees collected from an applicant pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with MGL Chapter 44 § 53G. Expenditures from this account may be made at the direction of the Commission with no further appropriation, but only for the purpose of review of the specific project for which the fees were collected.

At the completion of a project, any excess amount in the special fee account for that project, including accrued interest, if any, shall be repaid to the applicant or the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. For the purposes of this regulation, a project shall be considered complete when:

- (1) A complete Certificate of Compliance is issued by the Commission

- (2) If no Certificate of Compliance is required by law or regulation, by certification in writing by the Commission or its Agent that the project is complete, or
- (3) Approval of the project is denied and all appeal periods have elapsed without appeal being filed, or
- (4) Applicant submits written notice to the Commission that the application is withdrawn, or
- (5) The Commission finds unanimously that outside review of the project is complete and votes to release the funds.

The Town Accountant shall submit an annual report of all special accounts established pursuant to this section to the Board of Selectmen and Town Administrator as required by MGL Chapter 44 Section 53G. Said report shall be published in the town annual report. The Town Accountant shall submit annually a copy of said report to the Director of the Bureau of Accounts.

Exemptions

The provisions of this section shall not be applied to projects that constitute normal maintenance or improvement of land in agricultural use, as defined by 310 CMR 10.04.