

What MUST a conservation commission do:

Municipalities are creations of the State and may act only as authorized by state legislation. The New Hampshire Revised Statutes Annotated (RSA) are therefore the authority to consult on the powers of conservation commissions. Additional responsibilities may be given to a commission by local ordinance, but these responsibilities must be consistent with the powers delegated by state statute.

[RSA 36-A](#) authorizes towns to establish conservation commissions and lists their specific responsibilities, plus additional activities which commissions may, but need not, undertake. The statute directs every conservation commission to:

1. "... conduct researches into its local land and water areas ..."

This charge is integral to virtually every activity of a commission, since one can hardly make a recommendation on the proper use or protection of natural resources without knowing what those resources are.

2. "... seek to coordinate the activity of unofficial bodies organized for similar purposes ..."

An issue is more likely to be resolved or a project undertaken if all concerned can agree on the scope of the problem or project and the desired outcome. A town meeting or city council bombarded with requests from groups of citizens with different proposed solutions to a natural resources concern is less likely to solve a problem than one approached by several groups with one solution in mind. A conservation commission, as a part of municipal government, is in an ideal position to assemble representatives of concerned groups in order to develop mutually satisfactory goals.

3. "... keep an index of all open space and natural, aesthetic or ecological areas ... all marshlands, swamps and other wetlands ..."

The word "index" conjures up visions of 3x5 cards and file boxes - not necessarily the best way to organize information about natural resources. The objective is an organized, written compilation of the various resources of a municipality. The most useful form for such an index is a map showing the location of various features accompanied by a written description of the resources by category, e.g. bodies of water, scenic overlooks, etc. describes how a conservation commission might go about preparing such an "index".

4. "... keep accurate records of its meetings and actions ..."

Minutes are required. Because a conservation commission is a public body, it must comply with [RSA 91-A, the Right To Know Law](#), which requires public meetings, posting of meeting notices, and timely availability of minutes.

What MAY a conservation commission do:

In addition to the statutory duties, a conservation commission is authorized by [RSA 36-A](#) to engage in the following optional activities:

1. "... may recommend ... a program for the protection, development or better utilization of all ... areas [in the index] ..."

Once the required "index" is prepared, a conservation commission may prepare plans and recommendations for appropriate use of the areas identified and urge their adoption or implementation by the appropriate body. Plans and recommendations can vary considerably in scope. A proposal might be for use of a single municipally owned parcel; for a use, such as a trail system, involving several parcels; for acquisition of a locally outstanding natural feature; or for regulation of development to protect natural resources such as steep slopes or wetlands.

If a conservation commission has identified a town-owned parcel suitable for a town forest, its recommendation would be in the form of a warrant article designating the parcel as town forest. Recommendations may involve comments on the municipal master plan or, at the request of the planning board or master plan committee, may include preparing the open space or conservation section of the master plan. If the master plan adequately addresses areas of concern, a commission may help the planning board draft an ordinance to implement the recommendations in the plan.

2. "... may receive gifts of money and property, both real and personal, in the name of the city or town, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission ..."

"... may acquire in the name of the town or city, subject to the approval of the local governing body, ... the fee in such land or water rights, or any lesser interest ... and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes."

The intent of the legislature was to allow conservation commissions to accept donations and to acquire land, either outright or through easements, in the name of the town or city. In either case, the municipality becomes the owner of the property or easement; a conservation commission may not "own" property.

This authority can be useful in acquiring property, particularly when there is an established conservation fund with sufficient money in it to do so. Time is often of the essence when land becomes available. In towns, use of this power can avoid waiting for town meeting approval to accept or purchase property. It is less important in cities: city councils meet regularly and can accept donations and authorize acquisitions. If a city commission has a conservation fund, it can avoid the need to appropriate funds outside the regular budget process for land purchases.

Although a commission with the approval of the selectmen may acquire land, neither the commission nor the selectmen may dispose of Town Forest or conservation land without town meeting approval ([RSA 31-3](#) and [RSA 41-14-a](#)).

3. "... may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets ... necessary for its work."

Informing the public about the nature of and reasons for a particular proposal of a conservation commission is as vital to its success as the initial research and thought behind the proposal. If residents do not understand the need for a proposed action, often they will not support it. Few New Hampshire municipalities are small enough for conservation commissioners to persuade residents individually of the wisdom of a particular approach; most commissions must rely, at least in part, on written material.

Other Powers

Several other statutes give conservation commissions additional powers. These may increase the scope and influence of a commission's activities.

Town Forests

The statute enabling local designation and management of town and city forests, [RSA 31:110](#), [RSA 31:111](#), [RSA 31:112](#), and [RSA 31:113](#), provides two options for municipal forest managers: a forestry committee created for that purpose, or, by vote of town meeting or city council, a conservation commission may manage the town or city forest.

Dredge and Fill in Wetlands

The NH statute governing [Fill and Dredge in Wetlands, RSA 482-A](#), allows a conservation commission to request time to investigate an application for a dredge and fill permit filed with the NH DES Wetlands Bureau. If a commission makes this request within 14 days of the date the application is signed by the town or city clerk, the Bureau must delay action on that application until a report is received from the conservation commission or until 40 days from the date of the clerk's signature, whichever comes first. The conservation commission is the ONLY municipal body with authority to "intervene" (request this delay).

The conservation commission may also prepare the report and maps for the local designation of prime wetlands under [RSA 482-A](#).

Sand and Gravel Excavations

Unlike many NH statutes that allow a municipality to regulate an activity if it chooses to do so, [RSA 155-E \(Local Regulation Excavations\)](#) requires municipalities to regulate sand and gravel excavations by issuing permits. The planning board is responsible for administering this permit system unless the municipality votes to assign the responsibility to the zoning board of adjustment or the selectmen.

[RSA 155-E:3 \(Application for Permit\)](#) requires an applicant for an excavation permit to send a copy of the application to the conservation commission. This provides an opportunity for a commission to make comments and recommendations on proposed excavation and restoration plans. A commission should see to it that it does in fact receive copies of applications and that its comments are considered in regulatory decisions. Local regulations should specify that the regulator consider the commission's comments and prepare written findings if a decision differs from commission recommendations.

Once a commission is established and involved in numerous projects, members may wish for more people to share the work. Although the number of regular members of a commission cannot exceed the number authorized by local vote (between 3 and 7), [RSA 36-A:3](#) allows for the appointment of an unspecified number of alternate members. Alternates who serve "in the absence or disqualification of a regular member" have full voting powers. A commission should encourage alternates to attend meetings regularly and to participate in commission activities.

In addition, [RSA 36-A:2](#) allows a commission to "appoint such clerks and other employees or subcommittees as it may from time to time require." Conservation commissions may use this provision to create subcommittees to expand available manpower and expertise. Potential commission members may be asked to work on a short-term project as members of a committee chaired by a commission member. Others with a particular area of expertise may be willing to assist the commission on occasion but prefer not to participate on a regular basis. In some instances, former conservation commission members continue to contribute to the work of the commission as "advisors" or "associate members".

Conservation commissions in New Hampshire have used these techniques to expand participation and capabilities beyond those of appointed commissioners. However, participation by those who are neither regular members nor alternates serving in the absence of a regular member may not include official action, such as voting on commission business.

The composition of a conservation commission is prescribed by [36-A:3](#). Commission members must be residents appointed by the selectmen or mayor for three year terms, staggered so that each year approximately one third of the terms expire. The statute does not directly suggest qualifications for commission members, though the governing body should take into consideration whether the potential member has demonstrated an interest in the protection of natural resources. The law does permit one member to serve simultaneously on the city or town planning board and one or more members to serve on

the heritage or historic district commission. Common members can help to establish and maintain communications among these bodies, whose interests and activities may overlap but whose perspectives may differ.

Mayors and selectmen are responsible for appointing numerous local officials and often welcome suggestions or volunteers for municipal positions. While there is no "magic formula" of background or education to ensure that an appointee will be a good conservation commissioner, there are several areas that should be considered by those appointing or suggesting possible commission members.

The most important characteristics in a commission member are an interest in conservation and a willingness to devote time to the work of the commission. Few New Hampshire commissions have staff; those that do usually have a secretary or the occasional assistance of a municipal employee whose primary responsibility lies elsewhere. What a New Hampshire conservation commission accomplishes is in direct correlation to the time and effort expended by commission members.

Another factor to weigh is the balance of interests and talents among commission members. Conservation is a broad term embracing a number of interests related to natural resources. Hunters, fishermen, canoeists, foresters, farmers, hikers, snowmobilers, botanists, ornithologists, biologists, hydrologists, geologists, soil scientists, educators, and those concerned with pollution prevention and community planning are all interested in natural resources, but their perspectives on what constitutes wise use of those resources may vary considerably. Engineers, attorneys, photographers, and writers have skills that can be useful to a commission.

As a municipal body, a conservation commission should consider as many interests as possible in its recommendations for "proper utilization and protection of the natural resources" of the municipality for the simple reason that failure to do so is likely to result in unheeded recommendations. One way to ensure consideration of different concerns is to have members with varied interests and knowledge.