

**MASSACHUSETTS FORESTRY COMMITTEE MEETING**  
**Harvard Forest, Petersham**  
**June 26, 2007**

**Minutes**

**Attendees**

Committee Members: Paul Barten (Water Supply), Jim DiMaio (DCR Ex-Officio), Roger Plourde (Consulting Forester), Harry Webb (Forest Landowner), Bernie Bergeron (Primary Wood Using Industry), David Foster (Public at Large), John Conkey (Licensed Timber Harvester), Loring Schwarz (Environmental Organization)...

Others: Jim Soper (DCR), Dolores Boogdianian (DCR), Mike Fleming (DCR), Ed Fuller (DCR), Carmine Angeloni (DCR), Herm Eck (DCR), Bob O'Connor (EEA), Matt Kelty (UMass), Bruce Spencer, Tom Anderson, Susan Benoit, Mike Leonard, Mike Mauri, Fred Heyes, Lincoln Fish, Shane Bajnoci, Nathan L'Etoile, Dicken Crane, Jake Baehr, Michael Orzel, Raymond Sawyer, Bill Van Doren, Michael Barry, Joe Zorzin, John Clarke...

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**Meeting called to order at 1:15 PM.**

**Handouts:** The following were provided to those present.

1. MFC Public Meeting Notice / June 26 2007 (p. 1)
2. MFC Meeting Agenda / June 26, 2007 (p. 1)
3. DRAFT MFC Minutes from March 15, 2007 meeting
4. DRAFT - 304 CMR 11.00: FOREST CUTTING PRACTICES REGULATIONS - 3/14/07 (pp. 1-75)
5. SUMMARY OF COMMENTS & SUGGESTIONS, MFC 3/14/07 DRAFT 304 CMR 11:00: RECOMMENDATIONS RE: FOREST CUTTING PRACTICES REGULATIONS DEPARTMENT OF CONSERVATION & RECREATION
6. Letter from Alan C. Page, Ph.D., Green Diamond Systems dated June 12, 2007 (p. 1)
7. Letter from Alan C. Page, Ph.D., Green Diamond Systems dated May 20, 2007 (p. 1)
8. "Regarding Regulations of Forest Activity in MA. 2007", by Alan C. Page, Ph.D. MA License #184 (pp. 1-6, not numbered/dated)

**Submitted Document:** "Only Licensed Foresters Can Legally Practice Forestry", by Mike Leonard (pp. 1 – 2, not numbered/dated)

**Introductions**

**P. Barten**

- MFC members introduced themselves

**Overview**

**P. Barten**

- Explanation of changed dates (rescheduled) of this meeting (May 10<sup>th</sup> to May 29<sup>th</sup> to June 26<sup>th</sup>)
- Provided a history of MFC, MFC membership, and role in Ch 132 Regulations
- Reviewed Agenda, Goals of this Meeting, & Approach (see handout)

**March Minutes**

**P. Barten**

- Provided Committee time to review Draft MFC 03/15/07 Meeting Minutes (see handout)

**Motion:** by Bernie Bergeron and seconded by John Conkey to accept the March minutes. **Motion passed without objection.**

## Overview - continued

### J. DiMaio

- Provided comments on Ch 132 History, Process, and 3 Major Components:
  1. Ch 132 not about development, but about forest growth. Avoid loopholes. If development, its not Ch 132, go somewhere else (other regulations: state / town) to conduct development
  2. MA Endangered Species Act (M.G.L. c. 131A / 321 CMR 10.00:) & MA Wetlands Protection Act (M.G.L c. 131 / 301 CMR 10.00:)
  3. Baseline Silvicultural Systems
- Jim and staff are willing to attend and discuss with groups Ch 132 issues
- Reviewed & discussed April 15, 2007 letter from DCR Commissioner
- Re: M.G.L c. 30A legal process (open meetings)

**P. Barten:** Comments on process

**D. Boogdanian:** Comments on Ch 30A

**P. Barten:** MFC requested 2<sup>nd</sup> opportunity to seek input through process to provide good faith effort in acquiring public input

**C. Angeloni:** What's the time from for the Public Hearing process

**J. DiMaio:** License Regulations took 4 to 5 months

**N. L'Etoile:** Questioned the legal authority of the MFC re: regulations

**D. Boogdanian:** Yes, MFC is authorized to recommend regulations

**J. DiMaio:** See Ch 132 Section 41 & Ch 30A reference (<http://www.mass.gov/legis/laws/mgl/132-41.htm>)

**P. Brown:**??? Is MFC not indenting to change, but only edit at this point?

**P. Barten:** Yes, that's how this meeting was advertised. Additional comments on past process and input already provided, including Service Foresters. Asked if there were any additional comments from those present in the audience? Hearing none moved to next step.

## Identification and preliminary discussion of 2 - 3 key sections / comments / issues

**P. Barten:** Asked for each committee member to state their 2 - 3 key sections / comments / issues.

**H. Webb:**

- What costs / burdens of changes to landowners. (i. e. – wetlands harvesting requirements)?
- Where Service Forester discretion and stops & starts?

**D. Foster:**

- Added cost (file, mark, wait for permission)
- Effect of temporary vs. permanent crossings
- Forest conversion loophole

**B. Bergeron:**

- Forest Purposes vs. Forest Growth
- Cost / time (regulatory burden? / marking)
- A few other phrases / issues?

**J. Conkey:** Was hoping to go through whole document

- Time limits (3 to 6 months)
- Temporary Structures
- Land Conversion

**R. Plourde:**

- Silviculture Issues: get at subcommittee ideas before going out to regulations public hearing process (2 pages from subcommittee)
- Forest Conversion (anticipated changes). If they fall within regulations they get a permit, but no predevelopment cuts.

**B. Bergeron:**

- MFC charged with "Minimum" Forest Cutting Practices, not Maximum.

**K. Leslie:** Point of information re: What is on handout on 132 changes / comments?

**P. Barten & R. Plourde:** Responded to question.

**P. Barten:** Suggested that MFC tackle the following based upon MFC input:

1. Conversion Issue

2. Silvicultural Issue
3. Costs / Burdens – reasonable vs. too far?

### Discussion of Issue #1

**P. Barten:** Began discussion on Wetlands (see handout #4 pp. 8-11). Suggestion: start with “ID on ground”

**J. Conkey & H. Webb:** Does “ID on ground” trigger delineation of wetlands? Intent was not to require a wetlands expert to ID on the ground, but so Service Forester can make call.

**J. DiMaio:** If properly ID on the ground, then ok. If not, then subject to Ch 131 & DEP/Con. Comm.

**J. Soper:** Identification vs. delineation – “ID on ground” is not intended to be a hard and fast delineation as required in a Ch 131 reviewed engineered project.

**S. Benoit:** DEP/Con Comm re: 10 day limit – struggle, wetlands need to be id on map  
Suggested: replace “on ground” with “in the field”

**L. Fish:** Requiring “Marked Trees” in the regulations should be enough to address this issue. Why mark wetlands, flag boundaries if not cutting or operating in them?

**J. Soper:** Issue was addressed due to MACC concern over quality of maps submitted.

**J. Zorzin:** Agreed with L. Fish comment.

**K. Leslie:** Will Service Foresters be responsible for checking ID (flagging in wetlands)?

**J. Soper:** Yes

**C. Angeloni:** Expressed concern over Service Foresters role in approving wetland flagging on plans

**P. Barten:** May result in joint training among agencies and consulting foresters?

**F. Heyes:** Suggested adopting suggestion in handout #4 Page 11, but change “on the ground” to “in the field” as previously discussed and add the following “shall be marked within 100 feet of a wetland resource area”.

**Motion:** by R. Plourde and seconded by B. Burgeron that “the MFC will address:

1. flagging in the field will only occur in the field if you are in them (logged, crossed, etc.)
2. identification vs. delineation in definitions
3. if approved sale does not enter wetlands Service Forester, at their discretion, may require that the wetlands be flagged
4. Service and Licensed Foresters receive additional training (wetlands)

**Motion passed without objection.**

**H. Ricci:** questioned not marking / flagging wetlands. ID of wetlands, MACC has agreed that Ch 132 FCPs do not require same level of ID on ground as under Ch 131.

**Break 2:40 PM – 2:56 PM**

### Discussion of Issue #2

**P. Barten:** Began discussion on Conversion Issue/Loophole (see handout #4 p. 3, 11.02: / “change of use”)

MACC & Service Foresters wanted clarification.

**J. Conkey:** Time Limit – change from “6 months” to “1 year”.

**H. Webb:** Evidence? What is it? What about exploratory work a landowner conducts?

**L. Schwarz:** Likes p. 5- 6 alternative suggestion (starts at bottom of page 5). Likes more general language use, use of “Service Forester discretion”.

**J. Soper:** Discussed past history of the issue. Evidence.

**F. Heyes:** May create lots of local bylaws for harvesting operations that are “in-between” lots. If it meets silvicultural guidelines, it should be an approved cutting plan.

**J. Soper:** Discussed Sturbridge, Pelham and other communities with local bylaws and those landowners may still use Ch 132 in those communities.

**H. Ricci:** Agreed with need to close loophole.

**J. Conkey:** Is there anything on Ch 132 form for landowner to sign re: intent (conversion)?

**J. Soper:** Provided response that landowners state intention on FCP form.

**B. Spencer:** Landowners not likely to go through Ch 132 under recommended changes to regulations due to silvicultural requirements.

**C. Angeloni:** Silvicultural bar and Service Foresters will be able to make determination on whether it is a 132 cut or not.

**T. Anderson:** Discussed example of landowner with inherited subdivision plan.

**F. Heyes:** If FCP meets silvicultural standards, it should be approved.

**D. Boogdanian:** Statute language (purpose) “devoted to forest growth”. Issue of circumventing wetlands and other laws/regulations/bylaws under the guise of an approved FCP

**F. Heyes:** Use 2<sup>nd</sup> suggestion (paragraph) on page 6 (handout #4), but allow Service Forester to get sign off by local Con. Comm. on issue of a land use change.

**N. L’Etoile:** If over 5 acres it is exempt and no bylaw by Town can be created.

**H. Ricci:** Commented on concern over the conversion to another use.

**D. Crane:** Landowners due change their mind over and over and from time to time.

**R. Plourde:** Old regulations paradigm vs. new regulations – with new regulations (silvicultural changes) this issue (conversion) is not likely an issue in the future.

**P. Barten:** We do not want to create a disincentive for a landowner to keep land in forest use or from harvesting.

**M. Leonard:** Silvicultural change will likely not have predevelopment harvests in the future.

**L. Fish:** May lead to future contentious situations between landowners and Service Foresters. Suggest that a “pledge” be created “I will not change use of land for X number of days” signed on FCP form by the landowner.

**S. Benoit:** Discussed issue and recommended referring to the suggested language on pp. 5 & 6 (handout #4). Use *i* and *ii*, but replace *iii* with paragraph after “AND / OR”.

**D. Crane:** Discussed concern over potential situation where a landowner may discuss with Service Forester that they are considering development and SF will then not approve FCP.

**H. Ricci:** re: time limits / change of use – landowner can not be held to a change of use pledge because the landowner’s circumstances change.

**L. Fish:** What about one lot being changed out of a larger (contiguous?) ownership?

**J. Soper:** Yes, file each case separately, one would be Ch 132 FCP the change of use lot would be whatever other means applies for approved change of use. We are trying to prevent landowner from using FCP act when it should have been local Con. Comm. jurisdiction.

**M. Leonard:** Suggest requiring 2 year limit on FCP.

**D. Boogdanian:** Under statute, not recognized re: pledge by landowner. It is a condition of the plan and physical evidence that needs to be weighed in making a decision re: change of use.

**P. Barten:** In order to express what we have been discussing.

**D. Boogdanian:** (see comments/notes)

**C. Angeloni:** Allow for Service Foresters to request a letter re: landowner intentions.

**J. Conkey:** If you intend to develop and not continue in forest growth you must file under ???

**Motion:** by R. Plourde and seconded by L. Schwarz that “the MFC will address “Physical Evidence” definition.

**J. DiMaio:** suggested using 2<sup>nd</sup> paragraph on p. 6, add to iii paragraph and other laws and regulations from paragraph, add that landowner (create form) current intent to keep land in forest growth.

**Motion passed with one abstention.**

**J. DiMaio:** suggested that MFC also deal with (change) “6 months” to “one year” time frame issue.

**Motion:** by J. Conkey and seconded by B. Bergeron that “the MFC will address “clearing of land...within 6 months...” (change to 1 year).

**D. Boogdanian:** Who is paying taxes in year one?

**Motion passed without objection.**

**J. Conkey:** 2<sup>nd</sup> paragraph on p. 6 (handout #4), expressed concerned over “sole discretion” language

**D. Boogdanian:** Is subject to appeal.

**T. Anderson:** Are we not allowed to use a culvert along a road that is a stream crossing?

**P. Barten:** Take this up at another time with J. Soper as a detail.

### Discussion of Issue #3

**P. Barten:** Deferred discussion on Silvicultural Issue (start on p. 46 of handout #4) to R. Plourde (silvicultural subcommittee)

**R. Plourde:** re: Patch definition

1. Should be 2 acres in size instead of the current (changed) ½ acre.
2. Need to insert the word “Predominately” as it pertains to Dominant / Codominant Trees (Leave Trees).
3. Definitions changes.
4. Acknowledged issue of FCP looking more like a Management Plan.
5. Keep “Marked Trees”.
6. Allow species description. Some cuts would be allowed by species if acceptable (as discussed by L. Fish).

**L. Fish:** Substitute the word “Identify” instead of “Marked”.

**D. Foster:** Questioned allowing use of a “species description”.

**J. Conkey:** Scotch Pine example provided.

**S. Benoit:** Expressed concern over making this change.

**J. Zorzin:** Discussed “marking with few exceptions”.

**C. Angeloni:** Discussed species / marking issue examples.

**L. Fish:** Diseased Beech example provided.

**F. Heyes:** Discussed suggestions (2) on p. 48 (handout #4)

**B. Spencer:** Expressed support of “marking”.

**M. Leonard:** Commented on keeping FCP as simple as possible. Marking does this.

**H. Webb:** Discussed the consumer protection benefits of marking.

**Motion:** by B. Bergeron and seconded by J. Conkey that “the MFC accept the suggestions on p. 48 (handout #4) as read. Add (1) (a) 1. b. )...

MFC continued discussion on motion above.

**J. DiMaio:** If only one change is made to FCP regulations suggest include “Marking of Trees” be required.

**F. Heyes:** This is intended to be an exemption only.

**S. Benoit:** This is a structural change, not a minor edit.

**P. Barten:** Called for a vote by MFC.

**Motion failed.** In favor (2): J. Conkey, B. Bergeron. Opposed (5): P. Barten, L. Schwarz, R. Plourde, D. Foster, H. Webb

**J. DiMaio:** re: ½ acre vs. 2 acres; current standards, discussed use of the word “predominately” (define?) in suggested edit.

**R. Plourde:** Acknowledged need of added definition. (Something that is more than 51%???)

**Motion:** by R. Plourde and seconded by J. Conkey that “the size of a patch go from ½ acre to 2 acres, and to insert the word “predominately” in the silvicultural section (see 4<sup>th</sup> suggestion on p. 52 of handout #4). **Motion passed without objection.**

P. Barten: Opened up to other issues.

F. Heyes: Wetlands and Amendment Issue (p. 42, handout #4).

D. Crane, S. Benoit, and J. Soper: 10% amendment issue, stop (suspended) issue

J. Conkey: 10 year FCP for landowners with a forest management plan. (pp. 45 – 46, handout #4, see comment & suggestion re: “(15) Time an Approved Forest Cutting Plan is Valid”.

**Motion:** by J. Conkey and seconded by R. Plourde to change to “two year FCP” and “up to four one year extensions”. **Motion passed without objection???**

**J. Soper:** New Ch 61 changes re: weather, economics, NHESP, and other issues. Extension by one year increments.

**J. DiMaio:** Presented "Certificate of Commendation" to Dick DeGraaf (not present). Thanked Paul Barten for his efforts in leading us through this (Ch 132 FCP) process.

**Next meeting** – Harvard Forest / Petersham / ???

**Meeting adjourned at 5:19 P.M.**

