

Wetlands Protection Act Regulations Limited Project Provisions

The Wetlands Protection Act Regulations include higher performance standards to inland (freshwater) wetlands Resource Area known as "Bordering Vegetated Wetland (BVW). Within an ACEC, potential projects are prohibited that would result in the loss of up to 5,000 square feet or, in some cases up to 500 square feet of BVW (310 CMR 10.55(4)(e)). However, Conservation Commissions have the discretionary authority to permit work affecting BVW if the project meets the specific performance standards for "limited projects" enumerated in CMR 10.53(3) provided that the work causes no adverse effect on specified habitat sites of rare species. In this context, the term "limited" refers to the limited situations in which they may apply rather than as an indicator or level of impact to the wetland. In exercising the authority to grant limited project status, the Conservation Commissions' evaluation should be based on the:

- Magnitude of the alteration and the significance of the project site to the interests identified in M.G.L. c. 131, § 40
- Availability of reasonable alternatives to the proposed activity
- Extent to which adverse impacts are minimized and,
- Extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests identified in M.G.L. c. 131, § 40.

The following are defined as limited projects provided they are carried out in accordance with general conditions outlined in CMR 10.53(3) and any additional conditions deemed necessary by the Conservation Commission or the issuing authority:

Work on land to be used primarily and directly or in a related manner in the raising of:

- (a) animals ... fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs...
- (b) cranberries...
- (c) forest products under a planned program to improve the quantity and quality of a continuous crop
- (d) The construction, reconstruction, operation and maintenance of underground and overhead public utilities, such as electrical distribution or transmission lines, or communication, sewer, water and natural gas lines...
- (e) The construction and maintenance of a new roadway or driveway of minimum legal and practical width acceptable to the planning board, where reasonable alternative means of access from a public way to an upland area of the same owner is unavailable.
- (f) Maintenance and improvement of existing public roadways, but limited to widening less than a single lane, adding shoulders, correcting substandard intersections, and improving inadequate drainage systems.
- (g) The excavation of wildlife impoundments, farm ponds and ponds for fire protection...
- (h) The maintenance of beaches and boat launching ramps which existed on the effective date of 310 CMR 10.51 through 10.60 (April 1, 1983).
- (i) The maintenance, repair and improvement (but not substantial enlargement) of structures, including dams and reservoirs and appurtenant works to

such dams and reservoirs, buildings, piers, towers, headwalls, bridges, and culverts which existed on the effective date of 310 CMR 10.51 through 10.60 (April 1, 1983)...

(j) The construction and maintenance of catwalks, footbridges, wharves, docks, piers, boathouses, boat shelters, duck blinds, skeet and trap shooting decks and observation decks...

(k) The routine maintenance and repair of road drainage structures including culverts and catch basins, drainage easements, ditches, watercourses and artificial water conveyances to insure flow capacities which existed on the effective date of 310 CMR 10.51 through 10.60 (April 1, 1983).

(l) The construction, reconstruction, operation or maintenance of water dependent uses...

(m) Lake drawdown projects (except those related to the breaching of a dam or a reservoir or an appurtenant work to such dam or reservoir) undertaken in response to written Orders or Recommendation Letters issued by the Department of Conservation & Recreation Office of Dam Safety...

(n) Airport vegetation removal projects...

(o) The exploration, development, construction, expansion, maintenance, operation, and replacement of public water supply wells or wellfields (including necessary associated roads, ways, structures, and underground and overhead utility lines) derived from groundwater...

(p) The closure of landfills when undertaken to comply with the requirements of 310 CMR19.000...

(q) Assessment, monitoring, containment, mitigation, and remediation of, or other response to, a release or threat of release of oil and/or hazardous material in accordance with the provisions of 310 CMR 40.0000 ...

(r) The construction of a new access for forestry including leaving in place an access constructed in accordance with 310 CMR 10.04(Agriculture)(b)14.d., or the enlargement of an existing access for forestry ...

(s) the cutting of trees by owners for their own use of more than 10,000 board feet or 20 cords but less than 25,000 board feet or 50 cords during any 12 month period...

The issuing authority may also issue an Order of Conditions for projects which will improve the natural capacity of a resource area(s) to protect the interests identified in M.G.L. c. 131, § 40. These projects are enumerated in 310 CMR 10.53(4), (5) and (6) as follows:

(4) projects which will improve the natural capacity of a resource area(s).... Such projects include, but are not limited to, the removal of aquatic nuisance vegetation to retard pond and lake eutrophication and the thinning or planting of vegetation to improve habitat value.

(5) the support of existing agricultural production the reconstruction of existing dikes, the construction of new ponds or reservoirs, the expansion of existing ponds or reservoirs, and the construction of tailwater recovery systems and by-pass canals/channels...

(6) the construction, rehabilitation, and maintenance of footpaths, bikepaths, and other pedestrian or nonmotorized vehicle access to or along riverfront areas but outside other resource areas...