

BELMONT CONSERVATION COMMISSION WETLANDS SETBACK POLICY

In order to promote environmentally responsible development while protecting our water resources, the Belmont Conservation Commission, (The Commission) shall presume, absent clear and convincing evidence to the contrary, that any activity, other than minor activities as defined by the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.02(2)(b)(1)), within twenty-five (25) feet of a resource area boundary may cause a significant adverse impact on the resource area, and should therefore be prohibited.

PURPOSE OF POLICY

In promulgating its regulations pursuant to Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40), the Massachusetts Department of Environmental Protection (MassDEP) has deemed that activity within the 100 foot buffer zone bordering a resource area can pose a serious threat to that resource area. In recognition of this, and in recognition of the particular importance of that portion of this 100 foot buffer closest to the resource area for the purpose of resource protection, the Commission, by policy, further limits activities in areas within twenty-five (25) feet from the resource area boundary in the Commission's implementation of the Massachusetts Wetlands Protection Act.

BASIS OF POLICY

Scientific research (see sources) has demonstrated that alterations or reductions of vegetated buffers zones frequently and predictably result in adverse effects on the wetlands and water bodies that those buffer zones protect. These adverse effects include, but are not limited to disturbances of natural vegetation along the resource area boundary; run-off of pollutants, fill material, and other substances into the resource area; sedimentation from stockpiling or dumping of materials or debris, which migrate over time into the resources area; and disturbance of wildlife habitat, such as nesting sites and corridors that are important to wetland species.

The extent of these adverse effects has been found to depend, in part, on the portion of the buffer zone that is altered. In particular, the extent of these effects has been found to depend in part on the distance between the locus of the activity and the resource area and the width of vegetated buffer. As expressed in the preface to the 2005 revisions to the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00),

The potential for adverse impacts to resource areas from work in the buffer zone increases with the extent of the work and the proximity to the resource area. Extensive work in the inner portion of the buffer zone, particularly clearing of natural vegetation and soil disturbance is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrology, temperature, and the amount of light received. (310 CMR 317)

Thus, a project is disproportionately likely to adversely affect the resource area when the project requires activity within the innermost portions of the 100 foot buffer zone, where the buffer zone transitions, often imperceptibly, into the actual resource area.

In recognition of the disproportionately greater impact of an activity closer to the resource area, the practical difficulties inherent in precisely determining where a resource area ends and a buffer zone begins, and the irreparable harm that can result from the an error in identifying the actual point at which a resource area gives way to a buffer zone, the Commission considers it appropriate to provide different standards of protection to different portions of the 100 foot buffer zone. In particular, in implementing the Massachusetts Wetlands Act, the Commission regards it as logical, appropriate and scientifically sound to provide greater protection to that portion of the 100 foot buffer zone that is closest to the resource area.

DEFINITIONS

All terms used in this policy shall be construed in a manner consistent with the Wetlands Protection Act as implemented by the Regulations 310CMR10.00

POLICY

Activity within that portion of the 100-foot buffer zone that is within twenty-five (25) feet of a resource area boundary shall give rise to a rebuttable presumption that such construction or alteration will result in a significant and adverse impact on the resource area.

Accordingly, in acting upon Notices of Intent and in administering its other duties under the Massachusetts Wetland Protection Act, the Commission will not permit such construction or alteration unless the applicant rebuts the presumption by providing credible evidence demonstrating one or more of the following:

1. that such activity would not have a significant and adverse impact on the resource area;
2. that such activity will provide public benefits that will outweigh any such impact; or

3. that the activity is a minor activity as defined by the Wetland Protection Act Regulations at 310 CMR 10.02(2)(b)(1).

The applicant shall have the burden of the proof on this issue. In evaluating whether the applicant has met the burden of proof, the Commission will consider factors including, but not limited to the following:

1. the slope and topography of the buffer zone;
2. the hydrological and vegetative properties of the buffer zone
3. pre-existing conditions in the buffer zone
4. the ecological integrity of the resource area
5. the importance of the buffer zone to wildlife within the resource area
6. whether the proposed activity in the buffer zone would be permitted if it were in a resource area.
7. ecological benefits arising from the proposed activity, such as the removal of invasive species or the creation of a wildlife habitat, or the enhancement of an existing wildlife habitat.
8. any public benefits arising from the proposed activity.

Applicants wishing to rebut the presumption set forth in this policy shall provide the Commission with the following information in writing, together with any relevant information which the Commission may require to assess the ability of the bordering areas to support the interests of the Massachusetts Wetlands Protection Act:

- a. Important wildlife habitat features of the area;
- b. A cross-sectional profile of elevation changes in any area of the buffer zone within 25 feet of a wetland, which would be disturbed by the proposed activity
- c. A list of vascular plant species occurring in the 25 foot area of the buffer zone and adjacent wetland areas and the relative abundance of each species
- d. A wildlife habitat evaluation of the 25 foot area of the buffer zone and adjacent resource area, including data on observed wildlife utilization of such area by birds, fish, reptiles, amphibians and mammals
- e. A description of the nature of any public or ecological benefits which may arise from the proposed activities

Permissible alterations to the twenty-five (25) foot buffer zone area include, but are not limited to, planting of native and indigenous vegetation; pruning and routine maintenance of existing vegetation; maintenance and replacement of existing landscaped beds; removal of invasive plant species; maintenance of existing paths; maintenance of existing utilities and stormwater management systems; and improvements to the wildlife habitat values of the property.

Further, it is the Commission's policy, where it has discretion, to prohibit any activity in resource areas except where there are exceptional circumstances, where no other practical alternatives exist and where satisfactory replication takes place prior to any activity. Activity within the 100-foot buffer zone, but not within the 25-foot area, will continue to be reviewed on an individual case basis.

Sources:

Desbonnet, A., P. Pogue, V. Lee, N. Wolff. 1994. Vegetated Buffers in the Coastal Zone - A Summary Review and Bibliography. Coastal Resources Center Tech Rep. No. 2064. University of Rhode Island Graduate School of Oceanography, Narragansett, RI, 72 pp.

Wenger, S. 1999. A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation. Office of Public Service and Outreach, Institute of Ecology, University of Georgia, Athens, 59 pp.

Adopted by a unanimous vote of the Belmont Conservation Commission January 9, 2007 effective immediately.