

# Chapter

# 4

Buffer Plantings and the  
Massachusetts  
Wetlands Protection Act







## Buffer Plantings and the Massachusetts Wetlands Protection Act Regulations

The term "vegetative buffer," as used thus far in this manual, is somewhat different from the meaning of the term "buffer zone" under the Massachusetts Wetlands Protection Act (WPA) regulations. A vegetative buffer, as used in this manual, is a planted area along a water body that functions to filter runoff, capture pollutants before they reach nearby waterbodies, and provide wildlife habitat. It does not have any regulatory connotations.

A "buffer zone" in Massachusetts, however, does have regulatory implications. A buffer zone is an area 100 feet wide along the bank of a lake, pond or wetland. Development and other human activities that negatively impact the water resource or wetland are restricted within this area. Activities that are allowed within this area are regulated by the local Conservation Commission and the Department of Environmental Protection (DEP). Understanding the WPA and following its regulations are important, so it is recommended that you visit your local Commission to discuss your buffer plans before you begin planting. They will advise you as to whether you need to file any forms or apply for any local or state permits. In addition, some communities have adopted local bylaws that may be more restrictive than the state regulations. Your local Commission will explain these to you when it explains the state regulations to you. In general, restoring vegetation along the shoreline is beneficial for the environment and follows the intent of the WPA.

### Local Conservation Commission Responsibilities

In general, planting of vegetative buffers is considered a valuable project that helps the Commission in its efforts to protect water and wetland resource areas. There are five inland (freshwater) resource areas that fall under the jurisdiction of the Conservation Commission and the WPA:


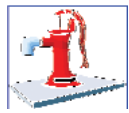




- 1) banks of lakes, ponds, streams and rivers
- 2) wetlands (swamps, bogs, marshes) that border on a water or wetland resource
- 3) land under any water body
- 4) land subject to flooding (100-year floodplain)
- 5) 200-foot riverfront area along perennial streams and rivers

It is the responsibility of each local Conservation Commission to review projects within these specific wetland resource areas and enforce the protective WPA regulations. The Commission is composed of a board of up to seven volunteers with a variety of backgrounds, knowledge and experience, such as farmers, businesspeople, home owners, professors, environmental consultants, and engineers. Although their primary role is enforcing the wetland regulations, they can be a great resource for information when you are designing your vegetative buffer, as well as help you understand the wetland review and permit process. The Commission can also provide you with information on the various exemptions that, if your project qualifies, will allow you to perform the work without first receiving a permit from them.

A copy of both the Massachusetts WPA and its regulations can be found at the DEP website <http://www.state.ma.us/dep/brp/ww/regs.htm>. They can also be obtained from your local Conservation Commission or be viewed at your local library.

The local Commission's role is to protect the eight public interests that are listed in the WPA regulations, as they relate to jurisdictional wetland resource areas. The eight interests protect the quality of life for all of the residents in the Commonwealth.

### The Eight Interests

	Protection of public and private water supply		Prevention of pollution
	Protection of groundwater supply		Protection of land containing shellfish
	Flood control		Protection of fisheries
	Prevention of storm damage		Protection of wildlife habitat

### Local Bylaws

Another reason for meeting with your local Conservation Commission is that there may be local wetland bylaws that you need to be aware of. Knowing what these might be will help you better design your buffer and meet these requirements. Some types of work that may qualify for an exemption under the state regulations may not be exempt under a local bylaw. This is because local bylaws are more restrictive than the state law. For example, many towns have adopted bylaws that extend the width of the buffer zone past 100 feet, add a 100-foot-or-greater buffer zone to other environmentally sensitive areas not covered under the WPA regulations, give added protection to vernal pools, or extend the Commission's jurisdiction in other ways.

## 4-2 Buffer plantings



## Exempt Minor Activities

Planting vegetated buffers along water bodies is generally an "exempt minor activity" under the WPA regulations. The DEP has put together a fact sheet titled "Exempt Minor Activities in Riverfront Areas and Buffer Zones" that outlines certain types of minor projects that do not require a filing with the Conservation Commission when they are located in the buffer zone and/or the Riverfront Area (see Appendix E). Please note that the same minor activities proposed in other wetland resource areas, including the land under water or stream or riverbanks, are not exempt. It is important to keep in mind that some types of work which may qualify for an exemption under the state regulations may not be exempt under a local bylaw.

## What Procedures Should I Go Through?

### 1. Request a pre-permitting meeting with the Conservation Commission.

Some Commissions (not all) will review informally your proposed project at one of their regular meetings prior to submission of an application, to give you suggestions and discuss areas of concern. Call ahead to find out if this is possible. The purpose of the pre-permitting meeting is only informational. Bring with you any information that you may have about the site and the work you wish to do. On an assessor's map or plot plan, sketch a planting plan that shows the area and extent of the planting, and the plant species that you have selected. Also bring any photographs of the area you may have.

### 2. Check with your local Commission about any local bylaws and application fees

Calling ahead to find out this information can ensure that your application is not held up due to submittal of insufficient fees or lacking a legal ad fee. Knowing what local bylaws your town has adopted will help you better design the project and meet these requirements. Some types of work that may qualify for an exemption under the state regulations may not be exempt under a local bylaw. This is because local bylaws are generally more restrictive than the state law.

### 3. File a Request for Determination Application

The Conservation Commission may require that you file a Request for Determination application, which includes a clear and detailed plan of work. This process was designed so that you can formally and fairly easily ask the Commission to determine whether or not the WPA regulations apply to your buffer planting. Following this process will protect you if you are unsure of whether or not your site or work is under the jurisdiction of the Commission. It may give you peace of mind to have the decision made by the Commission and have the piece of paper in hand. If you are confident that your site is out of the Commission's jurisdiction - that your work is not in a buffer zone or wetland resource area, or that your work qualifies for one of the exemptions - you may proceed with work at your own risk. However, be aware that should you be mistaken, the Conservation Commission can order you to stop work and restore the site to pre-construction conditions at your own expense.

Generally, planting vegetated buffers receives a "Negative Determination." Although this sounds ominous, it is a good thing; it means that your work will not negatively impact the water resource or the buffer zone and you can proceed with planting. The Commission may impose "conditions" on your project, such as erosion control measures (e.g. installing hay bales and silt fencing between the work and the waterbody, covering exposed soils to prevent sedimentation). You must comply with these conditions.



4. Read the instructions

The Request for Determination (WPA Form 1) and Notice of Intent (WPA Form 3) forms come with very detailed instructions. The instructions and the application forms are available from the DEP website <http://www.state.ma.us/dep/appkits/forms.htm> or from your local Conservation Commission office. Be sure to include all information that is required in the instructions, including a detailed description of the site and proposed work, a plan showing existing and proposed conditions, and adequate information for the Commission to locate the site.

5. Attend the Conservation Commission meeting and any site meetings

The Commission may request an on-site meeting to answer questions they may have. Questions and modifications that may be required can often be addressed at the site. Your presence will help facilitate and speed up the process. Bring copies of all your information and any alternatives that you may have considered to discuss with the Commission.

6. Consider hiring a consultant

If your buffer planting project is unusually large, you might consider hiring a consultant experienced in wetland permitting. Hiring a landscape architect or wetland consultant from the start may save time and money in the long run. Knowing where the buffer zone and wetland resource areas are located is essential to a well-designed project and often avoids delays in the application process due to project changes forced by inaccurate delineations. A consultant may also help you determine if the proposed work is exempt or suggest modifications that would help the work qualify for an exemption. Keep in mind that the delineation of any resource areas is not final until it is approved by the Conservation Commission.

## Tips for Meeting the Minor Activities Exemptions

Keep in mind that seemingly simple modifications to your buffer may possibly make a non-exempt project into an exempt one. For example, changing your proposed planting plan to include only native species, or agreeing to cover exposed soils during planting of the buffer may produce this result. These modifications may include the following:



1) Unpaved pedestrian walkways for private use. Note that this does not include paved walkways, bike paths, or other public use paths.

2) Fencing that does not create a barrier to wildlife movement. You may wish to review with the Conservation Commission the type and extent of fencing that you are proposing, in order to make sure that the Commission does not determine that it will create a barrier to wildlife movement. Some things to consider are the length and height of the fencing, current wildlife corridor usage, fence material, and spacing that will allow wildlife to safely pass through, over and under it.



3) Vista pruning (the selective thinning of tree branches or understory shrubs to create a "window" to improve visibility), as long as it occurs more than 50 feet from the mean annual high water line within a riverfront area or from a bordering vegetated wetland, whichever is farther. This activity does not include the cutting of trees that reduces the leaf canopy to less than 90% of the existing crown cover, or the mowing or removal of understory brush.

You will need to know where the mean annual high-water line and boundary of the bordering vegetated wetland are to ensure that you meet the requirements for this exemption. If there is any question as to their location, you should consider filing a Request for Determination application with the Conservation Commission.

4) Plantings of native trees, shrubs, or ground cover, but not turf lawns. Note that this exemption does not include planting of non-native exotic species or lawn grasses.



5) Conversion of patios, pools, sheds, or other impervious surfaces to lawn or natural vegetation. This type of work is generally viewed as an improvement to the area that will help protect the wetland resource area. Note: Maintenance of existing landscaping, including lawn mowing and pruning, is exempt from review regardless of location in the buffer zone or any wetland resource area.