

Newton Conservation Commission's Interpretation of 310 CMR 10.58(5) RFA: Redevelopment within Previously Developed Riverfront Areas; Restoration & Mitigation

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Introduction (the challenge)

1. Performance standards under 310 CMR 10.58(5) do not include clear definitions.
2. Performance standards 310 CMR 10.58(5) (c) and (d) are essentially indistinguishable.
3. For projects that “violate” performance standards 310 CMR 10.58(5) (c)/(d), and (e), it is not clear how to calculate minimum requirements for restoration and mitigation under 310 CMR 10.58(5) (f) and (g).
4. DEP will not provide guidance; it tells Conservation Commissions to interpret the regulations as they see fit.

The Purpose of this Guidance

1. Facilitate objective, consistent, and predictable interpretation and implementation of the regulations at 310 CMR 10.58(5).
2. Acknowledge that performance standard (d) appears to be duplicative of (c), so (d) will be ignored.
3. Fully support the diverse ecological and hydrological values of Riverfront Area in Newton by ensuring meaningful and appropriate restoration and mitigation for every project that does not fully meet the performance standards in subsections (c), and/or (e).
 - a. Clarify thresholds for approval for Riverfront Area redevelopment projects.
 - b. Discourage construction close to a river by fully enforcing the restoration and mitigation requirements of (c)
 - c. Encourage meaningful restoration and mitigation under (e) by allowing an expanded footprint further from the river.

The Guidance

1. The Commission may employ different standards, as site conditions and project proposals warrant.
2. The Commission's interpretations of the performance standards are as shown in Appendix A.
3. The Commission shall require the following compensation for projects that “violate” or “exceed” performance standard minimum thresholds.
 - a. Any portion of a Riverfront Area redevelopment project that does not meet standard (c), alone, must restore 1:1 and/or mitigate 2:1.
 - b. Any portion of a Riverfront Area redevelopment project that does not meet standard (e), alone, must restore 1:1 and/or mitigate 2:1.
 - c. To incentivize new construction (the “delta”) to be away from the river, any portion of a Riverfront Area redevelopment project that does not meet the standards (c) and (e) must restore for each “exceedance” 1:1 and/or mitigate for each “exceedance” 2:1.
4. All mitigation and restoration must conform to the Commission's mitigation planting guidelines.
5. For an area to be counted as “restoration” it must adhere to the definition in 10.58(5)(f), the Commission's mitigation guidelines, and be at least 200 sf.

Appendices

- Appendix A. The Commission's interpretation of 310 CMR 10.58(5) (and as a checklist for applicants & staff)
- Appendix B. The full text of 310 CMR 10.58(5) as reference

Appendix A. The Newton Conservation Commission's Interpretation of 310 CMR 10.58(5) as a Checklist

Summary of Regulations (See Appendix B for the full text)	Checklist Reflecting the Commission's Interpretation of the requirements of 10.58(5)
...the issuing authority may allow work to redevelop a previously developed riverfront area, provided the proposed work improves existing conditions.	Note: All redevelopment work in RFA is discretionary
Redevelopment means replacement, rehabilitation or expansion of existing structures, improvement of existing roads, or reuse of degraded or previously developed areas.	<input type="checkbox"/> This definition has been met
A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds.	<input type="checkbox"/> This definition has been met
Work to redevelop previously developed riverfront areas shall conform to the following criteria:	Note: All criteria (a)-(e) must be met or mitigation and/or restoration must be provided as per (f) and (g)
(a) At a minimum, work shall result in an improvement over existing conditions of the capacity to protect the interests	<input type="checkbox"/> Applicant will prove to the Commission's satisfaction true ecological and/or hydrological improvements
(b) Stormwater management is provided according to standards	<input type="checkbox"/> Stormwater standards will be met Note: 1-4 units are exempt
(c) Proposed work* shall not be located closer to the river than existing conditions or 100 feet, whichever is less, except in accordance with 310 CMR 10.58(5)(f) or (g).	<input type="checkbox"/> No work will be closer to the river than 100 feet <input type="checkbox"/> No point on the riverbank will have new development closer to it than currently exists <input type="checkbox"/> The area in "violation" (V) of just this section (c) will be compensated for by restoration (R) and/or mitigation (M) according to the formula: $V = (R + M/2)$
(d) Proposed work*, including expansion of existing structures, shall be located outside the riverfront area or toward the riverfront area boundary and away from the river , except in accordance with 310 CMR 10.58(5)(f) or (g).	New development will be within the area defined by the shortest lines connecting the existing structures with the RFA boundary Note: Since this appears to be redundant of and/or more restrictive than (c), (d) may be ignored
(e) The area of proposed work* shall not exceed the amount of degraded area (but the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area) except in accordance with 310 CMR 10.58(5)(f) or (g).	<input type="checkbox"/> The finished project doesn't exceed 10% degraded <input type="checkbox"/> The finished project exceeds 10% degraded area <input type="checkbox"/> The area of expansion over the 10% allowance but <u>further from</u> the river than existing conditions (V), will be compensated for by $V = (R + M/2)$ <input type="checkbox"/> The area of expansion over the 10% allowance but <u>closer to</u> the river than existing conditions (V), will be compensated for by $V = 2(R + M/2)$
(f) When an applicant proposes restoration on-site of degraded riverfront area, alteration may be allowed notwithstanding the criteria of 310 CMR 10.58(5)(c), (d), and (e) at a ratio in square feet of at least 1:1 of restored area to area of alteration not conforming to the criteria.	<input type="checkbox"/> No expansion or construction closer to the river is proposed, so no compensation is required or proposed <input type="checkbox"/> 1:1 Restoration for (c) alone areas will be provided, or <input type="checkbox"/> 1:1 Restoration for (e) alone areas will be provided, or <input type="checkbox"/> 1:1 Restoration for (c) <u>and</u> 1:1 restoration for (e) areas will be provided
(g) When an applicant proposes on-site or off-site mitigation , alteration may be allowed notwithstanding the criteria of 310 CMR 10.58(5)(c), (d), or (e) at a ratio in square feet of at least 2:1 of mitigation area to area of alteration not conforming to the criteria or an equivalent level of environmental protection where square footage is not a relevant measure.	<input type="checkbox"/> No expansion or construction closer to the river is proposed, so no compensation is required or proposed <input type="checkbox"/> 2:1 Mitigation for (c) alone violation will be provided, or <input type="checkbox"/> 2:1 Mitigation for (e) alone violation will be provided, or <input type="checkbox"/> 2:1 Mitigation for (c) <u>and</u> 2:1 mitigation for (e) violation areas will be provided
(g, continued) Alteration not conforming to the criteria shall begin at the riverfront area boundary.	<input type="checkbox"/> Non-conformance addressed by mitigation begins at the RFA boundary
(h) The issuing authority shall include a continuing condition in the COC for projects under 310 CMR 10.58(5)(f) or (g) prohibiting further alteration within the restoration or mitigation area.	Note: The Conservation Commission will require stone bounds with medallions to ensure permanent protection of restoration and mitigation areas and shall add a perpetual condition in the OOC.

* **"Proposed work"** is interpreted to mean the total final area of degraded land and any land converted from tree/shrub to lawn

Appendix B. Full Text of 310 CMR 10.58(5)
(emphasis added)

- (5) Redevelopment Within Previously Developed Riverfront Areas; Restoration and Mitigation. Notwithstanding the provisions of 310 CMR 10.58(4)(c) and (d), **the issuing authority may allow work** to redevelop a previously developed riverfront area, **provided the proposed work improves existing conditions**. Redevelopment means replacement, rehabilitation or expansion of existing structures, improvement of existing roads, or reuse of degraded or previously developed areas. A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, absence of topsoil, junkyards, or abandoned dumping grounds. **Work to redevelop previously developed riverfront areas shall conform to the following criteria:**
- (a) At a minimum, proposed work shall result in an **improvement** over existing conditions of the capacity of the riverfront area to protect the interests identified in M.G.L. c. 131 § 40. When a lot is previously developed but no portion of the riverfront area is degraded, the requirements of 310 CMR 10.58(4) shall be met.
 - (b) **Stormwater** management is provided according to standards established by the Department.
 - (c) Within 200 foot riverfront areas, proposed **work shall not be located closer to the river than existing conditions or 100 feet, whichever is less**, or not closer than existing conditions within 25 foot riverfront areas, except in accordance with 310 CMR 10.58(5)(f) or (g).
 - (d) Proposed work, including expansion of existing structures, **shall be located outside the riverfront area or toward the riverfront area boundary and away from the river**, except in accordance with 310 CMR 10.58(5)(f) or (g).
 - (e) **The area of proposed work shall not exceed the amount of degraded area**, provided that the proposed work may alter up to 10% if the degraded area is less than 10% of the riverfront area, except in accordance with 310 CMR 10.58(5)(f) or (g).
 - (f) When an applicant proposes **restoration on-site** of degraded riverfront area, alteration may be allowed notwithstanding the criteria of 310 CMR 10.58(5)(c), (d), and (e) at a ratio in square feet of at least 1:1 of restored area to area of alteration not conforming to them criteria. Areas immediately along the river shall be selected for restoration. Alteration not conforming to the criteria shall begin at the riverfront area boundary. Restoration shall include:
 - 1. removal of all debris, but retaining any trees or other mature vegetation;
 - 2. grading to a topography which reduces runoff and increases infiltration;
 - 3. coverage by topsoil at a depth consistent with natural conditions at the site; and
 - 4. seeding and planting with an erosion control seed mixture, followed by plantings of herbaceous and woody species appropriate to the site;
 - (g) When an applicant proposes **mitigation** either on-site or in the riverfront area within the same general area of the river basin, alteration may be allowed notwithstanding the criteria of 310 CMR 10.58(5)(c), (d), or (e) at a ratio in square feet of at least 2:1 of mitigation area to area of alteration not conforming to the criteria or an equivalent level of environmental protection where square footage is not a relevant measure. Alteration not conforming to the criteria shall begin at the riverfront area boundary. Mitigation may include off-site restoration of riverfront areas, conservation restrictions under M.G.L. c. 184, §§ 31 through 33 to preserve undisturbed riverfront areas that could be otherwise altered under 310 CMR 10.00, the purchase of development rights within the riverfront area, the restoration of bordering vegetated wetland, projects to remedy an existing adverse impact on the interests identified in M.G.L. c. 131, § 40 for which the applicant is not legally responsible, or similar activities undertaken voluntarily by the applicant which will support a determination by the issuing authority of no significant adverse impact. Preference shall be given to potential mitigation projects, if any, identified in a River Basin Plan approved by the Secretary of the Executive Office of Energy and Environmental Affairs.
 - (h) **The issuing authority shall include a continuing condition** in the Certificate of Compliance for projects under 310 CMR 10.58(5)(f) or (g) **prohibiting further alteration within the restoration or mitigation area**, except as may be required to maintain the area in its restored or mitigated condition. Prior to requesting the issuance of the Certificate of Compliance, the applicant shall demonstrate the restoration or mitigation has been successfully completed for at least two growing seasons.