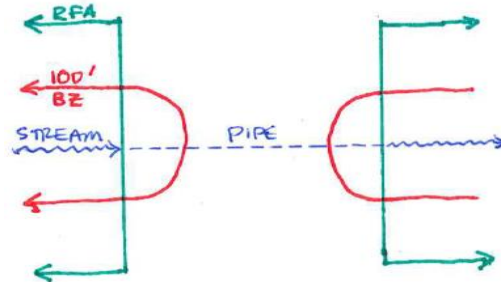


NEWTON CONSERVATION COMMISSION POLICY ON PIPED/CULVERTED STREAMS

Approved 2/26/15

Based on the 1983 Preamble to the Wetland Regulations and the Regulations themselves, the Newton Conservation Commission does not assert jurisdiction over land within 100 feet of a piped stream if:

1. Said pipe is over 200 feet long,
2. No other wetland resource areas or buffer zones exist on that land, and
3. The activities will not involve puncturing or threatening to puncture the pipe. See illustration on right.



The rationale is that:

1. Bank, as defined in 10.54, does not exist in such a pipe, and so no 100' Buffer Zone to Bank exists to be regulated in that area.
2. Land Under Water Bodies and Waterways (LUWW) does not have a 100' Buffer Zone to be regulated (see 10.02(1)).
3. Although the stream is a stream within the pipe (with critical qualities related to connectivity, water quantity, and water quality, and with RFA associated with it in other reaches), activities that will not puncture the pipe will not alter the LUWW or adversely impact its functions and values (the pertinent public interests).

EXCERPTS FRM DEP REGULATORY DOCUMENTS

Note: Excerpts below have been highlighted in yellow to indicate the sources of the foundation for this policy.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION PREFACE TO THE WETLANDS REGULATIONS 1983 REGULATORY REVISIONS

I. INTRODUCTION

The Act requires that any order so issued must contain conditions sufficient to preserve and promote the following public interests: the protection of public or private water supply and groundwater supply, the enhancement of flood control and storm damage prevention, the prevention of pollution and the protection of fisheries and land containing shellfish.

III. THE GENERAL APPROACH

Above all, the regulations are intended to put an end to the confusing, inconsistent and sometimes unnecessary regulatory practices that have attended administration of M.G.L. c. 131, § 40 in the past, especially with respect to the issue of jurisdiction.

At one extreme, it has been argued by those espousing a very restrictive interpretation of M.G.L. c. 131, § 40 that jurisdiction is limited to only those activities that are undertaken within the boundaries of the areas specified in M.G.L. c. 131, § 40. This is erroneous, in the Department's view, for a close reading of M.G.L. c. 131, § 40 indicates that regulation extends not only to such activities but to all work, regardless of where it is located, that has the demonstrable effect of removing, filling, dredging or altering an area subject to protection under M.G.L. c. 131, § 40.

At the other extreme, it has been the Department's experience that considerable upland acreage has been unnecessarily regulated by local conservation commissions on the basis of highly questionable assumptions with respect to the anticipated impact of a proposed project on a protected area located some distance away.

It is the Department's view that in the vast majority of cases it is unnecessary to regulate projects outside land subject to flooding and beyond 100 feet from freshwater wetlands bordering water bodies, provided that the wetlands themselves are left intact in order to attenuate project impacts.

... because it is the Department's judgment that work undertaken within 100 feet of bordering vegetated wetlands has a very high likelihood of adversely affecting those ecologically sensitive areas, the regulations require that anyone contemplating such work must file a Request for a Determination of Applicability with the conservation commission in order to insure that prior to commencement of the work an informed and public decision will be made as to possible impacts. Finally, the regulations make clear that work outside the 9 resource areas and outside the 100-foot buffer zone surrounding bordering vegetated wetlands can proceed without preconstruction review; jurisdiction over such work can be asserted only upon a showing that it has actually altered a resource area.

It is also the Department's view that while engineering solutions can protect the statutory interests at stake in most projects located in or near banks, floodplains and land under waterways and water bodies, this is not the case with bordering freshwater wetlands.

310 CMR 10.00: WETLANDS PROTECTION

10.02(b) Activities Within the Buffer Zone. Any activity other than minor activities identified in 310 CMR 10.02(2)(b)2. proposed or undertaken within 100 feet of an area specified in 310 CMR 10.02(1)(a) (hereinafter called the Buffer Zone) which, in the judgment of the issuing authority, will alter an Area Subject to Protection under M.G.L. c. 131, § 40 is subject to regulation under M.G.L. c. 131, § 40 and requires the filing of a Notice of Intent.

Note: Bank has buffer zone, LUWW does not. See 10.02(1).

10.02: Statement of Jurisdiction

(1) Areas Subject to Protection under M.G.L. c. 131, § 40. The following areas are subject to protection under M.G.L. c. 131, § 40:

Any bank,
any freshwater wetland,
any coastal wetland,
any beach, bordering
any dune, on
any flat,
any marsh,
or any swamp
bordering on ...

10.54: Bank (Naturally Occurring Banks and Beaches)

(2) Definition, Critical Characteristics and Boundary.

(a) A Bank is the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland. A Bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone.

(b) The physical characteristics of a Bank, as well as its location, as described in 310 CMR 10.54(2)(a), are critical to the protection of the interests specified in 310 CMR 10.54(1).

(c) The upper boundary of a Bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.