

POLICY

Previously Developed & Change in Use

Effective Date: February 19, 2014

These terms appear in the amended Commission Regulations, Section 2: Submission Standards and Standard of Review, Subsection V. Performance Standards and Standards of Review, B. Buffer Zone, third paragraph. The precisely relevant portion reads as follows:

“The Commission is concerned with future encroachments on resource areas and therefore requires that a permanent 50-foot No-Disturbance Zone (NDZ) and a permanent 15-foot No-Build Zone (NBZ) be established on all projects in the buffer zone not otherwise exempted from this provision. For projects or activities proposed on previously developed lots for which neither a subdivision nor a change in use is proposed, ... the No-Disturbance Zone shall be 25-feet.” (Emphasis added)

This amended language was inserted after public hearings and by vote of the Commission in January 2001. It followed an analysis by the Commission of the effectiveness of vegetated strips in retaining, absorbing, or otherwise reducing or altering common contaminants during the passage of surface runoff across the strip; as reported in the available literature at the time. That analysis, the report of which is available in the Commission files, indicated that effective control, meaning a high degree of pollution control thereby, required a lateral transport distance of from 100 to 300 feet, depending on the slope of the land, the nature of the vegetative cover and the type of soil.

The Commission, in its deliberations at the time, also considered that its jurisdiction usually extends only 100 feet laterally from wetland resources as defined in 310 CMR 10.00, that the current regulation established the No-Disturbance Zone as 25 feet, and that a NDZ width of 100 feet might render many lots unbuildable or unalterable, and thereby potentially raising a question of a “taking” of a property, property right or property interest. With a strong belief that the current regulation provided inadequate protection of wetland resources, the Commission temporized by proposing to increase the NDZ width to 50 feet laterally. Some members of the Commission objected, concerned that would place an unreasonable burden on owners (principally of smaller residential parcels) wishing to expand or otherwise alter the existing development. In order to address that concern the Commission proposed and ultimately adopted the current language.

Recently, issues have arisen at hearings regarding the interpretation of the terms “previously developed” and “change in use.” The Commission seeks to clarify these terms to ensure fairness and consistency in their application. This policy will further define these terms as referenced in the bylaw regulations above.

Defining “Previously Developed”

Previously developed lots are those lots on which **constructed** facilities for **human activity** exists. This includes playing fields, golf courses, playgrounds and other recreational areas. The human activity must be in existence (legally-violations do not qualify) at the time of application to the Conservation Commission. Lots that may have been previously developed but have reverted to a natural state (structures no longer present) do not qualify as “previously developed”. Pastureland, agricultural fields, and woodlots are not considered “previously developed”.

Defining “a change in use”:

A “change in use” is defined as a change in **activity or in vegetative cover** on a lot that would increase the potential for “alteration” (as defined in the statutes and regulations) of wetland resource areas. Examples include but are not limited to:

- Conversion of any undeveloped lot to development
- Conversion of a single-family home to two- or multi-family housing
- Conversion of a passive recreation area to an active recreation area (trails to playing field or playground)

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- Conversion of a residential property to a commercial, business or industrial property
- Conversion of a residential or vegetated lot to a parking area
- Conversion of agricultural, pastureland, or a woodlot to residential or commercial/business/industrial development
- Substantial change in vegetative cover all areas significant to water supply protection

Activities exempted from this policy are limited to the following:

- An increase in the use of an existing, previously developed, single-family parcel (existing lot lines) (i.e. swimming pool, shed, driveway expansion, lawn expansion, garden, etc.)*
- An alteration of the existing parcel (current lot lines) for the expansion of an existing commercial, business or industrial use without any “significant” change in potential contamination (i.e. building expansion, additional parking, landscaping, outbuilding, etc.)*
- The expansion of the agricultural use of a property that currently qualifies for an agricultural exemption under the Massachusetts Wetland Protection Act (WPA)*

***Note:** Activities exempt from the change in use policy may still require a filing with the Conservation Commission if they are within 100’ of a wetland resource area or within 200’ of a perennial stream.