

Boston Conservation Commission Implements New Wetlands Ordinance

October 5, 2020

In August, the Boston Conservation Commission adopted procedural regulations to implement Boston's local wetlands ordinance, adopted in December 2019. Among other things, the new regulations clarify the Commission's expanded authority to address future climate change impacts separate from the state Wetlands Protection Act and Regulations (the "WPA"). See our summary of the ordinance [here](#). The Commission will next turn its attention to mapping new resource areas and adopting performance standards.

Key aspects and provisions of the new regulations are highlighted below. The regulations may require projects approved under the state WPA to file a new application under the ordinance even if construction has commenced. Also, projects not subject to the WPA may be subject to the ordinance's increased scope even if they have received all other approvals and commenced construction.

Increased Jurisdiction

The ordinance regulates wetland Resource Areas beyond those covered by the WPA, including new Coastal and Inland Flood Resilience Zones, a potential 200-foot Extended Riverfront Area, a 25-foot Waterfront Area within certain Buffer Zones, and a broader definition of "Vernal Pool." The regulations clarify that the Commission's jurisdiction extends to any activity which may "alter or pose a significant threat to alter an area subject to protection." Unlike the WPA, the regulations do not distinguish standards for regulating activities in Buffer Zones from those for protected Resource Areas themselves.

Transition Rules

The ordinance is effective as of its passage on December 11, 2019. The regulations contain complex rules concerning whether previously approved projects will be subject to the ordinance, based on such factors as whether work has commenced, whether newly regulated resource areas are affected, and whether previous WPA approvals need to be extended or amended. These transition rules should be closely consulted to determine whether a specific project is exempt from the ordinance.

Application Process

The Regulations provide for three types of filings:

1. **Determination of Applicability** – to seek the Commission's determination whether a project is subject to the ordinance.

2. **Abbreviated Notice of Resource Area Delineation** – to establish the exact boundary of a protected Resource Area under the ordinance.
3. **Notice of Intent** – to obtain an Order of Conditions to conduct work in a protected Resource Area.

These filings mirror those under the WPA, but require separate application forms.

Procedures

The ordinance and regulations contain procedural requirements that differ from those of the WPA. These include more expansive abutter notice requirements and additional information requirements regarding the consequences of climate change.

Dynamic Process

We continue to monitor mapping of new Resource Areas and promulgation of performance standards, which are likely to affect the jurisdictional reach of the ordinance. If you have a question as to how the ordinance and regulations affect your project, please contact one of the attorneys tagged or your usual Goulston & Storrs attorney.