

- The Endangered Species Act, MGL Ch. 131A
- The Mass. Environmental Policy Act (MEPA), MGL Ch. 30 §§61-62

The Rivers Protection Act does not apply to the following activities:

- Any excavation, structure, road, clearing, driveway, landscaping, utility lines, rail lines, airports, bridges over two miles long, septic system or parking lot within the riverfront area in existence on 8/7/96
- Any project for which a draft environmental impact report has been prepared and submitted by 1/1/96 or a building permit has been filed for on or before 10/1/96 and is granted by 4/1/97

- A definitive subdivision plan has been approved or endorsed by 8/1/96 (but development of individual lots remain subject to the Rivers Protection Act regardless of when the subdivision was created).

THE DEPARTMENT of Environmental Protection (DEP) is required to promulgate regulations to facilitate implementation of the Act by 8/1/97. DEP is expected to issue draft regulations in May 1997. On 11/18/96 DEP issued the guidance document from which these highlights are drawn, to be used until regulations have been approved. The regulations when issued are likely to contain:

- Performance standards to determine which activities would cause a "significant adverse impact"

- A presumption that the closer the proposed activity is to the river, the greater the potential adverse impact and the more stringent the regulation

- Incentives to encourage restoration of a vegetated buffer along the river.

The Rivers Protection Act also directs EOEPA to develop for submission to the Joint Committee on Natural Resources and Agriculture by 1/31/97 a 25-year plan to protect the Commonwealth's rivers and to acquire open space fronting rivers and streams.



Natural Resources

Town of Wellesley

Wetlands Protection Committee

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Quick Guide to

THE RIVERS PROTECTION ACT

Ch. 258, Acts of 1996

The following highlights of the new Rivers Protection Act are from the Massachusetts Department of Environmental Protection's official guidance document of November 18, 1996



THE RIVERS PROTECTION ACT expands the jurisdiction of the Wetlands Protection Act, MGL Ch. 131 §40, by regulating activities within a new wetland resource area called the "riverfront area."

The Riverfront Area includes the area within 200 feet of the river's mean annual high-water line.

"River" is very broadly defined as "a natural flowing body of water that empties into any ocean, lake or other river and which flows throughout the year," so it includes almost every stream, regardless of size.

The purposes of the Rivers Protection Act are the same as the eight interests under the Wetlands Protection Act—to protect water supply, groundwater, land containing shellfish, wildlife habitat and fisheries; to provide flood control, and to prevent storm damage and pollution.

THE 200-FOOT RIVERFRONT AREA is reduced to 100 feet for new agricultural or aquacultural activities and for activities under Ch. 91, the Public Waterfront Act. It is further reduced to 25 feet along rivers in certain cities. Other cities and towns may designate, with EOEPA approval, a riverfront area 25 feet wide in densely developed areas that are ten acres or more in size. The riverfront area does not include certain land associated with historic mill complexes.

The Rivers Protection Act adds this provision to the Wetlands Protection Act:

In the case of riverfront areas, no order of conditions...shall permit any work unless the applicant...has proved by a

preponderance of the evidence that (1) such work, including proposed mitigation measures, will have no significant adverse impact on the riverfront area, and (2) there is no practical and substantially equivalent economic alternative to the proposed project with less adverse effects on the purposes of the Wetlands Protection Act.

APPLICANTS SUBMITTING NOTICES OF INTENT for projects within the riverfront area are subject to a two-part test:

1. *Is there a reasonably available alternative with less adverse impact on the eight enumerated interests?*

If so, the Conservation Commission can require the applicant to pursue it. A viable alternative is one that is available and capable of being done after considering 1) costs, whether reasonable or prohibitive; 2) technology; 3) proposed use; and 4) logistics in light of overall project purposes.

If access is to one dwelling, the alternatives analysis must focus only on that lot. For subdivisions, the analysis must focus on the total parcel plus other parcels owned by or reasonably obtainable by the same owner.

2. *Will the proposed project have no significant impact on the eight interests of the Wetlands Protection Act?*

The applicant bears the burden of proof. If he cannot prove this point, the Conservation Commission (Wetlands Protection Committee) is instructed to deny the project.

The procedures and forms for the Rivers Protection Act will be virtually identical to those under the Wetlands Protection Act.

There are no filing fees for projects affecting only the riverfront area until the DEP promulgates Rivers Act regulations, due 8/1/97.

EXEMPTIONS from the Rivers Protection Act:

- Rivers and streams protected by an Order under the Scenic Rivers Act, MGL Ch. 21 §17B
- Activities associated with wastewater treatment plants and facilities
- Mosquito control work
- Forest harvesting in accordance with a DEM-approved plan
- Activities exempted under the Wetlands Protection Act
- Activities associated with specified cranberry bogs are exempt under both the Wetlands and Rivers Protection Acts but are subject to a review process to be developed by DEP.

The Rivers Protection Act does not supersede the provisions of:

- The Watershed Act, Ch. 36 of the Acts of 1992