



Cape Cod Cranberry Growers' Association

GROWER ADVISORY

The Rivers Protection Act

Background

The Rivers Protection Act is a series of regulations that went into effect in 1996 to amend the Wetlands Protection Act by creating a new resource area, Riverfront Areas. These areas help to protect water quality, stabilize stream banks, reduce flood peaks and downstream flooding, support fish and wildlife habitats, and protect groundwater. This advisory should help to explain what the Rivers Protection Act means for a cranberry grower as a supplement to the advisory “*Agriculture Regulations of the Wetlands Protection Act*”.

First, a few definitions are needed:

The **Riverfront Area** is a 200-foot wide zone between the mean-annual high mark of a river and line extending out horizontally. Generally speaking, this area is to be kept free from development. Agriculture, however, enjoys only a 100-foot wide zone from the mean-annual high water line.

Rivers, as defined by the Commonwealth of Massachusetts, are any naturally flowing bodies of water that flow throughout the year and that empty into the ocean, a lake, or other river. Streams that flow intermittently through the year are not defined as rivers but this determination is complicated and if there is any confusion, you should talk to a wetlands consultant for an opinion.

The following conditions are considered rivers and as such, have Riverfront Areas:

- A river shown as perennial on the current USGS maps shall be determined to be perennial
- A river or stream shown as intermittent on the current USGS maps that has a watershed size greater than or equal to one square mile, is considered to be perennial.
- Rivers will be considered to include perennial streams that cease to flow during periods of extended drought or when affected by drawdowns

The following are **NOT** considered to be rivers and as such, **DO NOT** have Riverfront Areas:

- Constructed canals
- In general, intermittent streams do not have Riverfront Areas. However, in some instances, a determination will be needed to confirm if a stream is truly intermittent. In these situations, you will need to speak with your local Conservation Commission and/or discuss with a wetlands consultant for a wetland determination

New Construction and the Riverfront Area

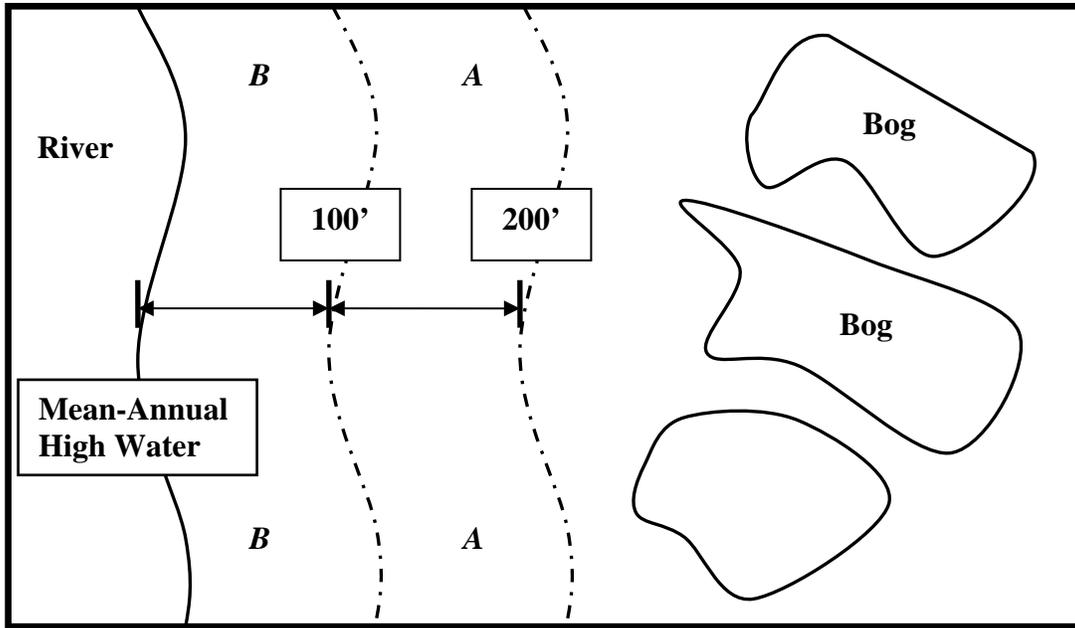
Where the Rivers Protection Act matters most is for new agricultural activities. You may still be able to conduct these activities in the Riverfront Area but you will need to follow certain steps before undertaking those activities.

As an illustrative example, in Figure 1 below there are two existing bogs and a reservoir located outside of the 200-foot Riverfront Area. Assuming that the land between the bogs and the river is not some other wetland resource area, then a cranberry grower is free to build new agricultural structures (ponds, bypass, tailwater, etc.) within Area A – the area comprising land 100 to 200 feet from the rivers mean-annual high mark.

New bog construction is allowed within that area between one hundred and two hundred feet from a river, but a grower should be aware that if another wetland resource is within one hundred feet of the site for the new bog, a Request for Determination should be filed with your local conservation commission.

New activities within Area B, as in the diagram below, will require a filing of a Request for Determination (RDA) and/or a Notice of Intent (NOI) with the local conservation commission before work is begun. In this case, Zone B is the Riverfront Area as it applies to agricultural activities.

Figure 1



Existing Agriculture in the Riverfront Area

Existing agriculture being practiced within the Riverfront Area may continue as long as it meets the standards set forth in the regulations of the Wetland Protection Act (310 CMR 10.04) for land in agricultural use. Broadly, it includes all “work performed for the normal maintenance or improvement of land in agricultural use.” This is clearly explained in CCCGA’s advisory, “*Agriculture Regulations of the Wetlands Protection Act*”. To summarize, land that is already in agricultural use – a bog, a sandpit, irrigation pond, etc. – may see normal maintenance and improvement activities as an exempt activity, following the requirements in the regulations. As always, it is entirely new activities on untouched land that will require you to follow the regulatory process before those activities are begun.

If you have a Chapter 91 license for a structure within 100 feet of a river, the regulations or conditions within your license for that structure through Chapter 91 (310 CMR 9.00), are not altered by any regulations for the Riverfront Area.

Process for New Activities

When an activity is planned within one hundred feet of a River’s Mean Annual High Water Line on land that is not currently being used for agriculture, a Request for Determination (RDA) and/or a Notice of Intent (NOI) must be filed with the local conservation commission. In order to comply with the basic standards of the NOI, your project would need to meet the following four criteria:

1. Show that you meet the standards for any other wetland resource area such as a bordering vegetated wetland, flood zone, isolated land subject to flooding, etc.
2. Show that you are not altering any rare species habitat.
3. Show that you have no other alternative location for the new activity on the lot you now own or formerly owned.
4. Show that you are not adversely affecting the riverfront area by minimizing the activity in the 100-foot riverfront area and by keeping or establishing a corridor of undisturbed vegetation along the river.

If you are unsure if the land on which you are planning to work is subject to the Riverfront Protection Act, you may file a Request for a Determination of Applicability with your local conservation committee. As always, we encourage you to consult with the Growers' Association or the PCCD Farm Planning Program for guidance.

The information in this guide is provided by the Cape Cod Cranberry Growers' Association as a service to its members. The information represents our interpretation of the state requirements and by no means is intended to act as a substitute for reading and following the specific regulatory requirements.

**Massachusetts General Law Chapter 131
And
Code of Massachusetts Regulations 310 CMR 10.00**

Note: An activity that is exempt from the Massachusetts Wetlands Protection Act or the Rivers Protection Act may still be subject to regulation under other state or federal laws.

For more information, please contact:

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