

Wetlands Program Policy 91-1: Plan Changes

Plan Changes: Administrative Appeals Policy for the Review of Project Plan Changes (DWW Policy 91- 1)

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Purpose

The primary purpose of this policy is to promote the intent of the Wetlands Protection Act, M.G.L. c. 131 s.40, to ensure thorough local review of work proposed in or near wetland resource areas by identifying those circumstances in which the Department will consider changes to plans filed under Notices of Intent (NOI) which are before the Department under appeal for a Superseding Order of Conditions (SOC) or for which a Claim for an Adjudicatory Hearing has been filed. It is also the purpose of this policy to encourage submission, at the earliest possible time during Conservation Commission review, of project designs that meet the performance standards and minimize impacts to resource areas. This policy specifically distinguishes those plan changes which are substantial, and will require a new NOI filing, from those plan changes which are deemed insubstantial and thus may be considered as part of the appeal review process. This policy only applies to plan change reviews contemplated prior to the issuance of a Final Order of Conditions.

Regulatory Standards

Minimum submittal requirements for filing an NOI are contained at 310 CMR 10.05(4)(a) and (b) and include submission of "plans, supporting calculations, and other documentation sufficient to completely describe the proposed work and mitigating measures". The Department may accept project revisions at any time while an NOI is under appeal. This discretion is limited only by 310 CMR 10.05(7)(h) which precludes the Department from considering new information when the Conservation Commission has denied the project for lack of such information and the Department concurs that the information is necessary.

Analysis

From time to time, parties to projects under appeal will request the Department to consider new information or will seek to amend project plans.

For the purpose of this policy, plan changes include changes in "project configuration" (e.g. roadway alignment, drainage structures, building footprints) and changes which result from the introduction of new information which changes the amount or type of resource area impact (e.g. identification of a stream or other resource areas that had previously been missed) despite the absence of a change in project configuration.

The Department will not consider plan changes, as defined above, which are deemed to be substantially different from the plan acted upon by the Conservation Commission and which are referenced in the Order of Conditions. Substantial plan changes are

deemed to be those changes which significantly modify the project configuration and which result in increased impacts to wetland resource areas. There are three exceptions to this policy. The Department may accept plan changes that are substantial if 1) the Conservation Commission has failed to act on the Notice of Intent; 2) the Conservation Commission has approved a project plan which does not meet the performance standards of the regulations; or 3) after consultation, the Conservation Commission does not object to the Department considering a substantial plan change.

The Department may consider plans which contain insubstantial changes from the plans acted upon by the Conservation Commission and referenced in the Order of Conditions. Insubstantial plan changes are limited to those changes which involve unchanged or decreased impacts but which do not constitute significant changes from the project configuration acted upon by the Conservation Commission (e.g. retaining walls, bridges, and spans for a wetlands crossing; repositioning of structures within the buffer zone to increase the distance from a wetland resource area; improvements to flow control or sediment control devices; and changes in the location of a deck on a house resulting in a change in the building footprint).

In presenting proposed plan changes to the Department, the burden is on the project proponent to demonstrate that the plan change is insubstantial. Specifically, the project proponent must show that the plan change results in an unchanged, or not significantly changed, project configuration and unchanged or decreased impact to any wetland resource areas as compared to the plan acted upon by the Conservation Commission and referenced in the Order of Conditions.