A stylized landscape illustration featuring rolling green hills, a blue sky with white clouds, a red bird in flight, a green tree, a purple flower, and a brown path.

Common Goals, Common Ground – Your Exemptions & How We Can Work Together

Franklin Agricultural Commission
Breeka Li Goodlander, CWS, Conservation Agent
July 25, 2022

Breeka Lí Goodlander, CWS

(bree-kah lie)

"If it's a dry year, look for where the corn is growing. If it's a wet year, look for where the corn is dead."

Accolades:

Certified Wetland Scientist
Professional Wetland
Scientist, TBA
Erosion and Stormwater
Manager
Drone Pilot
Wildland Firefighter
Board Member to AMPA

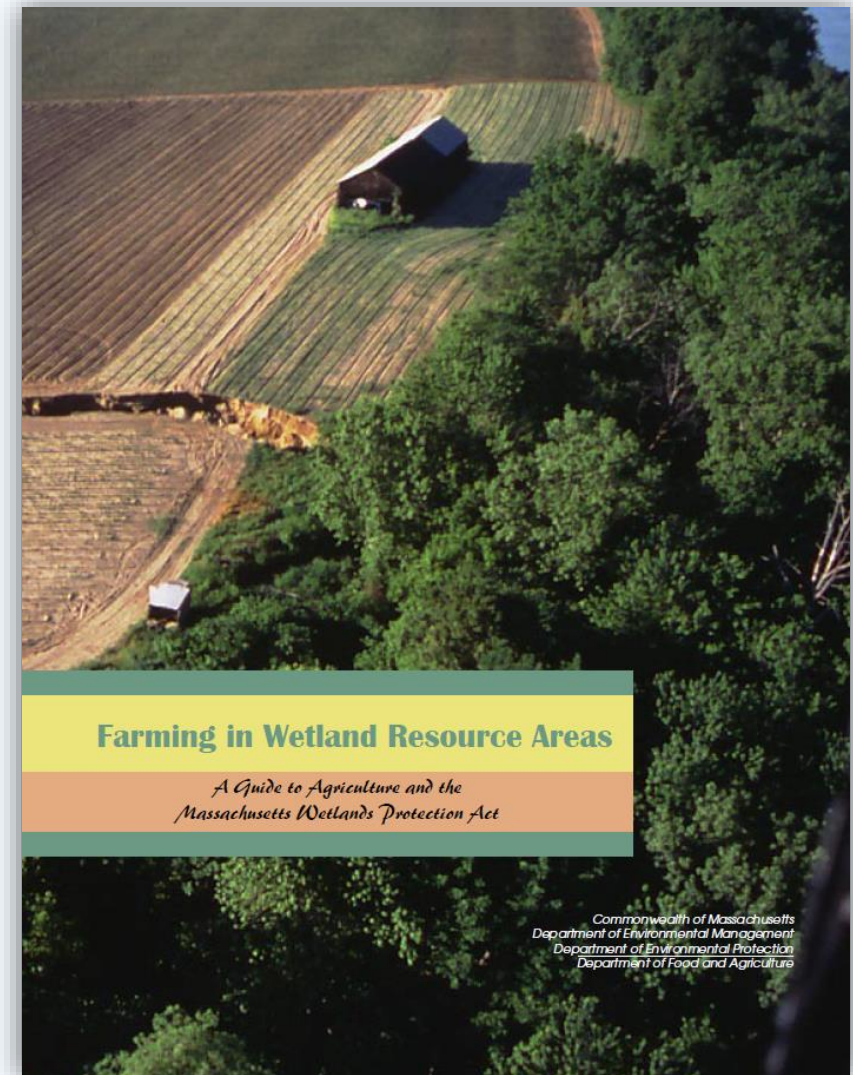
Other:

Experience in Environmental
and Construction Monitoring,
Wildlife in Agricultural
Ecosystems, Sustainability
Farm volunteer
Right to Farm community
Pig and farm cat mom
Bred in Minnesota
Granddaughter to farmers



Key Resources

- The Wetlands Protection Act (WPA) at M.G.L. Ch. 131 Sec. 40
- WPA Regulations at 310 CMR 10.04
- “Farming in Wetland Resource Areas” manual
- Local Bylaws and Associated Regulations



Jurisdictional Wetland Resource Areas

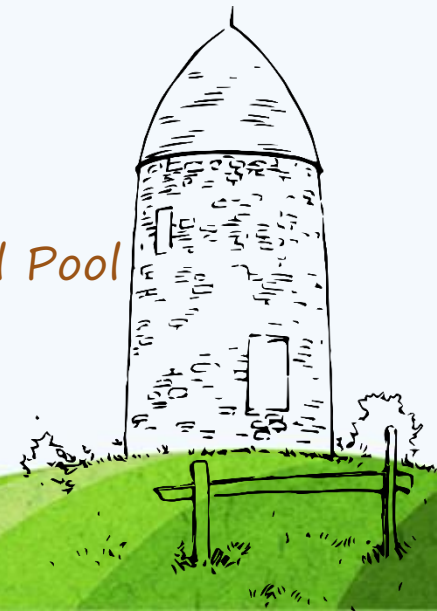
WPA Inland Resources

- Bank
- Beach
- Bordering Vegetated Wetlands (BVW)
- Land Under Water or Waterbodies
- Land Subject to Flooding (Bordering and Isolated)
- 200-foot Riverfront Area
- 100-foot Buffer Zone to Bank, Beach, and BVW

Local Bylaw & Associated Regulations Resources

- All of the above, plus
- Vernal Pools
- Intermittent streams
- 25-foot “No Touch” Zone
- 25 to 50-foot Buffer Zone
- 50 to 100-foot Buffer Zone
- 100-foot Buffer Zone to Vernal Pool and Land Subject to Flooding (Bordering or Isolated)

If you're not sure – ask me!



Importance of...

Wetland Resources

- Protection of public and private water supply
- Protection of groundwater supply
- Flood control
- Storm damage prevention
- Prevention of pollution
- Protection of land containing shellfish
- Protection of fisheries
- Protection of wildlife habitat

Agriculture

- Productive function – food, fiber, and other commodities
- Economic function – generate critical economic activity and lower the cost of community services (Goat yoga?)
- Cultural & historical heritage
- Amenity function – open space and scenic landscapes
- Habitat function – wildlife corridors
- Recreation function (Goat yoga x2?)



You make a
valuable
contribution to
the
Commonwealth.

*As stewards of the land, we all
have a responsibility to
conserve resources and employ
farming practices that avoid,
minimize, and mitigate harm
to the natural resource base.*



Where is the Agricultural Exemption?

The WPA

“The provisions of this section shall not apply to...

- Maintenance of drainage and flooding systems of cranberry bogs,
- Work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use, amended and effective on May 21, 1993.

Common Misconceptions

- Having an approved Conservation Plan or Forest Cutting Plan does not automatically mean an activity is exempt (but one is required for certain activities).
- Having land in “current use” under Chapter 61 and 61A, or being in a “Right to Farm” community is irrelevant to whether an activity is exempt.



10.04 Definitions: Agriculture

Land in Agricultural Use 10.04(a)

Land within Resource Areas or the Buffer Zone presently and primarily used in producing or raising one or more of the following agricultural commodities for commercial purposes:

1. Animals...
2. Fruits...
3. Feed...
4. Forest products on land maintained in "forest use"...

Normal Maintenance 10.04(b)(1)-(17)

- (1) Crop management practices, but NOT drainage in a BVW, customarily employed to enhance existing growing conditions;
- (3) The repair or replacement of existing access roads and livestock crossings;
- (15) notwithstanding the use of the words "for commercial purposes" in the first sentence of 310 CMR 10.04: Agriculture(a), the cutting of trees within Resources and the Buffer Zone by owners for their own use...



10.04 Definitions: Agriculture

Normal Improvement of Land in Agricultural Use includes, but is not limited to, eight specific activities 10.04(c)(1)(a)-(h):

- When they occur on land in agricultural use or
- When they occur within the Buffer Zone or Bordering Land Subject to Flooding that is not land in agricultural use,
- When they are directly related to production or raising of the agricultural commodities,
- When they are undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands, and
- The activity is conducted in accordance with federal and state laws.

Water Management Projects 10.04(c)(2)

- The reconstruction of existing structures occurring partly or entirely within BVW, when directly related to production or raising of the agricultural commodities.
- Requires a farm Conservation Plan certified by NRCS, and reviewed by ConCom at a public meeting.
- Includes limitations including square footage.

Commercial agricultural

- The activity of selling and goal of making profit, both elements must be present.
- ConCom may require documentation, such as sales receipts, to demonstrate continuous commercial agricultural use.



Land in Production vs. Necessary and Related Land

Land in Production

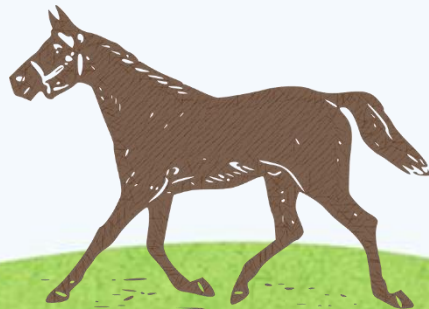
- Portion of the farm “presently and primarily” used to produce or raise agricultural commodities for commercial purposes.”

- Examples:

- Corn field, fenced pasture for grazing livestock, hayfield, orchard, etc.

Necessary and Related Land

- Portion of the farm “presently and primarily” used in a manner related to, and customarily and necessarily used in, producing agricultural commodities.
- Areas of the farm essential to the farm’s operations because they support existing land in production.
- Examples:
 - Existing access roads, barns, sheds, irrigation ponds, etc.



Active vs. Inactive Land

- Although the land must be “**presently and primarily**” in agricultural use, land may be “**inactive**” for up to five consecutive years without losing exempt status – or longer, if the land is inactive as part of a USDA contract under Conservation Reserve Program (CRP).
- When determining if the land is “**Land in Agricultural Use**” the land must have been farmed for commercial purposes within five years of the effective date (05/21/1993).
- The five-year requirement does not apply to land used for commercial forestry purposes in 10.04(b)(14)-(17).
- Conservation Commission may require documentation, such as sales receipts, to demonstrate active commercial agricultural use.



Examples of Non-Exempt Activities in Wetland Resource Areas

- Bringing abandoned land back into production, opening new land to farming, expanding a field to increase acreage under production, and creating new access roads or work areas because the land is not presently and primarily in production.
- Building, maintaining, or improving a habitable dwelling or renting out a horse stall because they are not directly related to the production or raising of agricultural commodities.

These activities can still be approved through the normal Conservation Commission permitting process!



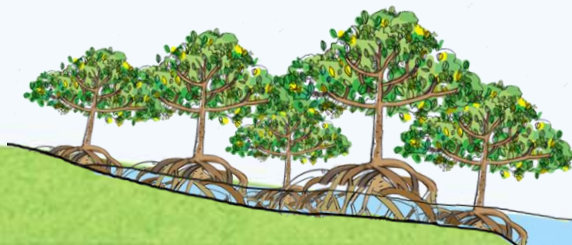
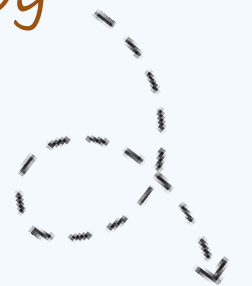
Other

If proposed work does not meet the Agricultural exemption, the activity must be permitted with Conservation.

- Agricultural Emergencies – 10.06(6)
- Agricultural Limited Project – 10.53(5)
- Agricultural Riverfront Area – 100 feet per 10.58(2)(a)(3)(c) for new activities

WPA Exemption for Forestry in Riverfront Area

- “The Riverfront Area shall not apply to...forest harvesting conducted in accordance with a cutting plan approved by DCR...”



Chapter 61 – Forest Lands and Forest Products



Forests provide ecosystem services such as, but not limited to, clean water, clean air, forest products, employment opportunities, outdoor recreations, wildlife habitat, and carbon sequestration.

If you have >10 contiguous acres of forest you may qualify for preferential tax treatment.

Chapter 61 for Forestlands

Chapter 61A for Agricultural Land

Chapter 61B for Recreational Land



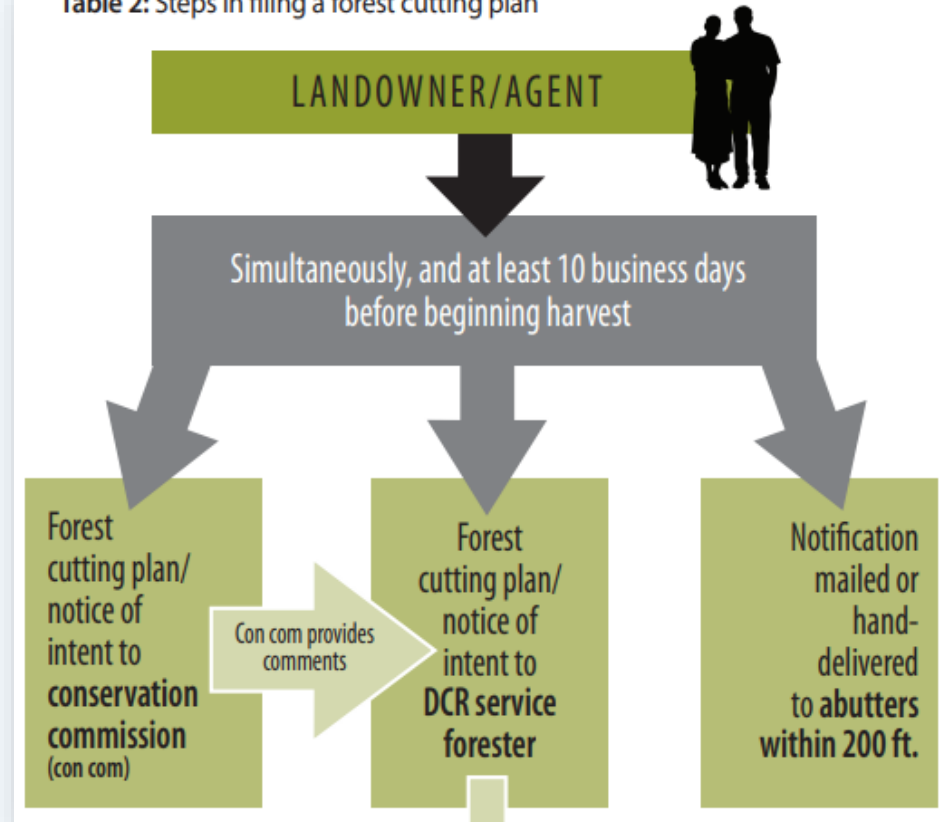
Chapter 61 – Role of the Conservation Commission and Forest Cutting Plans (FCP)

Provide timely, specific, and appropriate comments on

- the Plan
- any Best Management Practices (BMPs)
- and boundary delineations

within 10 business days

Table 2: Steps in filing a forest cutting plan



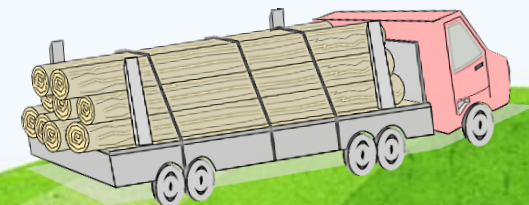
Chapter 61 – FCP & WPA Exemptions

Exemptions apply when:

- The FCP is filed with and approved by DCR
- Wetland Resources are properly identified
- Land is devoted to forest growth
- A copy of the FCP is sent to Conservation
- Faithful execution of the Plan

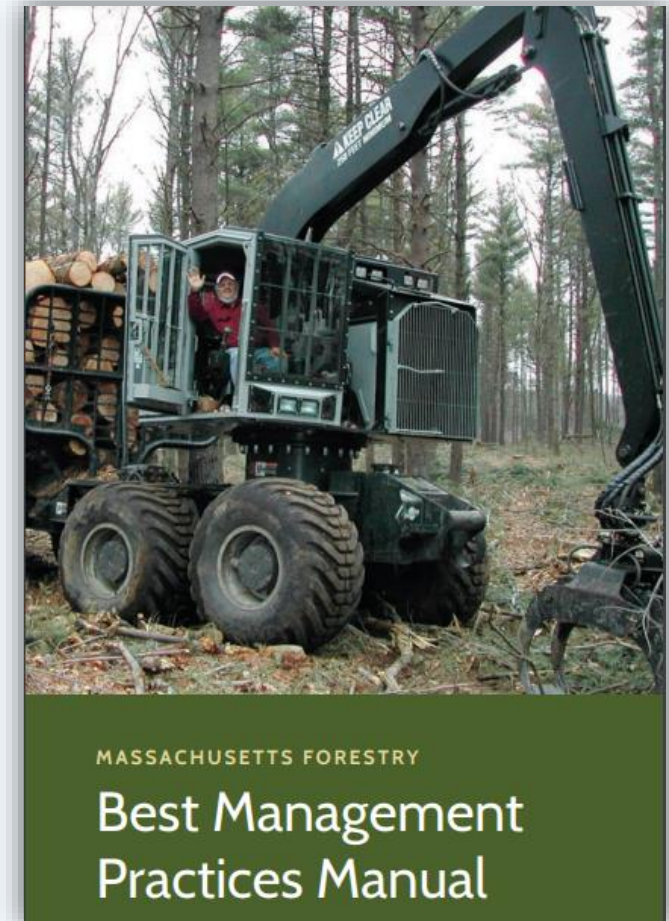
Exemptions do not apply when:

- Clearance or maintenance of a Right-of-Way (ROW)
- Maintenance of pasture
- Clearing of land for agriculture
- Non-commercial use of the owner
- Clearing of land for a change of land use

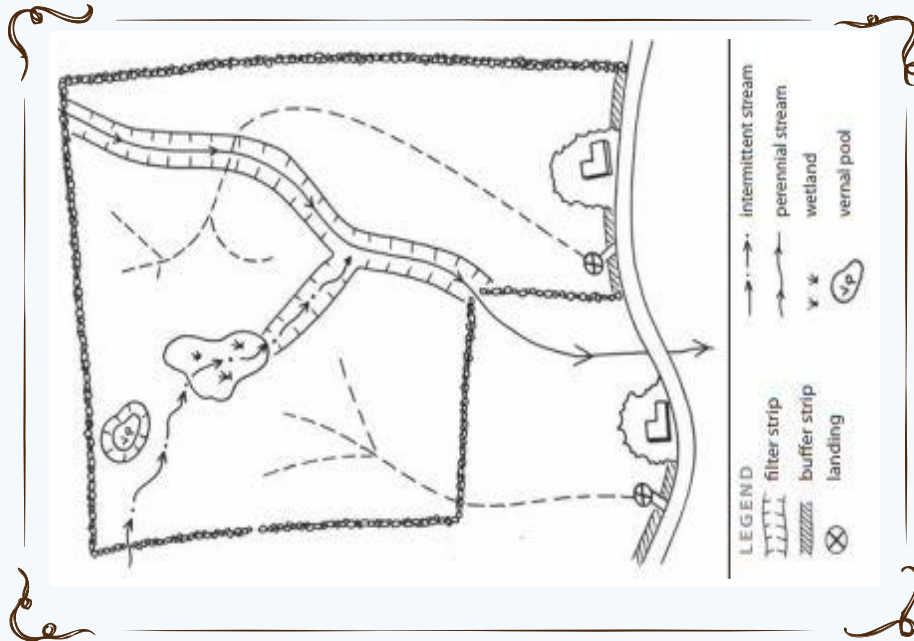


Chapter 61 – Required Wetland Resource BMPs

- Permit required by local Conservation Commission or an approved FCP;
- Limit Stream and Wetland crossings— obtain ROW over abutters and use erosion and sedimentation control BMPs;
- Time operation for harvest and plan for changing conditions; utilize structures such as timber mats when within Resources;
- Ensure the FCP includes all Wetland Resources, slopes, crossings, filter strips, etc. and that all crossings are flagged out in the field. Filter strips are required along all Ponds, Lakes, regulated Streams, and Certified Vernal Pools;
- Skid trails are not allowed in filter strips, except when using an approved crossing, or by permission of the Service Forester if it can be shown to have less impact. Protect and stabilize skid trails...
- No machinery is allowed to operate in a Certified Vernal Pool at any time;
- Stabilize soils and all Banks using seed, if necessary and more...



For your reference...



Example Map Maps can be professionally done or hand drawn, provided that the Resources are accurately located and shown.



Example BMP Photo of a timber mat being used to cross a Wetland.

Summary of Agriculture in or near Wetland Resources

- Not all agricultural activities are exempt.
- It is the *activity* not the land that may be exempt.
- Activity must be “*presently*” conducted (within 5 years).
- Activity must be for *commercial purposes*.
- There are *limitations* to some exemptions.
- Proposed work may include filing with multiple Agencies and have specific BMP requirements (Chapter 61).





Q&A

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The New Simplified WETLANDS Definitions

1. If it's wet, it's wet.
2. If it's dry, it's wet.
3. If it's wet, but not overly dry, or dry, but not overly wet, refer to items 1 and 2.
4. If it's wet, but could be dry, or dry, but could be wet, refer to item 3.
5. If it's neither wet nor dry, refer to the *Atmospheric Delineation Manual*...
9. If in doubt about the dryness or wetness of an area, and uncertain if water occurs in a form other than H₂O, contact your nearest political representative.