



Cape Cod Cranberry Growers' Association

GROWER ADVISORY

Agriculture Regulations of the Wetlands Protection Act

Cranberry Bogs and the Agricultural Exemption

The Massachusetts Wetlands Protection Act (WPA) regulates activities that may occur in wetlands and within 100 feet of wetlands. Jurisdiction areas include land within 100 feet of riverfront areas. Cranberry bogs and their surrounding work areas fall under the protection of this act.

Many cranberry growing activities are exempt from the WPA; that is, they are allowed to proceed without permits (Orders of Conditions). The Act exempts **“work performed for the normal maintenance or improvement of land in agricultural use.”** The Wetlands Protection Act Agriculture Regulations define the exemption in detail.

This advisory provides guidance on those cranberry activities that fall under the Agricultural Exemption. It is important to note that it is **not** the land that is exempt, but the **activity**. Consequently, some activities proposed for bogs or surrounding work areas are not exempt from regulation. Determining whether proposed work is exempt is a two-step process.

Step 1. Determine “Land in Agricultural Use”

An exempt activity must take place on land in--or directly related to--production. For cranberry bogs, this includes the bog itself, bog edges, dikes, reservoirs and ponds used for irrigation or flooding, pump houses, culverts, flumes, access roads, and pond inlets and outlets. Land may be inactive for up to 5 consecutive years and still be considered “land in agricultural use.” Land may be considered “active” even during years when no harvest takes place, if general maintenance of the cranberry bog is conducted. Examples of general maintenance include weeding, flooding, clearing ditches, and repairing flumes. Activities conducted on bogs or related lands that are out of production and have not received any maintenance for more than 5 years are **not** exempt from the Wetlands Protection Act and would require permits.



Stay in the Safe Zone!

Growers are advised to stay out of the permit process by keeping their activities within the scope of exemption from the Wetlands Protection Act. Once a grower enters the permitting process, it is extremely difficult to exit. The applicant must commit significant funds and time that may be impossible to recover. Although the permit filing fee is fairly low, there is no ceiling to the costs associated with an environmental assessment or engineering requirements that may be imposed. Preparing the surveys, reviewing the paperwork, and seeking several layers of bureaucratic approval often takes years to complete.

Step 2. Determine if the Activity is Exempt

Almost all normal farming activities that typically occur on land in production are exempt. Many improvements that will impact Bordering Vegetated Wetland (BVW) (see definition on Page 6), are either a) exempt only if the grower conducts them while strictly adhering to specific conditions and/or size limits, or b) not exempt under any situation. The following pages attempt to clarify which cranberry activities are exempt, which are not, and which are exempt with specific conditions.

GO

**The activities on this page are exempt.
The general conditions that appear in the boxes must be met.**

Normal Maintenance Activities

- Crop enhancement activities – sanding, pruning, irrigating, flooding, and flood release (not to include drainage of BVW).
- Harvest practices, including water harvesting activities.
- Use of fertilizers, compost materials and other soil amendments, pesticides, herbicides, and traps.
- Repair and replacement of existing access roads.
- Excavation of sand to be applied to bogs from sand pits.
- Cleaning, clearing, grading, repairing, dredging, or restoring existing man-made or natural water management systems such as reservoirs, farm ponds, irrigation systems, ditches, canals/channels, and dikes.
- Repair and reconstruction of water control structures such as flumes, pumps, dikes, and piping above and below ground.
- Maintenance and repair of composting areas, storage areas, and work areas.
- Storage of fertilizers, pesticides, and compost materials in a bog edge or floodplain (**not** within BVW).
- Leveling of bogs including modification of drainage and replanting of bogs.
- Repair and maintenance of existing farm structures.
- Management of beehives.
- Management of bog edges up to 100 feet wide. Management includes mowing, burning, brush cutting, and removing trees. (See Page 3 for management of edges that fall within BVW).

In **all** cases the normal maintenance activity must meet the following criteria:

- is directly related to producing or raising cranberries,
- is conducted in a manner **that prevents erosion and siltation of nearby water bodies and wetlands**,
- is not expanded in size (such as creeping production into unfarmed areas or expanding the size of a pond),
- does not result in substantial fill of floodplains (“substantial” meaning an amount that would cause flood waters to flow elsewhere), and
- is conducted in accordance with all federal and state laws.

Normal Improvement Activities

The following activities are exempt as long as they do **not** occur in BVW. (See Page 3 for discussion of improvement activities within BVW).

- Installation of dikes **within a cranberry bog**.
- Construction of farm structures (no houses). Footprint of each structure must be no greater than 4,000 ft².
- Construction of composting and storage areas (with no net loss of flood storage capacity).
- Construction of water management systems (with no net loss of flood storage capacity), such as a reservoir or farm pond, irrigation system, field ditch or cross ditch, bypass channel/canal, tailwater recovery, dike, or sub-surface drainage system.
- Expanding an existing managed bog edge that is less than 100 feet wide to a width of 100 feet.

In **all** cases the normal improvement activity must meet the following criteria:

- is directly related to producing or raising cranberries,
- is conducted in a manner that **prevents erosion and siltation of nearby water bodies and wetlands**,
- does not involve filling or dredging salt marsh, and
- is conducted in accordance with all federal and state laws.

PROCEED with CAUTION

The activities on this page are exempt,
provided the grower adheres to the general conditions on Page 2.

No Farm Conservation Plan is required.

Management of Field (Bog) Edges in BVW

(See Page 2 for Management of Field Edges that do not fall within BVW.)

The following conditions must be met when managing bog edges that fall within BVW:

- No cutting or removal of trees and understory vegetation **within 25 feet of a waterbody that is not managed as part of the farm**. Removal of trees and vegetation within this zone is allowed to control alternate hosts (as long as no more than 50% of the canopy is removed) or to maintain existing dikes.
- No placement of branches or logging debris within 25 feet of a waterbody that is not managed as part of the farm.
- No change in the topography within the managed bog edge, including tilling, filling, or excavation.

Change in Commodity on the Bog – Commodity may be changed, as long as there is:

- No filling of BVW or the cranberry bog.
- No increase or enlargement of drainage ditches or subsurface drainage system.

Squaring Off Bogs - The purpose of this activity is not to increase the amount of land in production, but to take an irregular or jagged boundary and make it straight.

The following conditions must be met when squaring off bogs:

- No alteration of BVW.
- No fill may be placed within a floodplain (Bordering Land Subject to Flooding). Squaring off bogs cannot result in the loss of flood storage capacity.
- No increase in the size of the cranberry bog beyond the minimum amount necessary for making the boundary of the bog more regular.

Neighbor Relations

If you are concerned that an **exempt** activity you are planning to conduct will be misunderstood by neighbors and may result in unwarranted complaints or enforcement against you, you may wish to notify your Conservation Commission via a letter or phone call. Inform them that you are about to conduct the activity and it is exempt from the Wetlands Protection Act.

PROCEED with CAUTION

**The activities on this page are exempt,
provided the grower adheres to the general conditions on Page 2.**

Construction, Reconstruction, or Expansion of Water Management Structures in BVW (Conservation Plan is required)

Activity	Requirements for activity to be EXEMPT	
	Grower must have a Natural Resources Conservation Service-approved Conservation Plan and submit it to local Conservation Commission	Grower must have a Natural Resources Conservation Service-approved Conservation Plan , file a Notice of Intent , and receive an Order of Conditions
Pond/Reservoir Reconstruction & expansion of existing Construction of new	Altering less than 10,000 ft. ² of BVW Not exempt	Altering between 10,000 – 20,000 ft. ² of BVW Altering less than 20,000 ft. 2 of BVW
Dike Reconstruction of existing	Altering less than 5,000 ft. ² of BVW	Altering between 5,000 – 10,000 ft. ² of BVW
Tailwater Recovery Construction of new	Altering less than 10,000 ft. ² of BVW	Altering between 10,000 – 20,000 ft. ² of BVW
Bypass Canal Construction of new	Altering less than 5,000 ft. ² of BVW	Altering between 5,000 – 20,000 ft. ² of BVW

The Emergency Provision

Work that would normally require a permit from the local Conservation Commission may be allowed without a permit, if the work is necessary due to an agricultural emergency:

- Eliminating an imminent threat to bog or water management system.
- Restoring bog or water management system that was damaged by a storm or other sudden, unforeseen event.
- Providing an emergency agricultural water source if existing source suddenly and unforeseeably becomes unusable.

The grower must give written notice of the work to the Conservation Commission and to the MA Department of Environmental Protection (DEP). The following criteria must be met:

- The notice must be received by the Conservation Commission and be mailed to DEP within 3 days after the start of work or the end of the emergency event, whichever is sooner.
- Work must begin within 30 days of a storm event, and must be completed within 30 days. The grower may request written approval for a later completion date.
- No work may be conducted within estimated rare species habitat. Maps are published by the Natural Heritage and Endangered Species Program of the MA Department of Fisheries, Wildlife, and Environmental Law Enforcement. The Cape Cod Cranberry Growers' Association will provide maps upon request.
- No filling or dredging of a salt marsh is allowed.

STOP

The activities on this page are not exempt.

The following are not exempt as part of normal maintenance activities:

- Placing fill in floodplains (Bordering Land Subject to Flooding).
- Filling or dredging a salt marsh.
- Drainage of BVW.
- Enlarging the geographical extent of an activity, such as creeping production into unfarmed areas or expanding the size of a pond.
- Changing the topography of a BVW during field edge maintenance.
- Storing farm chemicals or compost materials in the bog.

The following restrictions apply to activity within BVW:

- No drainage.
- No placement of fill.
- No construction of dikes.
- No widening roads or changing culvert size.
- No construction of farm structures.
- No storage of farm chemicals or compost materials.
- No filling of the cranberry bog when changing commodities.
- No bringing abandoned cranberry bogs back into production.
- No conversion of wetlands into cranberry bogs when managing field edges.
- No alteration of wetlands when squaring off fields and bogs as an exempt improvement practice.
- No alteration of wetlands for water management projects exceeding the square foot limits.
- No placement of storm debris in a wetland following an emergency.
- No impacts to wetlands exceeding 2,000 ft.² in developing an emergency agricultural water source. Refer to 310 CMR 10.06, section 6, for agricultural emergencies as there are specific criteria that must be met to be considered an emergency.

A grower who wishes to conduct an activity that is not exempt from the Wetlands Protection Act must file a Notice of Intent with the local Conservation Commission.

If a grower is unsure whether a proposed activity is exempt, they may file a Request for determination to find out if a Notice of Intent is required.

Additional Regulations Concerning Wetlands

Two other regulations to be aware of when planning work in wetlands are Sections 401 and 404 of the federal Clean Water Act. The administration of Section 401 is at the state level by the MA Department of Environmental Protection (DEP), while for Section 404 it is at the federal level by the U.S. Army Corps of Engineers. In general, proposed work that is exempt under the Massachusetts Wetlands Protection Act (WPA) may also be exempt under Sections 401 and 404 of the Clean Water Act. For more information, please consult the cranberry grower advisory “Understanding the Federal Clean Water Act.”

Work involving the discharge of dredged or fill material into wetlands that is **not** exempt under the WPA could also require a federal Section 404 permit, which triggers the need for a Section 401 Water Quality Certificate from the state. Any grower proposing work that is not exempt under the WPA should consult with the DEP and Army Corps of Engineers.

Definitions

Bordering Vegetated Wetlands (BVW) – Freshwater wetlands which border on creeks, rivers, streams, ponds, and lakes; including wet meadows, marshes, swamps, and bogs. The legal definition of BVW in the Regulations does include cranberry bogs. For the purpose of clarity in this guidance document, however, the term BVW is being used to refer to those wetlands that are outside of land in production.

To correctly apply the Agricultural Exemption, growers must be able to determine the difference between BVW that is land in production and BVW that is not. Growers requiring assistance may contact the Cape Cod Cranberry Growers’ Association, a conservation farm planner or their local Natural Resources Conservation Service field office.

Bordering Land Subject to Flooding – an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds or lakes. It extends from the banks of these waterbodies or from wetlands.

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.

The Massachusetts Wetlands Protection Act may be viewed in its entirety by consulting the **Massachusetts General Laws, Chapter 131, Section 40 310 Code of Massachusetts Regulations (CMR) 10.04**

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

Funding provided by USDA-Natural Resources Conservation Service Cranberry Conservation Initiative.

For more information, please contact:

<p>Your local conservation commission</p> <p>Massachusetts Department of Environmental Protection Website: http://www.mass.gov/eea/agencies/massdep/ 310 CMR 10.00: Wetlands Protection Act Regulations</p>	<p>Cape Cod Cranberry Growers’ Association 265 D South Meadow Rd. Plymouth, MA 02360 Phone: 508-866-7878 info@cranberries.org</p>
<p>United States Army Corps of Engineers Website: http://www.nae.usace.army.mil/</p>	<p>Mia Halter, District Conservationist NRCS 8 Thatcher Lane, Suite 2 Wareham, MA 02571 Phone: 774-678-7234 x3 Email: mia.halter@ma.usda.gov Website: www.nrcs.usda.gov</p>