



**Town of Arlington
Legal Department**

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MEMORANDUM

TO: Conservation Commission,
Emily Sullivan, Environmental Planner and Conservation Agent

FROM: Douglas W. Heim

DATE: September 3, 2020

RE: **Rivers Protection Act “Historic Mill Complexes” Exemption Standard**

Members of the Conservation Commission, I write at the request of the Chair to provide a basic overview of the “historic mill complex” exemption to Rivers Protection Act regulations, and to attempt to clarify the standards for reviewing the pending application for same relative to 1165R Massachusetts Ave.

G.L. c. 131 sec. 40: Massachusetts Rivers Protection Act Overview

The general purpose of the Rivers Protection Act, which is complimentary to the Wetlands Protection Act, is to preserve the natural integrity of rivers and adjacent land for the important values these areas provide within a wetland resource area known as the “Riverfront Area.”¹ In Arlington, the Riverfront Area is defined as 200 feet on either side of a perennial rivers and streams.

¹ As the Commission knows, the Rivers Protection Act considers the same categories of issues as the Wetlands Protection Act: protection of private or public water supply, protection of groundwater, flood control, prevention of

Historic Mill Complex Exemption

In recognition of the ways in which rivers were altered by historic uses of river mills throughout the Commonwealth, the Rivers Protection Act provides in relevant part:

*The riverfront area **shall not include land now or formerly associated with historic mill complexes** including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverhill, Methuen and Medford **in existence prior to nineteen hundred and forty-six and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on the effective date of this act.***

G.L. c. 131 sec. 40 (emphasis added).

However, the statute itself provides no further definition or guidance as to what constitutes a “historic mill complex” or how the exemption should be examined. 310 C.M.R. 10.04 offers some further definition as follows:

Historic Mill Complex means the mill complexes in, but not limited to, Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford in existence prior to 1946 and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on August 7, 1996. An historic mill complex also means any historic mill included on the Massachusetts Register of Historic Places. An historic mill complex includes only the footprint of the area that is or was occupied by interrelated buildings (manufacturing buildings, housing, utilities, parking areas, and driveways) constructed before and existing after 1946, used for any type of manufacturing or mechanical processing and including associated structures to provide water for processing, to generate water power, or for water transportation.

In one of the few matters further interpreting the definition of “historic mill complexes” a Department of Environmental Protection Presiding Officer held the exemption to apply to those historic mill complexes (and interrelated infrastructure) in existence before 1946 and until at least August 7, 1996. *In the Matter of 104 Stony Brook, LLC*, OADR Docket No. WET-2017-021, Weston, 25 DEPR 120 (2018).

Finally, it should be understood that the exemption afforded to historic mill complexes only applies to the Rivers Protection Act. It does not apply to the Wetlands Protection Act, state and local requirements for historic structures, or the Town Wetlands Bylaw.

storm damage, prevention of pollution, protection of land containing shellfish, protection of wildlife habitat, and protection of fisheries.

Standard for Exemption

In sum, based on the foregoing, the petitioner must provide evidence that the entirety of the area for which a waiver is sought was developed and used as a mill complex, including interrelated buildings, parking areas, driveways and similar infrastructure before 1946, and which remained in existence until at least August 7, 1996. They need not establish that the entire area was encompassed by the footprint of a building or specifically a “mill,” or even that buildings and/or relevant related infrastructure stands as to today. Rather, there must be sufficient evidence that the site’s buildings and related infrastructure served the purposes of working mills prior to 1946, which remained until at least the date of the passage of the Rivers Protection Act.

As a guidepost, the Hearing Officer in the 104 *Stony Brook* matter noted that the only evidence of mill use for the site at issue in that matter was the foundation of building which may have been used to house mill employees outside of the protected area. However in any event, that structure was demolished in the 1960s, which signified that no structures or infrastructure from what may have once been a historic mill complex existed within the riverfront area. Therefore, the obvious purpose of the exemption – recognition of the dramatic impact historic mills have on the riverfront areas – was moot, and had been for decades before the Act was passed.

While the facts of *Stony Brook* stand in dramatic contrast to the facts of the application before the Commission here, it is still essential that the Commission is satisfied that the mill complex and all of its related site area within the resource area was built before 1946, and remained until at least August of 1996.

It is essential to note that the 104 *Stony Brook* matter does not hold that a mill complex must be in *active* use as a mill until August of 1996, by which time many if not most of the mills in Medford, Methuen, Lawrence, and the other specific municipalities listed in would have long been shuttered for mill purposes. Rather, the common sense interpretation reflected in *Stony Brook* demonstrates that the concern of the exemption is the appropriateness of applying a second layer of riverfront regulation to sites in which the riverfront was dramatically engineered and altered for mill purposes.

Based on cursory review of other municipalities’ examination of exemption applications, in addition to the literature and supporting materials already provided by the Applicant, some of means of demonstrating the applicability of the exemption could be to search Massachusetts Historical Commission databases such as MACRIS, and consulting Town bodies, historical societies and resources to understand the scope of the historic use of the mill property and its related structures, and areas leading up to the Mill Brook.

Thank you for your consideration of the foregoing. Please advise me if I may be of further assistance on this or any other matter.