



# Understanding Wetland Regulations

The Fundamentals in Wetland  
Law and Regulation

# Protection of Wetland Values in Massachusetts

## 8 Interests of the Act

- Private & Public Water Supply
- Groundwater Protection
- Pollution Prevention
- Flood Prevention
- Prevention of Storm Damage
- Land Containing Shellfish
- Fisheries
- Wildlife Habitat



# **Inland Resource Areas**

- **Land Under Water (LUW)**
- **Banks**
- **Bordering Vegetated Wetland (BVW)**
- **Land Subject to Flooding**
  - a. **Bordering (BLSF)**
  - b. **Isolated (ILSF)**
- **Riverfront Area**

# **Buffer Zones**

## **Apply to:**

### **Inland**

- Banks**
- BVWs**

### **Coastal**

- Banks**
- Beaches**
- Dunes**
- Salt Marshes**



# Jurisdiction: Activities

**ACTIVITIES subject to regulation under the Act =  
Activities that will:**

## **Remove, Fill, Dredge or Alter a Resource Area**

### **(A) Activities within Resource Areas**

- that will remove, fill, dredge or alter the resource area are subject to regulation

### **(B) Activities within Buffer Zones**

- that will remove, fill, dredge or alter a resource area are subject to regulation
- that will alter the buffer zone but will not remove, fill, dredge or alter a resource area are NOT subject to regulation

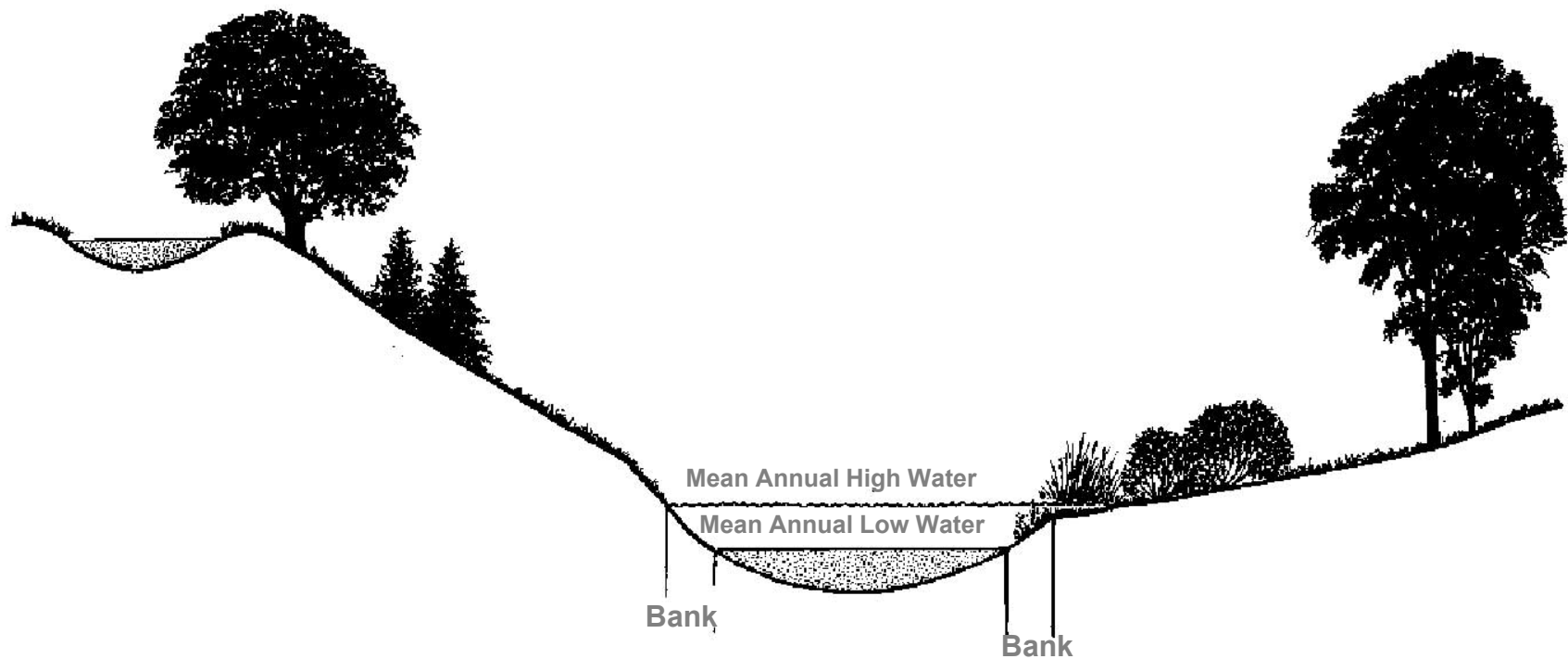
### **(C) Activities Outside Resource Areas and Buffer Zones**

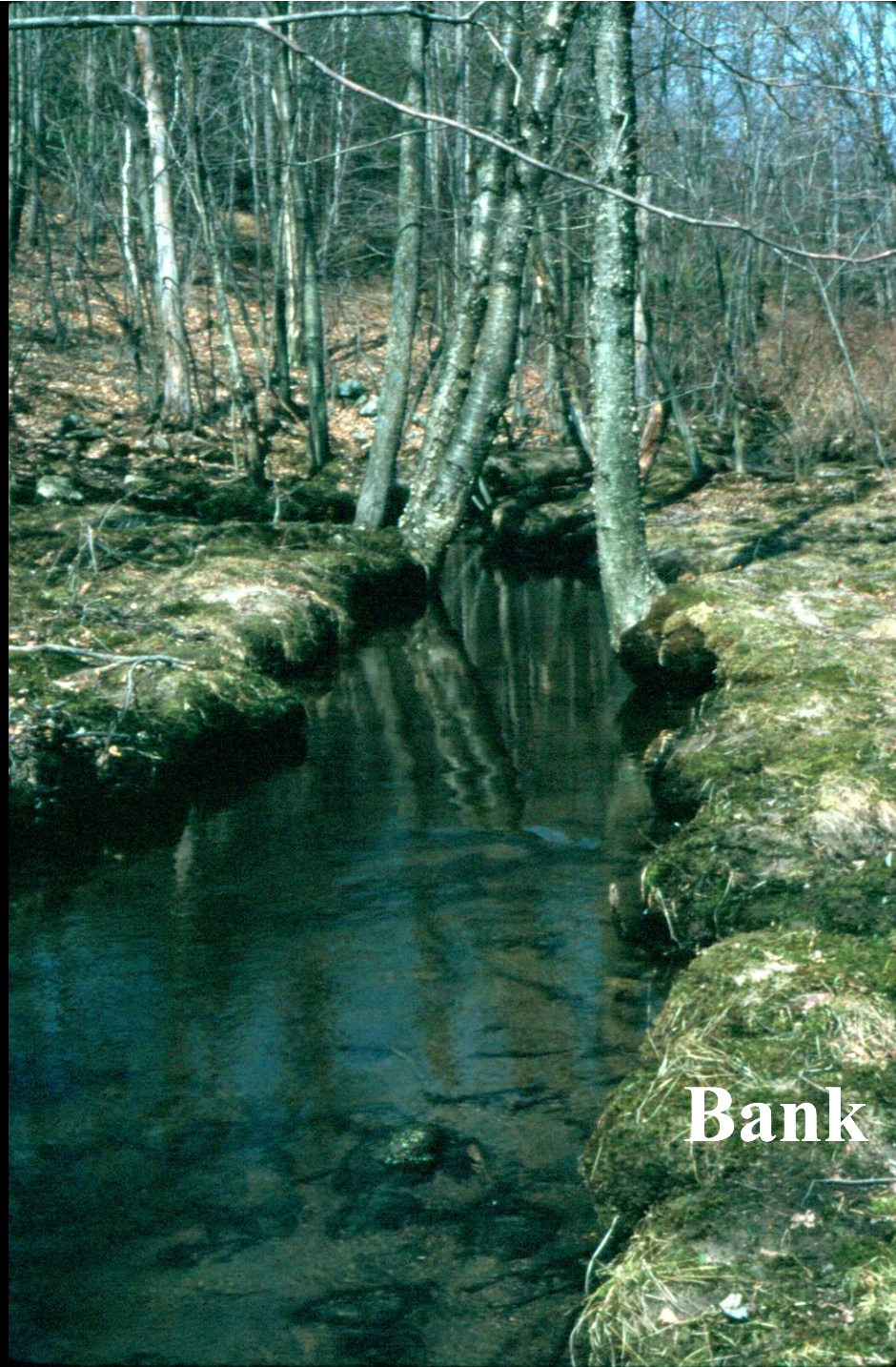
- are NOT subject to regulation unless and until the activity actually alters a resource area
- Exception: activities that result in a point source discharge within a resource area or buffer zone may be reviewed in order to condition the discharge

## BANK:

A Bank is the portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland. A Bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone. The upper boundary of a Bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.

(B)





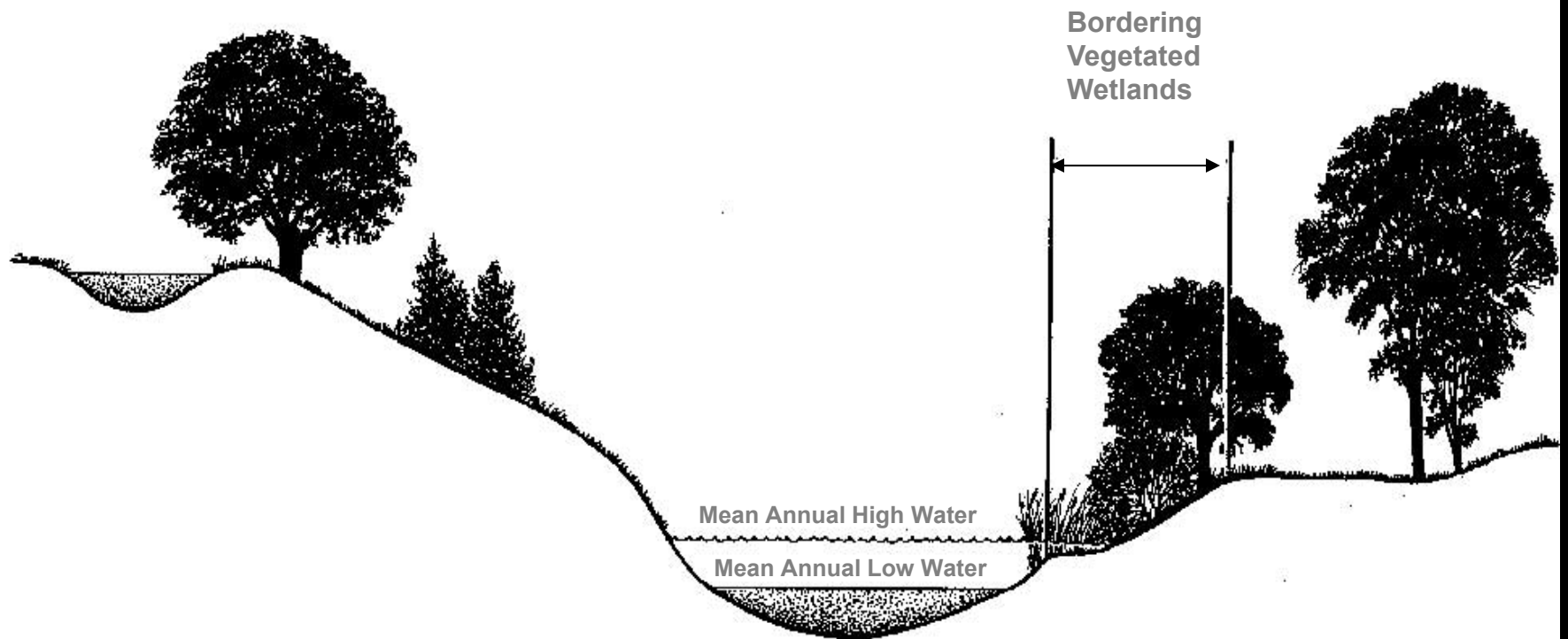
Bank





## BORDERING VEGETATED WETLANDS:

Bordering Vegetated Wetlands are freshwater wetlands which border on creeks, rivers, streams, ponds and lakes. They are areas where the soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. The boundary of Bordering Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. (BVW)





# Bordering Vegetated Wetland



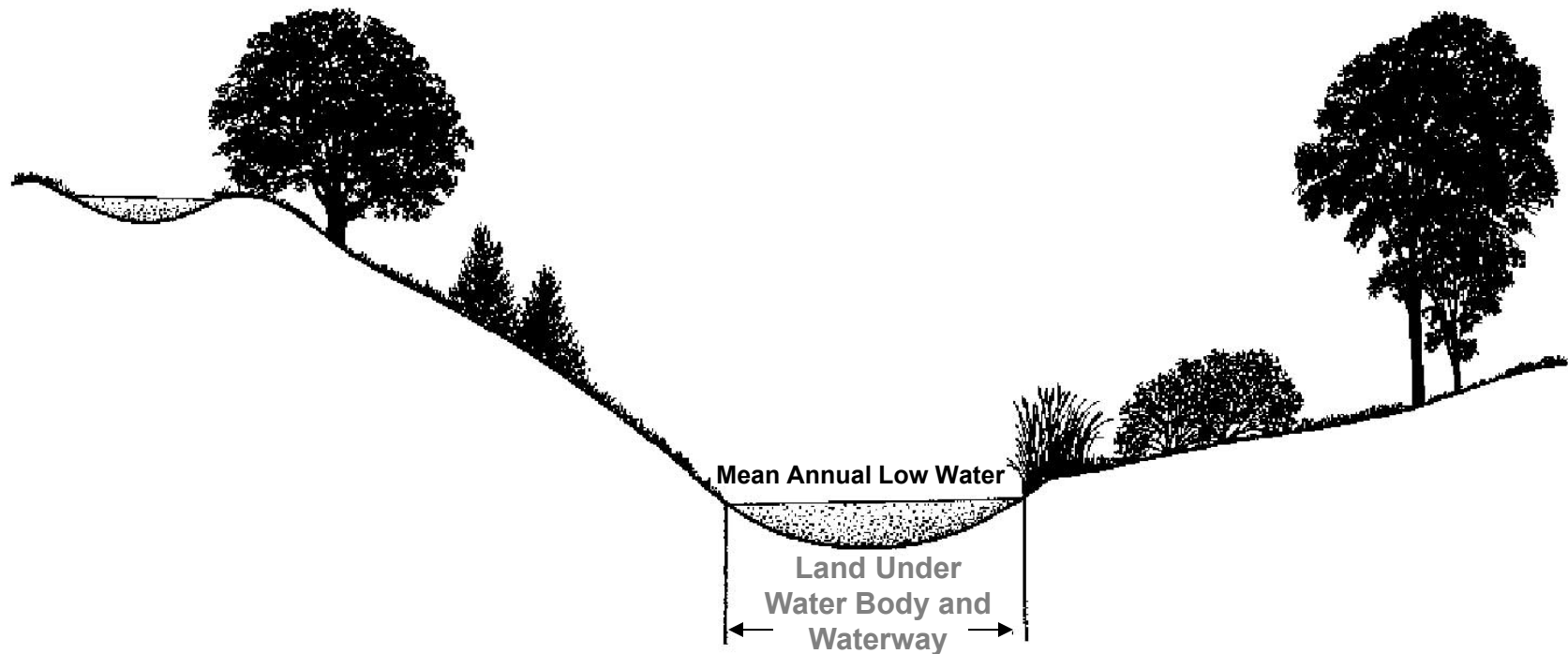


# Bordering Vegetated Wetlands (BVWs)

- Hydrology: areas that are saturated or inundated during the growing season such that they support wetland indicator plants
- Vegetation: areas where a significant part of the vegetative community is made up of wetland indicator plants

## LAND UNDER WATER BODIES AND WATERWAYS:

Land Under Water Bodies and Waterways is the land beneath any creek, river, stream, pond or lake. Said land may be composed of organic muck or peat, fine sediments, rocks or bedrock. The boundary of Land Under Water Bodies and Waterways is the mean annual low water level (LUWB/WW)





Land Under Water Bodies...



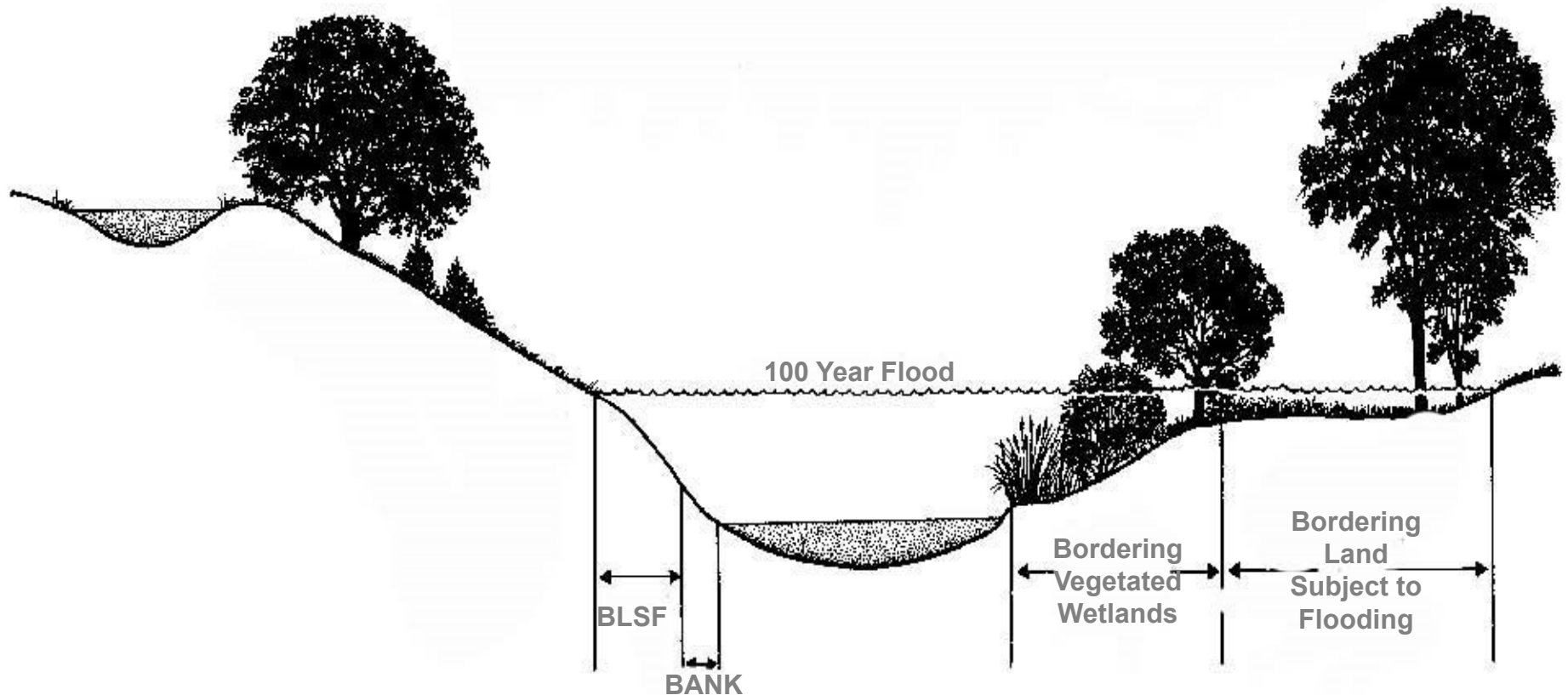


...and Waterways



## BORDERING LAND SUBJECT TO FLOODING:

Bordering Land Subject to Flooding is an area of 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 waterways and water bodies; where a bordering vegetated wetland occurs; it extends from said wetland. The boundary of Bordering Land Subject to Flooding is the estimated maximum lateral extent of flood water which will theoretically result from the statistical 100-year frequency storm. Said boundary shall be that determined by reference to the most recently available flood profile data prepared for the community within which the work is proposed under the National Flood Insurance Program...Said boundary, so determined, shall be presumed accurate. This presumption may be overcome only by credible evidence from a registered professional engineer or other professional competent in such matters. Where NFIP Profile data is unavailable, the boundary of Bordering Land Subject to Flooding, shall be the maximum lateral extent of flood waters which has been observed or recorded. (BLSF)



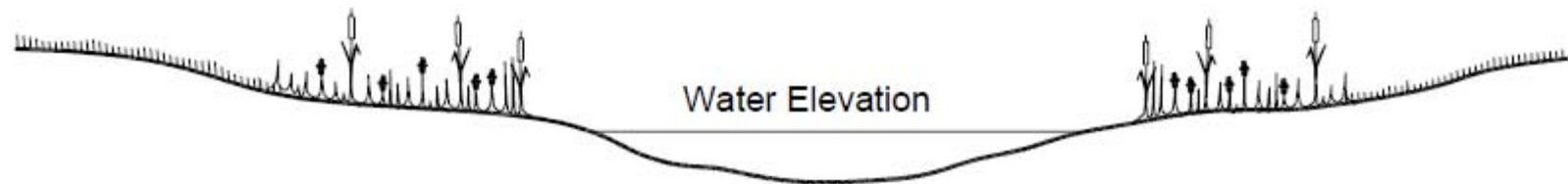


**Bordering Land Subject to Flooding**



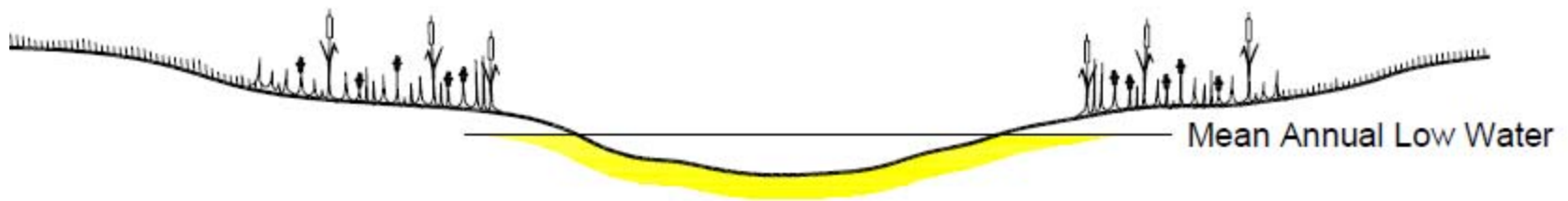


# Lake Cross-Section





## Lake Cross-Section



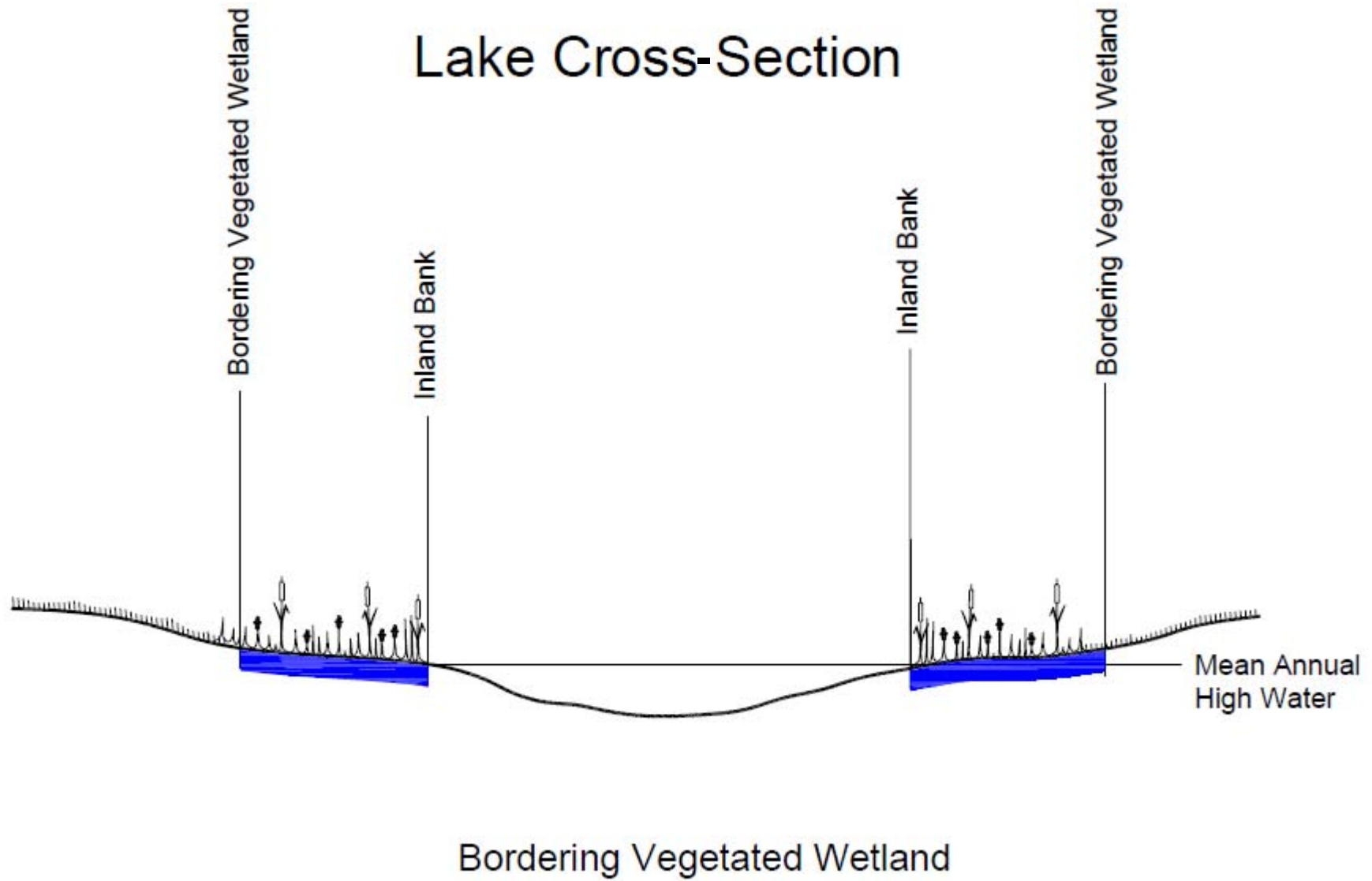
Land Under Water Body

# Lake Cross-Section

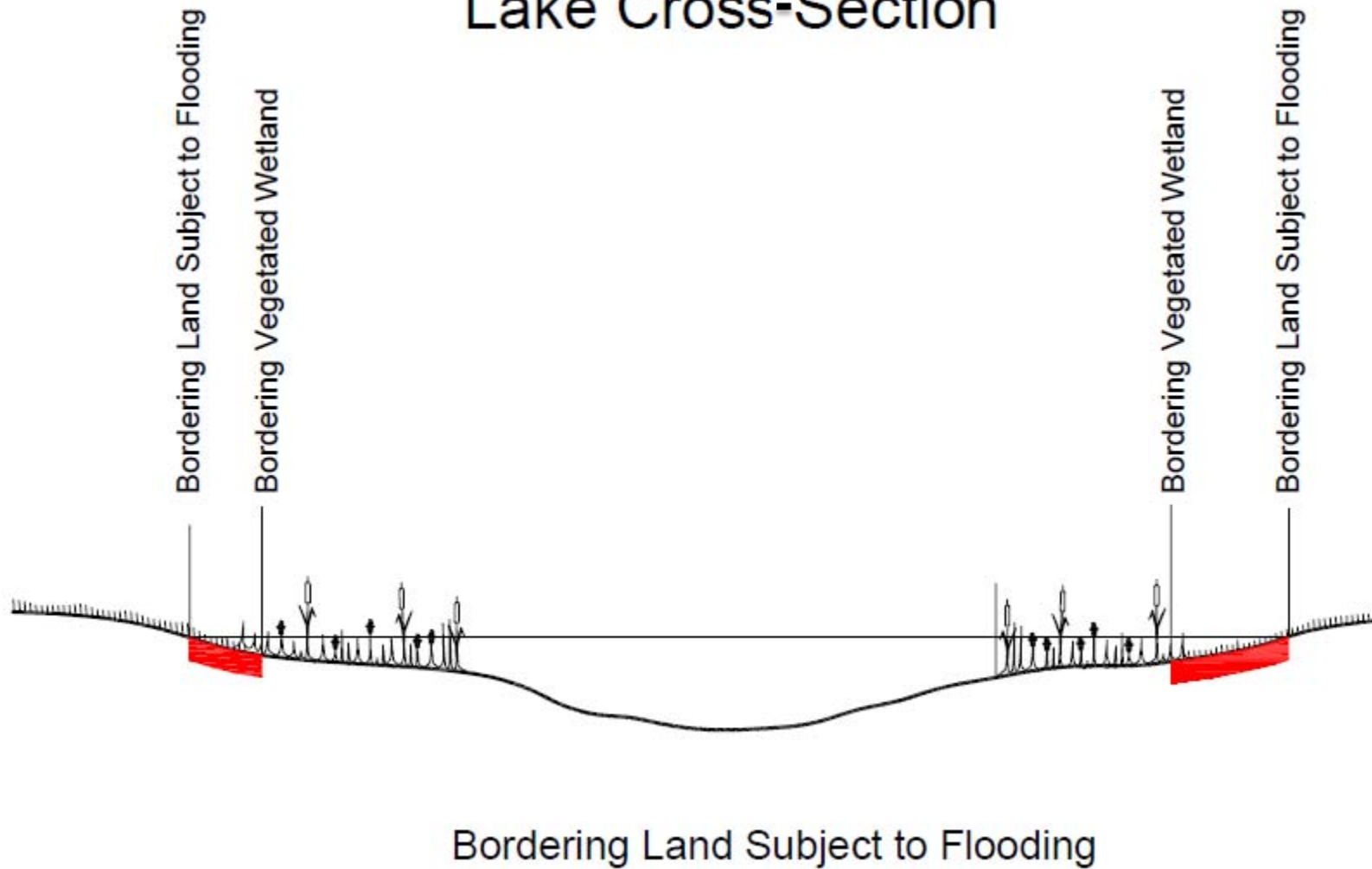


Inland Bank

# Lake Cross-Section

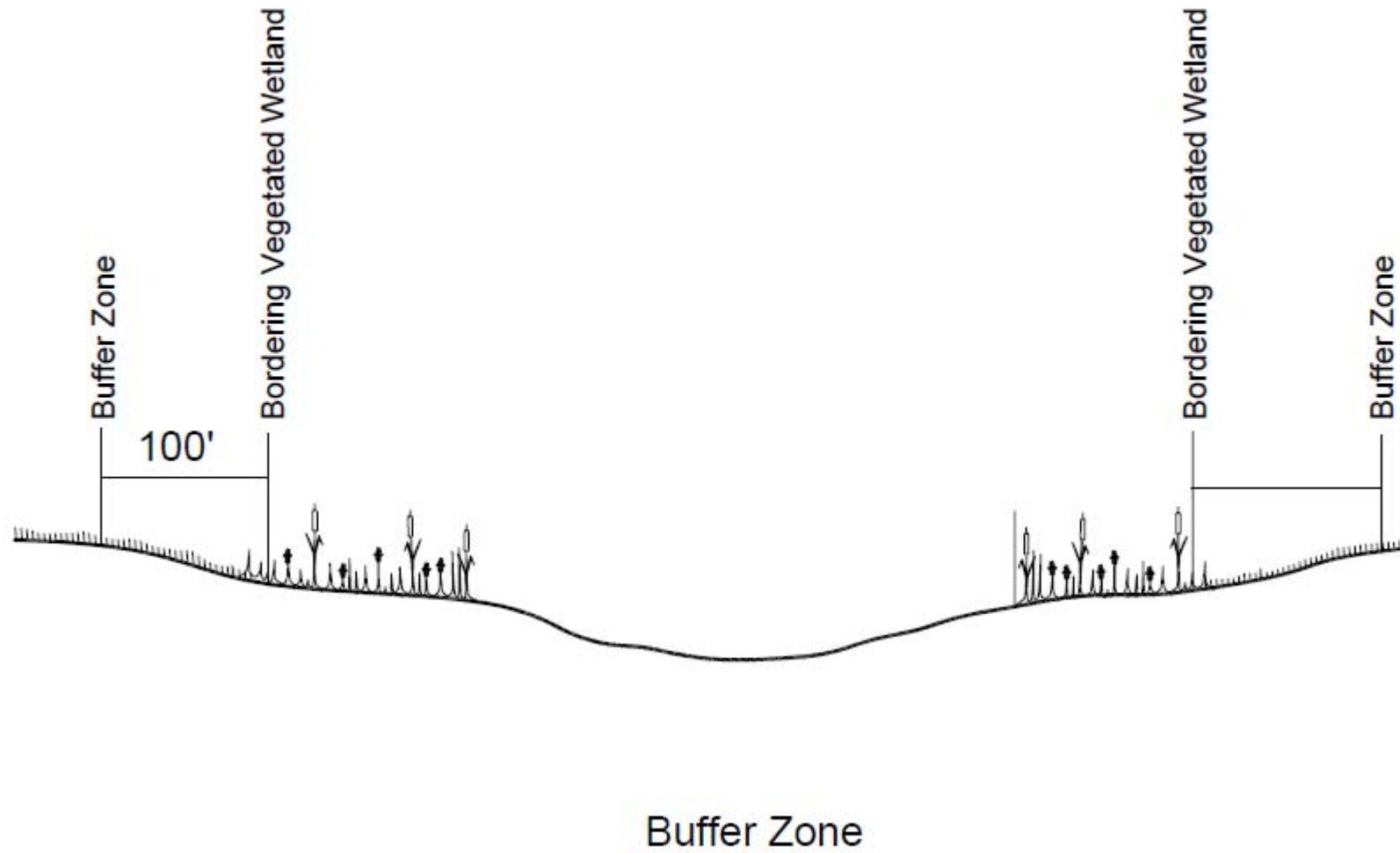


# Lake Cross-Section





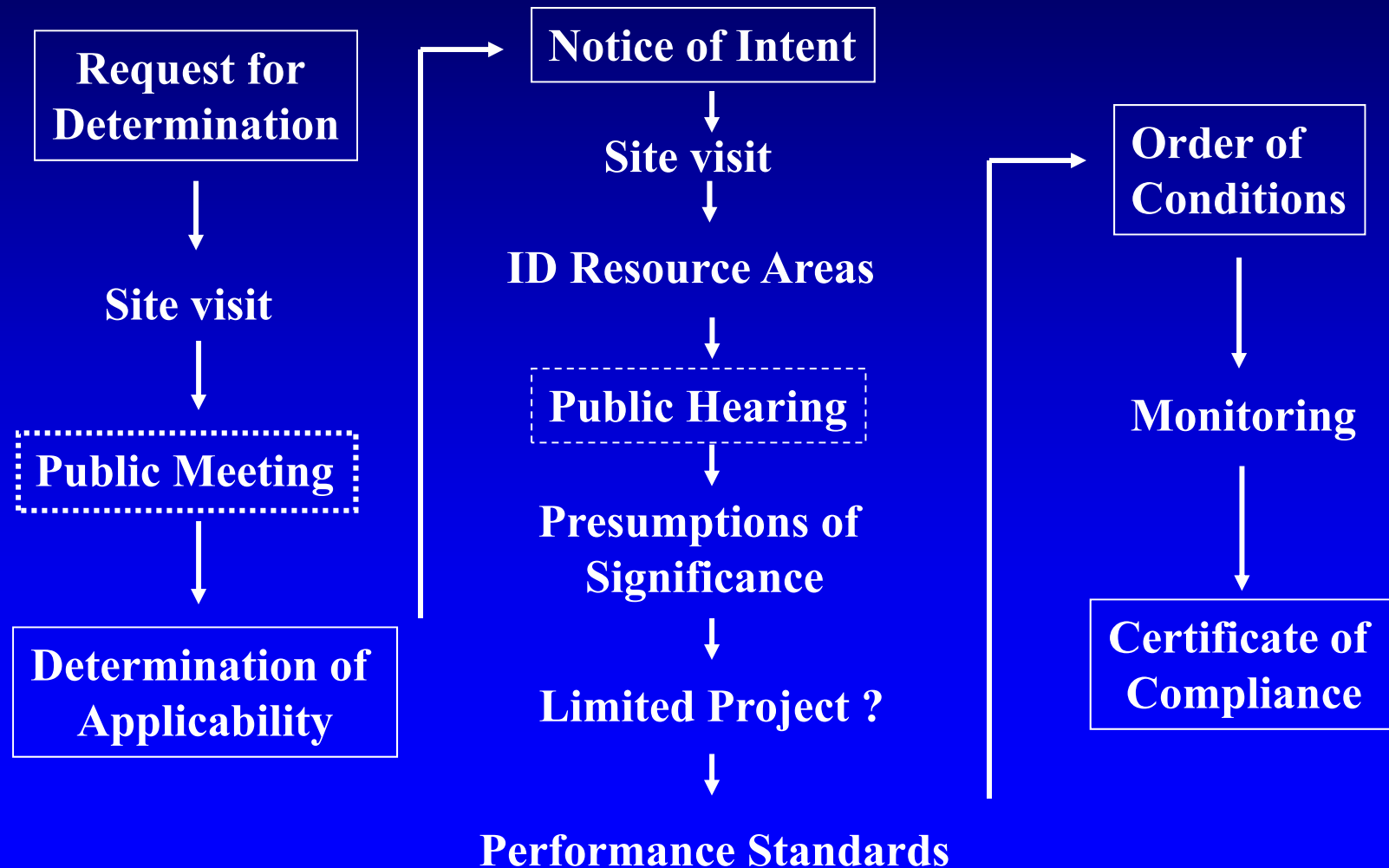
# Lake Cross-Section



- Each resource area has its separate and distinct place in the landscape and does not overlap with other resource areas (with the exception of Riverfront Areas).
- Each resource area has its own separate and distinct set of performance standards.

# The Regulatory Process

**Jurisdiction** → **Project Review** → **Permitting**



# ER Limited Project OOC

*Projects that meet the eligibility criteria set forth in 310 CMR 10.24(8) or 310 CMR 10.53(4) may be permitted as an ecological restoration limited project. (Use WPA Form 5)*


# WPA Form 3 – Notice of Intent

## Project Is an Ecological Restoration Limited Project 310 CMR 10.24(8), 310 CMR 10.53(4) Complete Section A.7b

	9. <input type="checkbox"/> Other	
	7b. Is any portion of the proposed activity eligible to be treated as a limited project (including Ecological Restoration Limited Project) subject to 310 CMR 10.24 (coastal) or 310 CMR 10.53 (inland)?	
	1. <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, describe which limited project applies to this project. (See 310 CMR 10.24 and 10.53 for a complete list and description of limited project types)
	2. Limited Project Type	
	If the proposed activity is eligible to be treated as an Ecological Restoration Limited Project (310 CMR 10.24(8), 310 CMR 10.53(4)), complete and attach Appendix A: Ecological Restoration Limited Project Checklist and Signed Certification.	
	8. Property recorded at the Registry of Deeds for:	



# Use WPA Form 3 – Notice of Intent

## Project Does Not Meet Definition of Ecological Restoration

 **Massachusetts Department of Environmental Protection**  
Bureau of Resource Protection - Wetlands  
**WPA Form 3 – Notice of Intent**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:  
MassDEP File Number \_\_\_\_\_  
Document Transaction Number \_\_\_\_\_  
City/Town \_\_\_\_\_

**Important:**  
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.

**Note:**  
Before completing this form consult your local Conservation Commission regarding any municipal bylaw or ordinance.

**A. General Information**

1. Project Location (Note: electronic filers will click on button to locate project site):

a. Street Address \_\_\_\_\_ b. City/Town \_\_\_\_\_ c. Zip Code \_\_\_\_\_

Latitude and Longitude: \_\_\_\_\_

d. Latitude \_\_\_\_\_ e. Longitude \_\_\_\_\_

f. Assessor's Map/Plat Number \_\_\_\_\_ g. Parcel /Lot Number \_\_\_\_\_

2. Applicant:

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_

c. Organization \_\_\_\_\_

d. Street Address \_\_\_\_\_

e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_

h. Phone Number \_\_\_\_\_ i. Fax Number \_\_\_\_\_ j. Email Address \_\_\_\_\_

3. Property owner (required if different from applicant): ☐ Check if more than one owner

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_

c. Organization \_\_\_\_\_

d. Street Address \_\_\_\_\_

e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_

h. Phone Number \_\_\_\_\_ i. Fax Number \_\_\_\_\_ j. Email address \_\_\_\_\_

4. Representative (if any):

a. First Name \_\_\_\_\_ b. Last Name \_\_\_\_\_

c. Company \_\_\_\_\_

d. Street Address \_\_\_\_\_

e. City/Town \_\_\_\_\_ f. State \_\_\_\_\_ g. Zip Code \_\_\_\_\_

h. Phone Number \_\_\_\_\_ i. Fax Number \_\_\_\_\_ j. Email address \_\_\_\_\_

5. Total WPA Fee Paid (from NOI Wetland Fee Transmittal Form):

a. Total Fee Paid \_\_\_\_\_ b. State Fee Paid \_\_\_\_\_ c. City/Town Fee Paid \_\_\_\_\_




wpafom3.doc \* rev. 10/24/2014 Page 1 of 3



# ER Limited Project Eligibility Checklist


310 CMR 10.24(8) or 310 CMR 10.53(4)

Complete and Attach Eligibility Checklist in WPA Form 3, Appendix

	Massachusetts Department of Environmental Protection Bureau of Resource Protection - Wetlands	Provided by MassDEP:
	<b>WPA Form 3 – Notice of Intent</b> <b>Appendix A: Ecological Restoration Limited Project Checklists</b> Massachusetts Wetlands Protection Act M.G.L. c. 131, §40	MassDEP File Number Document Transaction Number City/Town
<b>Ecological Restoration Limited Project Eligibility Checklist</b>		
<p>This Ecological Restoration Limited Project Eligibility Checklist guides the applicant in determining if their project is eligible to file as an Inland or Coastal Ecological Restoration Limited Project (310 CMR 10.53(4) or 310 CMR 10.24(8) respectively). These criteria must be met when submitting the Ecological Restoration Limited Project Notice of Intent to ensure that the restoration and improvement of the natural capacity of a Resource Area(s) to protect and sustain the interests identified in the WPA is necessary to achieve the project's ecological restoration goals.</p>		
<p><b>Important:</b> When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.</p>  	<b>Regulatory Features of All Coastal and Inland Ecological Restoration Limited Projects</b>	
	<p>(a) <b>May result in the temporary or permanent loss of or conversion of Resource Area:</b> An Ecological Restoration Limited Project that meets the requirements of 310 CMR 10.24(8) may result in the temporary or permanent loss of Resource Areas and/or the conversion of one Resource Area to another when such loss is necessary to the achievement of the project's ecological restoration goals.</p> <p>(b) <b>Exemption from wildlife habitat evaluation:</b> A NOI for an Ecological Restoration Limited Project that meets the minimum requirements for Ecological Restoration Projects and for a MassDEP Combined Application outlined in 310 CMR 10.12(1) and (2) is exempt from providing a wildlife habitat (310 CMR 10.60), but still must meet the general performance standards for Bank [310 CMR 10.54(4)(a)5]; Land Under Water Bodies and Waterways [310 CMR 10.56(4)(a)4], and Wildlife Habitat Evaluation [310 CMR 10.60].</p> <p>(c) The following are considerations for applicants filing an Ecological Restoration Limited Project NOI and for the issuing authority approving a project as an Ecological Restoration Limited Project:</p> <ul style="list-style-type: none"><li><input type="checkbox"/> The condition of existing and historic Resource Areas proposed for restoration.</li><li><input type="checkbox"/> Evidence of the extent and severity of the impairment(s) that reduce the capacity of the Resource Areas to protect and sustain the interests identified in M.G.L. c. 131, § 40.</li><li><input type="checkbox"/> The magnitude and significance of the benefits of the Ecological Restoration Project in improving the capacity of the affected Resource Areas to protect and sustain the other interests identified in M.G.L. c. 131, § 40.</li><li><input type="checkbox"/> The magnitude and significance of the impacts of the Ecological Restoration Project on existing Resource Areas that may be modified, converted and/or lost and the interests for which said Resource Areas are presumed significant in 310 CMR 10.00, and the extent to which the project will:<ul style="list-style-type: none"><li>a. avoid adverse impacts to Resource Areas and the interests identified in M.G.L. c. 131, § 40, that can be avoided without impeding the achievement of the project's ecological restoration</li><li>b. minimize adverse impacts to Resource Areas and the interests identified in M.G.L. c. 131, § 40, that are necessary to the achievement of the project's ecological restoration goals.</li></ul></li><li>c. utilize best management practices such as erosion and siltation controls and proper construction sequencing to avoid and minimize adverse construction impacts to resource areas and the interests identified in M.G.L. c. 131, § 40.</li></ul>	
<p>MASSDEP FORM 3-APPENDIX A (03/2014)      NOTICE OF INTENT TO RESTORE AN ECOLOGICAL RESTORATION LIMITED PROJECT (03/2014)      CHECKLIST 1</p> <p>PREPARED BY: _____</p>		




# *Certify That ER Limited Project Meets the Eligibility Criteria*

**Sign the ER Limited Project Certification in WPA Form 3,**

	Massachusetts Department of Environmental Protection Bureau of Resource Protection - Wetlands	Provided by MassDEP:
	<b>WPA Form 3 – Notice of Intent</b> <b>Appendix A: Ecological Restoration Limited Project Checklists</b> Massachusetts Wetlands Protection Act M.G.L. c. 131, §40	MassDEP File Number
		Document Transaction Number
		City/Town
<b>Certification that the Ecological Restoration Project Meets the Eligibility Criteria</b>		
<p>I hereby certify under penalties of perjury that the Ecological Restoration Project Notice of Intent application does not meet the Eligibility criteria for an Ecological Restoration Order of Conditions set forth in 310 CMR 10.13, but does meet the Eligibility Criteria for a Ecological Restoration Limited Project set forth in 10.24(8) or 10.53(4) whichever is applicable. I certify that I am familiar with the information contained in the application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.</p>		
Signature of Applicant or Authorized Agent		
Printed Name of Applicant or Authorized Agent		Date
<p>The certification must be signed by the applicant; however, it may be signed by a duly authorized agent (named in Item 2) if this form is accompanied by a statement by the applicant designating the agent and agreeing to furnish upon request, supplemental information in support of the application.</p>		

# *Ecological Restoration Limited Project OOC*

## **Use WPA Form 5 – Order of Conditions**

	<b>Massachusetts Department of Environmental Protection</b> Bureau of Resource Protection - Wetlands <b>WPA Form 5 – Order of Conditions</b> Massachusetts Wetlands Protection Act M.G.L. c. 131, §40	Provided by MassDEP: MassDEP File # eDEP Transaction # City/Town
	<b>A. General Information</b>	
<p><small>Please note: this form has been modified with added space to accommodate the Registry of Deeds Requirements.</small></p> <p><small>Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.</small></p> <p> </p>	1. From: Conservation Commission	
	2. This issuance is for (check one): <input type="checkbox"/> Order of Conditions <input type="checkbox"/> Amended Order of Conditions	
3. To: Applicant:		
a. First Name		
b. Last Name		
c. Organization		
d. Mailing Address		
e. City/Town		
f. State		
g. Zip Code		
4. Property Owner (if different from applicant):		
a. First Name		
b. Last Name		
c. Organization		
d. Mailing Address		
e. City/Town		
f. State		
g. Zip Code		
5. Project Location:		
a. Street Address		
b. City/Town		
c. Assessors Map/Plat Number		
d. Parcel/Lot Number		
Latitude and Longitude, if known:		
d. Latitude		
e. Longitude		

Page 1 of 1



# Eligibility Criteria for Restoration OOC (310 CMR 10.13)

## Project

- Meets the definition in 310 CMR 10.04.







Dam Removal Sackett Brook, Pittsfield





Dam Removal Sackett Brook, Pittsfield





# Freshwater Stream Crossing



# Stream Daylighting



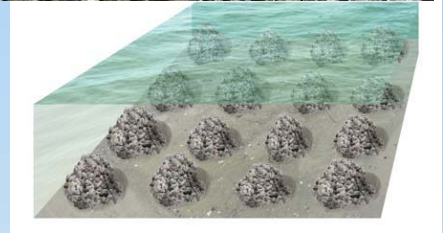





**Culvert Replacement to  
Eliminate Tidal Restrictions.**



# Shellfish Habitat Restoration



A photograph of a stream in a wooded area. A large, dark, circular culvert is visible in the background, with water flowing through it. In the foreground, there are several large, flat, rectangular stone structures placed across the stream, creating a series of small rapids or falls. The water is white and turbulent as it flows over these stones. The surrounding area is covered with moss and fallen branches, and there are trees in the background.

# Fish Passage and Rare Species Habitat Restoration

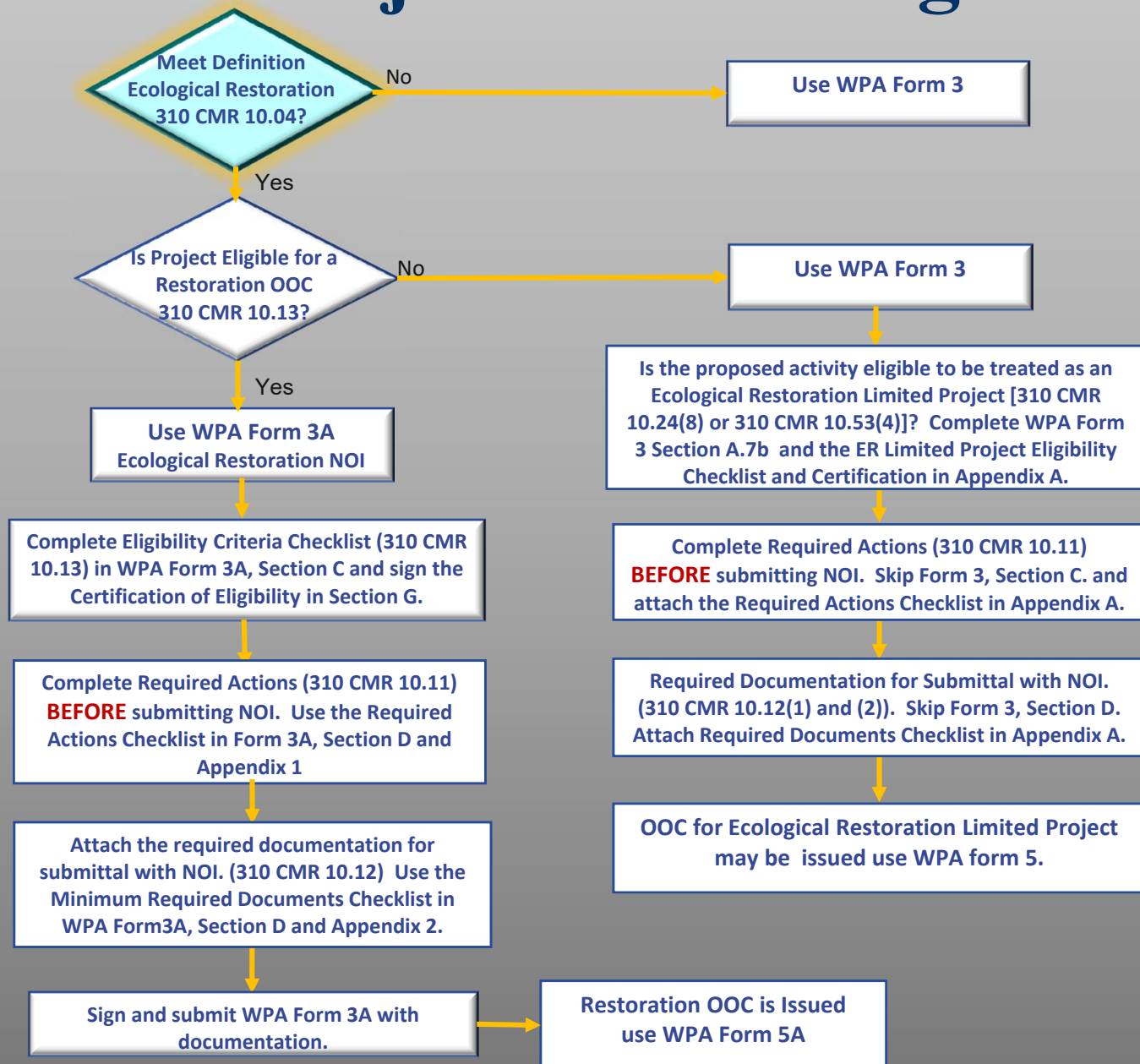


This Commission hereby finds the project, as proposed, is an Ecological Restoration Project for:

- ☐ Dam Removal
- ☐ Freshwater Stream Crossing Repair and Replacement
- ☐ Stream Daylighting
- ☐ Tidal Restoration
- ☐ Rare Species Habitat Restoration
- ☐ Restoring Fish Passageways




# Restoration Project Permitting Process



# *Project is Eligible for Restoration OCC*

## Sign the Certification of Eligibility for Ecological Restoration Project NOI in WPA Form 3A, Section G

	Massachusetts Department of Environmental Protection Bureau of Resource Protection – Wetlands Program	MassDEP File Number
	<b>WPA Form 3A - Notice of Intent for an Ecological Restoration Project</b>	City or Town
<b>G. Signatures and Submittal Requirements</b>		
<b>Certification of Ecological Restoration Project Notice of Intent</b>		
I hereby certify under penalties of perjury that the Ecological Restoration Project Notice of Intent application meets the Eligibility Criteria set forth in 310 CMR 10.13. I also certify that I am familiar with the information contained in this Notice of Intent application and that the accompanying plans, documents, and supporting data are to the best of my knowledge and belief true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.		
I understand that the Conservation Commission will place notification of this Notice in a local newspaper at the expense of the applicant in accordance with the wetlands regulations, 310 CMR 10.05(5)(a).		
I further certify under penalties of perjury that all abutters were notified of this application, pursuant to the requirements of M.G.L. c. 131, § 40. Notice must be made by Certificate of Mailing or in writing by hand delivery or certified mail (return receipt requested) to all abutters within 100 feet of the property line of the project location.		
1. Signature of Applicant or Authorized Agent		
2. Printed Name of Applicant or Authorized Agent		3. Date
4. Signature of Property Owner (if different)		5. Date
6. Signature of Representative (if any)		7. Date
The certification must be signed by the applicant; however, it may be signed by a duly authorized agent (named in Item 6) if this form is accompanied by a statement by the applicant designating the agent and agreeing to furnish upon request, supplemental information in support of the application.		
<b>For Conservation Commission:</b> Two copies of the completed Notice of Intent (Form 3), including supporting plans and documents, two copies of the NOI Wetland Fee Transmittal Form, and the city/town fee payment, to the Conservation Commission by certified mail or hand delivery.		
<b>For MassDEP:</b> One copy of the completed Notice of Intent (Form 3), including supporting plans and documents, one copy of the NOI Wetland Fee Transmittal Form, and a copy of the state fee payment to the MassDEP Regional Office (see Instructions) by certified mail or hand delivery.		
<b>Other:</b> The original and copies must be sent simultaneously. Failure by the applicant to send copies in a		

