

Wetlands Considerations for Farmers

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AGENDA

- What are Wetlands?
- Laws and Regulations
- How to Comply
- Exemptions
- What Can You Do on Your Farm?

What are Wetlands?

Wetlands are areas that contain surface waters that are protected under the state Wetlands Protection Act (Act), such as, streams, ponds, bogs, marshes, swamps, floodplains, isolated land subject to flooding, wet meadows, salt ponds, salt marshes, land under the ocean, and fish runs, etc. In 1996 the Rivers Protection Act (RPA) went into effect to amend the WPA by including a new resource area, Riverfront Areas.

Any proposed or undertaken activity to “remove, fill, dredge or alter a protected area” within specified sections in the Act must be approved by the local Conservation Commission (ConCom).

Regulatory Bodies

- Local Conservation Commission (ConCom)
 - The ConCom is a local board of appointed residents volunteering their time to review and approve the Applications. Some communities have paid staff, usually a Conservation Agent (professional).
- The Massachusetts Department of Environmental Protection (DEP)
 - Appeals made to DEP for issuance of a superseding order and under the local bylaw to Superior Court
 - Then to an adjudicatory hearing via Division of Administrative Appeals (DALA)

Hire Professionals

Lawyer- Wetlands Scientist -Engineer

- Staking of wetlands for preparation of plans to accompany RDA or NOI filings (ORAD or ANRAD)



Wetlands Protection Act

The Act is in effect in every community in the state; 200 municipalities also have local wetlands ordinances or bylaws; which may be more stringent than the State regulations.

Many municipalities require a 50-foot rather than 100-foot setback from wetlands under their local Bylaw, for example Plymouth has restrictions with regard to no build and no touch zones.

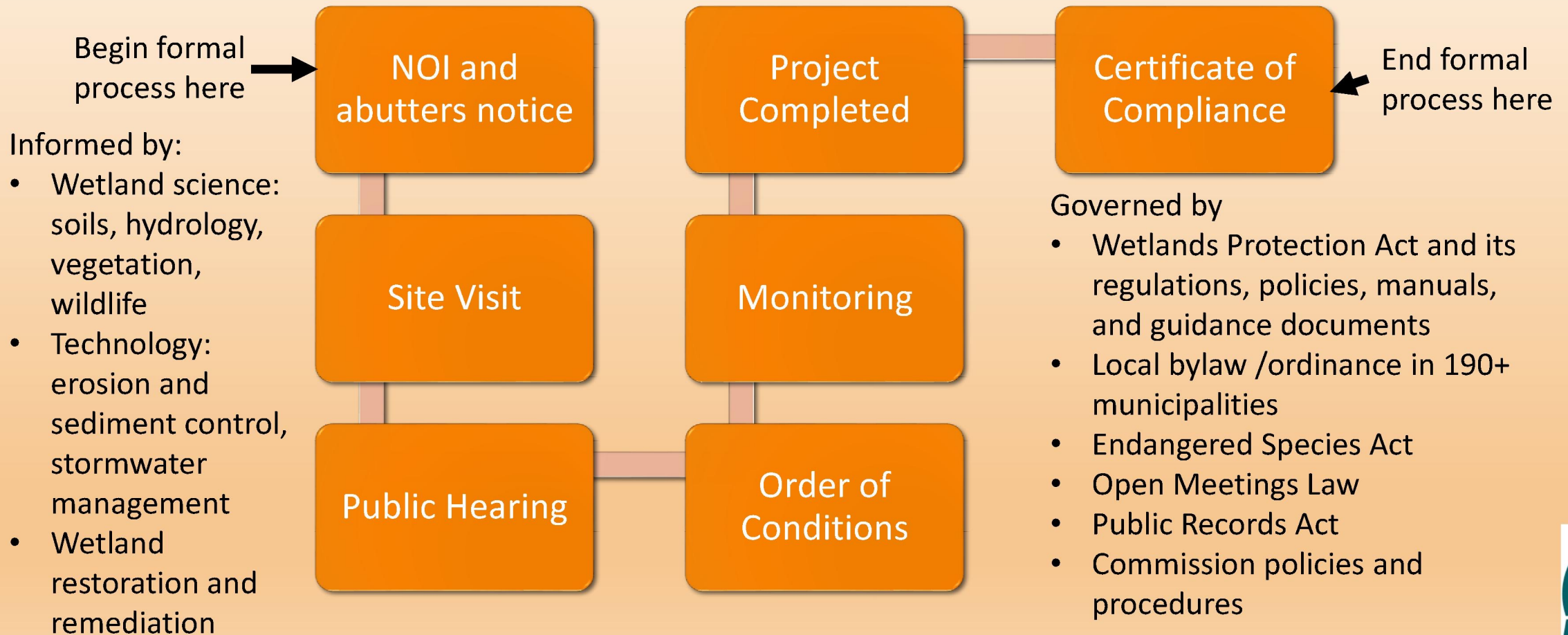
The Act covers both inland and coastal wetlands.

The Massachusetts Department of Environmental Protection (DEP) oversees the Act.

How to Comply with the Laws and Regulations?



Wetlands Protection Act Ideal Process



Exemptions

The Wetlands Protection Act exempts
“work performed for the normal
maintenance or improvement of land
in agricultural or aquacultural use”

M.G.L. Chapter 131, Section 40 and 310 CMR 10.04

Exemptions

Tests

- (1) it is the work or activity that is exempt and not the land itself;
- (2) the activity must be considered normal;
- (3) the activity must be considered maintenance OR the activity must be considered improvement; and
- (4) the activity must occur on land in agricultural or aquacultural use.

Conditions for Exemptions

Even though an activity is considered exempted, there are conditions that must be satisfied in order to exercise the exemption.

For instances, all maintenance or improvement shall be “undertaken in such a manner to prevent erosion and situation of adjacent water bodies and wetlands;” filling or dredging of a salt marsh is prohibited under all circumstances; and all maintenance and improvement must be “conducted in accordance with federal and state laws,” etc.

There are also certain limitations on size, location, loss of flood storage capacity, etc. Some example activities that are exempted are management of existing field edges, squaring off fields and bogs, construction of farm structures, not including habitable dwellings, etc.

Regulation Updates

The Rivers Protection Act (now under WPA)

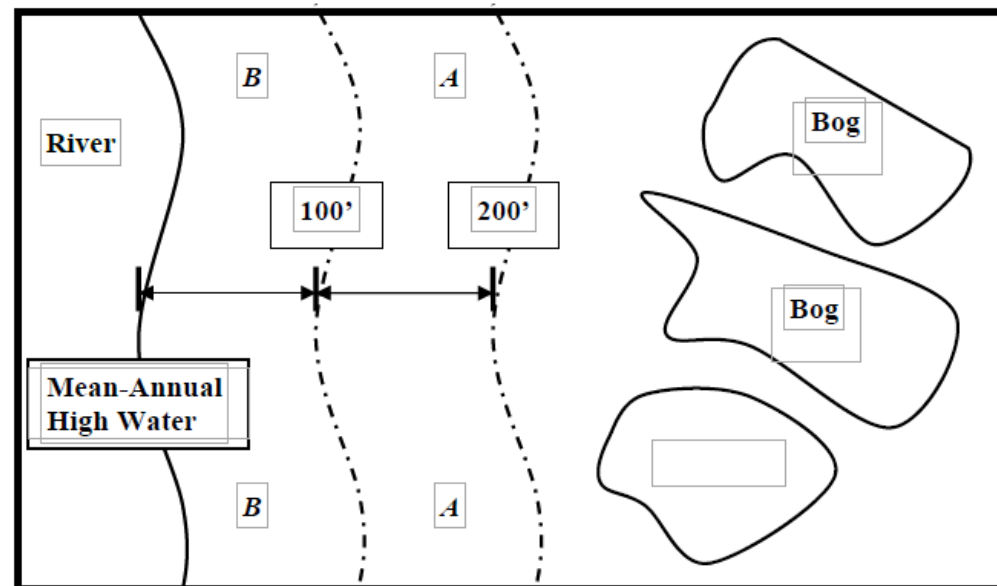
The Riverfront Area is a 200-foot wide zone between the mean-annual high mark of a river and line extending out horizontally.

Agriculture enjoys an only 100-foot wide zone and constructed canals are exempt.

Intermittent streams do not have riverfront areas.

The Rivers Protection Act

- New activities within Area A, so long as there are not other resources affected, does not require a filing for a pond or new bog, for instance. New activities within Area B, as in the diagram below, will require a filing of a Request for Determination (RDA) and/or a Notice of Intent (NOI) with the local conservation commission before work is begun. In this case, Zone B is the Riverfront Area as it applies to agricultural activities.
- Also, if you have a Chapter 91 license within Zone B, this supersedes the RPA regulations.



The Rivers Protection Act

- When an activity is planned within one hundred feet of a River's Mean Annual High Water Line on land that is not currently being used for agriculture, a Request for Determination (RDA) and/or a Notice of Intent (NOI) must be filed with the local conservation commission. In order to comply with the basic standards of the NOI, your project would need to meet the following four criteria:
 - 1) meet the standards for any other wetland resource area such as a bordering vegetated wetland, flood zone, isolated land subject to flooding, etc.
 - 2) you are not altering any rare species habitat.
 - 3) you have no other alternative location for the new activity on the lot you now own or formerly owned.
 - 4) you are not adversely effecting the riverfront area by minimizing the activity in the 100-foot riverfront area and by keeping or establishing a corridor of undisturbed vegetation along the river.
- Exemption - existing agriculture being practiced within the Riverfront Area may continue as long as it meets the standards set forth in the regulations of the Wetland Protection Act (310 CMR 10.04) for land in agricultural use.

What are other compatible land uses to farming and bogs?

- Farm stand
- Graveling
- Bee Hives
- Farm tours
- Venues
- Solar Panels

CASE STUDY

The SMART Program

- Dual Use solar panel installation in cranberry bogs AGRIVOLTAICS
- Whether such a project would “alter” a cranberry bog?
- “Alterations” that do not “destroy or otherwise impair” BVW and meet the performance standards for other applicable resource areas may be permitted in an Order of Conditions. Orders can be further conditioned with BMP design elements to insure that no impairment occurs. In most instances that although solar installations in the cultivated cranberry bog setting will alter that particular wetland, the alteration will not adversely affect the interests of the Act, taking into account the unique characteristics and customary management practices of the cranberry bogs.
- BMPs include: limiting capacity to 2MW, reduce shading to under 50%, 8-10 feet above ground, balance production between solar and agriculture, be continuous over 20-year SMART period.



Take-aways:

*hiring professionals for filings
agricultural exemption
compatible uses*

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