Wetlands Protection Act
Regulatory Reform 10-24-2014

- Summary of Statutory Changes
- Summary of Regulatory Changes and Additions
- ER Project Permitting Process
Statutory Changes
Statutory Changes

Emergency Declaration

- Electronic Notice to all conservation commissions,
- Specify types of work allowed,
- Identify mitigating measures,
- Specify reporting requirements,
- Limit geographic extent,
- Limit duration.
Abutter Notification

- Projects on Land Under Water

Legend:
- Project
- Project Locus
- Abutter within 100' of project site
- Abutter beyond 100' of project site
- Abutter to abutter - no notice
Projects on Lots > 50 Acres
Abutter Notification

- Linear Shaped Projects

- Project Sites
- Project Locus
- Abutter within 1000’/100’ of Project Site
- Abutter beyond 1000’/100’ of Project Site
- Project Abutter to abutter - no notice
Regulatory Changes and Additions
Definitions

- **Aquaculture**: Revised to include “municipal shellfish propagation”

- **Salt Marsh**: Revised to reflect the fact that certain species of plants such as *Phragmites* can occur in freshwater or saltwater environments.
Definitions

- **Historic Mill Complex**: No Change.
- **Man Made Canal**: No Change.
Definitions

- **Primary Frontal Dune**: Adopted text consistent with the provisions of FEMA.
- **Velocity Zone or V-Zone / Coastal High Hazard Area**
- **Special Flood Hazard Area**
Definitions

- **Innovative Technology:** Technology that has not been commercially deployed or is in limited deployment in **Massachusetts**, and includes, but is not limited to, energy technology that obtains energy from the ocean, waterway, or conditions associated with the ocean or waterway, other forms of renewable energy technology.
Renewable Energy Access Limited Project

Purpose:
Improve access for renewable energy projects.

May be permitted if designed and constructed in a manner that avoids, minimizes and mitigates adverse impacts to resource areas and complies with the specified conditions, to the maximum extent practical.
Renewable Energy
Wind Turbine Trailer Turning Radius
Test Projects

Streamline permits for testing innovative technology. Pelamis Wave Energy Converter
Test Projects

Limited to water-dependent projects.

Aquamarine Oyster: Water Power
Monitoring required during the test period to document anticipated project impacts.

Tidal turbines
Helical axis tidal turbine

- Site restoration to pre-test conditions required.
Minor Activities Not Subject to Regulation

- Installation of directly embedded utility poles provided that all work is conducted within 10 feet of the road or driveway shoulder and is a minimum of 10 feet from the edge of the Bank or BVW and as far away from resource areas as practicable, with no additional tree clearing or substantial grading within the buffer zone;
Provided they comply with 310 CMR 10.02(2)(b)1, the following minor activities are not subject to regulation:

- Installation of underground utilities (e.g., electric, gas, water) within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the completion of each workday;
Minor Activities Not Subject to Regulation

Vegetation cutting for road safety maintenance
Minor Activities Not Subject to Regulation

Vegetation cutting for road safety maintenance

- Site Distances at intersections
- Threats to driver safety
No new resource areas created for stormwater systems installed after November 18, 1996
Exempt O&M activities on systems built or improved after November 18, 1996.
Ch.91 now exempts improvement dredging within ACECs for the maintenance or restoration of historic navigation channels.
Combined Applications and Permits

Designed for coastal/inland dredging projects subject to: WPA, Chapter 91 and 401 WQC
Combined Applications and Permits
Ch. 91 and WQC

*NOI removed from Combined Application*

- 97% final OOC issued by Con Com
- Fee structure/processing becomes complex.
- Timing issues between permit processes.
- Ch. 91 now exempts improvement dredging for ER projects.
### Combined Application Information (check appropriate boxes)

**Components** | **Fee** | **Corresponding Application**
--- | --- | ---
Chapter 91 Water-Dependent
- Residential with ≤ 4 units | $215.00 | BRP WW01a
- Other | $330.00 | BRP WW01b
401 Water Quality Certification Dredging
- Major > 5000 yd² | $495.00 | BRP WW07
- Minor < 5000 yd² & > 100 yd² | $95.00 | BRP WW08
401 Water Quality Certification Fill/Excavation
- Major > 5000 ft² | $495.00 | BRP WW10
- Minor < 500 ft² | $95.00 | BRP WW11

Total combined application fee

### Applicant Information

1. Applicant:
   - **Name**
   - **Email Address**
   - **Mailing Address**
   - **City/Town**
   - **State**
   - **Zip Code**
   - **Telephone Number**
   - **Fax Number**

2. Authorized Agent (if any):
   - **Name**
   - **Email Address**
   - **Mailing Address**
   - **City/Town**
   - **State**
   - **Zip Code**
   - **Telephone Number**
   - **Fax Number**
Stream Crossing Standards (SCS)

- Standards apply to:
  - Restoration 310 CMR 10.11 to 310 CMR 10.14;
  - Inland/coastal Limited Projects 310 CMR 10.24/10.53
  - Bank 310 CMR 10.54
  - Land Under Water 310 CMR 10.56

- New crossings must meet the SCS fully
- Replacement crossings: meet SCS to the maximum extent practicable
Openness Ratio > 0.82

length

width > 1.2 times bankfull width

stream gradient consistent

culvert bed matches stream bed

Stream Crossing Standards (SCS)
Ecological Restoration

Ecological Restoration Project Types
Ecological Restoration Project Types

Dam Removal Sackett Brook, Pittsfield
Ecological Restoration Project Types

Dam Removal Sackett Brook, Pittsfield
Ecological Restoration Project Types

Freshwater Stream Crossing
Ecological Restoration Project Types

Stream Daylighting
Culvert Replacement to Eliminate Tidal Restrictions.
Shellfish Habitat Restoration

Ecological Restoration Project Types
Ecological Restoration Project Types

Fish Passage and Rare Species Habitat Restoration
New Regulatory Additions for Ecological Restoration

- Definitions: 310 CMR 10.04
- Permitting Process: 310 CMR 10.11 thru 310 CMR 10.14
- Coastal/Inland Limited Projects: 310 CMR 10.24(8) and 310 CMR 10.53(4)
Ecological “Restoration OOC”

Advantages for Applicant and Con Coms

- Faster & more predictable permitting process.
- Identifies key issues for review.
- All necessary information is provided up front.
- No WQC is required unless project involves dredging.
Ecological “Restoration OOC”

Advantages for Applicant and Con Coms

- ER projects eligible for General Permit are exempt from MEPA review.
- ER limited projects – No changes to MEPA requirements.
Ecological “Restoration OOC”

Advantages for Applicant and Con Coms

- Exempt from Wildlife Habitat Evaluation.
- ER projects may result in the temporary or permanent loss or conversion of one resource area to another when the loss is necessary to achieve the project’s ecological restoration goals.
Restoration Project Permitting Process

Meet Definition Ecological Restoration 310 CMR 10.04?

Yes

Is Project Eligible for a Restoration OOC 310 CMR 10.13?

Yes

Use WPA Form 3A
Ecological Restoration NOI

Complete Eligibility Criteria Checklist (310 CMR 10.13) in WPA Form 3A, Section C and sign the Certification of Eligibility in Section G.

Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Use the Required Actions Checklist in Form 3A, Section D and Appendix 1.

Attach the required documentation for submittal with NOI. (310 CMR 10.12) Use the Minimum Required Documents Checklist in WPA Form3A, Section D and Appendix 2.

Sign and submit WPA Form 3A with documentation.

No

No

Use WPA Form 3

Use WPA Form 3

Is the proposed activity eligible to be treated as an Ecological Restoration Limited Project [310 CMR 10.24(8) or 310 CMR 10.53(4)]? Complete WPA Form 3 Section A.7b and the ER Limited Project Eligibility Checklist and Certification in Appendix A.

Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Skip Form 3, Section C. and attach the Required Actions Checklist in Appendix A.

Required Documentation for Submittal with NOI. (310 CMR 10.12(1) and (2)). Skip Form 3, Section D. Attach Required Documents Checklist in Appendix A.

OOC for Ecological Restoration Limited Project may be issued use WPA form 5.

Restoration OOC is Issued use WPA Form 5A
Is Project an Ecological Restoration?

A project whose primary purpose is to restore or otherwise improve the natural capacity of a Resource Area(s) to protect and sustain the interests identified in M.G.L. c. 131, § 40, when such interests have been degraded or destroyed by anthropogenic influences. (310 CMR 10.04)
Ecological Restoration Project - NOT

ER Projects do not include mitigation for the alteration of a Resource Area authorized by a Final Order of Conditions or a 401 WQC.
Use WPA Form 3 – Notice of Intent
Project Does Not Meet Definition of Ecological Restoration
**Restoration Project Permitting Process**

1. **Meet Definition Ecological Restoration 310 CMR 10.04?**
   - **Yes**: Use WPA Form 3A Ecological Restoration NOI
   - **No**: Use WPA Form 3

2. **Is Project Eligible for a Restoration OOC 310 CMR 10.13?**
   - **Yes**: Use WPA Form 3A Ecological Restoration NOI
     - Complete Eligibility Criteria Checklist (310 CMR 10.13) in WPA Form 3A, Section C and sign the Certification of Eligibility in Section G.
     - Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Use the Required Actions Checklist in Form 3A, Section D and Appendix 1.
     - Attach the required documentation for submittal with NOI. (310 CMR 10.12) Use the Minimum Required Documents Checklist in WPA Form 3A, Section D and Appendix 2.
     - Sign and submit WPA Form 3A with documentation.
   - **No**: Use WPA Form 3

3. **Is the proposed activity eligible to be treated as an Ecological Restoration Limited Project [310 CMR 10.24(8) or 310 CMR 10.53(4)]?** Complete WPA Form 3 Section A.7b and attach the ER Limited Project Eligibility Checklist and Certification in Appendix A.
   - Required Documentation for Submittal with NOI. (310 CMR 10.12(1) and (2)). Skip Form 3, Section D. Attach Required Documents Checklist in Appendix A.
   - **OOC for Ecological Restoration Limited Project may be issued use WPA form 5.**

4. **Restoration OOC is Issued use WPA Form 5A**
Eligibility Criteria for Restoration OOC

(310 CMR 10.13(1))

- Project meets the definition in 310 CMR 10.04.
Eligibility Criteria for Restoration OOC
(310 CMR 10.13(1))

- Furthers at least one of the interests of the Act.
Eligibility Criteria for Restoration OOC
(310 CMR 10.13(1))

To maximum extent practicable
- Avoid and minimize adverse impacts to Resource Areas and the interests of Act,
- Uses erosion and siltation control BMPs to minimize construction impacts,
Eligibility Criteria for Restoration OOC (310 CMR 10.13(1))

- Project will not result in a significant increase in flooding or storm damage affecting buildings, wells, septic systems, roads or man-made structures or infrastructure.
Eligibility Criteria for Restoration OOC (310 CMR 10.13(1))

- NOI includes a 401 WQC (314 CMR 9.00) if the project involves dredging of 100 cubic yards of sediment or more or dredging in an ORW,
Eligibility Criteria for Restoration OOC
(310 CMR 10.13(1))

- Project will not substantially reduce the capacity of a resource area to serve habitat functions if carried out according to TOY restrictions/conditions from DMF for coastal and DFW for inland waters.
Eligibility Criteria for Restoration OOC (310 CMR 10.13(1))

Openess Ratio > 0.82

- Freshwater Stream Crossings are designed to comply with SCS 310 CMR 10.53(8).
Eligibility Criteria for Restoration OOC
(310 CMR 10.13(1))

- Tidal Crossings are designed to eliminate tidal restrictions to MEP 310 CMR 10.24(10).
Eligibility Criteria for Restoration OOC
(310 CMR 10.13(1))

- No armoring of a Coastal Dune or Barrier Beach.
- No discharge of dredged or fill material to a certified vernal pool,
- No point source discharge to ORWs,
Eligibility Criteria for Restoration OOC (310 CMR 10.13(1))

NHESP Review

- If project is within rare species habitat - a written Determination from NHESP that project will not result in a “take”.
- Determination identifies Rare Species and recommends appropriate changes or conditions to insure no short or long term adverse effects or
- Project is carried out in accordance with Habitat Management Plan OR Conservation and Management Permit approved by NHESP.
**Restoration Project Permitting Process**

Meet Definition Ecological Restoration 310 CMR 10.04?
- No → Use WPA Form 3
- Yes → Is Project Eligible for a Restoration OOC 310 CMR 10.13?
  - No → Use WPA Form 3
  - Yes → Use WPA Form 3A Ecological Restoration NOI

Complete Eligibility Criteria Checklist (310 CMR 10.13) in WPA Form 3A, Section C and sign the Certification of Eligibility in Section G.

Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Use the Required Actions Checklist in Form 3A, Section D and Appendix 1.

Attach the required documentation for submittal with NOI. (310 CMR 10.12) Use the Minimum Required Documents Checklist in WPA Form 3A, Section D and Appendix 2.

Sign and submit WPA Form 3A with documentation.

**Is the proposed activity eligible to be treated as an Ecological Restoration Limited Project [310 CMR 10.24(8) or 310 CMR 10.53(4)]?** Complete WPA Form 3 Section A.7b and attach the ER Limited Project Eligibility Checklist and Certification in Appendix A.

Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Skip Form 3, Section C. Attach the Required Actions Checklist in Appendix A.

Required Documentation for Submittal with NOI. (310 CMR 10.12(1) and (2)). Skip Form 3, Section D. Attach Required Documents Checklist in Appendix A.

OOC for Ecological Restoration Limited Project may be issued use WPA Form 5.

Restoration OOC is Issued use WPA Form 5A.
 Restoration Project Permitting Process

1. **Meet Definition Ecological Restoration 310 CMR 10.04?**
   - No → Use WPA Form 3
   - Yes → Is Project Eligible for a Restoration OOC 310 CMR 10.13?

2. **Is Project Eligible for a Restoration OOC 310 CMR 10.13?**
   - No → Use WPA Form 3
   - Yes → Use WPA Form 3A Ecological Restoration NOI
     - Complete Eligibility Criteria Checklist (310 CMR 10.13) in WPA Form 3A, Section C and sign the Certification of Eligibility in Section G.
     - Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Use the Required Actions Checklist in Form 3A, Section D and Appendix 1
     - Attach the required documentation for submittal with NOI. (310 CMR 10.12) Use the Minimum Required Documents Checklist in WPA Form3A, Section D and Appendix 2.
     - Sign and submit WPA Form 3A with documentation.

3. **Is the proposed activity eligible to be treated as an Ecological Restoration Limited Project [310 CMR 10.24(8) or 310 CMR 10.53(4)]?**
   - Complete WPA Form 3 Section A.7b and attach the ER Limited Project Eligibility Checklist and Certification in Appendix A.
   - Required Documentation for Submittal with NOI. (310 CMR 10.1.12(1) and (2)). Skip Form 3, Section D. Attach Required Documents Checklist in Appendix A.
   - OOC for Ecological Restoration Limited Project may be issued use WPA form 5.

4. **Restoration OOC is Issued use WPA Form 5A**
Use WPA Form 3 – Notice of Intent
Project Does Not Meet Eligibility Criteria for Restoration OOC
Is Project an Ecological Restoration Limited Project?

Definition (310 CMR 10.04)

Ecological Restoration Limited Project is an Ecological Restoration Project that meets the eligibility criteria set forth in 310 CMR 10.24(8) or 310 CMR 10.53(4).
## Ecological Restoration General Eligibility Criteria

<table>
<thead>
<tr>
<th>Restoration OOC 310 CMR 10.13(1)</th>
<th>Inland ERLP</th>
<th>Coastal ERLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>310 CMR 10.53(4)(a)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(a) The project is an Ecological Restoration Project as defined in 310 CMR 10.04, is a project type listed in 310 CMR 10.13(2) through (7), and the applicant has submitted a Notice of Intent that meets all applicable requirements of 310 CMR 10.12.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(b) The project will further at least one of the interests identified in M.G.L. c. 131, § 40</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>The project will have no short or long-term adverse effect on specified habitat sites of Rare Species located within the Resource Areas affected by the project or will be carried out in accordance with a habitat management plan that has been approved in writing by the Natural Heritage and Endangered Species Program and submitted with the NOI.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(d) To the maximum extent practicable, the project will:</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>1. 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 goals;</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>2. 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; and</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>3. Utilize best management practices such as erosion and siltation controls and proper construction sequencing to prevent and minimize adverse construction impacts to Resource Areas and the interests identified in M.G.L. c. 131, § 40</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(e) The project will not have significant adverse effects on the interests of flood control and storm damage prevention in relation to the built environment (i.e., the project will not result in a significant increase in flooding or storm damage affecting buildings, wells, septic systems, roads or other human-made structures or infrastructure).</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(f) If the project will involve the dredging of 100 cubic yards of sediment or more or dredging of any amount in an Outstanding Resource Water, the Notice of Intent includes a Water Quality Certification issued by the Department in accordance with 314 CMR9.00: Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(g) The project will not substantially reduce the capacity of a Resource Area to serve the habitat functions identified in 310 CMR 10.60(2). A project will be presumed to meet this eligibility criteria if the project will be carried out in accordance with any TOY restrictions or other conditions recommended by the DMF for coastal waters, and by DFW for inland waters in accordance with 310 CMR 10.11(3) through (5). An Ecological Restoration Project that meets the requirements of 310 CMR 10.12(1) and (2) is exempt from the requirement to perform a wildlife habitat evaluation in accordance with 310 CMR 10.60.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(h) If the Ecological Restoration Project involves work on a stream crossing, the stream crossing has been designed in accordance with 310 CMR 10.24(10) for work in coastal resource areas and 310 CMR 10.53(8) for work in inland resource areas, as applicable.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(i) The Ecological Restoration Project will not result in a discharge of dredged or fill material within 400 feet of the high water mark of a Class A surface water (exclusive of its tributaries) unless the project is conducted by a public water system under 310 CMR 22.00: Drinking Water or a public agency or authority for the maintenance or repair of existing public roads or railways in accordance with 314 CMR 4.06(1)(d)1.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(j) The Ecological Restoration Project will not result in a discharge of dredged or fill material to a vernal pool certified by the Division of Fisheries and Wildlife.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(k) The Ecological Restoration Project will not result in a point source discharge to an Outstanding Resource Water.</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>(l) The Ecological Restoration Project will not involve the armoring of a Coastal Dune or Barrier Beach.</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>

The project complies with all applicable provisions of 310 CMR 10.53(1) through (8).
Is Project an ER Limited Project?

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

1. Project meets definition: 310 CMR 10.04

2. NHESP – Project is within estimated habitat:
   - Preliminary written determination from NHESP regarding adverse effects on specified habitat sites of Rare Species; or
   - The project will be carried out in accordance with a habitat management plan that has been approved in writing by NHESP.
3. Project is presumed not to reduce capacity of Resource Area to serve wildlife habitat functions if carried out according to TOY restrictions and/or conditions recommended by DMF for coastal waters and DFW for inland waters;
4. If project involves dredging >100 cubic yards of sediment or dredging of any amount in an ORW, 401 WQC is required.

5. The project complies with all other applicable limited project provisions of 310 CMR 10.24 or 310 CMR 10.53.
| 9. | □ 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. □ Yes □ 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:
Eligibility Criteria Checklist

- Regulatory Features of all ER Limited Projects
- Coastal
  1. General
  2. Additional Project Specific
- Inland
  1. General
  2. Additional Project Specific
ER Limited Project Checklists

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

Complete and Attach Eligibility Checklist in WPA Form 3, Appendix A
Required Actions Checklist - Replaces Section C

- Publish notice in Environmental Monitor,
- NHESP – If project is within Estimated Habitat,
  ✓ written preliminary determination,
  ✓ Habitat Management Plan approved by NHESP
Required Actions Checklist - Replaces Section C

- DMF – If project is within coastal waters with restricted TOY a written determination as to whether project needs TOY restriction and recommended conditions.

- DFW – If project is within diadromous fish run; a written determination as to whether design and operation plans are compatible with fish passage requirements of fish run.

- 401 WQC for dredging projects.
Ecological Restoration Limited Project
Required Actions Checklist (310 CMR 10.11)

Skip Section C and Complete and Attach Required Actions Checklist in Form 3, Appendix A.

Required Actions - 310 CMR 10.11.

- Complete the Required Actions before submitting a Notice of Intent Application for an Ecological Restoration Project and submit a completed copy of this Checklist with the Notice of Intent.

- [ ] Environmental Monitor /Massachusetts Environmental Policy Act (MEPA)

- [ ] Submit written notification at least 14 days prior to the filing of a Notice of Intent (NOI) to the Environmental Monitor for publication. A copy of the written notification is attached and provides at minimum:
  - [ ] A brief description of the proposed project.
  - [ ] The anticipated NOI submission date to the conservation commission.
  - [ ] The name and address of the conservation commission that will review the NOI.
  - [ ] Specific details as to where copies of the NOI may be examined or acquired and where to obtain the date, time, and location of the public hearing.
Minimum Required Documents Checklist - Replaces Section D,

Eligibility Certification - Section G.
Ecological Restoration Limited Project

Required Documents Checklist (310 CMR 10.12)

Skip Section D and

Complete Minimum Required Documents Checklist Form 3, Appendix A

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Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 3 – Notice of Intent
Appendix A: Ecological Restoration Limited Project Checklists
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Ecological Restoration Notice of Intent (WPA 3a) - Required Actions (310 CMR 10.11) (cont.)

Areas of Critical Environmental Concern (ACECs)

Is any portion of the proposed project within an Area of Critical Environmental Concern (ACEC)?

☐ Yes ☐ No

If yes, provide name of ACEC (see instructions to WPA Form 3 or MassDEP Website for ACEC locations).

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Ecological Restoration Notice of Intent (WPA 3a) - Minimum Required Documents (310 CMR 10.12)

Complete the Required Documents Checklist below and provide supporting materials before submitting a Notice of Intent Application for an Ecological Restoration Project.

This Notice of Intent meets all applicable requirements outlined in for Ecological Restoration Projects in 310 CMR 10.12. Use the checklist below to ensure that all documentation is included with the NOI.

At a minimum, a Notice of Intent for an Ecological Restoration Project shall include the following:
Certify That ER Limited Project Meets the Eligibility Criteria

Sign the ER Limited Project Certification in WPA Form 3, Appendix A

Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 3 – Notice of Intent
Appendix A: Ecological Restoration Limited Project Checklists
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Certification that the Ecological Restoration Project Meets the Eligibility Criteria

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.

Signature of Applicant or Authorized Agent

Printed Name of Applicant or Authorized Agent

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.
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)
Ecological Restoration Limited Project OOC
Use WPA Form 5 – Order of Conditions

[Image of WPA Form 5 – Order of Conditions]

Massachusetts Wetlands Protection Act M.G.L. c. 313, §40

A. General Information

1. Form: Conservation Commission

2. This issuance is for (check one):
   a. Order of Conditions
   b. Amended Order of Conditions

3. To: Applicant:
   a. First Name
   b. Last Name
   c. Organization

4. Property Owner (if different from applicant):
   a. First Name
   b. Last Name
   c. Organization

5. Project Location:
   a. Street Address
   b. City/Town
   c. Assessors Map/Parcel Number
   d. Parcel Layout Number
   e. Latitude and Longitude, if known:
      1. Latitude
      2. Longitude

[Form fill-in fields]
Restoration Project Permitting Process

Meet Definition Ecological Restoration 310 CMR 10.04?

- No → Use WPA Form 3
- Yes → Is Project Eligible for a Restoration OOC 310 CMR 10.13?

- No → Use WPA Form 3
- Yes → Use WPA Form 3A
  - Ecological Restoration NOI

Complete Eligibility Criteria Checklist (310 CMR 10.13) in WPA Form 3A, Section C and sign the Certification of Eligibility in Section G.

- Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Use the Required Actions Checklist in Form 3A, Section D and Appendix 1
- Attach the required documentation for submittal with NOI. (310 CMR 10.12) Use the Minimum Required Documents Checklist in WPA Form3A, Section D and Appendix 2.

Sign and submit WPA Form 3A with documentation.

Is the proposed activity eligible to be treated as an Ecological Restoration Limited Project [310 CMR 10.24(8) or 310 CMR 10.53(4)]? Complete WPA Form 3 Section A.7b and the ER Limited Project Eligibility Checklist and Certification in Appendix A.

- Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Skip Form 3, Section C. Attach the Required Actions Checklist in Appendix A.
- Required Documentation for Submittal with NOI. (310 CMR 10.12(1) and (2)). Skip Form 3, Section D. Attach Required Documents Checklist in Appendix A.

OOC for Ecological Restoration Limited Project may be issued using WPA form 5.

Restoration OOC is Issued using WPA Form 5A.
 Restoration Project Permitting Process

- **Meet Definition Ecological Restoration 310 CMR 10.04?**
  - No → Use WPA Form 3
  - Yes → **Is Project Eligible for a Restoration OOC 310 CMR 10.13?**
    - No → Use WPA Form 3
    - Yes → **Use WPA Form 3A Ecological Restoration NOI**

**Complete Eligibility Criteria Checklist (310 CMR 10.13) in WPA Form 3A, Section C and sign the Certification of Eligibility in Section G.**

**Complete Required Actions (310 CMR 10.11) BEFORE submitting NOI. Use the Required Actions Checklist in Form 3A, Section D and Appendix 1.**

**Attach the required documentation for submittal with NOI. (310 CMR 10.12) Use the Minimum Required Documents Checklist in WPA Form3A, Section D and Appendix 2.**

**Sign and submit WPA Form 3A with documentation.**

- **Is the proposed activity eligible to be treated as an Ecological Restoration Limited Project [310 CMR 10.24(8) or 310 CMR 10.53(4)]?** Complete WPA Form 3 Section A.7b and the ER Limited Project Eligibility Checklist and Certification in Appendix A.
  - **Required Documentation for Submittal with NOI. (310 CMR 10.12(1) and (2)). Skip Form 3, Section D. Attach Required Documents Checklist in Appendix A.**
  - **OOC for Ecological Restoration Limited Project may be issued use WPA form 5.**
    - **RESTORATION OOC IS ISSUED USE WPA FORM 5A**
Project is Eligible for Restoration OCC

Use WPA Form 3A - NOI for Ecological Restoration Projects

Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Program

WPA Form 3A - Notice of Intent for an Ecological Restoration Project

Project Type

Check the Ecological Restoration type that applies:

- 1. Dam Removal
- 2. Freshwater Stream Crossing Repair and Replacement
- 3. Stream Daylighting
- 4. Tidal Restoration
- 5. Rare Species Habitat Restoration
- 6. Restoring Fish Passageways

Eligibility Criteria:

I am applying for a Restoration Order of Conditions and meet the General Eligibility Criteria [310 CMR 10.13(1)] as described in Section C1 and the Additional Eligibility Criteria for this Ecological Restoration Project type [310 CMR 10.13(2) through (7)] as described in Section C2.
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Program

WPA Form 3A - Notice of Intent for an Ecological Restoration Project

C. Ecological Restoration Project Description (cont.)

- If the Project involves the dredging of 100 cubic yards of sediment or more, or dredging in an ORW, a 401 Water Quality Certification is required and attached. Requires a 401 Water Quality Certification.

- The Project will not substantially reduce the capacity of a Resource Area to serve the wildlife habitat functions identified in 310 CMR 10.60(2). A project will be presumed to meet this eligibility criteria if the NOI is carried out in accordance with any Time of Year (TOY) restrictions or other conditions recommended by the DMF for coastal waters, and by the DFW for inland waters in accordance with 310 CMR 10.11(3), (4) and (5). A NOI for an Ecological Restoration Project that meets the requirements of 310 CMR 10.12(1) and (2) it is exempt from performing a wildlife habitat evaluation.

- If the project involves work on a stream crossing, the stream crossing has been designed in accordance with 310 CMR 10.24(10) for work in coastal resource areas and 310 CMR 10.53(8) for work in inland resource areas, as applicable. See additional requirements below for Freshwater Stream Crossing Repair and Replacement Projects.

- The project will not result in a discharge of dredged or fill material within 400 feet of the high water mark of a Class A surface water (exclusive of its tributaries) unless the project is conducted by a public water system under 310 CMR 22.00 or a public agency or authority for the improvement of the public drinking water supply.
Project is Eligible for Restoration OCC
Sign the Certification of Eligibility for Ecological Restoration Project NOI in WPA Form 3A, Section G
Ecological Restoration NOI Submittal
Complete Required Actions Before Submitting NOI (310 CMR 10.11) See WPA Form 3A, Section D and Appendix 1
Required Actions

- Publish Notice in the Environmental Monitor
- NHESP – as appropriate if project is within Estimated Habitat
  - written determination,
  - Conservation and Management Permit,
  - Habitat Management Plan,
Required Actions

- DMF written determination as to Time of Year restrictions or other conditions for projects in coastal waters with TOY restrictions.
- DFW written determination - Diadromous fish runs.
- 401 WQC if dredge >100 c.y. or dredging any amount in an ORW.
Minimum Required Documents for NOI Submittal (310 CMR 10.12)
Form 3A Section E and Appendix 2

Appendix 2: Ecological Restoration Notice of Intent (WPA 3A) - Minimum Required Documents (310 CMR 10.12)

Complete the Required Documents Checklist below and provide supporting materials before submitting a Notice of Intent Application for an Ecological Restoration Project.

This Notice of intent meets all applicable requirements outlined in the Notice of Intent Application for Ecological Restoration Projects in 310 CMR 10.12. Use the checklist below to ensure that all documentation is included with the NOI.

At a minimum, a Notice of Intent for an Ecological Restoration Project shall include the following:

- Description of the project's ecological restoration goals;
- The location of the Ecological Restoration Project;
- Description of the construction sequence for completing the project;
- A map of the Areas Subject to Protection Under M.G.L. c. 131, §40, that will be temporarily or permanently altered by the project or include habitat for Rare Species, Habitat of Potential Regional and Statewide Importance, eel grass beds, or Shellfish Suitability Areas;
- The method for BVW and other resource area boundary calculations (MassDEP BVW Field Data Form), Examination of Applicability, Order of Resource Area Determination, etc.;
- Documentation methodology;
- List the titles and dates for all plans and other materials submitted with the NOI:
  - Plan Title
  - Prepared by
  - Signed and stamped by
  - Final Revision Date
  - Scale
- Additional Required Document Title
- Add a plan or document title
- Add the date
- There is more than one property owner, attach a list of these property owners not listed on this form.
- Attach NOI Wetland Fee Transmittal Form.
- An evaluation of any flood impacts that may affect the built environment, including without limitation, buildings, wells, sumps, systems, tracks or other man-made structures or infrastructure as well as any proposed flood impact mitigation measures.
- A plan for invasive species prevention and control.
Minimum Required Documents for NOI Submittal (310 CMR 10.12)
Form 3A Section E and Appendix 2

Required Documents

- ER Goals,
- ER Project location,
- Construction sequencing,
- Maps,
- Flood impact study for built environment.
Minimum Required Documents for NOI Submittal (310 CMR 10.12)
Form 3A Section E and Appendix 2

Required Documents

- Plan for controlling invasive species.
- NHESP written determinations.
- TOY restrictions or conditions.
- Proof that notice was published in Environmental Monitor.
- Eligibility criteria certification.
- O&M for infrastructure.
Minimum Required Documents for NOI Submittal (310 CMR 10.12)
Form 3A Section E and Appendix 2

Required Documents

- 401 WQC if needed.
- Info to show a stream crossing design meets requirements of 310 CMR 10.24(10) for coastal or 10.53(8) for inland resource areas.
- Stream crossing baseline documentation.
NOI Submittal for ER Projects

Wildlife Habitat evaluation (310 CMR 10.12(3))

- Exempt if meets 310 CMR 10.12(1) and (2)
Ecological restoration projects that meet the eligibility requirements in 310 CMR 10.13 shall be issued a Restoration OOC. (Use new WPA Form 5A, Restoration OOC)
Restoration Order of Conditions
310 CMR 10.14, WPA Form 5A

- Approvals and Denials are based solely on the ability of the project to meet all Eligibility Criteria in 310 CMR 10.13(1) through (7).

<table>
<thead>
<tr>
<th>Approved subject to:</th>
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<tbody>
<tr>
<td>- The following conditions which are necessary in accordance with the Ecological Restoration eligibility criteria 310 CMR 10.13(1) through (7) and performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Ecological Restoration Notice of Intent referenced above, the following General Conditions and Special Conditions attached to this Restoration Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Ecological Restoration Notice of Intent, these conditions shall control.</td>
</tr>
</tbody>
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<tr>
<th>Denied because:</th>
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<tbody>
<tr>
<td>- The proposed work does not meet the eligibility criteria in 310 CMR 10.13(1) through (7). Therefore, work on this project may not go forward unless and until a new Notice of Intent (WPA Form 3 or 3A) is submitted and a Final Order of Conditions (WPA Form 5 or 5A) has been issued. The Commission has determined that following the eligibility criteria have NOT been met.</td>
</tr>
</tbody>
</table>
ROCC General Conditions 1-23 under WPA include Stormwater.

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Restoration Order of Conditions (Restoration Order).

2. The Restoration Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.

23. The work associated with this Order (the “Project”)

(1) applies and is subject to the Massachusetts Stormwater Standards
(2) does not apply and is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
Restoration Order of Conditions
310 CMR 10.14, WPA Form 5A

- Special Conditions for each ER project type.

<table>
<thead>
<tr>
<th>Massachusetts Department of Environmental Protection</th>
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<tbody>
<tr>
<td>Bureau of Resource Protection - Wetlands</td>
</tr>
<tr>
<td>WPA Form 5a – Restoration Order of Conditions</td>
</tr>
<tr>
<td>Massachusetts Wetlands Protection Act M.G.L. c. 131, §40</td>
</tr>
</tbody>
</table>

### C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

#### Special Conditions for Ecological Restoration Projects:

- **Dam Removal**

  This project involves dam removal and the following special conditions shall apply in addition to the general conditions set forth in 310 CMR 10.14(1):

  a) An as-built plan and a written statement from a registered professional engineer or other environmental professional expert in ecological restoration certifying substantial compliance with the design plan and construction specifications approved in the Restoration Order of Conditions shall be submitted to the Issuing Authority within 90 days of completion of the dam removal.

  b) The applicant shall monitor the dam removal site during the first two years following completion of the dam removal. Said monitoring shall include a topographic survey of the longitudinal profile and stream cross-sections from downstream of the former dam through the upstream end of the former impoundment. The survey reference point shall comprise a permanent marker or recoverable survey point with known coordinates, such as a fixed point shown on the as-built plan, an existing bench mark, or a new benchmark. That marker should be identified or referenced on the plans and on the as-built plans. The applicant shall establish at least two photo-points for pre- and post-restoration monitoring at the dam removal site. At least one photo-point location shall be chosen to document a view of the dam pre-restoration and to document the same site after the dam is removed. A second location shall be chosen to document a view of the impoundment pre- and post-restoration. Photos shall be taken for two years after the dam removal is completed.
No provisions for Conservation Commissions to issue/attach additional conditions under WPA.

Provisions for Local Bylaw decisions are included in Form 5A.
Appeal of Restoration OOC (310 CMR 10.05(7))

✓ “When the Order is a Restoration Order of Conditions, the basis of the request is limited to claim(s) that the applicant did not comply with one or more of the applicable procedural requirements of 310 CMR 10.05 and/or the conservation commission issued the General Order of Conditions in contravention of one or more of the applicable eligibility criteria. The request for Department action shall specifically identify any procedural requirements and eligibility criteria that the person requesting Department action alleges have not been met.
Ecological Restoration Forms