



Wetland Rules Workshop Focus: New Application Types and Content

Groundwater & Freshwater Wetlands Protection

RIDEM Office of Water Resources

February 28, 2022



Presentation Outline

- Standards Overview
- Application Types
- Application Content
- Next Steps & Questions





Navigating the New Rules

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Rule 3.7 – Standards Applicable to Regulated Projects and Activities and Variance Procedures

- Consolidated all standards and criteria into one section of the regulations and included variance requirements when standards cannot be met.



§ 3.7.1 Freshwater Wetlands and Buffer Protection Standards: New and Modified

(A) General Freshwater Wetlands Protection Standard

To meet the standard, propose a design that avoids any physical encroachment into freshwater wetlands.

New Definition of Freshwater Wetlands (3.4(A)(32)):

- Does not include riverbank or perimeter wetlands
- Includes vernal pools



§ 3.7.1(B) Freshwater Wetlands Buffer Standard (NEW)

To meet the standard:

1. Determine the **Buffer Zone** applicable to the project
2. Design the project to **avoid any physical alteration** of the **buffer**, including any buffer that may be required to be **created**.
3. Reduced buffer standards may apply on **infill lots** when the proposed project cannot meet the buffer standard.

See the January 26 workshop materials for details on how to meet the buffer standard.

(<http://www.dem.ri.gov/newwetlandrules>)



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§ 3.7.1(C) Setback Standards (NEW— previously no setback standard)

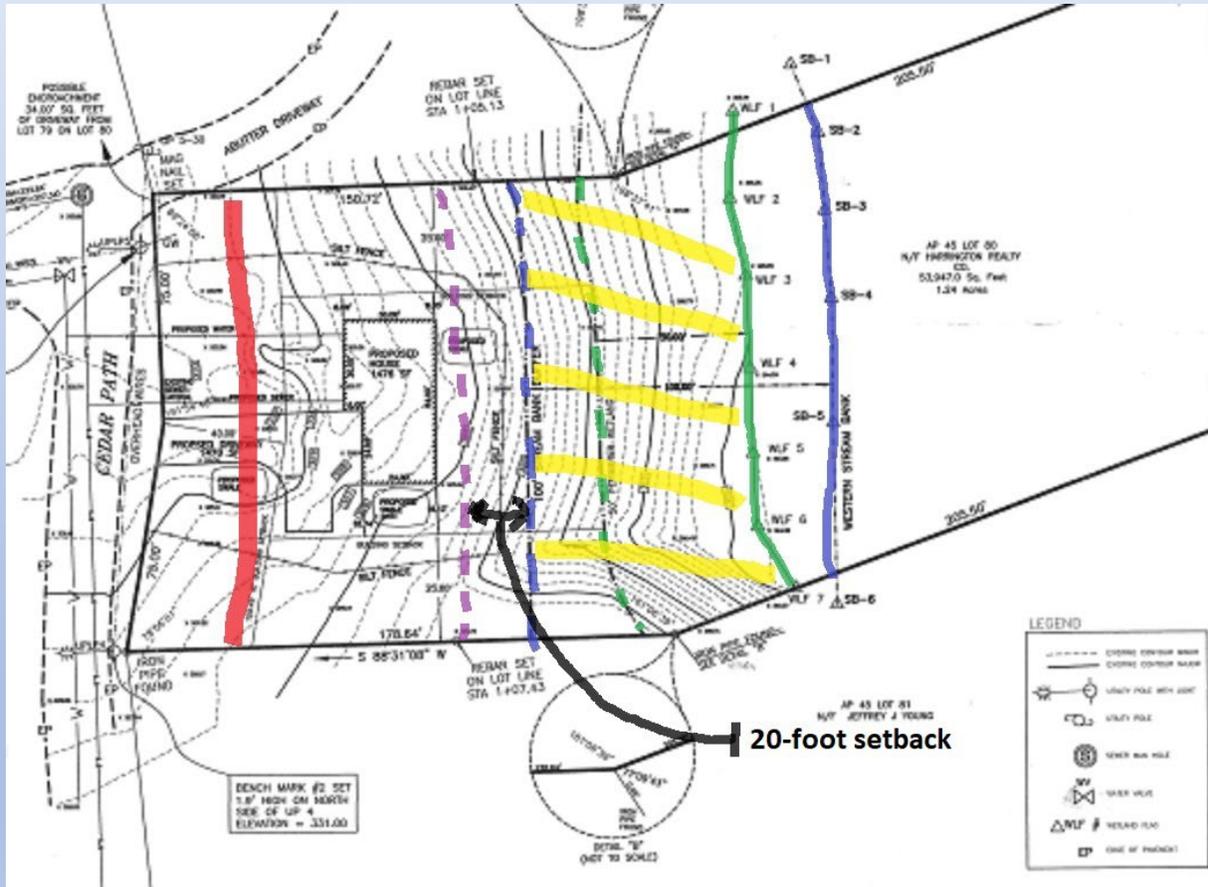
- **Primary Structures:** no less than Buffer width plus 20 ft
- **Accessory Structures:** no less than Buffer width plus 5 ft
- **OWTS:** As set forth in the OWTS Rules. Leach field and the required 10 ft cleared zone shall be located outside the buffer.



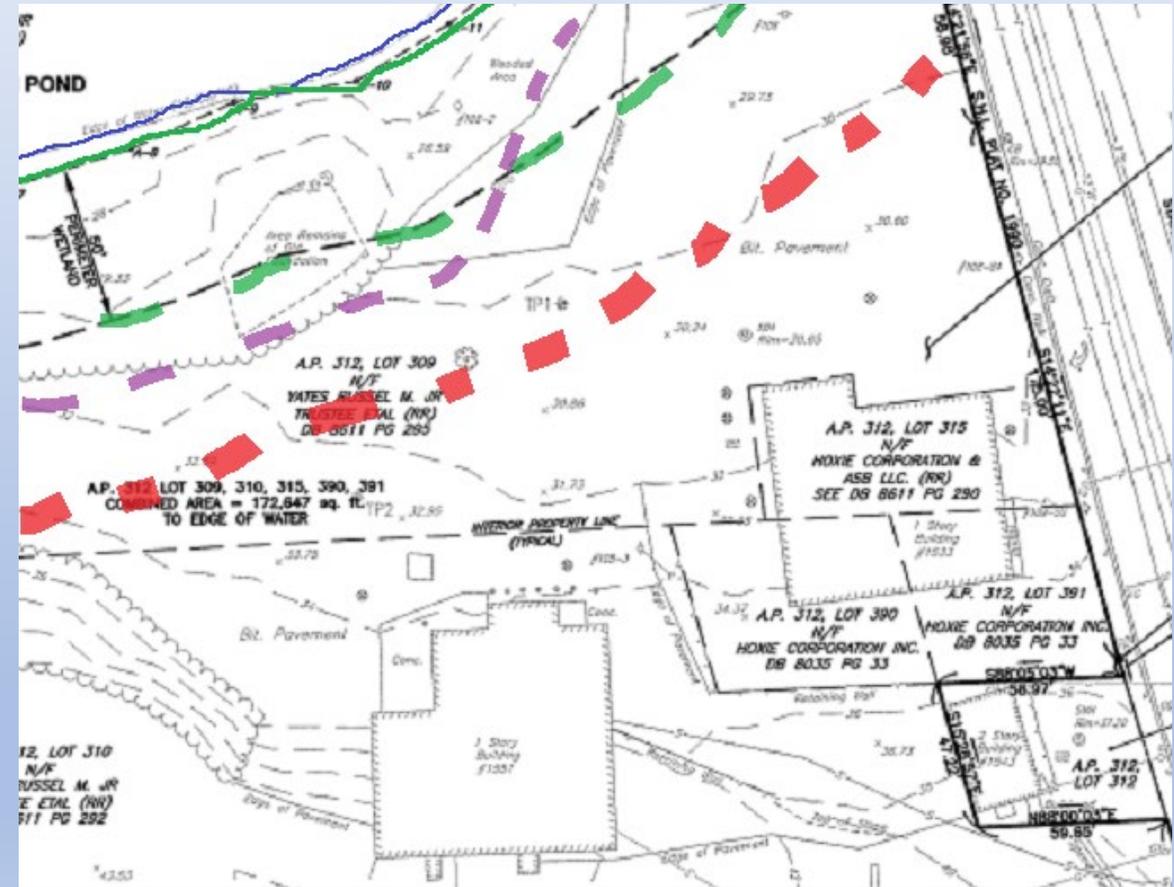


Setback Examples

Buffer Zone = All Buffer



Buffer Zone not entirely Buffer





Other Standards

Same as current regulations - **moved to consolidated standards section 3.7.1**

- (D) Rare or Endangered Species Standard
- (E) Flood Protection Standard
- (F) Surface and Groundwater Diversion Standard
- (G) Stormwater Management Standard
- (H) Erosion and Sediment Control Standard
- (I) Water Quality Standard

Standards derived from § 3.7.2 Review Criteria





§ 3.7.1(D) Rare or Endangered Species Standard

- A project cannot degrade the natural characteristics of a rare wetland type.
- A project cannot reduce ability of a wetland or buffer to ensure the long-term viability of any rare or endangered species.
- See § 3.3(A) & (B) “Rare Native Animals of Rhode Island” (2006), and “Rhode Island Rare Plants” (2016) from the RI Natural History Survey for lists of rare and endangered species.





§ 3.7.1(E) Flood Protection Standard

- No net reduction in flood storage volume.
- No reduction in the rate that flood waters are stored.
- No encroachment into floodway of rivers or streams by any fill, structure or other obstruction.





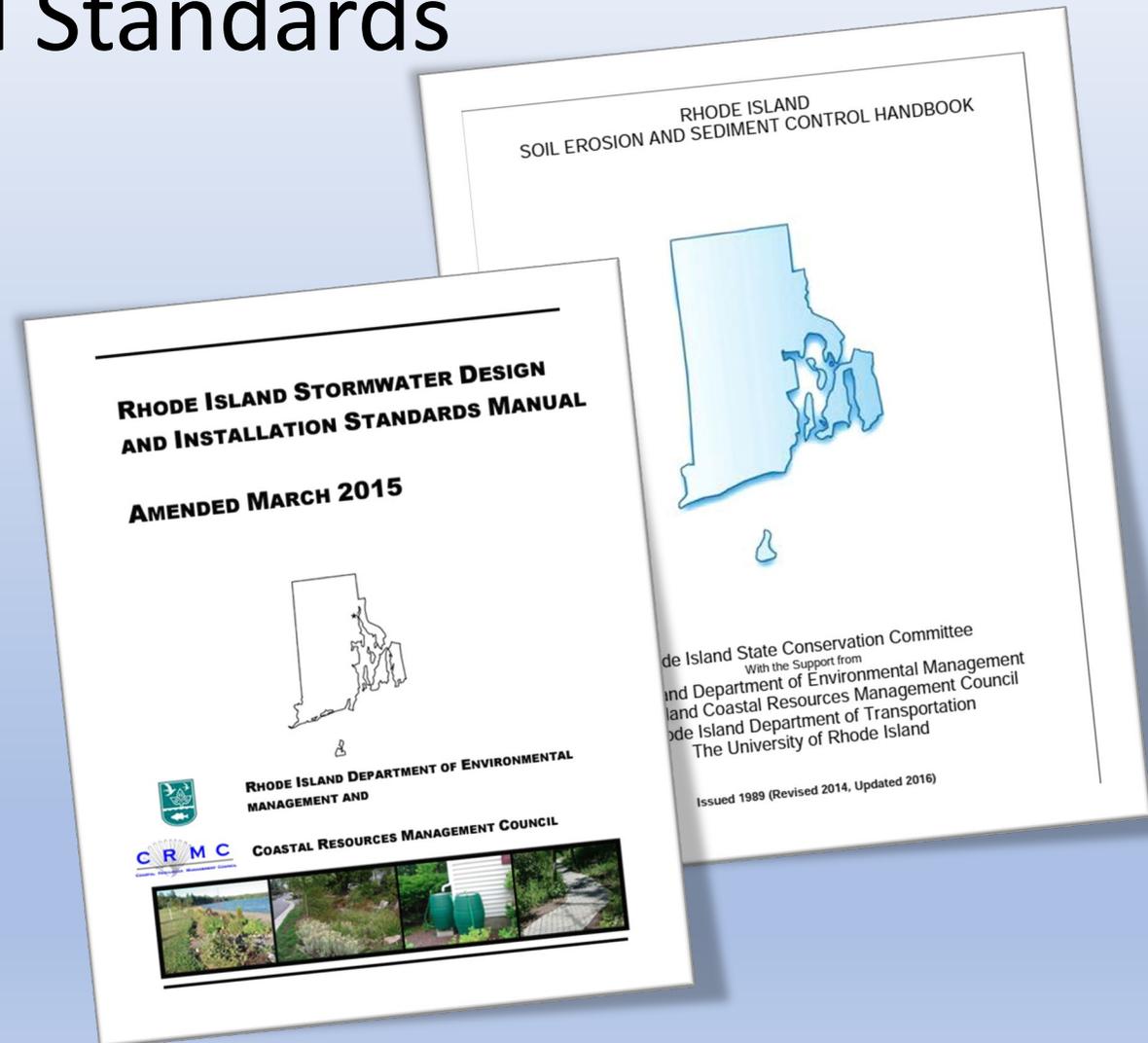
§ 3.7.1(F) Surface and Groundwater Diversion Standard

- No adverse effects on groundwater or surface water flow into or out of freshwater wetlands.
- No obstruction or reduction in storage capacity, of any Area Subject to Flooding or Area Subject to Storm Flowage.



§ 3.7.1(G) & (H) Stormwater Management and Erosion Control Standards

- Projects will need to meet the minimum standards of the RI Stormwater Design & Installation Rules or the RI Stormwater Guidance for Individual Single-Family Residential Lot Development.
- Projects must prevent erosion, consistent with the RI Soil Erosion & Sediment Control Handbook.





§ 3.7.1(I) Water Quality Standard

- Projects shall not contribute to a violation of any State Water Quality Standard for surface water or groundwater.
- Projects shall not contribute to significant degradation of any surface water or groundwater.





§ 3.7.2 Review Criteria

- Review Criteria are generally the same.
- Most revisions are minor, to update terminology.
- If you meet all of the standards, you have met the review criteria and will get a permit!



§ 3.7.3 Variances from Standards (NEW)

- A **variance** is required when certain Standards cannot be met
- Cannot receive a variance for the Stormwater Management, Erosion and Sediment Control, or Water Quality Standards
 - Relief is already built into the Stormwater Management Standard
- **Six requirements** for obtaining a variance
- Flexible requirements for **Public & Governmental Bodies**
- Local Zoning Ramifications
- Provides consistency with CRMC variance procedures.



Six Variance Requirements (§ 3.7.3) (NEW)

- (A)(2) Impact Avoidance & Minimization
- (A)(3) All review criteria must be satisfied
- (A)(4) Standards cannot be met due to site conditions
- (A)(5) Relief requested is the minimum needed for reasonable use of the property
- (A)(6) Variance request is not due to prior action of the applicant
- (A)(7) Meeting the standard would cause undue hardship

More specific training and examples at future workshops!

Variance Requirements: **Public and Governmental Bodies** (3.7.3(B)) **(NEW)**



(B)(1)(a) Impact Avoidance & Minimization

(B)(1)(b) All review criteria must be satisfied

(B)(1)(c) Standards cannot be met due to site conditions

~~4. Relief requested is the minimum needed for reasonable use of the property~~

~~5. Variance request is not due to prior action of the applicant~~

~~6. Meeting the standard would cause undue hardship~~

More specific training and examples at future workshops!

Variance Criteria for Public & Governmental Bodies (§ 3.7.3(B)) (NEW)



- (B)(1)(a) Impact Avoidance and Minimization
- (B)(1)(b) All review criteria must be satisfied
- (B)(1)(c) Standards cannot be met due to site conditions
- (B)(1)(d) The project serves a necessary public purpose that provides benefits to the public.





Local Zoning Ramifications (§3.7.3(D))(NEW)

- If the applicant cannot meet standards (particularly the buffer or setback standards) due to municipal zoning setback requirements, but could meet them if a variance were granted, the applicant is required to attempt to get a variance from the municipality before applying to RIDEM.



Questions on Permitting Framework or Standards?

QUESTIONS? Visit dem.ri.gov/newwetlandrules

New Permit Application Types and Nomenclature (§3.8.1)



General Permit (§3.10) – Designed to reduce submittal requirements, limit department review, and provide quick decision.

- Only for projects with < 1 acre of land disturbance
 - Individual Residential Construction & Accessory Structures
 - Limited Projects associated with existing developed properties (additions, garages, tennis courts, landscaping, OWTS...)
 - New development outside of designated buffer zones
 - Stormwater Retrofit Projects

For projects that have limited risk for impacts

NEW Permit Application Types/Nomenclature



- **Application for a Freshwater Wetlands Permit (§3.8.1(A)(5))**
 - Simplified application when all standards are met (A&M narrative not required).
 - Application for a Freshwater Wetlands Permit **with Variance**
 - When all standards cannot be met, **and** a significant alteration is not proposed.
 - Must meet variance criteria, including A&M narrative.
 - Similar to Request for Preliminary Determination.
- **Application for a Significant Alteration (§3.8.1(A)(6))**
 - Equivalent to Application to Alter a Freshwater Wetland.
 - Must meet variance criteria, including A&M narrative.
- **Request to Determine the Presence of Jurisdictional Area (§3.8.1(A)(1))**
 - Equivalent to Request to Determine the Presence of Wetlands.
 - Cannot include a proposed project.



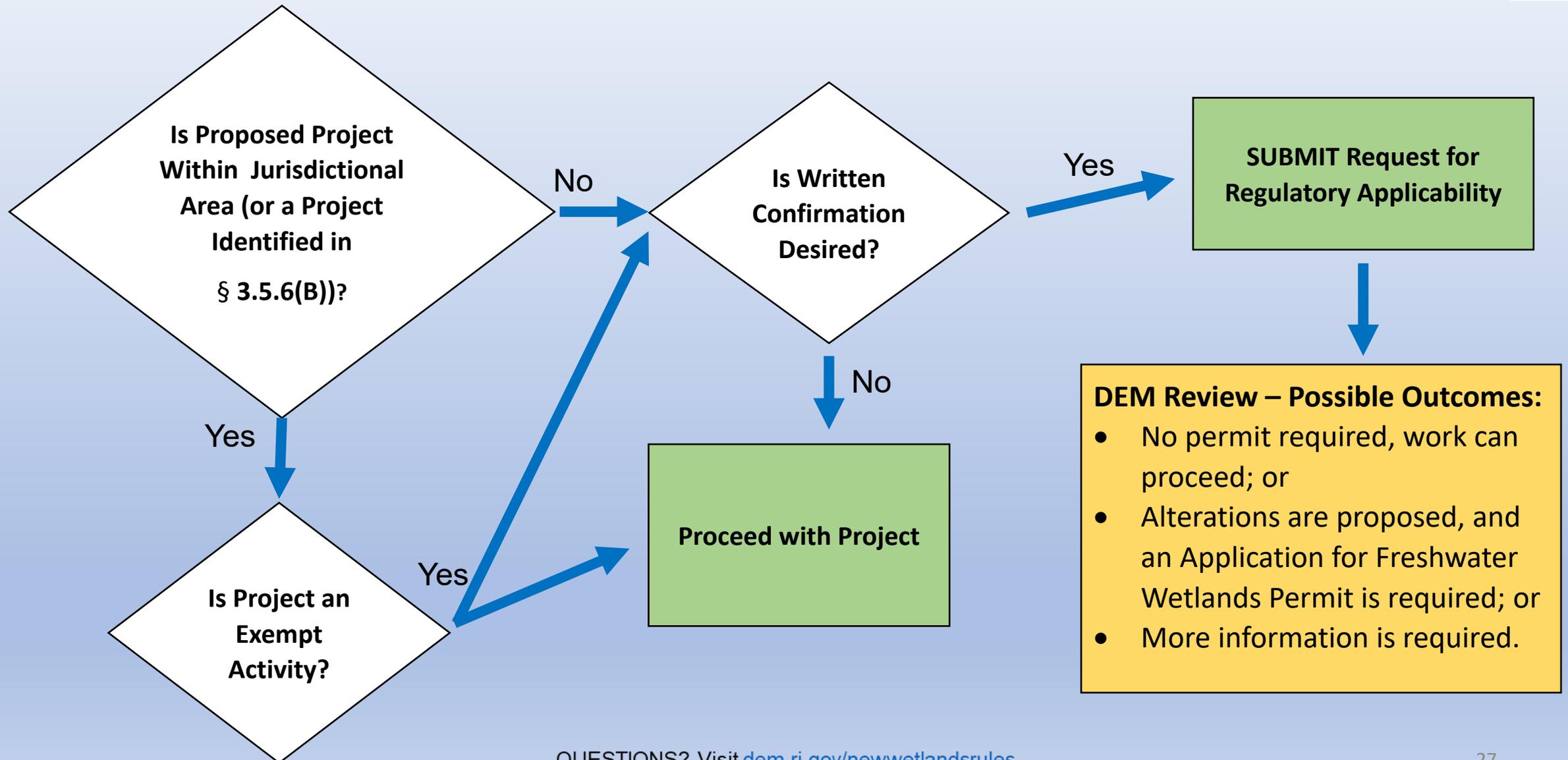
Permit Application Types- Unchanged (§3.8.1)

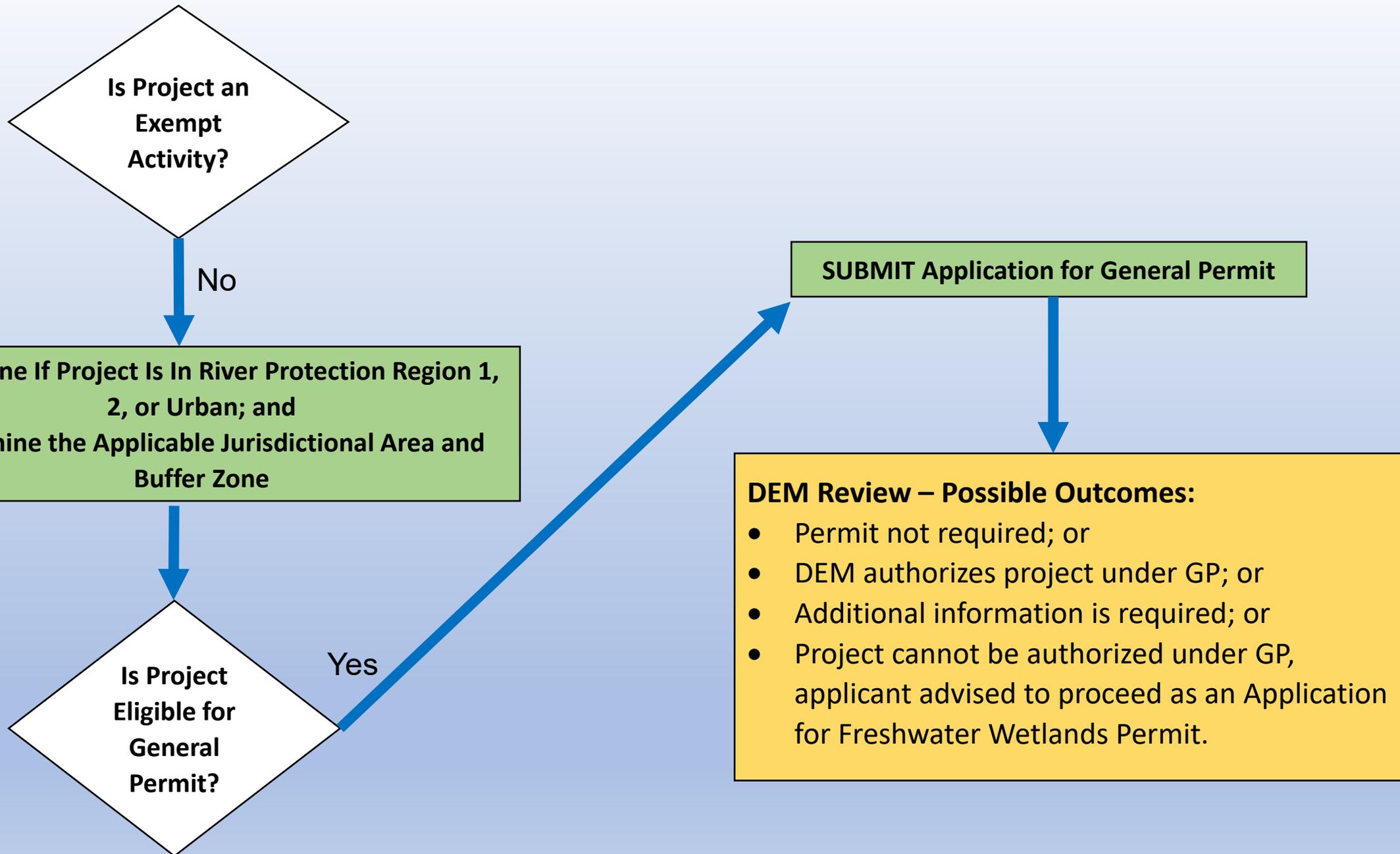


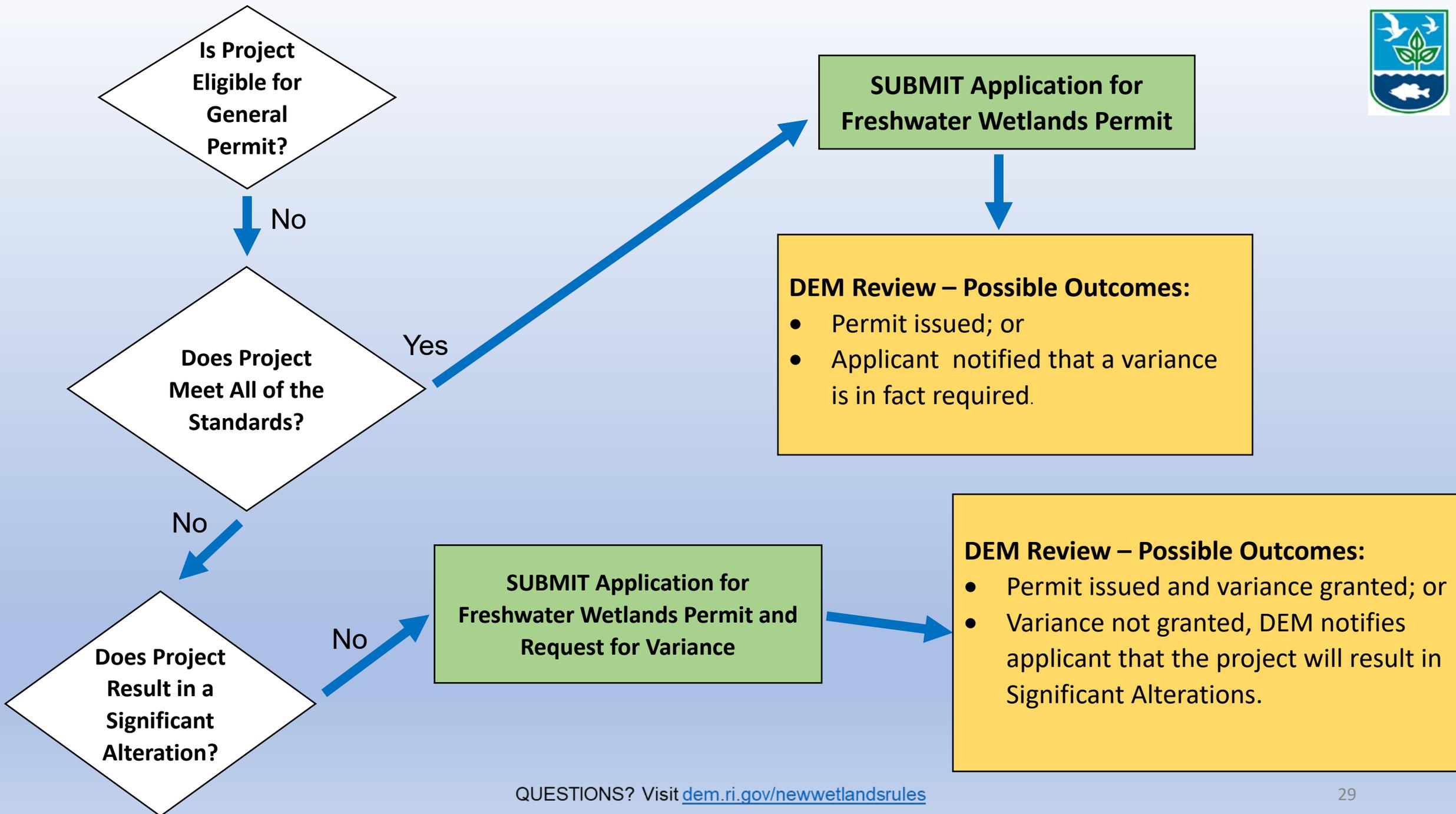
- Request to Verify Wetland Edges
- Request for Regulatory Applicability
- Application for Emergency Alteration
 - Application for Permit Renewal
 - Application for Permit Modification
 - Application for Permit Transfer
- Application Relating to Farmers (not subject to new Wetland Jurisdictional Areas)

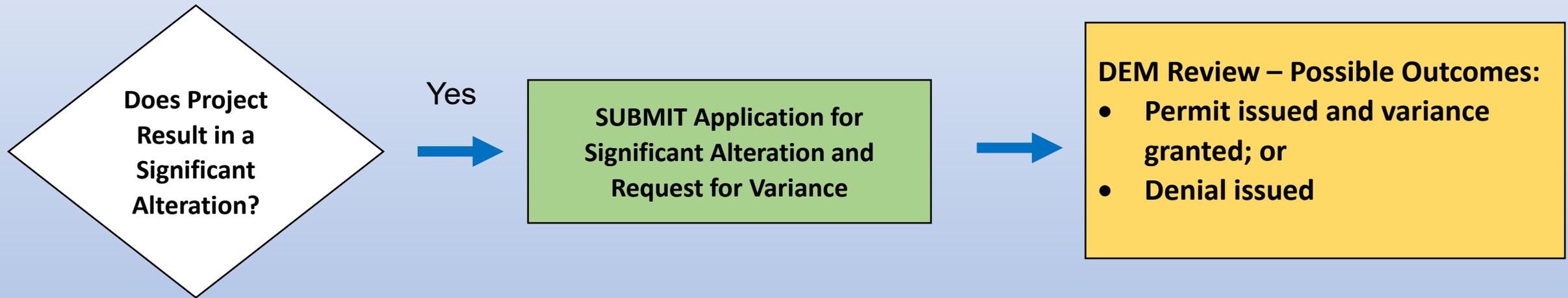


Pathways to Permits











Permit Expiration and Renewals (Updated)

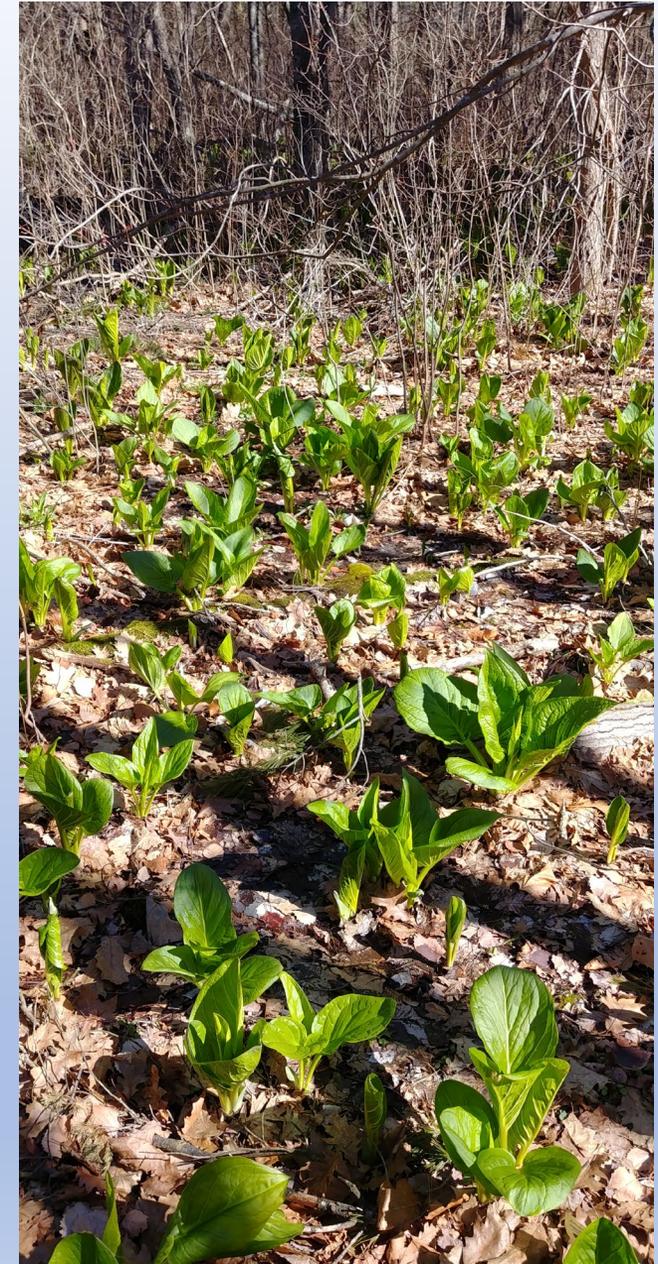
- Application for Freshwater Wetlands Permit (§3.11.4):
 - **Good for 5 years with the opportunity for 1 additional one-year renewal** (Change from 4 years with opportunity for 1 additional two-year renewal).
- Application for Significant Alteration (§3.12.6):
 - **Good for 1 year with the opportunity to renew 3 times for a total for 4 years** (Removed the provision for a 4th renewal).
- Request to Determine the Presence of Jurisdictional Area & Request to Verify Wetland Edges (§3.9.2 & §3.9.3)
 - **Good for 5 years with no renewals** (Change from 4 years with no renewals).
- Cannot renew a permit that was issued under a joint FWW/OWTS application (same as previous rules).



Questions on Application Types?

Common Submittal Requirements Across All Application Types (§3.8)

- Application Forms
- Signatures
- **Site Plans**
- FWW Edge Delineation & Related Requirements
- Additional Site Work Requirements
- Requirements Regarding Use of Professionals
- Fees





Submittal Requirements: Site Plans and Depiction of Freshwater Wetlands (§ 3.8.4 & 3.8.5)

All site plans must accurately depict the freshwater wetland edges, buffers zones, buffers and jurisdictional area as follows:

1. The edge of any freshwater wetlands relied on for depiction of associated buffer zones;
2. The edge and direction of flow of any river, stream, area subject to flooding or area subject to storm flowage;
3. The outer extent of any applicable buffer zone;
4. The outer extent of the jurisdictional area;

Submittal Requirements: Site Plans and Depiction of Freshwater Wetlands (§ 3.8.4 & 3.8.5)



4. The edge and elevation of any flood plain and the limit of any floodway, except the Department may grant an exception to this requirement when:

- a. Pre-determined one hundred (100) year flood elevations are not available from published sources including previous engineering studies; and
- b. When a Registered Professional Engineer provides clear and convincing documented evidence that the project site is above any probable one hundred (100) year flood elevation;

[RIDEM Guidance Pertaining to Floodplain and Floodways](#)



Submittal Requirements

- **Application for Freshwater Wetland Permit (§3.11.2)**
 - Must document how each Standard (§3.7.1) has been met
 - Must address Avoidance and Minimization and other Variance requirements in a written narrative **only** when all standards cannot be met
 - §3.11.2(A)(4): Major Land Development Projects or Major Subdivisions will require documentation of approval at local level **prior to** application to DEM



Submittal Requirements

- **Application for Significant Alteration (§3.12.2)**
 - Must document how each Standard (§3.7.1) has been met
 - Must address Avoidance and Minimization and other Variance requirements in a written narrative (**always necessary**)
 - §3.12.2(A)(2)(i): Major Land Development Projects or Major Subdivisions will require documentation of approval at local level **prior to** application to DEM



Questions?



- <http://www.dem.ri.gov/programs/water/permits/pn-wetland.php>
- Please see the chat for a link to submit a question on the Rules and a link to a short survey for feedback on this presentation.

Photo Credit: Shawna Smith and Nancy Freeman, RIDEM

QUESTIONS? Visit dem.ri.gov/newwetlandrules