



RIPARIAN BUFFERS

LEGAL CONSIDERATIONS

Presented by: Eliza Heins, Staff Attorney
Environmental Quality Branch

A photograph of a library shelf filled with rows of dark brown leather-bound law books. The books are arranged in perspective, receding into the background. Several books have black labels with gold lettering that reads "LAW REPORTS". The word "TAKINGS" is superimposed in large, bold, white capital letters across the center of the image.

TAKINGS

FIFTH AMENDMENT

- *Nor shall private property be taken for public use, without just compensation*
- Applied to the states through the Fourteenth Amendment

Permanent Physical Occupation = Per Se Taking

A law allowing television companies to install cable equipment in apartments without landlord's consent was an unconstitutional taking.

Loretto v. Teleprompter Manhattan, 485 U.S. 419 (1982)

Essential Nexus Required for Permit Conditions

A permit condition requiring public beach access as a condition of building a single-family home was unconstitutional because **there was no essential nexus** between the access requirement and the project's alleged impacts.

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)

Permit Conditions Must Be Roughly Proportional

Even where an essential nexus exists, a permit condition requiring dedication of land for a **stream buffer and public bicycle path** as part of a store expansion was unconstitutional because it was **not roughly proportional** to the project's impacts.

Dolan v. City of Tigard, 512 U.S. 374 (1994)

Total Deprivation of Economically Beneficial Use = Per Se Taking

A coastal protection regulation that prevented an owner from building on his property, **eliminating all economically beneficial use**, was a per se taking requiring compensation. Lucas v. South Carolina Coastal Council, 503 U.S. 1003 (1992)

Actual Adverse Impact Required to Deny a Permit

A wetlands commission may not deny an application **absent evidence of actual adverse impact** to a wetland or watercourse. This holding reinforces the need for **nexus and proportionality** when regulating activity near protected resources.

River Bend Associates, Inc. v. Conservation & Inland Wetlands Commission, 269 Conn. 57 (2004)

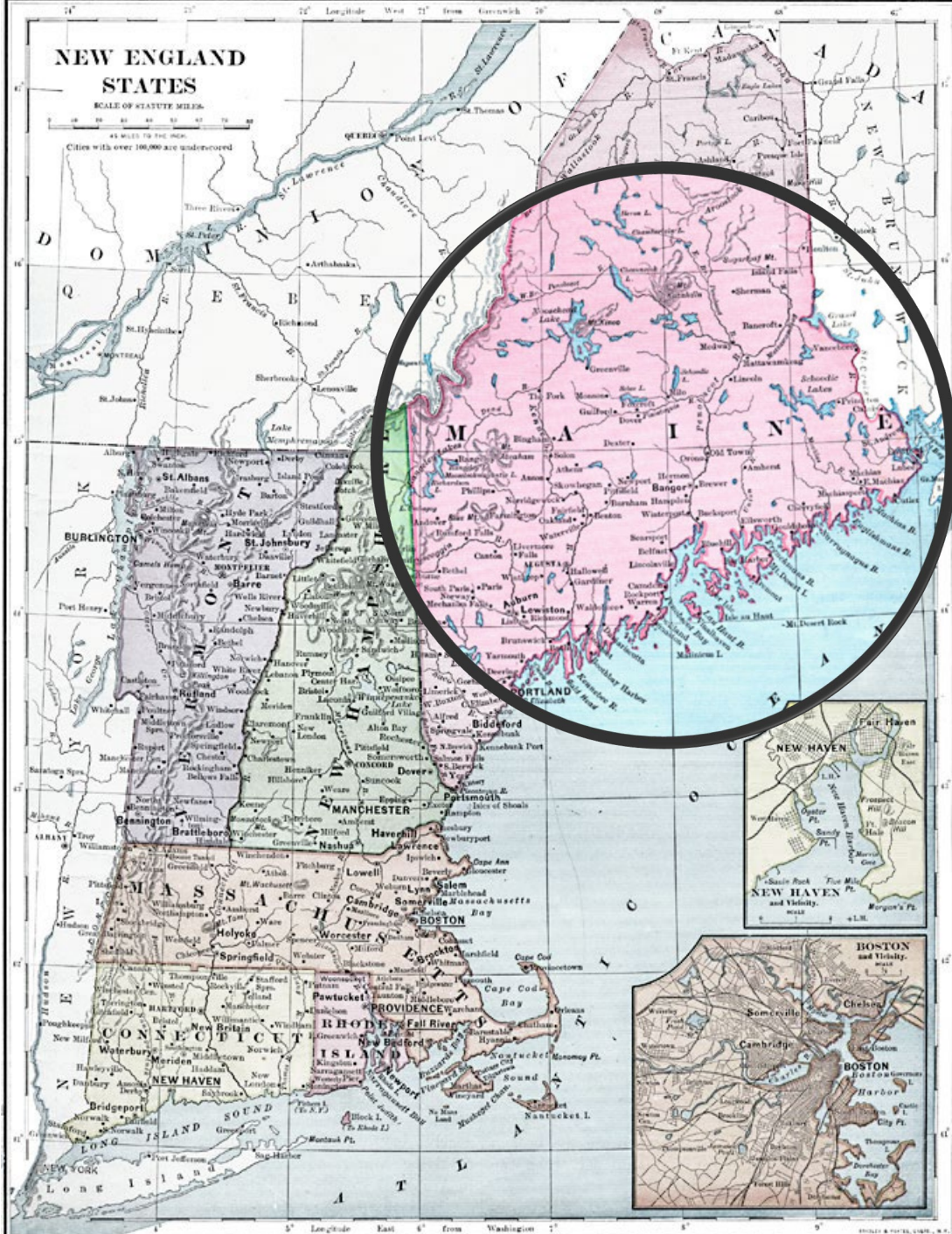
NEW ENGLAND LAWS

Called	Shoreline Zoning
Administered by	Local Zoning
Permit in buffer	Yes, zoning permit
Buffer permit considerations	Heightened requirements in buffer zones
Buffer dimensions	<ul style="list-style-type: none">Streams: 75 feet from high water markRivers: 250 feet from high water mark
Buffer permit exemption examples	<ol style="list-style-type: none">Commercial fisheries vegetative clearingDowntown decks over rivers, trails, walkways over riversSome timber harvesting
Variances or wavers	Pre-existing non-conforming uses

Maine

“To aid in the fulfillment of the State's role as trustee of its waters and to promote public health, safety and the general welfare, it is declared to be in the public interest that shoreland areas be subject to zoning and land use controls.”
Me. Rev. Stat. 38 § 435

PROTECTION AND IMPROVEMENT OF WATERS
Me. Rev. Stat. 38 §§ 435-448



Called	Woodland Buffer
Administered by	State Department of Environmental Services
Permit in buffer	Yes
Buffer permit considerations	Natural ground cover removal prohibited unless approved by DES; otherwise, limited vegetation removal within 50 feet (point system)
Buffer dimensions	50 feet; 150 feet from reference line
Buffer permit exemptions	<ol style="list-style-type: none">1. Agriculture2. Timber Harvesting3. Adding up to 900 sq ft of impervious area
Variances or waivers	Variances & waivers at DES discretion

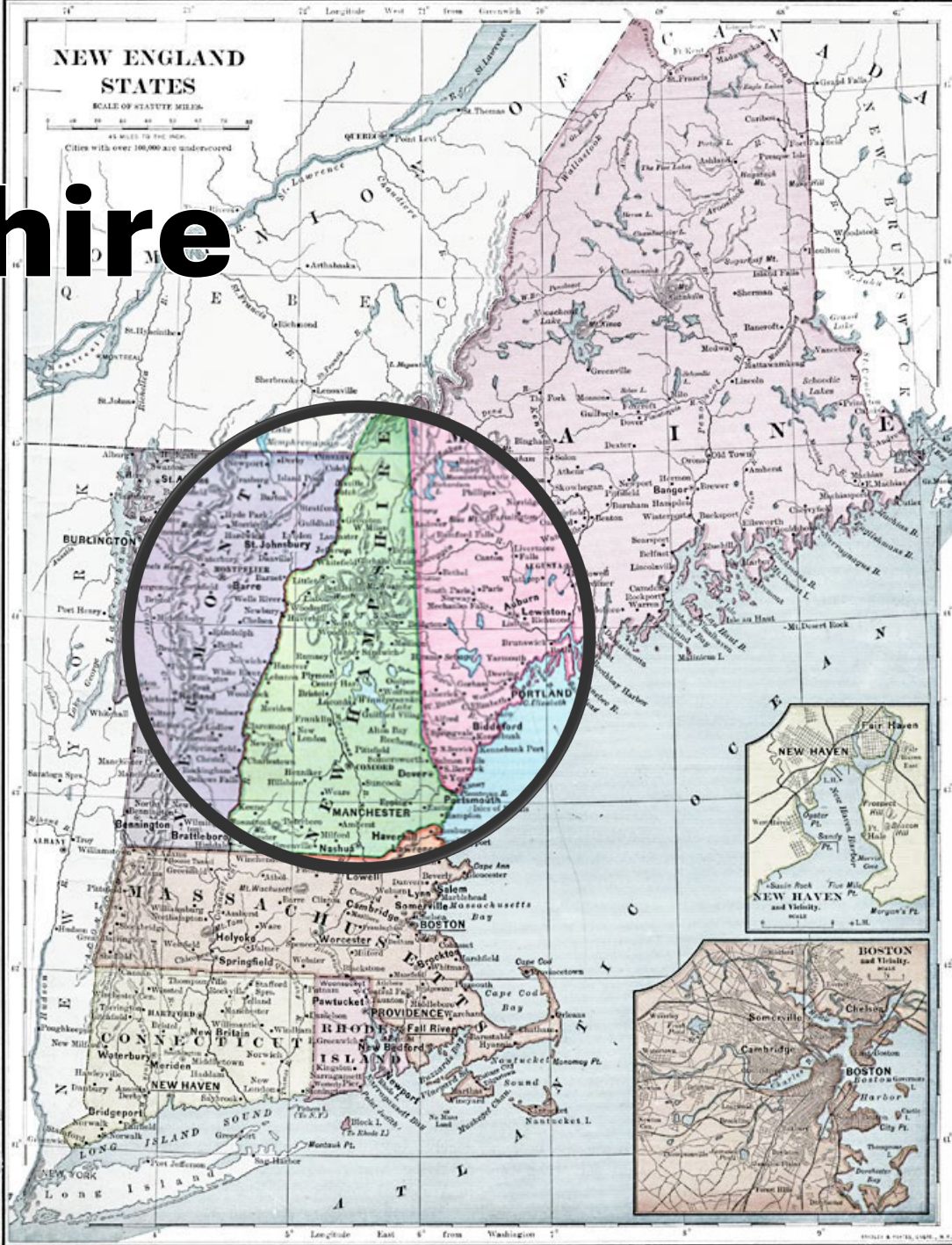
New Hampshire

“No person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from the department to ensure compliance with this chapter.”

N.H. Rev. Stat. § 483-B:5.I(a)

SHORELAND WATER
QUALITY PROTECTION ACT;
REGULATIONS

N.H. Rev. Stat. §§ 483-B:1 –
B:22; N.H. Code Admin. R.
Env-Wq 1400

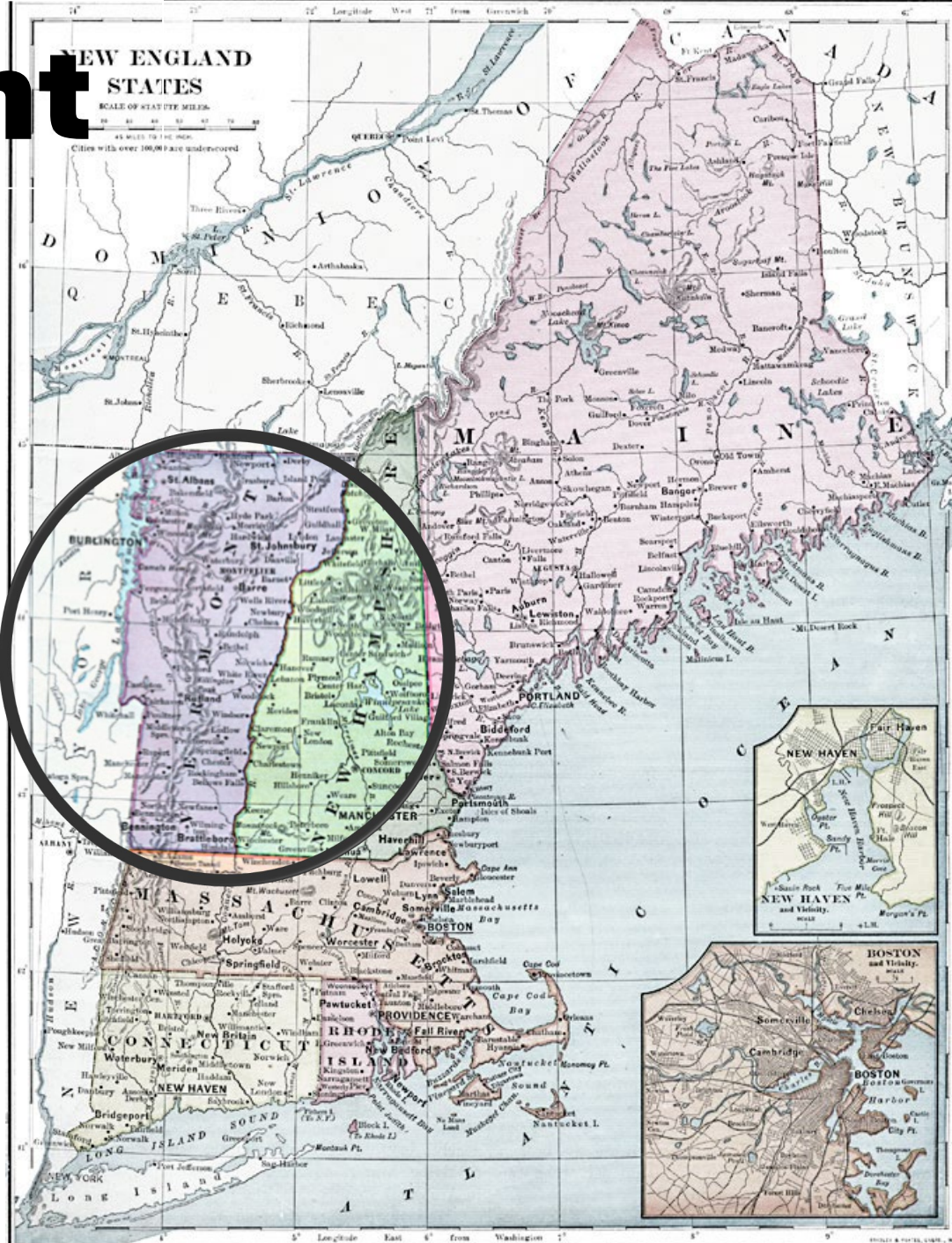


Called	Shoreline [protection]
Administered by	District Commissions
Permit in buffer	Yes
Buffer permit considerations	As far as possible & reasonable: (i) retain the shoreline and the waters in their natural condition, (ii) allow continued access to the waters and the recreational opportunities provided by the waters, (iii) retain or provide vegetation which will screen the development or subdivision from the waters, and (iv) stabilize the bank from erosion, as necessary, with vegetation cover
Buffer dimensions	None for watercourses, 50-100 feet for wetlands
Buffer permit exemptions	Downtown developments have different requirements

Vermont

“No person shall . . . or commence construction on a subdivision or development or commence development without a permit.”
Vt. Stat. tit. 10, § 6086

[VERMONT ACT 250](#)
Vt. Stat. tit. 10, §§ 6081-93

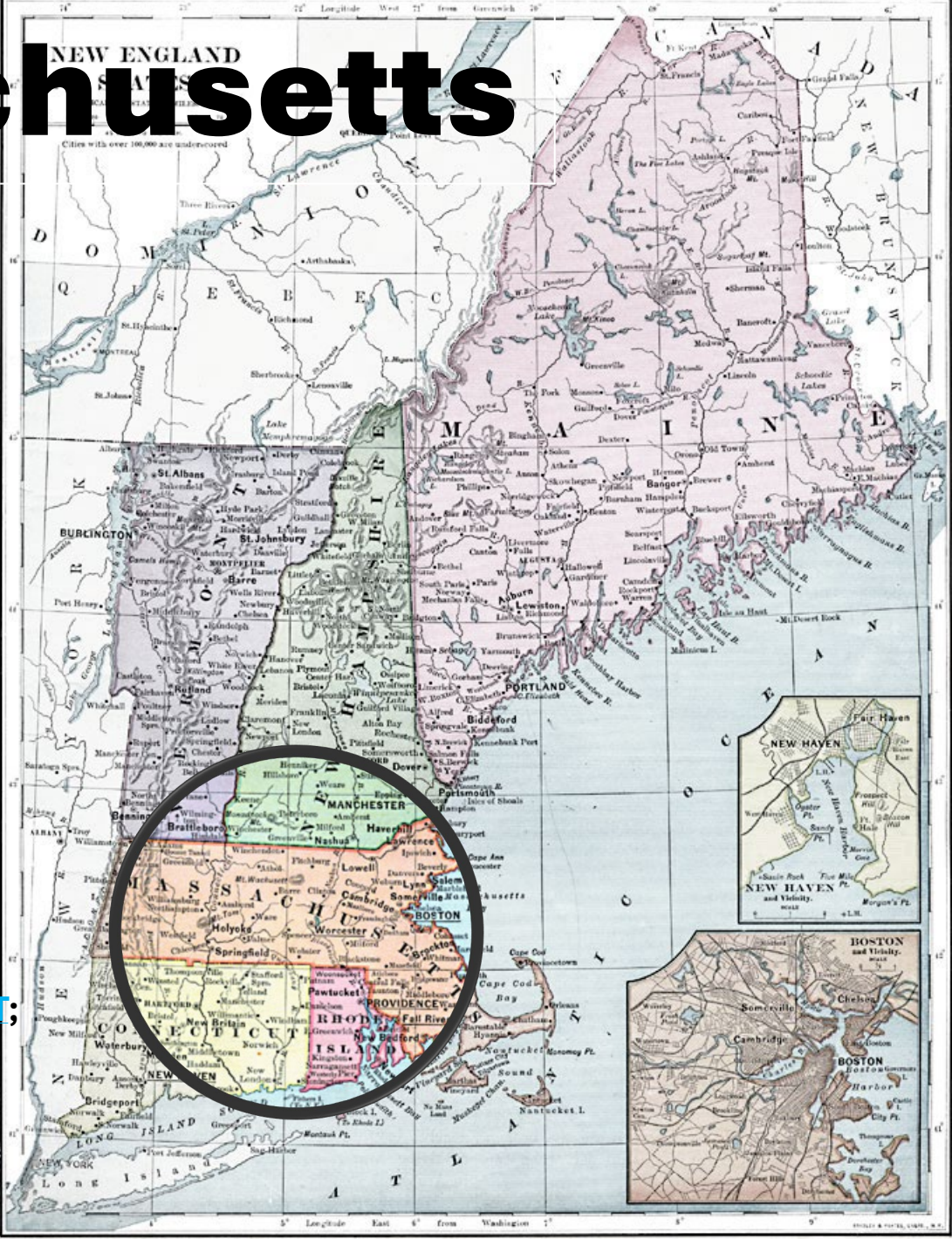


Called	Riverfront Areas
Administered by	Conservation Committees
Permit in buffer	Yes, “order of conditions”
Buffer permit considerations	Permit only if the project does not greatly harm the riverfront area and that there is no practical and economically feasible alternative
Buffer dimensions	Urban: 25 feet Other: 200 feet
Buffer permit exemption examples	<ol style="list-style-type: none">1. Routine maintenance of lawfully existing lawns, gardens and landscaping2. Agricultural or aquacultural use3. Construction & maintenance of piers, docks, boat houses, landings
Variances or waivers	<ul style="list-style-type: none">• Pre-existing (before 1996)• Maintenance and repair of existing structures

Massachusetts

“No person shall remove, fill, dredge or alter any bank, riverfront area. . . without filing written notice of his intention to so remove, fill, dredge or alter. . . without receiving and complying with an order of conditions. . .”
Mass. Gen. Laws ch. 131 § 40

WETLANDS PROTECTION ACT; REGULATIONS
Mass. Gen. Laws ch. 131, § 40; 310 Mass. Code Regs. 10.58



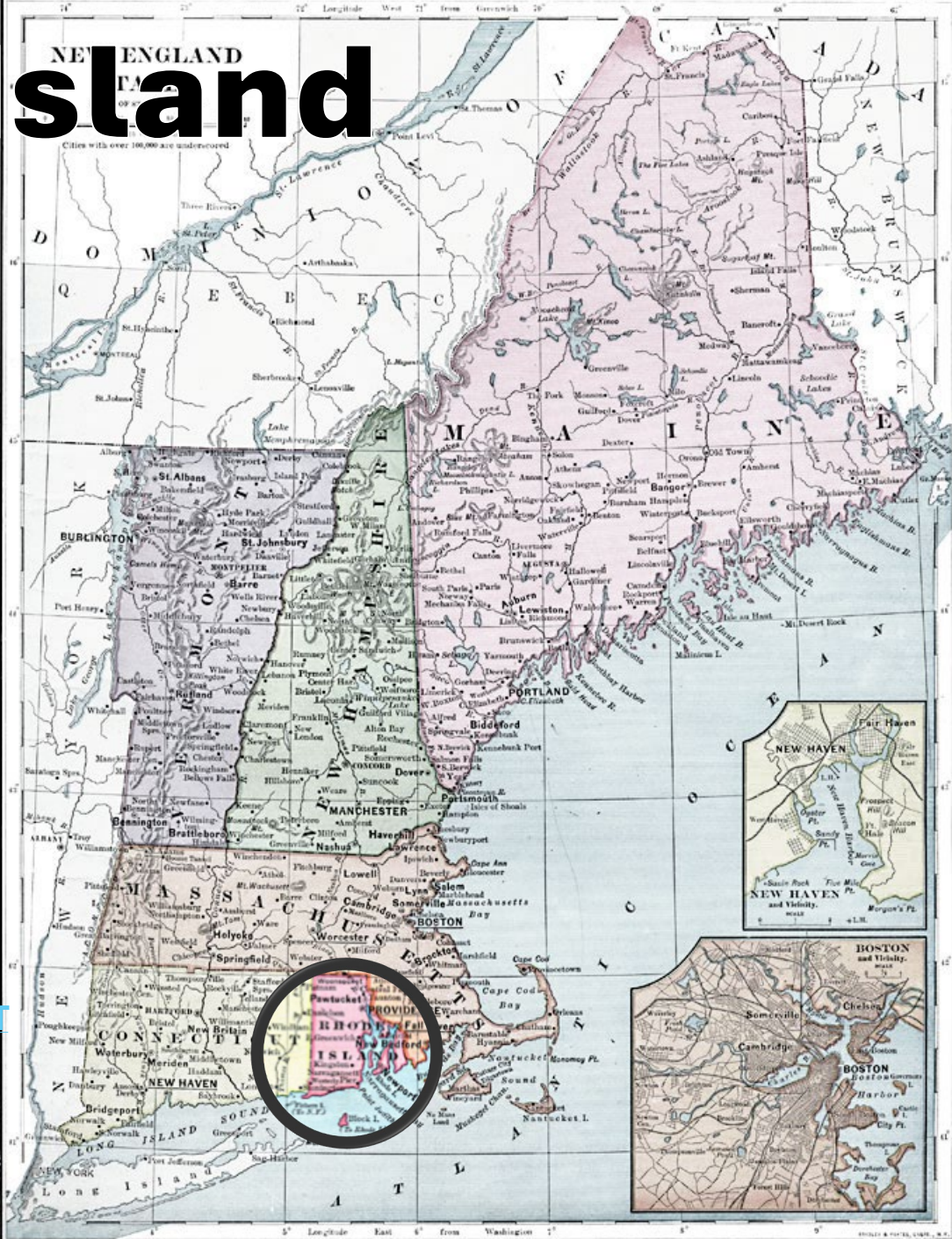
Called	Freshwater Buffers and Setbacks
Administered by	Department of Environmental Management
Permit in buffer	Yes
Buffer permit considerations	26 considerations, including wildlife diversity; degradation in natural characteristics, elimination of traditional human access to rivers, streams or buffers
Buffer dimensions	15 to 65 feet
Buffer permit exemption examples	<ol style="list-style-type: none">1. Cutting vegetation on existing or approved lawn2. Farming and ranches3. New pedestrian trails
Variances or waivers	Variances allowed General permit (minimal or no alteration of buffer)

Rhode Island

“No person . . . may excavate, drain, fill, place trash . . . divert water flows into or out of . . . or otherwise alter the character of any freshwater wetland, buffer or floodplain . . . without first obtaining approval of the director of the department of environmental management”
R.I. Gen. Laws § 2-1-21(a)(1)

FRESHWATER WETLANDS ACT REGULATIONS

R.I. Gen. Laws §§ 2-1-18 to 2-1-24; 250-150 R.I. Code R. §§ 3.1 to 3.24



Called	Upland Review Area
Administered by	Local Inland Wetlands and Watercourses Commissions
Permit in buffer	Yes
Buffer permit considerations	Consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, the protection of life and property from natural disasters, and public policy set forth in sections 22a-28 to 22a-35. Denial requires actual adverse impact to wetlands or watercourse
Buffer dimensions	Generally 100 feet
Buffer permit exemption examples	<ol style="list-style-type: none">1. Uses incidental to residential property2. Outdoor recreation3. Grazing, farming up to 3 acres
Variances or waivers	None

Connecticut

“No regulated activity shall be conducted upon any wetland without a permit.

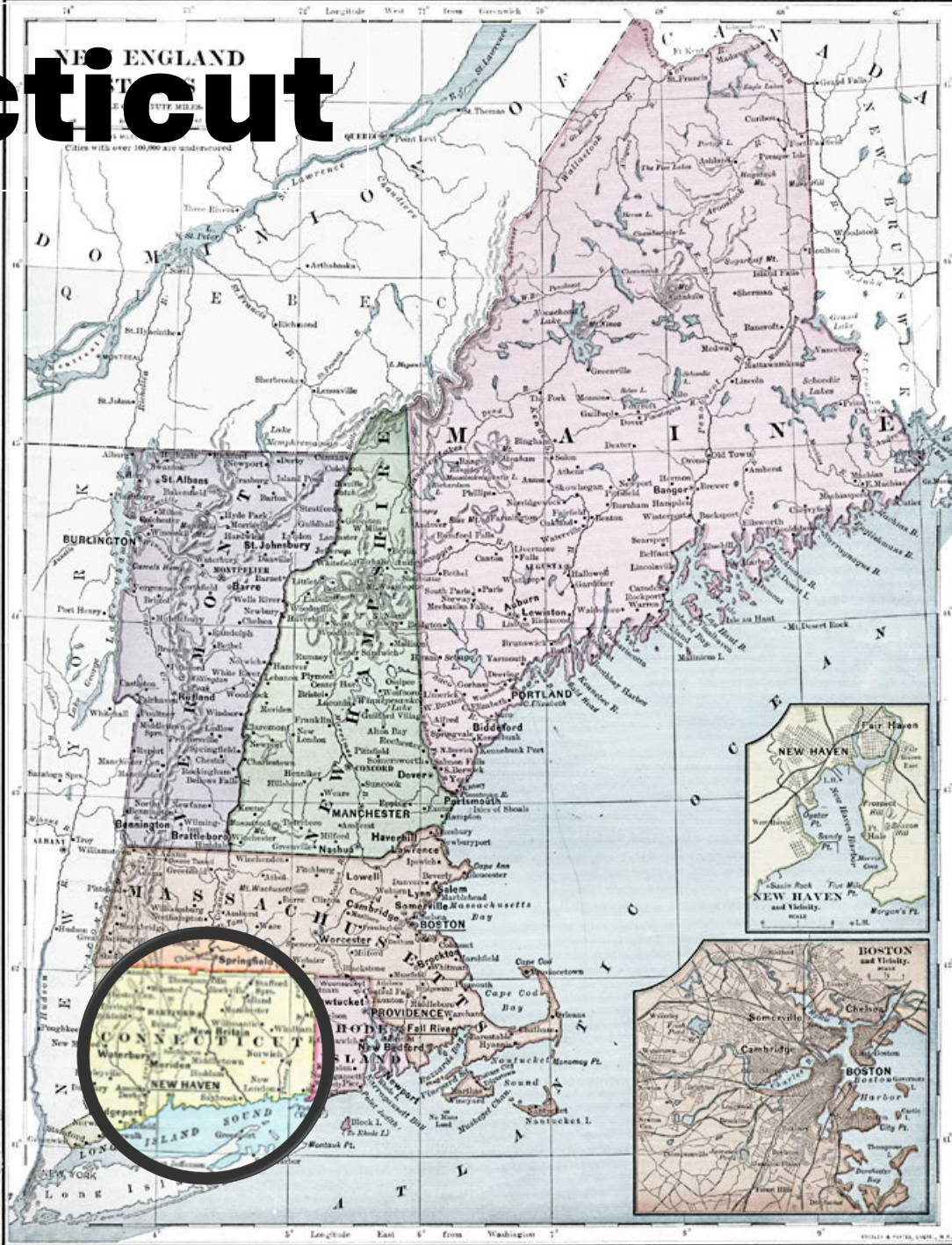
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“If a municipal wetlands agency regulates activities within areas around wetlands or watercourses, such regulation shall. . . apply only to those activities which are likely to impact or affect wetlands or watercourses.”

Conn. Gen. Stat. §§ 22a-32(a), 42a(f)

INLAND WETLANDS AND WATERCOURSES ACT

Conn. Gen. Stat. §§ 22a-28 to 45d



Summary

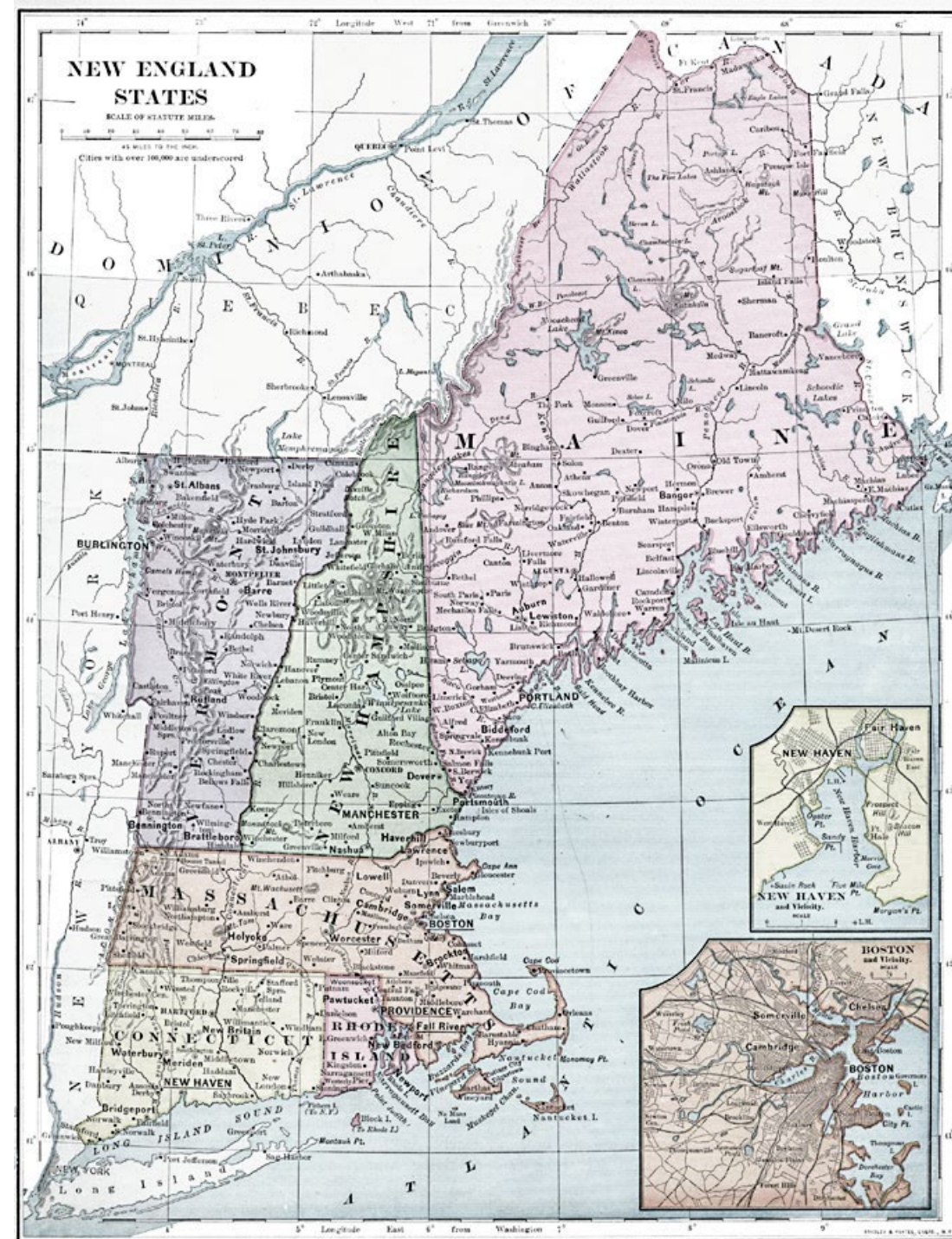
Most New England states use **set buffer distances** from watercourses (15–250 ft)

Connecticut relies on **upland review areas**, generally around 100 ft

All states, including Connecticut, require **permits** for work within these areas and allow limited exemptions

No state imposes an **absolute ban** on vegetation removal
Categorical prohibitions raise constitutional takings concerns

Some states administer the program at a **state** level, many states, including Connecticut, administer at a **local** or **regional** level





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