

**RHODE ISLAND GOVERNMENT REGISTER
AMENDED PUBLIC NOTICE OF PROPOSED RULEMAKING**

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Title of Rule: Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act

Rule Identifier: 250-RICR-150-15-2

Rulemaking Action: Proposed Adoption

Important Dates:

Date of Public Notice: 11/23/2020

Hearing Date: 12/17/2020

End of Public Comment: 01/22/2021

Authority for this Rulemaking:

R.I. Gen. Laws §§ 2-1-18 through 2-1-27

Summary of Rulemaking Action:

The Department proposes to adopt new freshwater wetland rules in accordance with the amendments set forth in R.I. Gen. Laws §§ 2-1-18 through 2-1-27 to strengthen the protection of freshwater wetlands and to provide clarity and predictability and streamlining of the regulatory framework. The new rules will replace the existing rule which will be repealed. The statutory amendments were enacted in response to recommendations of a Legislative Task Force as described in the Final Report, dated December 2014, Rhode Island Division of Planning.

Following is a brief summary of the proposed rules, 250-RICR-150-15-2:

1. § 2.4 incorporates new and revised definitions of certain terms including, but not limited to, freshwater wetlands, jurisdictional area, buffer and buffer zone.
2. § 2.5.1, the applicability rule, is clarified by identifying landscape features that are not considered freshwater wetlands.
3. § 2.5.2 describes the additional areas that will fall under the Department jurisdiction consistent with the expansion of the authority prescribed in the amended law.
4. § 2.6, the list of exempt activities, is modified by adding new exemptions or clarifying the language of existing exemptions.
5. §§ 2.7.1(A) and (B) of the rule specify freshwater wetlands and buffer protection standards the latter of which are new. The buffer standards reflect a tiered protection

with buffer zone widths specified between 25 feet and 200 feet for the different freshwater wetland resources being protected. This section also includes rules addressing the creation of new buffer on existing disturbed properties and a procedure for in-fill lots.

6. § 2.7.1(C) specifies construction setback requirements.
7. § 2.7.2 presents the review criteria pertaining to the review of applications for proposed projects or activities.
8. § 2.7.3. establishes a new variance procedure for applicants proposing projects or activities that do not meet certain protection standards (§§ 2.7.1(A) to (F)).
9. In § 2.8.9 the application fee schedule is simplified and the fee for municipal government projects is eliminated.
10. § 2.10 establishes the new process for the issuance of general permits.
11. § 2.13 is organized to more clearly present rules applicable to farming and ranching activities.
12. § 2.16 includes new language on a municipal petition process, as required by the amended law.
13. § 2.23 provides additional detail, including tables, to identify the applicable buffer zone designations.
14. § 2.24 includes a map which is used to distinguish buffer zone requirements by the designation of regions.
15. § 2.19 discusses the relationship of the new rules to existing applications and the municipal approval process.
16. § 2.20 specifies a 180-day phase in period before the new rules would take effect.
17. Other changes in wording for clarity and consistency have been made throughout the rules.

Additional Information and Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed adoption until January 22, 2021 by contacting the appropriate party at the address listed below:

Carol Murphy
Department of Environmental Management

Office of Water Resources
235 Promenade Street
Providence, RI 02908
carol.murphy@dem.ri.gov

Public Hearing:

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed adoption shall be held on December 17, 2020 at 1:00 pm at <https://us02web.zoom.us/j/86978437441?pwd=SFp2N1Q5YnJMdGorZG>, Zoom, Meeting ID: 869 7843 7441, Passcode: 751780, Dial: 1 929 205 6099, RI 02908 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-423-1927 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Regulatory Analysis Summary and Supporting Documentation:

In the development of the proposed rules consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. The Agencies, DEM and CRMC, have determined that that the benefits of the proposed rules justify the costs of the proposed rules and that the proposed rules achieve the objectives of the authorizing statute in a cost-effective manner over other alternatives.

For full regulatory analysis or supporting documentation contact the agency representative listed above.

For full regulatory analysis or supporting documentation see agency contact person above.