

## **250-RICR-150-15-3**

# **TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

## **CHAPTER 150 – WATER RESOURCES**

### **SUBCHAPTER 15 – WETLANDS**

#### **PART 3 – Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act**

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### **3.1 Authority and Purpose**

- A. Authority: These Rules and Regulations (the Rules) are promulgated pursuant to R.I. Gen. Laws §§ 2-1-20.1, 42-17.1-1 *et seq.*, 42-17.6-1 *et seq.*, 46-23-6, and in accordance with R.I. Gen. Laws § 42-35-1 *et seq.*
- B. Purpose: These Rules are promulgated to:
  - 1. Describe the Department's authority to administer and enforce R.I. Gen. Laws §§ 2-1-18 through 2-1-27; the Freshwater Wetlands Act (the Act); and
  - 2. Preserve, protect and restore the purity and integrity of all freshwater wetlands, buffers and floodplains in the State of Rhode Island so that these resources shall be available for all beneficial purposes, and thus protect the health, welfare and general well-being of the people and the environment of Rhode Island.

### **3.2 Administrative Findings**

- A. The declarations of intent and public policy enumerated in R.I. Gen. Laws §§ 2-1-18 and 2-1-19 are hereby adopted as the administrative findings upon which these Rules are based.
- B. Consistent with these declarations, the Department makes the following findings:
  - 1. Freshwater wetlands, buffers and floodplains are ecological systems performing functions that directly benefit the health, welfare and general well-being of people and the environment.
  - 2. Any such freshwater wetland, buffer and floodplain functions as an integrated ecological system, no portion or component of which is less worthy of regulatory protection than the system as a whole. Buffers and floodplains are important integral components of the flowing body of water or the freshwater wetlands with which they are associated. It has been established that maintaining lands adjacent to freshwater wetlands as naturally vegetated buffers protects the functions and values of wetlands and that such buffers in and of themselves perform vital ecological functions.
  - 3. Freshwater wetlands, buffers and floodplains perform specific functions and support specific values, including but not limited to the following:
    - a. Wildlife and Wildlife Habitat: Freshwater wetlands and buffers are important areas for the production and maintenance of a diversity of wildlife. Freshwater wetlands and buffers provide habitat for individual species and communities of animals and plants. Animals include both game and non-game species, which may be either

obligate or facultative, and which may be permanent residents, or they may be seasonal or transient in nature. Freshwater wetlands serve as travel corridors; nesting, feeding, resting, nursery and brood-rearing sites; drinking water sources and escape cover; and provide seasonal breeding, migration and over-wintering habitat for wildlife. Freshwater wetlands and buffers provide critical habitat for some plant and animal species and also provide habitat for rare animal and rare plant species.

- b. Recreation and Aesthetics: Freshwater wetlands and buffers support active and passive recreational and aesthetic values that are important to the general public. They provide the opportunity for recreational activities, including but not limited to: hunting, fishing, trapping, cross-country skiing, ice skating, boating, water-skiing, canoeing, camping, swimming, bicycling, hiking, walking, horseback riding, harvesting of natural foods or plant materials, birdwatching and other animal observation, education and nature studies, and photography. Aesthetic values include, but are not limited to, the visual, aural and cultural qualities of the freshwater wetland and buffer. Without limitation, these include the freshwater wetland's and buffer's prominence as a distinct feature in the local area, including its value as open space; whether it is a rare freshwater wetland type; whether it offers or provides suitable habitat for any rare animal or rare plant species; whether it has any outstanding or uncommon geomorphologic features; or whether it contains or may contain material of archaeological, historical, or cultural significance.
- c. Flood Protection: Freshwater wetlands, buffers, setbacks and floodplains protect life and property from flooding and flood flows by storing, retaining, metering out and by otherwise controlling flood waters from storm events. Freshwater wetlands, buffers and floodplains also control the damaging impacts of flood flows by providing frictional resistance to flood flows, by dissipating erosive forces, and helping to anchor the shoreline.
- d. Surface Water and Groundwater: Freshwater wetlands and buffers provide and maintain surface and groundwater supplies by acting as recharge or discharge areas, and, in the case of some ponds, acting as surface water reservoirs. Although groundwater recharge and discharge functions and values may vary seasonally, freshwater wetlands and buffers, either individually or cumulatively, may be an important factor in replenishing ground and surface water supplies, maintaining stream flows, transporting surface waters, and storing and distributing surface waters and groundwater during periods of drought.

- e. Water Quality: Freshwater wetlands and buffers protect and maintain water quality by retaining and removing nutrients; filtering and removing pollutants; removing sediments; producing oxygen; reducing turbidity; maintaining or modifying stream flow; maintaining temperature and oxygen regimes in both standing and flowing surface waters; and providing and maintaining safe drinking water supplies.
- 4. The cumulative impact of incremental alterations to freshwater wetlands, buffers and floodplains that occur at different times or in different locations within the same system, or both, may constitute a significant alteration, even if a single proposed alteration may not in and of itself constitute a significant alteration.
- 5. Consistent with the purposes of the Act, it is the public policy of the State to preserve the purity and integrity of all freshwater wetlands, buffers and floodplains in Rhode Island. Random, unnecessary or undesirable alteration of any freshwater wetland, buffer or floodplain is contrary to the Act and not in the best public interest because of the adverse impacts of such alterations on their functions and values.
- 6. The Department recognizes that dams have created freshwater wetlands and buffers that may provide important wildlife habitats and recreational areas and may provide other important functions, values and benefits such as flood storage areas. Also, consistent with its responsibilities under R.I. Gen. Laws Chapter 46-19, the Department finds that many dams in the State are in disrepair and may present safety hazards to the public. The Department hereby acknowledges that, as a result of an analysis of alternatives for addressing a dam's state of disrepair, the removal or substantial alteration of a dam may be required by the Department for reasons of public safety. The Department finds that the removal or substantial alteration of a dam for public safety reasons may be deemed consistent with the authority and purposes of these Rules provided that no other feasible alternative is available and impacts related to the dam's removal or alteration are assessed and acceptably mitigated in accordance with these Rules.

### **3.3 Incorporated Materials**

- A. These Regulations hereby adopt and incorporate the "Rare Native Animals of Rhode Island" (2006) prepared by the Department by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these Regulations.
- B. These Regulations hereby adopt and incorporate the "Rhode Island Rare Plants" (2016) prepared by the Rhode Island Natural History Survey from R. W. Enser (2007) and the Rhode Island Wildlife Action Plan Appendix 1d (2015), by

reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these Regulations.

- C. These Regulations hereby adopt and incorporate the U.S. Army Corps of Engineers "National Wetland Plant List: State of Rhode Island Wetland Plant List" (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these Regulations.

### **3.4 Definitions**

- A. For the purposes of these Rules, the following terms shall have the following meanings:
1. "AAD" means the Department's Administrative Adjudication Division for Environmental Matters.
  2. "Accessory structure" means a structure that has an ancillary or supplementary function to the main use of the property. Accessory structures include, but are not limited to, amateur radio towers; flag poles; swing sets; slides; decks; patios; gardens; sheds; in-ground or above-ground swimming pools; fences that do not span or obstruct public access to rivers, streams, and other waterbodies (along and within boundaries or areas such as existing home lawns and driveways); treehouses; drinking water wells with a volume of withdrawal no greater than five hundred (500) gallons a day; walls; stairs; walks; and pervious driveways.
  3. "Act" means the Freshwater Wetlands Act as set forth in R.I. Gen. Laws §§ 2-1-18 through 2-1-27, as from time to time amended.
  4. "Alter" or "alteration" means to change (act of changing) the character of a freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage as a result of activities within or outside of these resources. Such activities include, but are not limited to, the following: Excavating; draining; filling; placing trash, garbage, sewage, road runoff, drainage ditch effluent, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; diverting water flows into or out of; diking; damming; diverting; clearing; grading; constructing in; adding to or taking from; or other activities that individually or cumulatively change the character of any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage.
  5. "Aquatic base flow" or "ABF" means minimum river or stream flow conditions necessary to sustain indigenous aquatic fauna and flora, as determined by one (1) of the following:



- a. Where a minimum of twenty-five (25) years of U.S. Geological Survey gauging records exist on a river or stream that is basically free-flowing, the ABF for all times of the year shall be equivalent to at least the median August flow for the period of record unless spawning and incubation requirements exceed the median August flow; or
  - b. Where a river or stream lacks adequate flow data, or where it is regulated by a dam or upstream diversion, the ABF shall be at least one half (0.5) cubic feet per second per square mile of drainage (cfs/m), unless spawning and incubation requirements exceed this minimum; or
  - c. Where concerns exist regarding spawning and incubation flow requirements, the ABF shall be one (1.0) cfs/m in October/November and four (4.0) cfs/m in April/May for the entire applicable spawning and incubation periods of aquatic fauna; or
  - d. Where a specific in-stream flow study identifies an ABF based upon the specific needs of aquatic fauna or flora, the ABF shall conform to the results of that study, provided the ABF is approved by the Department.
6. "Area subject to flooding" or "ASF" means areas that include, but are not limited to, low-lying areas that collect, hold or meter out storm and flood waters from any of the following: rivers, streams, intermittent streams or areas subject to storm flowage.
7. "Area subject to storm flowage" or "ASSF" means areas that include drainage swales and channels that lead into, out of, pass through or connect other freshwater wetlands or coastal wetlands, and that carry flows resulting from storm events, but may remain relatively dry at other times.
8. "Best management practices" or "BMPs" means generally accepted practices, procedures and management techniques that include, but are not limited to, schedules of activities, prohibitions, maintenance procedures, structural and non-structural methods, and other management approaches to prevent or minimize any reduction of the functions and values associated with freshwater wetlands, buffers or floodplains.
9. "Bog" means consistent with R.I. Gen. Laws § 2-1-20(3), a place where standing or slowly running water shall be near or at the surface during a normal growing season and/or where a vegetational community shall have over fifty percent (50%) of the ground or water surface covered with sphagnum moss (*Sphagnum*) and/or where the vegetational community

shall be made up of one (1) or more of, but not limited to nor necessarily including all of the following: blueberries and cranberries (*Vaccinium*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), sundews (*Drosera*), orchids (*Orchidaceae*), white cedar (*Chamaecyparis thyoides*), red maple (*Acer rubrum*), black spruce (*Picea mariana*), bog aster (*Aster nemoralis*), larch (*Larix laricina*), bog rosemary (*Andromeda glaucophylla*), azaleas (*Rhododendron*), laurels (*Kalmia*), sedges (*Carex*), and bog cotton (*Eriophorum*).

10. "Buffer" means pursuant to R.I. Gen. Laws § 2-1-20(4), an area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition or is to be created to resemble a naturally occurring vegetated area. For the purpose of defining buffer in these Rules, "adjacent to" means land area within the buffer zone.
11. "Buffer zone" means an area of land within a jurisdictional area that is contiguous to a freshwater wetland and the width of which is designated in § 3.23 of this Part.
12. "Completed application" means any application that, in the opinion of the Department, provides all of the requisite information necessary to process the application in accordance with R.I. Gen. Laws § 2-1-22(a) and these Rules.
13. "CRMC" means the Rhode Island Coastal Resources Management Council.
14. "CRMC regulations" means the Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (650-RICR-20-00-9) adopted by the Coastal Resources Management Council pursuant to R.I. Gen. Laws § 46-23-6.
15. "Cumulative impact" means the combined impact on the freshwater wetland, buffer and floodplain environment and their functions and values which may result from past, present and future alterations to the same freshwater wetland, buffer and floodplain system, regardless of what agency or person undertakes such alterations.
16. "Dam" or "damming" means any barrier made by humans, including appurtenant works, that impounds or diverts surface water. Damming means to impound water by means of a dam.
17. "Department" means the Department of Environmental Management (DEM). When used in the context of an action, authorization or permit, it shall mean the agent of the Department duly authorized by the Director to take such action, grant such authorization or approve such permit.

18. "Dike" means a berm or structure that impedes, redirects, diverts, or otherwise controls the flow or elevation of water.
19. "Director" means, as defined by R.I. Gen. Laws § 2-1-20(6), the Director of the Department of Environmental Management or his or her duly authorized agent or agents.
20. "Drain" means to lower the surface water or groundwater elevation, either temporarily or on a permanent basis.
21. "Edge" means the line of intersection or division between:
  - a. Any swamp, marsh, pond, bog, vernal pool or emergent and submergent plant communities and its associated buffer zone; or
  - b. Any flowing body of water and its associated buffer zone; or
  - c. Any floodplain, area subject to flooding or area subject to storm flowage and adjacent non-flooded or non-flowing areas.
  - d. The edge shall be identified according to those procedures set forth in § 3.21 of this Part.
22. "Emergent plant community" means a freshwater wetland characterized by erect, rooted, herbaceous hydrophytic vegetation that is present for most of the growing season in most years, and that may be persistent or non-persistent in nature.
23. "Excavate" means to dig into, cut, quarry, uncover, remove, displace, relocate, or grade any earth, soil, sand, gravel, rock, peat, organic, inorganic or any other similar material.
24. "Existing" means:
  - a. A condition that was present as of the enactment of the Act (July 1971) or its applicable amendments and that has continually remained in the same condition; or
  - b. A condition that is present and was approved under the Act (July 1971) or its applicable amendments; or
  - c. A condition that was present on the effective date of these Rules that was in a previously non-regulated area and which is now, pursuant to these Rules, a regulated area; or
  - d. A condition that has naturally occurred and is currently present.

25. "Facultative wildlife species" means wildlife that utilize freshwater wetlands or buffers as habitat, but generally do not require freshwater wetlands for survival or reproduction.
26. "Farmer" means an individual, partnership or corporation that operates a farm and has filed a Form 1040F or comparable instrument with the U.S. Internal Revenue Service, has a State of Rhode Island farm tax number, and has earned ten thousand dollars (\$10,000.00) gross income on farm products in each of the preceding four (4) years.
27. "Feasible" means capable of being done, executed, accomplished or brought about by engineering standards.
28. "Fill" means dirt, soil, stones, gravel, sand, sediment, tree stumps, brush, leaves, solid waste, debris, garbage, trash, grass clippings, pollutants, or any other material, substance, or structure placed in a freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage; or any action that places such material in a freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage.
29. "Floodplain" means as defined in R.I. Gen. Laws § 2-1-20(7), that land area adjacent to a river or stream or other body of flowing water which is, on the average, likely to be covered with flood waters resulting from a one hundred (100) year frequency storm. A "one hundred (100) year frequency storm" is one that is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to have a one percent (1%) probability of being equaled or exceeded in any given year.
30. "Floodway" means the channel of a river or stream and any immediately adjacent areas that must be kept free of encroachment to allow one hundred (100) year flood waters to be carried without increase in flood heights or flows and without endangering life or property.
31. "Flowing body of water" means any river, stream, or intermittent stream that flows long enough during the year to develop and maintain defined channels, and generally has flowing water at times other than those periods immediately following storm events. Such watercourses have defined banks, a bed, and maintain visible evidence of flow or continued reoccurrence of flowing water.
32. "Freshwater wetlands" means, as consistent with R.I. Gen. Laws § 2-1-20(8), except as specified in R.I. Gen. Laws § 2-1-22(k), and includes, but is not limited to:
  - a. Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of

vegetation typically adapted for life in saturated soil conditions including, but is not limited to, marshes, swamps, bogs, emergent and submergent plant communities, rivers, streams, ponds, and vernal pools or any combination thereof; or

- b. Any or all freshwater wetlands created as part of, or the result of, any activity permitted or directed by the Department after July 16, 1971 including, but not limited to: restored freshwater wetlands; value replacement freshwater wetlands created to compensate for wetland loss such as floodplain excavations; and any freshwater wetlands created, altered or modified after July 16, 1971.
33. "Freshwater wetlands for farmers conducting normal farming and ranching activities" means, pursuant to R.I. Gen. Laws § 2-1-22(k), for farmers undertaking activities specified in R.I. Gen. Laws §§ 2-1-22(i)(1) and (2), freshwater wetlands shall be defined as:
- a. Freshwater wetlands;
  - b. Floodplains;
  - c. Areas subject to storm flowage;
  - d. Areas subject to flooding, as defined herein;
  - e. The land area within two hundred feet (200') of a flowing body of water having a width of ten feet (10') or more during normal flow;
  - f. The area of land within one hundred feet (100') of a flowing body of water having a width of less than ten feet (10') during normal flow; and
  - g. The area of land within fifty feet (50') of a bog, marsh of one (1) acre or greater, swamp of three (3) acres or greater and pond not less than one quarter (1/4) acre in extent.
34. "Freshwater wetlands in the vicinity of the coast" means, consistent with the R.I. Gen. Laws § 46-23-6, freshwater wetlands and the associated jurisdictional area, as defined within this Part, seaward of the jurisdictional boundary that are regulated by the Coastal Resources Management Council in accordance with the Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (650-RICR-20-00-9).
35. "Growing season" means the period from April 1<sup>st</sup> to November 15<sup>th</sup> of any calendar year.

36. "Hydrophyte" or "hydrophytic vegetation" means a plant or plant life that grows in water, or in or on a substrate that is at least periodically deficient in oxygen as a result of saturation or flooding by groundwater or surface water.
37. "Insignificant alteration" means in the opinion of the Department, a proposed alteration, limited in scope, area or duration, which appears to result in no more than a minimal change or modification to the characteristics, functions or values of any freshwater wetland(s), buffer(s), floodplain(s), area(s) subject to flooding or area(s) subject to storm flowage and is not random, unnecessary or undesirable.
38. "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm, or harm to human health.
39. "Jurisdictional area" means, pursuant to R.I. Gen. Laws § 2-1-20(9), the following lands and waters, as defined within this Part, except as provided for in R.I. Gen. Laws § 2-1-22(k), that shall be subject to regulation under these Rules:
- a. Freshwater wetlands;
  - b. Buffers;
  - c. Floodplains;
  - d. Areas subject to storm flowage;
  - e. Areas subject to flooding; and
  - f. Contiguous areas that extend outward:
    - (1) Two hundred feet (200') from the edge of a river or stream;
    - (2) Two hundred feet (200') from the edge of a drinking water supply reservoir; and
    - (3) One hundred feet (100') from the edge of all other freshwater wetlands.
40. "Jurisdictional boundary" means the line determined by the Department and the Coastal Resources Management Council, pursuant to R.I. Gen. Laws § 46-23-6, that designates areas of freshwater wetland-related authority as depicted on maps available by the Department (see § 3.22 of this Part).
41. "Lentic" means a habitat or ecosystem characterized by standing water.

42. "Lotic" means a habitat or ecosystem characterized by flowing water.
43. "Low-flow period" means under normal conditions, the period from July 1<sup>st</sup> to October 31<sup>st</sup> of any calendar year.
44. "Low hazard dam" means a dam where failure or misoperation results in no probable loss of human life and low economic losses.
45. "Marsh" means, consistent with R.I. Gen. Laws § 2-1-20(10), a place wholly or partly within the State of Rhode Island where a vegetational community shall exist in standing or running water during the growing season and/or shall be made up of one (1) or more of, but not limited to nor necessarily including all of the following plants or groups of plants: hydrophytic reeds (*Phragmites*), grasses (*Gramineae*), mannagrasses (*Glyceria*), cutgrasses (*Leersia*), pickerelweeds (*Pontederiaceae*), sedges (*Cyperaceae*), rushes (*Juncaceae*), cattails (*Typha*), water plantains (*Alismataceae*), bur-reeds (*Sparganiaceae*), pondweeds (*Zosteraceae*), frog's bits (*Hydrocharitaceae*), arums (*Araceae*), duckweeds (*Lemnaceae*), water lilies (*Nymphaeaceae*), water-milfoils (*Haloragaceae*), water-starworts (*Callitrichaceae*), bladderworts (*Utricularia*), pipeworts (*Eriocaulon*), sweet gale (*Myrica gale*), and buttonbush (*Cephalanthus occidentalis*).
46. "Mitigate" or "mitigation" means a process undertaken by single or cumulative actions to avoid or lessen the damaging effects of human activities upon freshwater wetlands and buffers and the functions and values that they provide prior to, during, or after the completion of any project or activity.
47. "Near or at the surface" means, as defined in R.I. Gen. Laws § 2-1-20(11), within eighteen inches (18") of the surface.
48. "Normal farming and ranching activities" means, consistent with R.I. Gen. Laws § 2-1-22(i)(1), projects and activities carried out by farmers, including plowing, seeding, cultivating, land clearing for routine agriculture purposes, harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes, upland soil and water conservation practices, and maintenance of existing farm drainage structures, existing farm ponds and existing farm roads, and any other activity determined by the Division of Agriculture to constitute a normal farming activity.
49. "Obligate wildlife species" means wildlife that depend upon freshwater wetlands for all or part of their life cycle.
50. "Permit" means an authorization in the form of a document issued and signed by the Department, allowing a project or activity subject to specific terms and conditions in accordance with these Rules.

51. "Person" means any individual; corporation; partnership; public utility; nonprofit organization; trust; unincorporated association; Federal, State, county or local government, or any agency or subdivision thereof; or any other entity; or any combination of the foregoing.
52. "Pollutant" means any dredged material; solid waste; incinerator residue; sewage; garbage; sewage sludge; sediment; filter backwash; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; dirt; industrial or municipal or agricultural wastes or effluent; petroleum or petroleum products including but not limited to oil; or any material which will likely alter any one (1) or more of the following: the aesthetic, physical, chemical, biological or radiological characteristics or integrity of any freshwater wetland, buffer or floodplain.
53. "Pollution" means the human-made or human-induced alteration of the aesthetic, physical, chemical, biological or radiological characteristics or integrity of any freshwater wetland, buffer or floodplain as a result of the introduction of any pollutant to any freshwater wetland, buffer or floodplain.
54. "Pond" means, consistent with R.I. Gen. Laws § 2-1-20(12), a place, natural or manmade, wholly or partly within the State of Rhode Island, where open standing or slowly moving water shall be present for at least six (6) months a year. For the purpose of these Rules, ponds exclude those places within the State of Rhode Island that meet the definition of vernal pool.
55. "Project" means planned or designed work or undertaking, and for the purpose of the Rules, the term project also indicates activities.
56. "Random, unnecessary, or undesirable alteration" means:
  - a. A random alteration is any alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage for which the applicant does not specify in the application the entire project proposed or contemplated by the applicant or in which the purpose of the alteration cannot be determined.
  - b. An alteration is unnecessary unless it is essential, vital, or indispensable to the project and cannot be avoided by exhausting all other non-wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage alternatives.
  - c. An undesirable alteration is any alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage that individually or cumulatively may reduce or



degrade any functions and values as set forth herein, which does not avoid and minimize to the maximum extent possible any damaging effects on these functions and values, or does not satisfy the review criteria in § 3.7.2 of this Part.

57. "Rare" means when used in the context of species or freshwater wetland types, those invertebrate and vertebrate animals or plant species or those freshwater wetland types that are listed as threatened, endangered, of special interest or of special concern by the Department or under the Federal Endangered Species Act, 16 U.S.C. § 1531 *et. seq.* For the purpose of these Rules bogs, fens, Atlantic white cedar swamps, floodplain forests and freshwater pond shores with coastal plain species are considered rare freshwater wetlands in Rhode Island.
58. "Recreational activities" means activities that include, but are not limited to, the following: education or nature studies, hunting, fishing, boating, canoeing, camping, trapping, water-skiing, swimming, ice skating, hiking, bird watching or other wildlife observations, photography, cross-country skiing, harvesting of natural foods or plant materials, and visual/esthetic appreciation of natural environments as a whole or in part.
59. "Restoration" means the result of actions that, in the opinion of the Department, reinstate or will reinstate, insofar as possible, the functions and values of a freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage that has been altered.
60. "River" means, as defined in R.I. Gen. Laws § 2-1-20(13), a body of water that is designated as a perennial stream by the United States Department of Interior Geologic Survey on 7.5-minute series topographic maps, and that is not a pond as defined in this Part.
61. "Rules" means these Rules and Regulations, 250-RICR-150-15-3, which govern the administration and enforcement of the Act. Unless otherwise expressly stated, any reference herein to the Rules incorporates the relevant provisions of the Act.
62. "Sediment" means any organic or inorganic material that is in suspension, has been deposited, is being transported, or has been moved from its site of origin by natural or human action.
63. "Selective cut/cutting" means the cutting of trees, or the mowing or cutting of shrubs or emergent vegetation which would result in:
  - a. At least sixty percent (60%) stocking of trees remaining in any forested wetland. Stocking shall be based upon the applicable northeastern tree stocking guide for the dominant tree type within the forested wetland;

- b. At least seventy-five percent (75%) crown cover of shrubs remaining within any shrub or forested wetland;
  - c. At least eighty percent (80%) cover remaining in any emergent community.
64. "Setback" means, pursuant to R.I. Gen. Laws § 2-1-20(14), the minimum distance from the edge of a freshwater wetland at which an approved activity or alteration may take place.
65. "Significant alteration" means in the opinion of the Department, a proposed project which by its area, scope or duration, appears to represent more than a minimal change or modification to the characteristics, functions or values of any freshwater wetland(s), buffer(s), floodplains(s), area(s) subject to flooding or area(s) subject to storm flowage; may be detrimental to the basic natural capabilities or values associated with any freshwater wetland(s), buffer(s), floodplain(s), area(s) subject to flooding or area(s) subject to storm flowage; or appears to be random, unnecessary or undesirable.
66. "Standing water" means non-flowing water of any depth inundating the ground surface.
67. "Stream" means any flowing body of water or watercourse other than a river that flows long enough each year to develop and maintain a channel and that may carry groundwater discharge or surface runoff. Such watercourses may not have flowing water during extended dry periods but may contain isolated pools or standing water.
68. "Submergent plant community" means a freshwater wetland characterized by plants that grow principally below the surface of the water for most of the growing season. Submergent plants are either attached to the substrate or float freely in the water.
69. "Substantial alteration of a dam" means, consistent with the Rules and Regulations for Dam Safety, Part 130-05-1 of this Title, any physical modification to a dam that results in a permanent change in the water elevation of the reservoir or impoundment or in water flow downstream of the dam.
70. "Surface water" means water inundating the substrate or soil surface, regardless of depth.
71. "Swamp" means, consistent with R.I. Gen. Laws § 2-1-20(16), a place wholly or partly within the State of Rhode Island where groundwater shall be near or at the surface of the ground for a significant part of the growing season, or where runoff water from surface drainage shall collect frequently, and/or where a vegetational community shall be made up of a

significant portion of one (1) or more of, but not limited to nor necessarily including all of the following: red maple (*Acer rubrum*), elm (*Ulmus americana*), black spruce (*Picea mariana*), white cedar (*Chamaecyparis thyoides*), ashes (*Fraxinus*), poison sumac (*Rhus vernix*), larch (*Larix laricina*), spice bush (*Lindera benzoin*), alders (*Alnus*), skunk cabbage (*Symplocarpus foetidus*), hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), sphagnum (*Sphagnum*), azaleas (*Rhododendron*), black alder (*Ilex verticillata*), coast pepperbush (*Clethra alnifolia*), marsh marigold (*Caltha palustris*), blueberries (*Vaccinium*), buttonbush (*Cephalanthus occidentalis*), willow (*Salicaceae*), water willow (*Decodon verticillatus*), tupelo (*Nyssa sylvatica*), laurels (*Kalmia*), swamp white oak (*Quercus bicolor*), or species indicative of marsh. For purposes of this definition, "significant part of the growing season" means that period of the growing season when water is present long enough to support a plant community of predominantly hydrophytic vegetation.

72. "Terms and conditions" means any requirements specified by the Department which it deems necessary to prevent any authorized or permitted project or activity from reducing the functions and values associated with any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage; prevent any significant alteration which is not authorized; prevent the destruction of any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage or portion thereof; or protect the health, welfare, and general well-being of the public.
73. "Undeveloped vegetated land" means an area of land that does not consist of buildings, impervious surfaces, bare gravel, lawn or landscaped areas.
74. "Undue hardship" means an inappropriate, unsuitable, unlawful, or excessive standard or requirement levied upon an applicant. This does not include economic diminution in value.
75. "Utility" means any electricity, water, sewer, gas, oil or communication transmission line or pipe.
76. "Vernal pool" means, pursuant to R.I. Gen. Laws § 2-1-20(17), a depressional wetland basin that typically goes dry in most years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both size and depth depending upon landscape position and parent materials. Vernal pools usually support one (1) or more of the following obligate indicator species: wood frog (*Lithobates sylvaticus*), spotted salamander (*Ambystoma maculatum*), marbled salamander (*Ambystoma opacum*), and fairy shrimp (*Eubranchipus* spp.) and typically precludes sustainable populations of predatory fish.

- 77. "Water quality improvement project" means a project whose sole purpose is to eliminate or minimize conditions that cause or contribute to water quality degradation.
- 78. "Width during normal flow" means the distance between the opposite edges of the flow channel of a river or stream as determined by the criteria set forth in § 3.21.5 of this Part.
- 79. "Wildlife" means any vertebrate or invertebrate animal species which may reproduce in, rest in, feed in, or otherwise utilize any freshwater wetland or buffer regulated by these Rules.
- 80. "Wildlife habitat" means those freshwater wetlands or buffers that provide breeding, nursery, resting, travel or feeding areas for birds, fish, reptiles, mammals, amphibians, or invertebrates, as well as the biotic and abiotic characteristics of freshwater wetlands or buffers that may provide food, cover, breeding sites, or other support systems for these life forms.
- 81. "Wildlife habitat project" means a project whose sole purpose is to create, restore or enhance wildlife habitat.

### **3.5 Applicability and Regulated Activities**

#### **3.5.1 General Applicability to Freshwater Wetlands**

- A. These Rules apply to all freshwater wetlands of the State and other jurisdictional area, as defined herein, except as provided for in §§ 3.5.3 and 3.5.4 of this Part.
- B. For the purpose of these Rules, the following features are not considered freshwater wetlands or freshwater wetlands for farmers conducting normal farming or ranching activities:
  - 1. Bermed spill containment areas;
  - 2. Commercial or industrial ponds created for the purpose of providing cooling water;
  - 3. Concrete or poly-lined ponds;
  - 4. Construction dewatering basins;
  - 5. Ditches which are stormwater channels that do not flow into, flow out of, or connect freshwater wetlands;
  - 6. Ornamental or reflecting pools that are lined and were not created in freshwater wetlands;

7. Puddles which are small, shallow pools of water that form temporarily on pavement or uplands during or immediately after a precipitation event, and that do not contain hydrophytic vegetation or hydric soil typical of freshwater wetlands and do not meet the definition of vernal pool;
  8. Stormwater control features excavated, constructed or installed to convey, store, or treat stormwater runoff, including detention basins, retention basins, bio-retention basins, bio-filtration areas, rain gardens, and wet vegetated treatment systems;
  9. Wash ponds created for, and that have been in continuous use as part of, an existing or approved mining operation;
  10. Lagoons created for the purpose of wastewater treatment; and
  11. Ponds created for the purpose of recycling wastewater.
- C. Notwithstanding § 3.5.1(B) of this Part, a freshwater wetland permit may be required for construction, modification or removal of any such feature that is located within a jurisdictional area specified in § 3.5.2 of this Part.

### **3.5.2 Jurisdictional Area**

These Rules establish the jurisdictional area in which projects and activities are subject to regulation by the Department. Jurisdictional area includes freshwater wetlands, buffers, floodplains, areas subject to storm flowage, areas subject to flooding, and contiguous areas that extend outward two hundred feet (200') from the edge of a river or stream, two hundred feet (200') from the edge of a drinking water supply reservoir, and one hundred feet (100') from the edge of all other freshwater wetlands, except as otherwise provided for in R.I. Gen. Laws § 2-1-22(k) for farmers conducting normal farming and ranching activities.

### **3.5.3 Freshwater Wetlands in the Vicinity of the Coast**

- A. The Freshwater Wetlands Jurisdictional Boundary map (§ 3.22 of this Part) that depicts the jurisdictional boundary between freshwater wetlands and freshwater wetlands in the vicinity of the coast is available for review at the Department and on the Department website. Freshwater wetlands in the vicinity of the coast are under the exclusive jurisdiction of the Rhode Island Coastal Resources Management Council (CRMC), with these exceptions:
1. The Department shall retain authority over farming-related projects and activities undertaken by farmers, as defined herein, involving freshwater wetlands in the vicinity of the coast.
  2. The Department shall retain authority over any permits issued prior to January 1, 2002, that are the subject of an outstanding compliance order

or other formal administrative, civil or criminal legal action initiated by the Department for the purpose of litigating or settling that action.

3. The Department shall retain authority over any permits or permit applications acted upon by the Department prior to January 1, 2002, to permit the Department to defend or settle any legal proceedings brought against it as a result of those actions.
  4. Any compliance order issued or other civil or criminal enforcement action taken by the Department prior to August 18, 1999, shall continue to be subject to the Department's authority and to be governed by the Rules and Regulations in effect at the time the order was issued or action taken.
  5. Permits issued by the Department for projects that lie on or that straddle the jurisdictional boundary shall be administered by the Department in accordance with § 3.5.4 of this Part.
- B. Projects and activities located within the DEM freshwater wetlands jurisdiction that are located within the boundary of the CRMC Narrow River Special Area Management Plan (650-RICR-20-00-4) or the Salt Pond Region Special Area Management Plan (650-RICR-20-00-3), and which constitute a watershed activity, as defined within the Special Area Management Plan, may be subject to CRMC requirements for larger buffers or setbacks.

#### **3.5.4 Projects that Lie on or Cross the Jurisdictional Boundary**

- A. Applications for linear projects such as road or utility rights of way lying on the jurisdictional boundary will be reviewed as follows:
1. If the project is located entirely or partially either within the CRMC Narrow River Special Area Management Plan (650-RICR-20-00-4) or Salt Pond Region Special Area Management Plan (650-RICR-20-00-3), or within two hundred feet (200') of a coastal or shoreline feature, as defined by CRMC, then CRMC shall be the freshwater review agency.
  2. If the project is located entirely outside of the CRMC Narrow River Special Area Management Plan (650-RICR-20-00-4) or Salt Pond Region Special Area Management Plan (650-RICR-20-00-3) and beyond two hundred feet (200') of a coastal or shoreline feature, as defined by CRMC, then the Department shall be the freshwater review agency.
- B. Applications for projects that cross or fall on both sides of the jurisdictional boundary will be reviewed as follows:
1. If the jurisdictional area is located seaward of the jurisdictional boundary, then CRMC shall be the reviewing agency.

2. If the jurisdictional area is located inland of the jurisdictional boundary, then the Department shall be the reviewing agency.
  3. If the jurisdictional area lies on both sides of the jurisdictional boundary and the project is non-linear in character, then:
    - a. Where the project is located entirely or partially either within the CRMC Narrow River Special Area Management Plan (650-RICR-20-00-4) or Salt Pond Region Special Area Management Plan (650-RICR-20-00-3), or within two hundred feet (200') of a coastal or shoreline feature, as defined by CRMC, then CRMC shall be the reviewing agency; or
    - b. Where the project is entirely outside of the Narrow River Special Area Management Plan (650-RICR-20-00-4) or Salt Pond Region Special Area Management Plan (650-RICR-20-00-3) and is beyond two hundred feet (200') of a coastal or shoreline feature, as defined by CRMC, then the Department shall be the reviewing agency.
  4. For linear projects that are on both sides of the jurisdictional boundary, the Department and CRMC shall jointly determine which agency will serve as the reviewing agency. This determination shall be made on a case-by-case basis in response to a written request from an applicant to CRMC, and be based on the following: the extent and location of the jurisdictional area, the area and proximity of potential land disturbance, and the guidelines set forth in any applicable watershed plan. Within ten (10) business days of the receipt of a request for clarification from an applicant, the agency that retains jurisdiction shall so inform the applicant. Upon written notice to the applicant, the agency may extend the ten (10) day deadline for up to an additional ten (10) business days for any reason. Although the goal of these provisions is to promote the designation of a single review agency, in the event that a project includes potential freshwater wetland, buffer or floodplain alterations on both sides of the jurisdictional boundary, the Department and CRMC reserve the right to jointly exercise their authority.
- C. The permitting agency for a project that is on the jurisdictional boundary or on both sides of the jurisdictional boundary shall renew, modify, transfer and enforce the permit in accordance with the applicable agency Rules and Regulations that were in effect at the time the permit was issued.

### **3.5.5 Prohibitions**

- A. Except as provided in § 3.6 of this Part, no person may excavate; drain; fill; place trash, garbage, sewage, road runoff, drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; clear; grade; construct in; add to or take from or

otherwise alter the character of any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage in any way, without first obtaining the approval from the Department; or

- B. Undertake any project or activity within a jurisdictional area, that may alter the character of the freshwater wetland, buffer or floodplain without first obtaining the approval from the Department.

### **3.5.6 Regulatory Applicability**

- A. Projects or activities within a jurisdictional area that may alter freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage are subject to regulation and are required to obtain approval from the Director in accordance with these Rules. Certain limited activities are exempt in accordance with § 3.6 of this Part.
- B. Projects or activities as specified in §§ 3.5.6(B)(1) through (3) of this Part that are proposed outside of a jurisdictional area which in all likelihood, because of their close proximity to freshwater wetlands or buffers, or because the size or nature of the project or activity will result in an alteration of the natural character of any freshwater wetland or buffer, may not be undertaken without approval from the Department in accordance with these Rules. Such projects or activities generally are those that will:
  - 1. Result in a change to the normal surface run-off characteristics which increases the rate or volume of water flowing into, or draining or diverting water away from, freshwater wetlands or buffers. For any such project or activity that involves land disturbance of one (1) acre or more of land area, approval may be obtained under the Department's General Permit for Stormwater Discharge Associated with Construction Activity without a separate application to the Freshwater Wetlands Program.
  - 2. Result in diversion of groundwater into or away from freshwater wetlands or buffers.
  - 3. Result in a modification to the quality of water reaching freshwater wetlands or buffers which could alter their natural character.
- C. No project or activity that may or will alter a freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage may be undertaken unless it conforms at all times to all applicable permits and permit terms and conditions, and all representations made in all applicable permit applications.

### **3.5.7 Applicability to Farming and Ranching Activities**

- A. Normal farming and ranching activities conducted by a farmer, as defined herein, may be carried out in accordance with the provisions of § 3.13.3 of this Part.



- B. The construction of new farm ponds, new drainage structures and new farm roads by a farmer, as defined herein, are subject to the provisions of § 3.13.4 of this Part.
- C. Normal farming and ranching activities conducted within a jurisdictional area specified in § 3.5.2 of this Part by persons that do not meet the definition of farmer, as defined herein, shall be regulated in accordance with these Rules, including the permitting provisions of §§ 3.7 through 3.14 of this Part. Certain activities may be exempt in accordance with § 3.6.11 of this Part or deemed to be an existing condition in accordance with the definition of existing in § 3.4(A)(24) of this Part.
- D. The construction of new farm ponds, new drainage structures and new farm roads within a jurisdictional area specified in § 3.5.2 of this Part, by persons that do not meet the definition of farmer, as defined herein, shall be regulated in accordance with these Rules, including the permitting provisions in §§ 3.7 through 3.14 of this Part.
- E. Except as provided for in §§ 3.5.7(A) through (D) of this Part, proposed projects involving the construction of buildings, other structures or site improvements on property utilized for farming and ranching, within a jurisdictional area specified in § 3.5.2 of this Part or in other locations that may result in alteration of freshwater wetlands, buffers or floodplains are regulated in accordance with these Rules, including the permitting provisions in §§ 3.7 through 3.14 of this Part.

### **3.5.8 Existing Conditions**

- A. The continued existing use of property located within a jurisdictional area as established by these Rules is not affected, provided the use conforms to the definition of existing in § 3.4(A)(24) of this Part, and provided such condition or activity does not otherwise constitute a violation of these Rules.
- B. These Rules shall be liberally construed to permit the Department to effectuate the purposes of the Act.

## **3.6 Exempt Activities**

### **3.6.1 General Conditions for Exempt Activities**

- A. This Rule describes certain limited activities within a jurisdictional area that may proceed without a written permit from the Department, subject to the conditions and restrictions set forth below. The Department strongly recommends that all such exempt activities or projects occur as far away from freshwater wetlands as possible.
- B. Nothing in § 3.6 of this Part shall be deemed to:

1. Limit or reduce, in any way, the Department's authority over freshwater wetlands or jurisdictional area; or
  2. Supersede any current terms or conditions of any permit, or
  3. Interfere with the Department's ability to make a determination or decision on an application, or
  4. Impose terms and conditions on any permit, enforcement action or Consent Agreement.
- C. Any activities within a jurisdictional area not described within this Rule that could alter the character of any freshwater wetlands, buffers or floodplains require a written permit.
- D. Nothing in § 3.6 of this Part shall preclude the Department from initiating an enforcement action in the event of any failure to undertake exempt activities in accordance with the requirements and conditions set forth herein.
- E. The following general restrictions apply to all activities performed under § 3.6 of this Part:
1. Exempted activities do not obviate the need to obtain other applicable Federal, State, or local permits, approvals, or authorizations required by law;
  2. Any structure or fill exempt under § 3.6 of this Part shall be properly maintained to ensure public safety, and to protect freshwater wetland functions and values;
  3. Best management practices for erosion and sediment controls must be used and maintained in effective operating condition during the activity, and all exposed soil and other fills must be permanently stabilized at the earliest possible date. (See Stormwater Management, Design and Installation Rules, § 10-8.16 of this Chapter.);
  4. No activity exempted herein may jeopardize the continued existence of a rare freshwater wetland type, or a rare species; likewise, no activity exempted herein may destroy or adversely modify the critical habitat of such species;
  5. Exempt activities shall be undertaken and performed in a manner that prevents the introduction or spread of invasive species, and all vehicles and equipment used in freshwater wetlands, including rivers, streams and ponds, shall be routinely inspected and cleaned of all invasive plant material;

6. Following the limited activity, all equipment used in installation or maintenance activities shall be removed from any freshwater wetland and any created access paths must be restored and allowed to naturally revegetate; and
7. All freshwater wetland functions and values must be protected to the maximum extent possible so as to prevent pollutants, direct discharge of stormwater runoff, or any material foreign to a freshwater wetland or hazardous to life, from entering any freshwater wetland, buffer or floodplain so as to be protective of aquatic life and not result in long-term reductions in stream flow or increased flooding. Hydrodemolition of concrete structures within or adjacent to freshwater wetlands is not authorized for any exempt activity in this Rule.

### **3.6.2 Limited Cutting of Vegetation**

- A. Limited cutting of vegetation within a jurisdictional area is allowed in accordance with § 3.6.1 of this Part only when:
  1. The cutting or maintenance of vegetation is within existing or approved lawn or landscaped areas, consistent with any limit of disturbance specified in a permit or a consent agreement where applicable; or
  2. The cutting is to remove tree limbs or dead, diseased, leaning or overhanging trees or shrubs which, if left unattended, pose a threat to individuals, dwellings, structures, or safe vehicle movement over roads and driveways; or
  3. The cutting is for purposes of trimming back and removing grasses, weeds, or shrubs encroaching upon existing or approved limits of disturbance, landscaped areas, fields, pastures or recreational areas, provided that the cutting is not taking place in an area designated to be planted, revegetated, or set aside to revert to a natural wild state for any mitigation or restoration purposes as a result of any term and condition of any permit, approval, enforcement action issued by the Department, or any Consent Agreement entered with the Department; or
  4. The cutting is for obtaining firewood for non-commercial, individual use, is selective in nature, and ensures the long-term protection and stability of the forested habitat. The use of any motorized vehicle(s) for this purpose in any freshwater wetland is prohibited; or
  5. The cutting is selective, and is carried out under the supervision of and in cooperation with the Department's Division of Forest Environment and:
    - a. For non-emergency forest operations and management practices the following conditions are met:

- (1) The property owner, in cooperation with the Division of Forest Environment, notifies the Freshwater Wetlands Program that a notice of intent to cut, or an approved written management plan submitted under the Farm, Forest and Open Space Act, R.I. Gen. Laws Chapter 44-27, an approved USDA NRCS Forest Management Plan or the Rhode Island Forest Stewardship Program is on file with the Division of Forest Environment; and
  - (2) The cutting operation proceeds under those best management practices developed and approved by the Division of Forest Environment; and
  - (3) The cutting operation results in no permanent degradation or loss of any wildlife habitat associated with any freshwater wetland or buffer; and
  - (4) Equipment crossings of watercourses are limited to areas subject to storm flowage or streams or a river less than ten feet (10') wide through the use of temporary bridges or other protective structures authorized by the Division of Forest Environment. This temporary crossing must not restrict natural flow patterns and wildlife movements, and must be removed immediately following the harvesting operation. Disturbed jurisdictional areas in the vicinity of any equipment crossings must be stabilized, revegetated, and restored to a natural condition; and
  - (5) Best management practices for erosion and sediment control are followed throughout the life of the project (see Stormwater Management, Design and Installation Rules, § 10-8.16 of this Chapter); or
- b. For forest operation and management practices in response to an event-specific emergency, such as a wind or ice storm, a wildfire, or a pest outbreak, the following conditions are met:
- (1) Prior to the removal of any slash or woody debris from any jurisdictional area, the property owner notifies the Division of Forest Environment and receives a written confirmation that a non-silviculture emergency event has occurred; and
  - (2) The cutting operation proceeds under those best management practices developed and approved by the Division of Forest Environment; and

- (3) The cutting operation results in no additional or permanent degradation or loss of any wildlife habitat associated with any freshwater wetland; and
  - (4) Equipment crossings of watercourses are limited to areas subject to storm flowage, streams or rivers less than ten (10) feet wide through the use of temporary bridges or other protective structures authorized by the Division of Forest Environment. This temporary crossing must not restrict natural flow patterns and wildlife movements, and must be removed immediately following the harvesting operation. Disturbed jurisdictional areas in the vicinity of any equipment crossings must be stabilized, revegetated, and restored to a natural condition; and
  - (5) Best management practices for erosion and sediment control are followed throughout the life of the project. (See Stormwater Management, Design and Installation Rules, § 10-8.16 of this Chapter.)
- 6. The cutting is for the maintenance of existing or approved footpaths or pedestrian trails; or for the maintenance of existing or approved cleared areas immediately along, but no greater than ten feet (10') from, the edges of driveways and access roads for vehicle safety and access; or
- 7. The cutting is within existing or approved, cleared utility rights-of-way and is restricted to only that necessary to maintain integrity of the utility line or pipe itself and to maintain access for maintenance, inspection or repair of poles, structures and equipment within the right-of-way; or
- 8. The cutting is on or along property lines for survey purposes or is on an established transect line to allow for access on foot when conducting environmental assessments, and is no greater than five feet (5') in width; or
- 9. Removal of any floating or submergent plants or cutting of common reed (*Phragmites australis*) is limited to that area immediately adjacent to, but no more than fifteen feet (15') from, existing or approved docks; boat ramps; beaches; or swimming areas. The clearing or removal of such vegetation is accomplished only through the manual use of hand-held implements; or
- 10. The cutting is restricted to existing drainage ditches, swales, or embankments of stormwater best management practices as a normal maintenance activity; or

11. The cutting is performed to remove individual trees or portions thereof that have fallen over or into rivers normally accessible by canoes, kayaks, or boats; or
12. The cutting of trees or shrubs within a floodplain that is located outside of all freshwater wetlands and their contiguous one hundred foot (100') or two hundred foot (200') jurisdictional area; or
13. The cutting is for continued routine maintenance of a Department-approved landfill or site remediation cap.

### **3.6.3 Limited Maintenance and Repair Activities**

- A. Limited repair and maintenance of an existing structure located in a jurisdictional area is allowed under § 3.6.1 of this Part as specifically provided below, so long as the repair or maintenance does not increase the size of the structure vertically or horizontally. Some limited structural changes also may be exempt, as specifically provided below. For purposes of § 3.6.3 of this Part, repair and maintenance is limited to routine activities necessary to ensure the upkeep of structures built in accordance with all necessary Federal, State and local permits.
  1. Normal maintenance of existing or approved structures and accessory structures to maintain their integrity and condition; or
  2. Replacement of functional drainage structures, provided that:
    - a. Culverts of more than fifty feet (50') are the same size, length, capacity and invert elevation as the present structure;
    - b. Culverts of fifty feet (50') or less maintain the same slope, a nominally equivalent cross-sectional area and the same invert elevation as the present structure with no more than five foot (5') extensions in length on either end;
    - c. The project or activity does not result in sediment transport to freshwater wetlands or buffers or result in any filling, draining, or impoundment of freshwater wetlands, buffers or floodplains beyond what was approved or existing; and
    - d. The property owner maintains site plans that detail the condition of the drainage structure as it existed prior to replacement. A riprap scour pad not greater than ten feet (10') in length may be placed at the culvert outfall if an erosion problem is evident, provided that the access for fish and wildlife is not impeded; or
  3. Cleaning of drainage pipes, culverts, catch basins, manholes, drainage swales, and removal of accumulated sediment within ten feet (10') of the inlet or outlet, provided there is no disturbance to the original soil

substrate. For purposes of § 3.6.3(A)(3) of this Part, a drainage swale is a conveyance that facilitates the drainage of stormwater from paved or disturbed areas, but does not meet the definition of river or stream; or

4. Repaving of, or undertaking normal roadway maintenance of, paved public and private roadways, bikeways or footpaths, provided there is no expansion of these facilities. Normal roadway maintenance includes: resurfacing or in-place recycling of paved surfaces; repairs to, resetting or replacing curbs, berms, sidewalks or guardrails; addition of guardrails, signing, striping or signals; adjusting manholes, catch basins or utility structures to grade; structural repairs to, or in-place replacement of manholes, catch basins or grates; and installation of wheel chair ramps in existing sidewalks. Paving or oiling of dirt roads, however, is considered an alteration which requires a permit; or
5. Repair to or maintenance of a stream crossing, such as a stone ford and its approach, or any unpaved road which is used at least on an annual basis, provided that any increase in road surface cover does not require the expansion of any slopes further into the freshwater wetland, buffer or floodplain beyond the present toe of slope and provided that any increase in height does not exceed two inches (2"). Repair or maintenance to any stream crossing and its approach must be done during low or no flow periods; or
6. Repair of docks and footbridges. This does not include enlargements or extensions; or
7. Repair to boat ramps which does not include enlargements; or
8. Repair to any bridge or culvert, including repair of cracks and spalling; sealing of joints; repointing of masonry; replacement of decking with no replacement of other structural members or increase in the deck width; repairs to or replacement of signage, railings, or lighting; and painting provided that:
  - a. The repair does not require vehicular equipment access beyond the existing road surface;
  - b. No permanent changes will occur in streambed geometry or hydraulic capacities;
  - c. All cleared or disturbed areas are allowed to revegetate;
  - d. Temporary cofferdams are limited to placement of sandbag/liner cofferdams or similar structures that allow for unhindered flow in the remaining channel and do not require disturbance of the substrate of any freshwater wetland or watercourse; and

- e. Provided that any material removed from the structure during repair is disposed of properly; or
- 9. Removal of manmade trash from a jurisdictional area that is not within a freshwater wetland or buffer is exempt. Removal of manmade trash from freshwater wetlands, buffers or floodplains without causing any change in their profile or general character is also exempt, provided that the removal must be performed manually, or by equipment when chains or cables can be attached to the item to be removed and the equipment can be operated from a road, parking area, or other similar location. Removal of natural material such as logs, brush, or trees from freshwater wetlands, including flowing bodies of water or from buffers must be limited to problem locations where lack of removal will result in erosion or blockage of culverts, obstruction of existing paths, or prevention of canoeing access; or
- 10. Repair to or in-place replacement of shoreline stabilization structures such as stone or masonry walls, provided that there is no change in the dimension or location of the structure and no material is placed in any location or in any manner that would impair surface water flow, and no material is placed in a manner such that it will be eroded by normal or expected high surface water flows; or
- 11. Maintenance of soil erosion and sediment control management practices and stormwater management practices in accordance with a plan approved by the Department; or
- 12. Maintenance of existing or approved bathing beach that does not expand or otherwise change the size or shape of the beach; or
- 13. Inspection, maintenance and repair to those utility poles, structures, equipment or underground lines or pipes which are necessary to provide utility services to the public; or
- 14. Replacement of utility poles, including changes in physical size, without any change to existing or approved cleared rights-of-way; or
- 15. Repair and replacement of utility lines attached to existing or approved bridges or in existing or approved roadways and railway beds provided anti-seepage collars are used as appropriate to prevent sub-draining effects on freshwater wetlands; or
- 16. Maintenance by municipalities of surface water impoundments used for drinking water supplies, provided that all maintenance activities occur within the existing boundary perimeters of the impoundment and that the municipality provide the Department with twenty (20) days advance written notice of such maintenance activity in accordance with R.I. Gen. Laws § 2-1-21(a); or



17. Repair and replacement of wells and their supply lines, provided that the following conditions are met:
  - a. All cleared vegetation is allowed to re-grow naturally;
  - b. The volume of withdrawal from the replacement well is no greater than five hundred (500) gallons per day;
  - c. The repair/replacement well will service the same lot as its predecessor;
  - d. No other feasible upland alternative is available; and
  - e. All freshwater wetlands and buffer disturbance is limited to the maximum extent possible; or
18. Repair of failed onsite wastewater treatment system (OWTS), made in accordance with the Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems, Subchapter 10 Part 6 of this Chapter; or
19. In-kind replacement of existing or approved buildings and constructed accessory structures if destroyed by fire or natural causes; or
20. Repaving or undertaking normal maintenance of existing parking lots where any pavement removal exposing erodible soils is less than ten thousand square feet (10,000') in area; or
21. Repair, replacement or installation of gates, boulders, logs or other physical barriers intended to limit unauthorized vehicular access to existing or approved driveways or access roads, provided that the following conditions are met:
  - a. Such barriers extend along or beyond the edge of the access road no farther than necessary to limit vehicular access; and
  - b. No structural or material barriers are placed in freshwater wetlands.

#### **3.6.4 Demolition of Buildings or Accessory Structures**

- A. Demolition of buildings, parking areas or accessory structures is allowed within a jurisdictional area in accordance with § 3.6.1 of this Part only where:
  1. The demolition of a building, parking area or accessory structure is not associated with new construction on the same property;
  2. All material is properly disposed of in accordance with all State laws and Rules, and the material is not disposed of or stockpiled in any freshwater

wetlands, buffers, floodplains, areas subject to flooding, areas subject to storm flowage or setbacks;

3. All pre-demolition grades are restored and all disturbed soils are stabilized;
4. Clean fill is used, where foundation holes or cellars of demolished buildings are to be filled;
5. All rubble and demolition debris are removed from the soil surface when demolition is complete;
6. Demolition activity and equipment operation are maintained within existing or approved disturbed areas on the property; and
7. All disturbed soils are loamed and seeded.

### **3.6.5 Single-Family Residences and Accessory Structures**

A. The following limited changes to existing or approved single family residences and accessory structures within a jurisdictional area are exempt in accordance with § 3.6.1 of this Part provided that: no freshwater wetlands or buffers are altered or artificially illuminated; all construction activity is located within existing or approved cleared areas, such as parking areas, lawns or cultivated fields; and all construction activity is located outside of floodplains, areas subject to flooding or areas subject to storm flowage, and is at least twenty-five feet (25') from any pond, marsh, or swamp, and is at least fifty feet (50') from any flowing body of water, bog or vernal pool:

1. Horizontal addition, such as a family room, bedroom, attached garage, or house wing, that is less than or equal to six hundred square feet (600') in footprint;
2. Vertical addition of no more than two (2) stories;
3. Attached deck, enclosed porch, exterior ramp, or patio less than or equal to six hundred square feet (600') in footprint;
4. Stand-alone garage, shed, or greenhouse less than or equal to six hundred square feet (600') in footprint;
5. Pervious driveway less than or equal to six hundred square feet (600');
6. Alteration to an onsite wastewater treatment system (OWTS) approved in accordance with the Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems, Subchapter 10 Part 6 of this Chapter;

7. Installation of outlets for French drains, subdrains, or sump pumps is permissible within a jurisdictional area provided that the discharge outlets are located outside of any freshwater wetlands or buffer; or
8. Other accessory structures, including rain gardens or infiltration structures for roof drains and other stormwater management practices, except as limited in §§ 3.6.5(A)(1) through (7) of this Part.

### **3.6.6 Non-Residential Buildings or Multifamily Residences and Accessory Structures**

- A. The following limited changes to existing or approved non-residential buildings or multifamily residences and accessory structures within a jurisdictional area are exempt in accordance with § 3.6.1 of this Part provided that: no freshwater wetlands or buffers are altered or artificially illuminated; all construction activity is located within existing or approved cleared areas, such as parking areas, lawns or cultivated fields; and all construction activity is located outside of floodplains, areas subject to flooding or areas subject to storm flowage and is at least twenty-five feet (25') from any pond, marsh, or swamp and is at least fifty feet (50') from any flowing body of water, bog or vernal pool:
  1. Horizontal addition with less than or equal to a six hundred square foot (600') footprint;
  2. Vertical addition limited to no more than two (2) stories;
  3. The foundation and enclosure is limited, per lot, to storage coolers, dumpsters, equipment sheds, or garages, each of which is less than or equal to six hundred square feet (600') in footprint;
  4. Attached exterior ramp; or
  5. Alteration to an onsite wastewater treatment system (OWTS) approved in accordance with the Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems, Subchapter 10 Part 6 of this Chapter.

### **3.6.7 Emergency Environmental Protection**

- A. Emergency installation of environmental protection structures, and undertaking of activities directly associated with the emergency containment and cleanup of oil or hazardous materials in a jurisdictional area, including the resolution of leaking underground storage tanks, is permissible in accordance with § 3.6.1 of this Part provided that such installation or activity is undertaken under the direct supervision of Department or Federal cleanup personnel or the Department's emergency response personnel. During the emergency cleanup, unnecessary alterations of freshwater wetlands, buffers and floodplains shall be prevented to the maximum extent possible, and best management practices for erosion and

sediment controls must be initiated and maintained. Where applicable, heavy equipment working in freshwater wetlands must be placed on mats, and other temporary measures must be taken to minimize soil and habitat disturbance. Following emergency cleanup, the disturbed area must be stabilized and restored to the satisfaction of the Department.

- B. The Freshwater Wetlands Program must be notified of the initiation of emergency environmental cleanup and upon completion of emergency cleanup activities.

### **3.6.8 Site Remediation**

- A. Activities within a jurisdictional area which are required by the Department for remediation of contamination resulting from releases of oil or hazardous materials are allowed in accordance with § 3.6.1 of this Part provided that:
  - 1. All site remediation activities are under the direct oversight or control of the Department;
  - 2. The initial document or plan identifying potential impacts to the jurisdictional area and all subsequent action plans are submitted, whenever necessary, for the Freshwater Wetlands Program review;
  - 3. The remediation activities are only those necessary to protect or restore freshwater wetlands or buffers from impacts or substantial threats resulting from actual releases of hazardous materials; and
  - 4. The remediation activities incorporate all measures necessary to fully protect, replace, restore or mitigate the harm to any affected freshwater wetlands or buffers including best management practices, best available technologies, and any other measures which, in the opinion of the Department are necessary to:
    - a. Comply with the substance and intent of these Rules;
    - b. Protect the freshwater wetlands, buffer and floodplain environment; and
    - c. Protect the functions and values provided by freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage.

### **3.6.9 Utility Emergencies**

Emergency access and repair or replacement of utility lines, poles, pipes, structures, equipment or facilities which is necessary as a result of storm damage, acts of vandalism, accidents or equipment failure is permissible in accordance with § 3.6.1 of this Part provided that all affected freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to

storm flowage are fully restored following completion of the repair or replacement.

### **3.6.10 New Utility Lines**

- A. Installation, in accordance with § 3.6.1 of this Part, of new utility lines, poles, pipes, structures, equipment or facilities is permissible only where installation occurs on, above, or beneath existing or approved paved or unpaved roadways and their existing or approved cleared shoulders, or on, above, or beneath existing or approved railroad beds and their existing or approved cleared shoulders; and where anti-seepage collars are used as appropriate to prevent sub-draining effects on freshwater wetlands; and provided that:
  - 1. Existing culverts and the flow of water under bridges in roads or highways are not permanently blocked or disrupted by going under or attaching to such structure;
  - 2. The project does not cause any diversion of ground or surface water to or from any freshwater wetlands;
  - 3. The preconstruction contours are restored immediately upon installation;
  - 4. All work in any freshwater wetlands in the easement is undertaken during low-flow periods;
  - 5. All disturbed areas are revegetated after restoring contours; and
  - 6. The project design incorporates best management practices for dewatering excavated areas.
- B. Installation, in accordance with § 3.6.1 of this Part, of new or replacement utility lines and pipes to an existing structure where the pipe or conduit crosses any jurisdictional area, including area subject to storm flowage, that is not freshwater wetland or buffer, is permissible provided that the preconstruction contours are restored immediately upon installation.
- C. Installation, in accordance with § 3.6.1 of this Part, of overhead poles or cable lines that are conveyed on singular poles, including the installation of the pole(s), is permissible within a jurisdictional area that is not freshwater wetland or buffer, provided that:
  - 1. The lines do not cross over or through any area of freshwater wetland or buffer; and
  - 2. The preconstruction contours are restored immediately upon installation.

### **3.6.11 Agricultural Practices By Any Property Owner Other Than a Farmer**

- A. Continuing agricultural practices in a jurisdictional area, including cutting or clearing of invasive plants, by any property owner other than a farmer are permissible in accordance with § 3.6.1 of this Part provided that the activities are restricted to existing or approved gardens, pastures, and fields which have been in use on a regular basis.
- B. Expansion of gardens, pastures, and fields within a jurisdictional area is exempt, in accordance with § 3.6.1 of this Part, provided that:
  - 1. No freshwater wetlands are altered; and
  - 2. All activity is located outside of any designated buffer zone (see § 3.23 of this Part) and does not cause filling of any floodplains, areas subject to flooding or areas subject to storm flowage.

### **3.6.12 Normal Farming and Ranching Activities**

Normal farming and ranching activities carried out by farmers, as defined herein, are exempt from obtaining permits in accordance with the provisions of § 3.13 of this Part and the R.I. Gen. Laws §§ 2-1-22(i) and (k).

### **3.6.13 Conservation Activities**

- A. Conservation activities, such as fish and wildlife management that are carried out on State or Federal property by the Department or by the U.S. Department of Interior Fish and Wildlife Service, are permissible in accordance with § 3.6.1 of this Part. Such activities are limited to the following:
  - 1. Manipulation of water elevations within impoundment areas on State or Federal property for the purpose of habitat and species management;
  - 2. Management of species and habitat conditions by cutting, clearing, planting, plowing, or prescribed burning;
  - 3. The maintenance, repair or installation of in-stream structures for manipulation and management of fisheries habitat including fish ladders, fish diversions, fish traps and structures to moderate river or stream velocities/volumes for fisheries management objectives;
  - 4. The maintenance, repair, replacement or installation of any water control structure within an existing low hazard dam maintained and operated by the Division of Fish and Wildlife for the management or conservation of waterfowl or wildlife;
  - 5. The maintenance, repair, replacement or installation of small signs for the purpose of trail markers, identification of property boundaries or display of educational materials; and

6. The activities described in §§ 3.6.13(A)(2) through (4) of this Part on lands controlled by easement held by the State or Federal government provided that flow levels are maintained.
- B. This Rule does not allow for the installation or removal of dams, construction of new ponds, or filling or permanent drainage of freshwater wetlands, buffers, or floodplains.

### **3.6.14 Monitoring and Research Activities**

- A. The following monitoring and research activities are authorized within a jurisdictional area in accordance with § 3.6.1 of this Part provided that there is no permanent loss of freshwater wetlands, buffer, floodplain, area subject to flooding or area subject to storm flowage, any soil disturbance is stabilized, any temporary subsurface borings are properly closed, and the area is allowed to revert to its natural condition.
1. Installing groundwater monitoring wells to determine the depth to the water table or the extent of subsurface contaminants; installing groundwater table test pipes; onsite wastewater treatment system (OWTS) test holes; taking exploratory borings for soil and ledge/bedrock assessments; and installing pump test wells for the purpose of investigating public water supply, including piezometers, staff gages, and groundwater monitoring wells;
  2. Installing stream flow gauging stations by the United States Geological Survey, Water Resources Division or by public water supply districts;
  3. Harvesting limited quantities of vegetation to estimate plant productivity or biomass;
  4. Clearing footpaths or transect lines no greater than five feet (5') in width to permit wildlife surveys or access to sampling stations or plots;
  5. Excavation of temporary pits for examination of soil properties and for the collection of soil samples; or
  6. Construction of temporary blinds for wildlife observation.

### **3.6.15 Temporary Educational, Recreational and Cultural Structures**

The placement of temporary inert structures or items for use during specific events such as water-skiing competitions, boat races, or public events or festivals is permissible in accordance with § 3.6.1 of this Part, provided that such structures or items are in place no longer than thirty (30) days, are removed immediately after the specific event, and where they do not result in impedance of flow. Such structures consist of temporary buoys, markers, floating docks less than one hundred fifty square feet (150') in size, and other similar structures.

### **3.6.16 Moorings and Anchorage for Single Boats**

One (1) mooring or anchorage (not to exceed a weight of one hundred (100) pounds) per waterfront lot for use by a single boat may be placed in accordance with § 3.6.1 of this Part.

### **3.6.17 Fire Fighting**

- A. Emergency withdrawal of water from a pond or flowing body of water for the purpose of fighting fires is permissible in accordance with § 3.6.1 of this Part, provided that the water withdrawal is for a specific emergency event and that other sources of water are inadequate or inaccessible at the time of the emergency.
- B. The installation of dry hydrants in ponds for fire-fighting purposes only is permissible in accordance with § 3.6.1 of this Part, provided that there is no cutting or clearing of woody vegetation and the intake pipe is at least one foot (1') above the pond bottom.

### **3.6.18 Restoration Planting Projects**

- A. Planting in a jurisdictional area, other than freshwater wetlands, is permissible in accordance with § 3.6.1 of this Part, provided that the following conditions are met:
  - 1. The purpose of the project is to restore a disturbed, degraded or unvegetated area such as a mowed lawn, a gravel area, or a parking lot;
  - 2. No cutting or clearing of native trees or shrubs will occur. Cutting of existing groundcover to create a plantable site is limited to an area immediately around each new plant, not to exceed a radius that is twice the diameter of the root ball;
  - 3. Pavement removal is limited to that area that will be planted;
  - 4. All plantings must be non-invasive species, with a preference for native species, and suitable for the site condition;
  - 5. No excavation, filling, draining or grading is allowed except for the addition of topsoil for each new plant and the application of a layer of mulch or woodchips less than two inches (2") deep around each new plant;
  - 6. All disturbed soils must be stabilized with a suitable conservation seed mix with a preference for native seed mixes;
  - 7. All plantings must be cared for and watered until they are established; and



8. Except in areas that are currently paved or compacted gravel, protective practices are implemented to safeguard potential turtle nesting areas, including minimizing soil disturbance from May 15<sup>th</sup> through September 15<sup>th</sup>.
- B. For tracking purposes, the property owner must notify the Department's Water Quality and Wetland Restoration Team, in writing, within thirty (30) days after completion of the restoration planting project.

### **3.6.19 High Hazard and Significant Hazard Dams**

Maintenance, repair and emergency repair of high hazard and significant hazard dams, as defined in the Department's Rules and Regulations for Dam Safety, Part 130-05-1 of this Title, are permissible, provided that all proposed projects and activities adhere to the requirements of said Rules, and provided that the project will not result in a substantial alteration of a dam, as defined herein.

### **3.6.20 Low Hazard Dams**

- A. Limited cutting or clearing of vegetation is permissible, in accordance with § 3.6.1 of this Part, and as specifically provided for below:
  1. The cutting or clearing is limited to areas on and adjacent to the low hazard dam, such that it does not exceed fifteen feet (15') from the perimeter of the dam, including the toe; or
  2. The cutting or clearing is necessary to access the dam to complete maintenance activities.
- B. Limited maintenance of low hazard dams to maintain them in proper working order is permissible, in accordance with § 3.6.1 of this Part, provided that the activities are limited to filling minor erosion areas, lubricating and exercising equipment, and re-pointing masonry areas.
- C. Inspection, maintenance and repair to any water control structure within a low hazard dam is permissible, provided that the Freshwater Wetlands Program receives written notification at least ten (10) days prior to the commencement of the activity. Such notice must explain the activity to be performed and must state the expected time of completion. The normal water surface elevation shall not be substantially lowered except for that which is necessary to complete the inspection, maintenance or repair of the structure. Where practicable, either normal water elevations or temporarily lowered water elevations must be maintained by the use of temporary cofferdams. Such cofferdams must remain in place until maintenance is completed and must be removed upon project completion.

### **3.6.21 Crossing or Relocating an Area Subject to Storm Flowage**

- A. Crossing or relocating an area subject to storm flowage that is not within a freshwater wetland, buffer or floodplain is permissible in accordance with § 3.6.1 of this Part, provided that the activities:
1. Do not change the flow capacity of the area subject to storm flowage;
  2. Do not create a new discharge point; and
  3. Do not change the flood storage capacity.

### **3.6.22 Restoration of Freshwater Wetlands Resulting from Unauthorized Alterations**

- A. Activities within a jurisdictional area which are required by an enforcement action issued by the Department to restore unauthorized alterations in freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage are allowed in accordance with § 3.6.1 of this Part provided that:
1. All activities which may affect freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage are under the direct oversight or control of the Department;
  2. The activities are only those necessary to carry out the requirements as directed by the Department to protect or restore freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage; and
  3. The activities incorporate all measures necessary to avoid and minimize impacts to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage and will protect, replace, restore, or mitigate the harm to any affected resource by including best management practices, best available technologies, and any other measures which, in the opinion of the Department are necessary to:
    - a. Comply with the substance and intent of these Rules;
    - b. Protect the freshwater wetland environment; and
    - c. Protect the functions and values provided by freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage.

### **3.6.23 Control of Invasive Plants**

- A. Limited cutting and clearing of invasive plants is allowed in accordance with § 3.6.1 of this Part provided that:

1. A permit for control of aquatic nuisance plant species using pesticides/herbicides is obtained from the Division of Agriculture, Pesticide Control Program and all treatments are applied by a Department licensed applicator; or
2. The hand-pulling and removal of water chestnut (*Trapa natans*) is in accordance with a project description and location provided to the Department's Water Quality and Wetland Restoration Team and is reviewed and authorized by the Team; or
3. The cutting for invasive species control is within freshwater wetlands or buffers, where necessary to facilitate the growth of native plants, and provided that:
  - a. The project description and location are submitted to the Department's Water Quality and Wetland Restoration Team for review, and the project is deemed to contain the necessary controls and expertise; and
  - b. Projects in freshwater wetlands or buffers that propose soil excavation shall not be exempt according to this Rule; or
4. The cutting and clearing of invasive plants is within a jurisdictional area that is not freshwater wetlands, buffer or buffer zone.

#### **3.6.24 Pedestrian Trails**

- A. Establishment of a new pedestrian trail within a jurisdictional area is allowed in accordance with § 3.6.1 of this Part only when:
  1. All activities are conducted outside of freshwater wetlands and buffer zones;
  2. The trail and associated limits of disturbance are no wider than four feet (4') wide;
  3. Any grade changes shall not exceed four inches (4") for the establishment or maintenance of the trail;
  4. There is no increase in impervious area; and
  5. No alteration of surface or groundwater flows will occur except as may otherwise be allowed in § 3.6.21 of this Part.

### **3.7 Standards Applicable to Regulated Projects and Activities and Variance Procedures**

§ 3.7 of this Part establishes freshwater wetlands and buffer standards, setback requirements and other required standards applicable to projects and activities as regulated pursuant to these Rules, except as provided in § 3.6 of this Part. Exempt Activities or except as governed by the provisions of § 3.13 of this Part for farmers conducting normal farming and ranching activities. The standards are intended to protect and enhance the functions and values of freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage.

#### **3.7.1 Freshwater Wetlands and Buffer Protection Standards**

##### **A. General Freshwater Wetlands Protection Standard**

All projects and activities subject to this Rule shall be designed and carried out to avoid alteration of freshwater wetlands.

##### **B. Freshwater Wetlands Buffer Standard**

1. § 3.7.1(B) of this Part establishes buffer standards for projects and activities carried out within a jurisdictional area. As defined herein, a buffer is an area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition or an area of land that is to be created to resemble a naturally occurring vegetated area. Undeveloped vegetated land is an area of land that does not consist of buildings, impervious surfaces, bare gravel, lawn or landscaped areas.
2. Buffer Zones. The land areas contiguous to freshwater wetlands as specified in these Rules are designated as buffer zones (see § 3.23 of this Part). The width of a buffer zone is measured in accordance with the procedures in § 3.23 of this Part.
3. Protection of Existing Freshwater Wetland Buffers. All projects and activities shall be designed and carried out to avoid alteration of buffers within buffer zones, except as provided for in § 3.7.1(B)(5) of this Part, Residential Infill Lot Buffer Standard. The buffer within a designated buffer zone shall consist of:
  - a. All undeveloped vegetated land; and
  - b. Any area to be newly created to resemble buffer pursuant to § 3.7.1(B)(4) of this Part.
4. Creation of New Buffer on Existing Disturbed Property

- a. When a project or activity is proposed within a buffer zone that does not consist entirely of undeveloped vegetated land, new buffer area may be required to be created within a portion of the buffer zone to resemble a naturally occurring vegetated area.
- b. A project or activity that cannot, due to site constraints, avoid intrusion into the buffer zone shall be designed and carried out to avoid alteration of the existing buffer as well as meet the following minimum targets for creation of new buffer contiguous to freshwater wetlands or existing buffer on the subject property:
  - (1) For proposed projects or activities on property with no existing buildings, the minimum target for total buffer width (existing undeveloped vegetated land plus created buffer) is:
    - (AA) Fifty percent (50%) of the applicable buffer zone width from § 3.23 of this Part, not to exceed fifty feet (50'), on lots greater than or equal to one (1) acre; or
    - (BB) Fifteen feet (15'), on lots less than one (1) acre.
  - (2) For proposed projects or activities on property that is greater than or equal to three (3) acres, that is not a single-family residential lot of record, that contains one (1) or more existing structures, and where the proposed land disturbance total is greater or equal to ten thousand square feet (10,000'), the minimum target for total buffer width is:
    - (AA) Twenty-five feet (25') in the non-urban River Protection Regions 1 and 2 (see § 3.24 of this Part); or
    - (BB) Fifteen feet (15') in the urban region (see § 3.24 of this Part).
- c. Creation of new buffer may be accomplished by the planting of vegetation or by allowing the area to naturally revegetate, at the discretion of the Department. The Department may require plantings as a condition of a permit, and such area shall be defined as buffer. When creating buffer, the Department may allow certain areas to remain clear in order to accommodate existing utilities, drainage easements, reasonable access to existing developed shoreline features, property accessories, or conditions where re-vegetation would require the removal or threaten the integrity of existing structures.

## 5. Residential Infill Lot Buffer Standard

- a. This standard shall apply to proposed new construction on an individual residential lot of record, as of the effective date of these Rules, where the lot meets the following conditions:
  - (1) Has frontage on an existing road;
  - (2) Has adjacent lots on both sides that are developed;
  - (3) Is less than or equal to one (1) acre in size; and
  - (4) Is undeveloped vegetated land.
- b. When the proposed new construction cannot meet the buffer and the setback standards for the freshwater wetlands of concern, the proposed structure foundation is to be located no closer to the edge of the subject freshwater wetland than the structure foundation on the adjacent lot which is farthest from the subject freshwater wetland edge. The project shall be designed to avoid alteration of the remaining buffer, and in no case shall the remaining buffer be less than that shown in Table 1 in § 3.7.1(B)(5)(c) of this Part:

c. Table 1. Minimum buffer and setback distances

Residential Infill Lot Size	Buffer Width	Setback
Less than 10,000 square feet	15 feet	Buffer plus 15 feet
Equal to or greater than 10,000 square feet and less than 20,000 square feet	25 feet	Buffer plus 15 feet
Equal to or greater than 20,000 square feet (and less than or equal to 43,560 square feet)	50 feet	Buffer plus 15 feet

6. Buffer Management and Maintenance. A buffer shall be retained in a natural vegetative, undisturbed condition to protect the functions and values of the freshwater wetlands and buffer. Certain activities related to buffer management may be authorized as exempt activities pursuant to the provisions and conditions in § 3.6 of this Part.

## C. Setback Standards

1. Setback Standards for Primary Structures. Primary structures (e.g. residential dwellings, commercial/industrial structures, schools, churches,

etc.) must be located to meet a setback distance of no less than the buffer width plus twenty feet (20'). Accessory structures must be located to meet a setback distance of no less than the buffer width plus five feet (5').

2. Setbacks for Onsite Wastewater Treatment Systems. The setback requirements for the components of an onsite wastewater treatment system are specified in the Department Rules Establishing Minimum Standards Relating to the Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems, Subchapter 10 Part 6 of this Chapter, in effect at the time of application. A leachfield and the required ten foot (10') cleared zone around it shall be located outside of the buffer.

D. Rare or Endangered Species Standard

No project or activity may result in degradation of the natural characteristics of any rare freshwater wetland type; likewise, no project or activity may reduce the ability of a freshwater wetlands or buffer to ensure the long-term viability of any rare or endangered animal or plant species incorporated by reference in §§ 3.3(A) and (B) of this Part or under the Federal Endangered Species Act.

E. Flood Protection Standard

1. Flood storage capacity: Projects and activities taking place in a floodplain shall not result in any net reduction in flood storage capacity and shall not reduce the rate at which floodwater is stored by the floodplain.
2. Floodway obstruction: Projects and activities taking place within or adjacent to rivers or streams shall not encroach into floodway limits with any fill, structure or other development.

F. Surface Water and Groundwater Diversion Standard

Projects and activities shall not adversely affect the flow of groundwater or surface water into or out of any freshwater wetlands and shall not result in obstruction of, or the reduction in storage capacity of, any area subject to flooding or area subject to storm flowage.

G. Stormwater Management Standard

Projects and activities shall meet the minimum standards in the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter, or for single-family lots of record, the "RI Stormwater Management Guidance for Individual Single Family Residential Lot Development" for the recommended and primary means to achieve this standard.

H. Erosion and Sedimentation Control Standard

Projects and activities shall be designed and carried out in a manner that prevents soil erosion and sedimentation consistent with the Stormwater Management, Design and Installation Rules, § 10-8.16 of this Chapter.

I. Water Quality Standard

Projects shall not cause or contribute to a violation of any State water quality standard for surface water or groundwater or contribute to significant degradation of surface water or groundwater resources.

**3.7.2 Review Criteria**

- A. The following review criteria will be used by the Department to determine the impacts of all projects and activities, either individually or cumulatively, upon the functions or values of freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage. All such projects shall be subject to all of the review criteria contained within this Part and must incorporate those best management practices, best available technologies, and any maintenance or inspection schedules necessary to comply with the applicable criteria.
1. A project or activity determined by the Department to meet the standards in § 3.7.1 of this Part is presumed to satisfy the review criteria in §§ 3.7.2(A) and (B) of this Part;
  2. No project or activity shall result in the adverse impacts identified in the review criteria § 3.7.2(B) of this Part; and
  3. No project or activity shall result in any random, unnecessary or undesirable alteration of a freshwater wetlands, buffer, floodplain, area subject to flooding or area subject to storm flowage.
- B. Before issuing a permit, the Department must determine that a proposed project or alteration will not result in:
1. Significant reduction in the overall wildlife production or diversity of a freshwater wetland or buffer;
  2. Significant reduction in the ability of a freshwater wetland or buffer to satisfy the needs of a particular wildlife species;
  3. Significant displacement or extirpation of any wildlife species from a freshwater wetland or surrounding areas due to the alteration of the freshwater wetland or buffer;
  4. Any reduction in the ability of the freshwater wetland or buffer to ensure the long-term viability of any rare animal or rare plant species;



5. Any degradation in the natural characteristic(s) of any rare freshwater wetland type;
6. Significant reduction in the suitability of any freshwater wetland or buffer for use by any resident, migratory, seasonal, transient, facultative, or obligate wildlife species, in either the short or long term as a travel corridor; feeding site; resting site; nesting site; escape cover; seasonal breeding or spawning area;
7. Any more than a minimal intrusion of, or increase in, less valuable, invasive or exotic plant or animal species in a freshwater wetland or buffer;
8. Significant reduction in the wildlife habitat functions and values of any freshwater wetland or buffer which could disrupt the management program for any game or non-game wildlife species carried out by State or Federal fish, game, or wildlife agencies;
9. Significant reduction in overall current or potential ability of a freshwater wetland or buffer to provide active or passive recreational activities to the public;
10. Significant disruption of any on-going scientific studies or observations performed by or in cooperation with Federal, State, or municipal agencies or educational institutions;
11. Elimination of, or severe limitation to traditional human access to, along the bank of, up or down, or through any rivers, streams, ponds, or other freshwater wetlands or buffers;
12. Any reduction in water quality functions and values or negative impacts to natural water quality characteristics, either in the short or long term, by modifying or changing: water elevations, temperature regimes, volumes, velocity of flow regimes of water; increasing turbidity; decreasing oxygen; causing any form of pollution; or modifying the amount of flow of nutrients so as to negatively impact freshwater wetland functions and values;
13. Any placement of any matter or material beneath surface water elevations or erection of any barriers within any ponds or flowing bodies of water which could cause any hazards to safety;
14. Significant loss of important open space or significant modification of any uncommon geologic or archaeological features;
15. Significant modification to the natural characteristics of any freshwater wetlands or buffer area of unusually high visual quality;

16. Any decrease in the flood storage capacity of any floodplain or area subject to flooding which could impair its ability to protect life or property from flooding or flood flows;
17. Significant reduction of the rate at which flood water is stored by any floodplain or any area subject to flooding during any flood event;
18. Restriction or significant modification of the path or velocities of flood flows for the one (1) year, ten (10) year, or one hundred (100) year frequency, twenty-four (24) hour, Type III storm events so as to cause harm to life, property, or other functions and values provided by freshwater wetlands, buffers or floodplain;
19. Placement of any structure or obstruction within a floodway so as to cause harm to life, property, or other functions and values provided by freshwater wetlands or their associated buffers;
20. Any increase in run-off rates over pre-project levels or any increase in peak flood elevations within freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage for the one (1) year, ten (10) year, or one hundred (100) year frequency, twenty-four (24) hour, Type III storm events which could impair their ability to protect life or property from flooding or flood flows;
21. Any increase in run-off volumes and discharge rates which could, in any way, exacerbate flooding conditions in flood-prone areas;
22. Significant changes in the quantities and flow rates of surface or groundwater to or from isolated freshwater wetlands (e.g., those freshwater wetlands without inflow or outflow channels);
23. Placement of any structural stormwater best management practices within freshwater wetlands, or proposal to utilize freshwater wetlands as a stormwater best management practice;
24. Any more than a short-term decrease in surface water or groundwater elevations within any freshwater wetlands;
25. Non-compliance with the Rhode Island Department of Environmental Management Water Quality Regulations, Subchapter 05 Part 1 of this Chapter; or
26. Any detrimental modification of the ability of a freshwater wetland or buffer to retain or remove nutrients or act as natural pollution filter.

### **3.7.3 Variances from Standards Applicable to Regulated Projects and Activities**

#### **A. General Variance Criteria**

1. Unless eligible as an exemption pursuant to § 3.6 of this Part, or eligible for approval under a Freshwater Wetlands General Permit (see § 3.10 of this Part), projects and activities that cannot meet the standards specified in §§ 3.7.1(A) through (F) of this Part may apply for a variance in order to receive a permit from the Department. Variances shall only be granted if the applicant demonstrates and documents that all of the following criteria have been met. No variance is available for standards specified in §§ 3.7.1(G) through (I) of this Part.
2. All reasonable alternatives to avoid and minimize impacts to freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage have been pursued and incorporated into the project design and application as follows:
  - a. Avoidance: All persons must satisfactorily demonstrate to the Department in the form of a written narrative that all probable impacts to freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage functions and values have been avoided to the maximum extent possible. The written narrative must describe what steps were taken to avoid impacts to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage. At a minimum, applicants must consider and address the following issues:
    - (1) Whether the primary proposed activity is water-dependent or whether it requires access to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage as a central element of its primary purpose;
    - (2) Whether any areas within the same property or other properties owned or controlled by the applicant could be used to achieve the project purpose without altering the natural character of any freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;
    - (3) Whether any other properties reasonably available to, but not currently owned or controlled by, the applicant could be used to achieve the project purpose while avoiding freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage alterations. A property is reasonably available if, in whole or in part, it can be acquired without excessive cost, taking individual circumstances into account, or, in the case of property owned or controlled by the same family, entity, group of affiliated entities, or local, State or Federal government, may be obtained without excessive hardship;

- (4) Whether alternative designs, layouts or technologies could be used to avoid freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage or impacts on functions and values on the subject property or whether the project purpose could be achieved on other property that is reasonably available and would avoid freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;
- (5) Whether the applicant has made any attempts (and if so what they were) to avoid alterations to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage by overcoming or removing constraints imposed by zoning, infrastructure, parcel size or the like; and
- (6) Whether the feasible alternatives that would not alter the natural character of any freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage on the subject property or on property that is reasonably available, if incorporated into the proposed project would adversely affect public health, safety or the environment.

b. Minimization: For any impact to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage that cannot be avoided, the applicant must satisfactorily demonstrate to the Department in the written narrative that the impact to their functions and values have been reduced to the maximum extent possible. At a minimum, applicants must consider and address the following issues:

- (1) Whether the proposed project is necessary at the proposed scale or whether the scale of the alteration could be reduced and still achieve the project purpose;
- (2) Whether the proposed project is necessary at the proposed location or whether another location within the site could achieve the project purpose while resulting in less impacts to the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;
- (3) Whether there are feasible alternative designs, layouts, densities or technologies, that would result in less impacts to the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage while still achieving the project purpose; and

- (4) Whether reduction in the scale or relocation of the proposed project to minimize impact to the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage would result in adverse consequences to public health, safety or the environment.
3. All applicable review criteria specified in § 3.7.2 of this Part have been satisfied.
4. Due to the conditions at the project site, the applicable standard(s) cannot be met.
5. The relief requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable alteration or use of the site as required by §§ 3.7.3(A)(2)(a) and (b) of this Part.
6. The requested variance to the applicable standard(s) is not due to any prior action of the applicant or the applicant's predecessors in title.
7. Due to the conditions of the project site in question, the standard(s) will cause the applicant an undue hardship. In order to receive relief from an undue hardship an applicant must demonstrate *inter alia* the nature of the hardship and that the hardship is shown to be unique or particular to the site. Mere economic diminution, economic advantage, or inconvenience does not constitute a showing of undue hardship that will support the granting of a variance.

B. Variance Criteria for Public and Governmental Bodies

1. Unless eligible as an exemption pursuant to § 3.6 of this Part or eligible for approval under a Freshwater Wetlands General Permit (see § 3.10 of this Part), public or governmental projects or activities that do not meet the standards specified in §§ 3.7.1(A) through (F) of this Part are also required to obtain a variance in order to receive a permit from the Department. Variances shall be granted if the applicant demonstrates and documents that all of the following criteria have been met. No variance is available for standards specified in §§ 3.7.1(G) through (I) of this Part.
  - a. All reasonable alternatives to avoid and minimize impacts to freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage have been pursued and incorporated into the project design and application as required in §§ 3.7.3(A)(2)(a) and (b) of this Part;
  - b. All applicable review criteria specified in § 3.7.2 of this Part have been satisfied;

- c. Due to the conditions at the project site, the applicable standards cannot be met; and
- d. The proposed project serves a necessary public purpose that provides benefits to the public.

C. **Alternative Configuration of Vernal Pool Buffer Zone**

Where an applicant is unable to meet the buffer standard associated with a vernal pool, the applicant may propose an alternative buffer zone configuration that is protective of the functions and values of the associated vernal pool. This alternative configuration will be reviewed on a case-by-case basis by the Department through the variance process.

- D. In those instances where a variance would be obviated or reduced if a variance for a setback were acquired from a local municipality, the applicant must first exhaust his or her remedies before the local municipality prior to submitting an application for a permit to the Department.
- E. Relief from a standard does not remove the applicant's responsibility to comply with all other requirements pursuant to the Act and this Part.

### **3.8 Application Types and General Application Requirements**

§ 3.8 of this Part describes general application requirements and provisions applicable to all application types unless otherwise specified herein. Additional requirements for each application type are described in §§ 3.9 through 3.14 of this Part.

#### **3.8.1 Application Types**

- A. These Rules provide for the following types of applications:
  - 1. **Request to Determine the Presence of Jurisdictional Area:** This application may be submitted to request that the Department determine whether a regulated freshwater wetlands or other jurisdictional area is present on the applicant's property (see § 3.9.2 of this Part). The Department possesses the sole authority to determine which areas are deemed freshwater wetlands, buffers, floodplains, areas subject to storm flowage or areas subject to flooding.
  - 2. **Request to Verify Freshwater Wetland Edges:** This application may be submitted to request that the Department confirm the freshwater wetland edge(s) delineated by the applicant and, if in substantial agreement with the documentation provided, confirm the presence of the identified freshwater wetlands and their delineated edges (see § 3.9.3 of this Part). Furthermore, the Department will identify the type(s) of freshwater

wetland(s) verified with the applicable buffer zones and associated jurisdictional area.

3. Request for Regulatory Applicability: This application may be submitted to request that the Department make a determination as to whether a proposed project does or does not require a permit (see § 3.9.4 of this Part).
4. Application for a Freshwater Wetlands General Permit: This application may be submitted to seek approval for a proposed project that meets all the eligibility requirements of a Freshwater Wetlands General Permit (see § 3.10 of this Part).
5. Application for a Freshwater Wetlands Permit (see § 3.11 of this Part):
  - a. The Freshwater Wetlands Permit decision serves as the preliminary determination pursuant to R.I. Gen. Laws § 2-1-22(a).
  - b. Unless a proposed project or activity is exempt (see § 3.6 of this Part) or is eligible for approval for a Freshwater Wetlands General Permit (see § 3.10 of this Part):
    - (1) This application must be submitted for a project within a jurisdictional area or that requires approval from the Department in accordance with § 3.5 of this Part. For a project that does not meet all of the standards specified in § 3.7.1 of this Part, a request for a variance to the standards in accordance to § 3.7.3 of this Part must be submitted with the Application for a Freshwater Wetlands Permit.
    - (2) For projects on single family lots, an applicant may choose to submit to the Department a Joint OWTS Application for New Building Construction or for Alteration to a Structure and for a Freshwater Wetlands Permit, herein referred to as a Joint OWTS/Freshwater Wetlands Application, provided that the project does not involve variances from either these Rules or the Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems, Subchapter 10 Part 6 of this Chapter.
6. Application for a Significant Alteration: This application must be submitted to obtain a permit for a proposed project that will, or is likely to, result in a significant alteration of a freshwater wetlands, buffer or floodplain (see § 3.12 of this Part).
7. Application for Emergency Alteration: This application must be submitted either by the owner of the property or an appropriate official, orally or in

writing, to request a permit for an emergency alteration in the event that public health or safety is at imminent risk (see § 3.14.1 of this Part).

8. Application for Permit Renewal: This application must be submitted to renew a previously granted freshwater wetlands permit (see § 3.14.2 of this Part).
9. Application for Permit Modification: This application must be submitted to request approval of a minor modification to a previously permitted project (see § 3.14.3 of this Part).
10. Application for Permit Transfer: This application may be submitted to request the transfer of a valid permit to a new property owner (see § 3.14.4 of this Part).
11. Application Relating to Farmers: This application must be submitted directly to the Department's Division of Agriculture for a determination as to whether the project represents an insignificant or a significant alteration in accordance with these Rules (see § 3.13 of this Part).

### **3.8.2 Application Forms and Their Submission**

- A. What to Submit: It is the responsibility of each applicant to submit a completed application package, including originals of all applicable forms available from the Department and any additional supporting information required by the Department as specified in §§ 3.8 through 3.14 of this Part. The application must be accompanied by full payment of any applicable fee per §§ 3.8.8 and 3.8.9 of this Part.
- B. Who May Submit: The applicant must be the owner or owners of the property or easement that is the subject of the application, or it must be the government agency or entity with power of condemnation over such property or easement.
- C. Notification of Applicant and Agents: The Department will mail notices and other written communications regarding the application to the applicant and to the applicant's attorney, agent or other representative if, at the time the application is filed, the applicant so informs the Department in writing of his or her name and mailing or e-mail address.

### **3.8.3 Signatures**

- A. All application forms must be signed by the applicant, and the applicant's name must be clearly printed near the signature. In cases where a power of attorney is exercised, a notarized copy of the power of attorney must be attached to the application.



- B. In cases where the property is owned or controlled by a person that is not an individual, the application shall be signed as follows, and shall be accompanied by the titles of all such signatories:
1. For a corporation, company, fire district, association, club, non-profit agency or other entity not specifically identified in this § 3.8.3(B)(1) of this Part: by an officer with legal authority to bind the appropriate entity;
  2. For a partnership: by a general partner;
  3. For a municipal, State or Federal government, or any division, subdivision or agency thereof: by either a principal executive officer or by a ranking elected official. For purposes of this section, a Principal Executive Officer of a governmental agency includes:
    - a. The Chief Executive Officer of the agency, or
    - b. A Senior Executive Officer having responsibility for the overall operations of a principal organizational unit of the agency;
  4. For an estate: by the executor/executrix or administrator of the estate.
- C. Except as noted below, applicants proposing projects on their own property and within a jurisdictional area either partially or wholly on property owned or controlled by others must obtain written notarized authorization from the landowner of the property within which the jurisdictional area will be directly altered as a result of a proposed project. Such written, notarized authorizations must be provided to the Department and must expressly authorize the applicant to apply for the proposed site alterations as depicted on the site plans submitted with the application. The authorizing landowner does not become an "applicant" as described in § 3.8.2(B) of this Part by granting such written notarized authorization to an applicant.
- D. Written notarized authorization shall not be required for freshwater wetland alterations associated with full or partial removal of a dam proposed for the purpose of habitat improvement, restoration or dam safety. The surface water (impounded) upstream of the dam must be considered a flowing body of water, and not a pond, both prior to and after completion of the project. This exemption applies subject to confirmation by the Department.
- E. If the applicant is a government agency or entity, the agency or entity must demonstrate that it owns the property or holds an easement of sufficient scope to cover the proposed project or activity; or has the requisite power of condemnation with regard to the relevant area. In such cases, authorization from each property owner who owns property containing a jurisdictional area that will be altered as a result of a proposed project is not required.

- F. Any change in property ownership during the processing of any application will require the following:
1. The submission of a new application form with the identity of the new owner and appropriate signatures; and
  2. A certified copy of the deed of transfer for an Application for a Significant Alteration only.

#### **3.8.4 Site Plan Requirements**

- A. Site plans must be submitted with the following application types:
1. Request to Verify Freshwater Wetland Edges (§ 3.9.3 of this Part);
  2. Application for a Freshwater Wetlands General Permit (§ 3.10 of this Part);
  3. Application for a Freshwater Wetlands Permit (§ 3.11 of this Part);
  4. Application for a Significant Alteration (§ 3.12 of this Part); and
  5. Application for Permit Modification (§ 3.14.3 of this Part).
- B. Site plans may be required for other application types as specified in §§ 3.9 through 3.14 of this Part.
- C. The correct number of site plans required by the Instructions for Submittal must be provided at the time of submission. If additional plans are required, the applicant will be informed and must submit them.
- D. All site plans must be drawn to scale. The scale of all plans must be no smaller than one inch (1") equals one hundred feet (100') (1" = 100'); however, a larger scale is preferred (e.g., one inch (1") equals forty feet (40') (1" = 40')). Where additional detail is required to complete its evaluation, the Department may require larger scaled details.
- E. All site plans must be at least eight and one half inches (8 ½") by eleven inches (11") (8 1/2" x 11") in size, but no larger than twenty-four inches (24") by thirty-six inches (36") (24" x 36").
- F. All site plans must contain a title block, the original date of the plan, and the latest revision date of the plan if applicable. The title block must include the name of the person or party involved, the proposed project title, if any, the principal street or road abutting the site, the tax assessor's plat and lot number(s), the city or town, the name of the preparer, and the scale of the plan.
- G. All site plans containing more than one (1) sheet must be numbered consecutively (specifically: "page 1 of [total number of sheets]," and so forth).

- H. All site plans must contain a legend which explains all markings or symbols.
- I. All site plans must have all markings permanently fixed. Site plans that are pieced together with tape or contain markings of pen, pencil, crayon, markers or other items that can be changed or altered at a later date are not acceptable. Blue-line or black-line prints or photocopies of originals are acceptable.
- J. All site plans must, at a minimum, depict the following:
  - 1. Street(s) abutting the site with fixed reference points, (e.g., utility poles and numbers, house and number, and any other similar structures);
  - 2. Distance and direction to nearest street intersection;
  - 3. Magnetic North Arrow;
  - 4. Entire property boundary outline and dimensions, which may be shown on a separate plan sheet;
  - 5. Inset map showing location of site in the community;
  - 6. Any other fixed referenced points or developed land including, but not limited to, stone walls, buildings, fences, edges of fields/woods, trails, access roads, bare gravel or paved areas; impervious surfaces, lawns and landscaped areas; and
  - 7. Scale of plans.
- K. All site plans indicating physical features, distances, contour elevations, property lines, freshwater wetland edges, or other information provided as baseline data must clearly note whether such information was obtained by on-site survey, by aerial photogrammetry sources, or by reproduction from other maps or plans. Site plan information obtained from aerial photogrammetry sources or by reproduction from other plans or maps must provide an estimate of the maximum possible horizontal or vertical error between the information provided and the actual on-site conditions. Site plans developed from on-site surveys must clearly note what class or standard the survey meets.
- L. All site plans submitted with a Request to Verify Freshwater Wetland Edges, an Application for a Freshwater Wetlands General Permit, an Application for a Freshwater Wetlands Permit or an Application for a Significant Alteration must accurately depict the edge of all freshwater wetlands, applicable buffer zones, buffers, and the limits of other applicable jurisdictional areas in accordance with § 3.8.5 of this Part.
- M. All site plans submitted for review or approval of a proposed project shall include and depict the following, where applicable:

1. Where changes to grades are proposed, both current and proposed contour line elevations at maximum intervals of two feet (2') and where no changes to grades are proposed, include a notation which so indicates;
  2. Profiles and cross sections drawn to scale;
  3. A labeled 'limit of disturbance' that encloses all proposed temporary and permanent vegetative clearing and surface or subsurface disturbance associated with the proposed project;
  4. All temporary and permanent erosion and sediment controls;
  5. All temporary and permanent stormwater, flood protection and water quality management controls, and all best management practices;
  6. All proposed measures to conduct, contain or otherwise control the movements of surface water, groundwater, or stormwater flows; and the ultimate destination of such flows;
  7. Any and all construction activities either above or below the earth's surface proposed to occur within a jurisdictional area, including the height of buildings;
  8. Any additional specific requirements contained in the application package checklist for proposed projects; and
  9. Any area within a buffer zone that is to be created and maintained as buffer in accordance with § 3.7.1(B)(4) of this Part.
- N. Each site plan sheet prepared by a registered professional must bear the stamp of that professional, along with the date and his or her signature. Site plans submitted for an Application for a Significant Alteration must bear the stamp and signature of a Registered Professional Engineer.

### **3.8.5 Freshwater Wetland Edge Delineation and Related Requirements**

- A. Depiction on Site Plans – 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 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;
  5. The outer extent of the jurisdictional area; and
  6. The name of any surface or flowing water body or any other freshwater wetlands where applicable.
- B. Delineation of Freshwater Wetland Edges: Freshwater wetland edges shall be delineated on the property as follows:
1. The freshwater wetland edge shall be flagged with sequentially numbered or lettered flags. Flags must be placed at the freshwater wetland edge in sufficient numbers to clearly identify the edge. The distance between flags must allow for adequate visibility from one (1) flag to another;
  2. The freshwater wetland edge shall be surveyed and recorded on a site plan showing the locations and numbers/letters of the flags corresponding with those flags at the site.
  3. Field delineation of freshwater wetland edges may not be required in the following instances:
    - a. The freshwater wetland has well-defined edges, provided that the edges are otherwise accurately located, depicted and labeled on the site plans;
    - b. The proposed project will be sited in an already disturbed area, and sufficient fixed references are available to allow for on-site confirmation of freshwater wetland edges (in such cases, depiction on site plans of approximate freshwater wetland edges will be acceptable); or
    - c. The freshwater wetland is on adjacent or nearby property, provided that the depiction of freshwater wetland edges on the site plans submitted pursuant to this Rule is based on best available mapping or other reliable information and sufficient fixed references are available to allow for onsite confirmation.

4. Field delineation of the edges of rivers, streams, areas subject to storm flowage, buffers, buffer zones, jurisdictional area limits or floodplains, or the contiguous jurisdictional area that extend outward from the edges of rivers, streams, drinking water supply reservoirs and all other freshwater wetlands is not required.
- C. Use of Global Position System (GPS) technology to delineate freshwater wetland edges is permissible only if GPS results are at least as accurate as a ground survey. The use of GPS must be so noted on site plans, and the Department reserves the right to require a standard ground survey.

### **3.8.6 Additional Site Work**

- A. To facilitate site inspection by the Department, the applicant must perform site work to clearly identify and label the following activities and features, as applicable:
1. Property boundaries in or adjacent to freshwater wetlands, if few or no fixed reference points are available;
  2. Freshwater wetland edges, in accordance with §§ 3.8.5 and 3.21 of this Part, flagged for verification or for review of a proposed project;
  3. Periodic points of reference to the proposed project;
  4. The boundary of the outermost limit of disturbance (e.g., filling, clearing, soil disturbance);
  5. Outlines of proposed ponds and stormwater best management practices;
  6. Subdivision lots and numbers;
  7. Corner locations of proposed structures in or adjacent to freshwater wetlands;
  8. Corner locations of proposed septic systems on proposed lots containing freshwater wetlands (staked and labeled);
  9. Center lines of roadways, pipelines and utility lines, with station numbers indicated; and
  10. Centerlines of proposed drainage channels.

### **3.8.7 Requirements Regarding Use of Professionals**

- A. State or other law, including these Rules, may require professionals to prepare site plans, specifications, reports or other documents related to activities subject to these Rules. The applicant, or the respondent in matters concerning

enforcement actions, is responsible for engaging or employing any and all such professionals. Such licensed professionals shall affix their stamp, signature and date of signing upon those plans, specifications, documents, or portions thereof, for which they are responsible.

- B. When a Registered Professional Engineer is engaged, all engineering work that applies to the project application (e.g., drainage calculations and drainage narrative) must be stamped by the engineer; and the engineer shall be registered in the State of Rhode Island.
- C. These Rules require, or provide the Department with discretion to require, the use of a Registered Professional Engineer in the following instances:
  - 1. Pursuant to R.I. Gen. Laws § 2-1-22, site plans submitted for an Application for a Significant Alteration must bear the stamp and signature of a Registered Professional Engineer.
  - 2. The flood plain edge must be established by a Registered Professional Engineer if one hundred (100) year floodplain data are unavailable from the Federal Emergency Management Agency (FEMA).
  - 3. Where pre-determined one hundred (100) year flood elevations are unavailable, the applicant must provide clear and convincing documented evidence prepared by a Registered Professional Engineer that the project site is above any probable one hundred (100) year flood elevation.
  - 4. With regard to an Application for a Significant Alteration, the Department may require written certification from a Registered Professional Engineer attesting to the completion of all engineered portions of the project that are described or referred to in the permit and on the approved site plans.
- D. As further described in guidance documents available from the Department, applicants are strongly advised to retain the services of qualified professionals with the educational background and experience necessary to perform the following tasks:
  - 1. Identification and delineation of freshwater wetland edges §§ 3.8.5 and 3.21 of this Part; and
  - 2. Evaluation of freshwater wetland functions, values, and impacts § 3.12.2(A)(4) of this Part.
- E. When an approval requires a certification that a proposed project was constructed in accordance with the approved site plans or all terms and conditions of a permit, that certification must be prepared and submitted by an appropriate licensed professional.

- F. Professionals who have prepared assessments, evaluations, recommendations, or reports on behalf of an applicant or respondent in matters involving enforcement of these Rules shall be identified.

### **3.8.8 General Fee Requirements**

- A. The applicant must pay all required fees to the Department in full at the time the applicant submits any application or request for hearing.
- B. The fees for proposed projects and activities are set forth in the fee schedule (see § 3.8.9 of this Part).
- C. Unless specified in the Fee Schedule, fees submitted to the Department are not refundable once the technical review of the application has commenced; however, for the original applicant only, the Department will apply fifty percent (50%) of the fee submitted for an Application for a Freshwater Wetlands Permit to the cost of a new application for the project, if:
1. A determination of a significant alteration is issued, and the original applicant subsequently files an Application for a Significant Alteration for the proposed project within six (6) months of the date the significant alteration determination was issued; or
  2. A determination of a significant alteration is issued with recommendations to prevent such an alteration, and the original applicant files a second Application for a Freshwater Wetlands Permit that incorporates the recommendations, within six (6) months of the date of issue of the original determination.
- D. All fees must be paid by check or money order made payable to the Rhode Island General Treasurer.
- E. No application fees pursuant to these Rules are required for projects where the Department or a municipality is the applicant, or for an Application for Emergency Alterations (§ 3.14.1 of this Part).

### **3.8.9 Fee Schedule**

- A. Table 2. Freshwater wetlands application fees:

Application Type	Lot Size/Length	Fee
1. Determine the Presence of Jurisdictional Area:	a. 0 – 5 acres	\$150.00
	b. >5 – 20 acres	\$250.00



	c. > 20 acres	\$500.00
2. Verify Freshwater Wetland Edges:	a. < 500 feet	\$300.00
	b. 500 to 999 feet	\$600.00
	c. > 1000 feet	\$1,000.00
3. Regulatory Applicability		\$150.00
4. Freshwater Wetlands General Permit		\$150.00
5. Freshwater Wetlands Permit and Significant Alteration		See Project Types §§ 3.8.9(B) and (C) of this Part
6. Joint Permit		OWTS plus Wetlands Fee
7. Permit Transfer		\$100.00
8. Permit Modification		\$150.00
9. Permit Renewal		\$200.00
10. Negotiated Settlements		\$500.00
The Department shall refund any variance fee paid between July 1, 2022 and the date the applicable Rule amendment becomes effective.		

B. Table 3. Application fees for the following project types:

Project Type	Lot Size/Number of Lots	Fee for Application for Freshwater Wetlands	Fee for Application for Significant Alteration

1. Projects Associated with Existing Single-Family Lot		\$200.00	\$400.00
2. Construction of New Single-Family Lot		\$450.00	\$900.00
3. Projects Associated with Existing Non-Single Family, not miscellaneous in § 3.8.9(C) of this Part	a. 0 – 5 acres	\$300.00	\$600.00
	b. > 5 – 20 acres	\$1,000.00	\$2,000.00
	c. > 20 acres	\$2,000.00	\$4,000.00
4. Construction of New Non-Single Family, not miscellaneous in § 3.8.9(C) of this Part	a. 0 – 5 acres	\$500.00	\$1,000.00
	b. > 5 – 20 acres	\$1,500.00	\$3,000.00
	c. > 20 acres	\$3,000.00	\$6,000.00
5. New Subdivisions	a. 1 – 9 Lots	\$250.00 per Lot	\$500.00 per Lot
	b. 10 or more Lots	\$2,500.00 plus \$200.00 per Lot	\$5,000.00 plus \$400.00 per Lot
6. The maximum total fee for any subdivision is:		\$10,500.00	\$15,000.00

C. Table 4. Application fees for miscellaneous project types:

Miscellaneous Project Type	Fee for Applications for Wetlands Permit	Fee for Application for Significant Alteration
1. Individual docks, floats	\$100.00	\$300.00

2. Wildlife habitat project or water quality improvement project		
3. Dry hydrants		
4. Freshwater wetland restoration project		
5. Aquatic plant control project		
6. Land redevelopment/reuse project limited to conversion of sand and gravel banks, mill sites, abandoned commercial/industrial property to public recreation facilities	\$300.00	\$750.00
7. Rehabilitation of existing parks or recreational areas		
8. Multiple docks, floats or individual boat launches		
9. Pedestrian trails, paths, foot bridges		
10. Irrigation projects, subdrains		
11. Relocation/channelization of an area subject to storm flowage		
12. Dam repair, alteration or removal projects		
13. Wells other than for single family house lots	\$600.00	\$2,000.00
14. New pond construction		
15. Dredging existing ponds		

16. New or replacement drainage structures/facilities, e.g., culverts			
17. New access drive and roadways			
18. Construction of all new dams		\$1,000.00	\$2,000.00
19. New parks or recreational areas		\$1,000.00	\$2,500.00
20. Land clearing and/or grading operations			
21. Industrial processing/cooling, alternative energy project			
22. Bike paths			
23. River or stream relocation/channelization			
24. Surface mining, e.g. gravel quarry		\$5,000.00	\$10,000.00
25. New golf course			
26. Road, Bridge, Railway, Airport facility	a. Reconstruction	\$2,000.00	\$4,000.00
	b. New Construction	\$5,000.00	\$10,000.00
27. Utility installation, and Transmission lines	a. Reconstruction	\$2,000.00	\$4,000.00
	b. New Construction	\$5,000.00	\$10,000.00
28. Other new projects not listed above		\$1,200.00	\$4,000.00

- D. Application hearings: Fees are required to cover the costs for all investigations, a stenographer, an original transcript, room rental, and a hearing officer.
1. Public Hearings equals two thousand five hundred dollars (\$2,500.00).
  2. Adjudicatory Hearings equals two thousand dollars (\$2,000.00); however, in the event that the cost of the hearing exceeds the fee paid, the Department, through the AAD will require an additional fee which the applicant must submit prior to the Department's issuance of any final decision regarding an application. The adjudicatory hearing fee shall accompany the written request for hearing and shall be filed directly with the clerk of the AAD.
  3. Reimbursement of hearing fees may be allowed provided that:
    - a. No costs relating to the hearing were incurred by the Department, including the AAD. Where costs were committed or incurred, but do not exceed the initial fee, the Department may provide a partial reimbursement; and
    - b. All requests for full or partial reimbursement must be in writing and received by the Department within thirty (30) days following the Department's issuance of any final decision regarding an application.

### **3.8.10 Application Coordination**

A. Preapplication and Other Meetings

Any person may request a meeting with representatives of the Department to discuss regulatory procedures and requirements consistent with guidelines established by the Department.

B. Coordination with the Onsite Wastewater Treatment System (OWTS) Program

The Department reserves the right to require that applications for the same proposed project be submitted concurrently to the Freshwater Wetlands Program and to the OWTS Program to enable the Department to undertake a joint review.

C. Application Processing

The Department will process completed applications generally in the order in which properly completed initial application materials are received by the Department, except where potential competing demands of State and Department priorities dictate otherwise; including, but not limited to, those applications submitted in accordance with R.I. Gen. Laws Chapter 42-117.

- D. Only those applications that are determined to be complete in accordance with these Rules and are accompanied by the proper fee will be processed by the Department.
- E. Written Response. All Department decisions, determinations or authorizations, with the exception of responses to Requests for Emergency Alterations, will be issued in writing and signed by the Department.
- F. Any determination, verification or permit issued by the Department pursuant to any application involving freshwater wetlands does not obviate the need for the applicant to obtain any and all other necessary permits, and for the applicant and project to comply with all other applicable Federal, State and local laws, Regulations and ordinances.

### **3.8.11 Coordination with Municipalities**

- A. Applicants for major land development or major subdivision projects, as defined in R.I. Gen. Laws § 45-23-32, must submit, at the time the application is submitted to the Department, one (1) of the following:
  - 1. Local Master Plan approval; or
  - 2. Local conditional approval of a combined Master and Preliminary Plan; or
  - 3. A letter from an authorized municipal official (the Administrative Officer) certifying compliance with local low impact development site planning and design requirements as contained within the local zoning ordinance, land development and subdivision Regulations, or other pertinent Regulations.
- B. Those municipalities that want to receive notification of Applications for Freshwater Wetland Permits that are filed with the Department for projects that are within the municipality's boundaries shall provide the Department the names and email addresses of two (2) staff contact persons designated to receive such notification. The municipality shall update the contact names and email addresses with the Department as applicable.
- C. The Department shall notify those municipal contact persons of the receipt of such applications for projects that are proposed within its boundaries.
- D. The Department will allow fifteen (15) days for the municipality to provide written comment to the Department on any such Application for a Freshwater Wetlands Permit. An Application for a Significant Alteration shall follow procedures described in § 3.12.4 of this Part.

### **3.8.12 Suspension of Application Process**

- A. In any of the following circumstances, the Department may at its discretion suspend the processing of an application, provided that it advises the applicant in

writing and where appropriate it conducts an investigation of the matter alleged in any of the following circumstances:

1. Where the property with respect to which an application has been submitted is alleged to contain unauthorized alterations of a jurisdictional area, discovered either during the review of an application or during investigation of a complaint.
2. Where the property with respect to which an application has been submitted is the subject of any unresolved violation of the Rules, or which is the subject of any non-compliance with a Department, administrative, or judicial consent agreement, order, or judgment, or where the property subject to unauthorized alterations is not restored to the satisfaction of the Department.
3. Where information provided on the application form or in support of the application is misleading, false, erroneous, inconsistent with these Rules, incomplete or non-responsive to deficiencies identified by the Department.

### **3.8.13 Recording of Permits**

Whenever required by the terms and conditions of any permit or revised permit issued by the Department, the applicant shall record the permit or revised permit at his or her own expense in the land evidence records of the municipality or municipalities in which the property subject to the permit lies.

## **3.9 Request to Determine the Presence of Jurisdictional Area, Request to Verify Freshwater Wetland Edges, or Request for Regulatory Applicability**

### **3.9.1 Purpose**

- A. An application may be made to the Department to request a determination regarding:
  1. The presence of jurisdictional area on the property which is regulated under the Act (§ 3.9.2 of this Part).
  2. The verification of the delineated edge of freshwater wetlands on the property (§ 3.9.3 of this Part); or
  3. Whether the Rules apply to a proposed project, or not, or confirmation that a project is exempt according to §§ 3.6 and 3.9.4 of this Part.

### **3.9.2 Request to Determine the Presence of Jurisdictional Area**

- A. An applicant seeking a Request to Determine the Presence of Jurisdictional Area must submit the following documents and adhere to the following requirements:

1. A completed application form (§§ 3.8.2 and 3.8.3 of this Part);
  2. The appropriate fee (§ 3.8.9(A) of this Part); and
  3. A site plan of the subject property (§ 3.8.4 of this Part) or a tax assessor's map that includes a title block and locus map, drawn to a scale no smaller than one inch (1") equals one hundred feet (100') (1" = 100'), with sufficient fixed reference points is required. The tax assessor's map must be legible and clearly depict property boundaries. The site plan or tax assessor's map must not depict any proposed project or activities.
  4. If property boundaries are not clearly identifiable on the property itself, the applicant must clearly identify those boundaries with labeled markers such as flags or stakes.
- B. The Department will inspect the property and issue a determination stating whether a jurisdictional area is present. The purpose of this determination is to determine whether jurisdictional area is present on the property and the type of such area, not to verify the specific location of any such area.
- C. Any determination regarding the presence of a jurisdictional area issued by the Department in accordance with this Rule shall be valid for a period of five (5) years from the date of issue; any such determination issued prior to the effective date of these Rules is no longer valid.

### **3.9.3 Request to Verify Freshwater Wetland Edges**

- A. An applicant seeking a Request to Verify Freshwater Wetland Edge must submit the following documents and adhere to the following requirements:
1. A completed application form (§§ 3.8.2 and 3.8.3 of this Part);
  2. The appropriate fee (§ 3.8.9(A) of this Part);
  3. A site plan of the subject property (§§ 3.8.4 and 3.8.5 of this Part) prepared by a qualified professional (§ 3.8.7 of this Part), that identifies the freshwater wetlands and their edges and their associated jurisdictional area that the applicant requests the Department to verify; and
  4. Completed freshwater wetlands edge documentation forms (§ 3.9.3(E) of this Part).
- B. Site plans submitted for Request to Verify Freshwater Wetland Edges must not depict any proposed project or activities.
- C. The edge(s) of all freshwater wetlands should be identified by a qualified professional as specified in guidance documents available from the Department,



and shall be delineated in accordance with the specifications set forth in § 3.21 of this Part.

- D. Any delineation or identification of freshwater wetlands completed by a person other than the Department, including by an applicant or applicant's agent, shall be valid only after review and written verification by the Department (see the procedures outlined in § 3.21 of this Part).
- E. For verification purposes, the applicant must undertake the following steps:
  - 1. Identify each freshwater wetland edge that the applicant wishes to have verified on the property, and record the edge on a site plan.
    - a. The freshwater wetland edge on the property shall be flagged with sequentially numbered or lettered flags, and the flags must be placed at the freshwater wetland edge in sufficient numbers to clearly identify the edge to be verified. The distance between flags must allow for adequate visibility from one (1) flag to another during the growing season.
    - b. The freshwater wetland edge shall be surveyed and recorded on the site plans showing the location and number/letter of the flag corresponding with those flags at the site.
    - c. In addition to the surveyed freshwater wetland edge, periodic measurements (i.e., at least one (1) for every one hundred feet (100') of surveyed edge) must be recorded on the site plan, indicating the distance from the surveyed edge to fixed reference points on the property. Fixed reference points on the property shall include, but are not limited to: stone walls, watercourses, roads, trails, buildings, structures, fences, cut transects or traverse lines, survey stakes with stations, or other features that allow confirmation of the location of the flagged freshwater wetland edge by field measurements.
  - 2. Identify the professional(s) conducting the delineation.
  - 3. Provide documentation on forms provided by the Department describing the reasoning used to delineate a particular freshwater wetland edge or any series of edges.
- F. Contour elevations, while helpful on site plans, are not required for Requests to Verify Wetland Edges, except where:
  - 1. A request to verify the edge of the one hundred (100) year flood plain has been made; or

2. The freshwater wetland edge is located along or within a parcel exceeding ten (10) acres.
- G. The Department will inspect the freshwater wetland edge(s) delineated by the applicant and, if in substantial agreement with the documentation provided by the applicant, confirm the presence of identified freshwater wetlands and the location of their delineated edges and identify the associated buffer zones and jurisdictional area.
- H. Any verification of a freshwater wetland edge or series of edges issued by the Department shall be valid for a period of five (5) years from the date of issue. Any such verification issued more than four (4) years prior to the effective date of these Rules, or any determination issued regarding the presence or extent of those areas previously defined as “perimeter wetland” or “riverbank wetland” prior to the effective date of these Rules, is no longer valid.
- I. A Request to Verify Freshwater Wetlands Edges file shall be considered closed if the applicant fails to answer any notification of application deficiency or any request for additional information from the Department within a period of two (2) years from the date of the deficiency letter or request.

#### **3.9.4 Request for Regulatory Applicability**

- A. An applicant seeking a Request for Regulatory Applicability should submit the following documents and adhere to the following requirements:
1. A completed application form (§§ 3.8.2 and 3.8.3 of this Part);
  2. The appropriate fee (§ 3.8.9(A) of this Part);
  3. A plan drawn to scale, illustrating and describing current and proposed conditions based on measured distances, and including a clearly depicted limit of clearing and disturbance, a locus map, and the location of any freshwater wetlands, freshwater wetland edges, buffer zones or buffers of concern;
  4. A written project description including the purpose, size, and location of the project;
  5. A written description of how potential freshwater wetland impacts have been avoided to the maximum extent possible; and
  6. Photographs depicting the current site conditions in the area of the proposed work.
  7. While not required, a verified freshwater wetland edge will facilitate the applicability decision, particularly where a determination of applicability, or

eligibility as an exempt activity, is dependent on a proposed project's distance from the freshwater wetland edge.

- B. The Department will review information provided by the applicant, and determine whether the proposed project is exempt or otherwise will not alter the character of any freshwater wetland, or whether further application is required in accordance with these Rules. If the proposed project appears to involve alteration to freshwater wetland or if the application is not clear or is missing information, further application will be required.

### **3.10 General Permits**

- A. The Department may issue a general permit in accordance with the following:
1. Scope. The general permit shall cover projects and activities as described in the permit within a jurisdictional area, as defined herein;
  2. Sources. The general permit shall regulate, within the scope described in § 3.10(A)(1) of this Part, projects or activities that:
    - a. Involve the same or substantially similar types and areas of alteration and impacts;
    - b. Occur only within the jurisdictional area identified in the general permit;
    - c. Involve similar land uses; and
    - d. In the opinion of the Department, are more appropriately authorized under a general permit than under individual Freshwater Wetlands Permits;
  3. The general permit shall define, identify and regulate specific eligible projects or activities that may be proposed within a jurisdictional area;
  4. General permits may be issued, modified, revoked, and reissued or terminated by the Department in accordance with applicable requirements of these Rules;
    - a. Freshwater Wetlands General Permits may be periodically issued, modified or revoked in accordance with requirements of these Rules and following a forty-five (45) day public notice and comment period;
    - b. The public notice shall be provided to the municipal contacts as identified in accordance with § 3.8.11(B) of this Part, and it will also be made available on the Department's web page; and

- c. A Freshwater Wetlands General Permit shall be valid for a period of five (5) years. Its renewal shall also be subject to a forty-five (45) day public notice and comment period.
- 5. An applicant may not proceed under a general permit until an application has been made to the Department and written confirmation has been received that a proposed project or activity is eligible for authorization under the general permit; and
- 6. The contents of the application shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the applicant, the location of the project site, and such other information the Director may reasonably require under § 3.8 of this Part. All applications shall be signed in accordance with § 3.8.3 of this Part.

B. General Permit Application

- 1. An application for a determination as to whether the proposed project or activity is eligible for approval under the Freshwater Wetlands General Permit may be submitted to the Department as described herein. This Rule does not apply until such time that the Department has issued a Freshwater Wetlands General Permit which covers the applicable activity or project. An applicant seeking approval under a Freshwater Wetlands General Permit must submit the following documents and adhere to all requirements herein;
  - a. A completed application form (§§ 3.8.2 and 3.8.3 of this Part);
  - b. The appropriate fee (§ 3.8.9(A) of this Part);
  - c. Site plans drawn to scale depicting the subject property and proposed project (§§ 3.8.4 and 3.8.5 of this Part);
  - d. All other written documentation as may be required by the Freshwater Wetlands General Permit, including, a project narrative, drainage computations, and floodplain documentation, to demonstrate that the proposed project meets all requirements to be considered eligible under the applicable General Permit.
- C. Upon receipt of an Application for a Freshwater Wetlands General Permit, the Department will review all submitted materials to confirm that the proposed activity or project is eligible for approval. If the project is eligible, the Department will issue confirmation in writing.
- D. The Department reserves the right to request additional information as necessary to confirm that a proposed project is eligible for a Freshwater Wetlands General Permit.

- E. In the event a proposed project is not eligible for approval, the Department will so notify the applicant and as appropriate offer the applicant an opportunity to provide additional documentation and the balance of any fee as necessary to proceed with review of the proposed project via the Application for a Freshwater Wetlands Permit described in § 3.11 of this Part.

### **3.11 Application for a Freshwater Wetlands Permit**

#### **3.11.1 Purpose and Outcomes**

- A. An Application for a Freshwater Wetlands Permit may be submitted to the Department to receive a determination as to whether or not all applicable standards specified in § 3.7.1 of this Part have been met or, if not, whether or not a proposed project may be granted a variance from the standards without the submittal of an Application for a Significant Alteration.
- B. The Department's review of an Application for a Freshwater Wetlands Permit may result in one (1) of the following outcomes:
  - 1. Issuance of a permit, with conditions, for alteration of freshwater wetlands including, if applicable, granting of a variance from standards specified in § 3.7.1 of this Part; or
  - 2. Issuance of a determination, in accordance with R.I. Gen. Laws § 2-1-22(a), that a significant alteration has been proposed and that a permit may be sought only by filing an Application for a Significant Alteration (§ 3.12 of this Part); or
  - 3. Issuance of a determination that a permit is not required, along with conditions deemed necessary to ensure that this remains the case in the future.

#### **3.11.2 Application Submittal Requirements**

- A. An applicant submitting an Application for a Freshwater Wetlands Permit must submit the following documents and must adhere to the following requirements:
  - 1. Project Scope. The application must include and describe the entire project proposed by the applicant. A request for a partial review or review of fewer than all phases of a project may be considered by the Department only if:
    - a. The Department has previously reviewed the entire project and has considered all project impacts on freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage; or

- b. As a condition of a prior determination, permit, consent agreement, or consent judgment, the Department required separate applications for individual portions of an overall project.
- 2. Application Contents. A complete application must satisfy the general requirements set forth in § 3.8 of this Part. The application shall include the following:
  - a. An original completed application form provided by the Department (§§ 3.8.2 and 3.8.3 of this Part);
  - b. The appropriate fee (§ 3.8.9 of this Part);
  - c. A completed site plan, drawn to scale, that clearly depicts all elements of the project and accurately depicts the freshwater wetlands edges, associated buffers and buffer zones, floodplains, areas subject to flooding and areas subject to storm flowage that are on the property (§§ 3.8.4 and 3.8.5 of this Part); and
  - d. Site work required to identify the proposed project (§ 3.8.6 of this Part).
- 3. Project Narrative. The applicant must provide a written overall description of the proposed project, including the following:
  - a. Project size, purpose, location and type;
  - b. A description of all applicable jurisdictional area;
  - c. Site history; and a description of the areas evaluated, including nearby roadways and adjacent land uses;
  - d. A description of the documented occurrence of rare native plants, rare native animals or rare freshwater wetland types as specified on lists maintained by the Department; and
  - e. The project narrative must clearly document how the proposed project has satisfied the standards specified in § 3.7.1 of this Part.
- 4. Applicants for major land development or major subdivision projects, as defined in R.I. Gen. Laws § 45-23-32, must submit, at the time the application is submitted to the Department, documentation of one (1) of the following:
  - a. Local Master Plan approval; or
  - b. Local conditional approval of a combined Master and Preliminary Plan; or

- c. A letter from an authorized municipal official (the Administrative Officer) certifying compliance with local low impact development site planning and design requirements as contained within the local zoning ordinance, land development and subdivision Regulations, or other pertinent Regulations.
- 5. As required, any reports and calculations documenting compliance with the Engineering Requirements specified in § 3.11.2(A)(6) of this Part.
- 6. Engineering Requirements
  - a. Applications for proposed projects that increase impervious area or that trigger the redevelopment standard specified in the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter, must submit supporting calculations, documents, and reports to demonstrate that the proposed project meets or exceeds the applicable review criteria set forth in § 3.11.3 of this Part below and in § 3.7.2 of this Part. Applicants should refer to the written evaluation – required elements in §§ 3.12.2(A)(4)(d)((3)) through ((5)) of this Part as applicable.
  - b. Applications for proposed projects on individual residential lots of record may use the Rhode Island Stormwater Management Guidance for Individual Single-Family Residential Lot Development in place of the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter.
  - c. Applications for projects that propose one (1) acre or more of land disturbance must include a Soil Erosion and Sediment Control Plan as specified in the Department's General Permit for Storm Water Discharge Associated with Construction Activity.
  - d. Applications for projects that propose to place fill or structures within a floodplain or floodway, or which otherwise may alter the rate at which flood water is stored by any freshwater wetland, must include supporting calculations, documents, and reports to demonstrate that the proposed project meets or exceeds the review criteria set forth in § 3.7.2 of this Part. Applicants are referred to the written evaluation – required elements in § 3.12.2(A)(4)(d) of this Part as applicable.
  - e. The Department reserves the right to require additional information in order to satisfy the review criteria or to waive any requirement if it is determined that the information is not applicable.
- 7. Variance from Standards. If a proposed project does not meet all of the standards specified in § 3.7.1 of this Part, an applicant must provide a

narrative description documenting how the proposed project will satisfy the variance criteria specified in § 3.7.3 of this Part.

### **3.11.3 Review by the Department**

- A. On-Site Review and Evaluation. An Application for a Freshwater Wetlands Permit is considered to be a preliminary determination, and the Department will act on an Application for a Freshwater Wetlands Permit only following an on-site review and a preliminary evaluation of the project and its anticipated impacts to the natural characteristics, functions, or values of the subject freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage.
- B. Permit Issuance. In order to issue a permit, the Department must be satisfied that a proposed project will not result in a significant alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage.
  - 1. A project which is determined by the Department to meet or satisfy all standards specified in § 3.7.1 of this Part shall be presumed to not result in a significant alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage.
  - 2. If a project is determined by the Department not to meet the standards specified in § 3.7.1 of this Part, a permit may be issued only when the Department is satisfied that:
    - a. All variance criteria specified in § 3.7.3 of this Part have been satisfied; and
    - b. The project will not result in a significant alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage (see § 3.11.3(C) of this Part);
- C. Significant Alteration Determination. In determining whether a proposed project will result in a significant alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage, the Department will consider the following criteria, as well as the review criteria in § 3.7.2 of this Part. A proposed alteration may be considered significant whenever any one (1) of the following conditions exist:
  - 1. A project appears to propose a random, unnecessary, or undesirable alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;
  - 2. A project appears to alter the character, functions or values of any freshwater wetlands, buffer, floodplain, area subject to flooding or area subject to storm flowage in a way that could result in the following:



- a. More than a minimal change of any portion of any freshwater wetland, river or stream resulting in a conversion from wetland to upland;
  - b. The detrimental modification of the biological, chemical or hydrologic characteristics of any freshwater wetlands or buffer areas which could reduce the natural values associated with the freshwater wetland or buffer;
  - c. More than minimal displacement of any flood waters onto or into property owned by others;
  - d. Increased flooding by a change in runoff characteristics or hydrology;
  - e. Reduction of the groundwater recharge or discharge value of any freshwater wetland or buffer;
  - f. Reduction of river or stream flows as a result of diversion or withdrawal of water;
  - g. Permanent change or conversion from one (1) habitat type in a freshwater wetland or buffer to another; or
  - h. The disturbance or destruction of any rare species or rare freshwater wetland type or the degradation of habitat for rare species.
- 3. A project proposes temporary alterations which over time may cause significant permanent alterations to freshwater wetlands or buffers and their functions and values.
  - 4. Any individual alteration that may, when evaluated cumulatively with other alterations, cause significant impacts to freshwater wetlands, buffers or floodplains and their functions and values.
  - 5. A project involves a variance to standards and does not meet all the criteria to be granted a variance as specified in § 3.7.3 of this Part.

#### **3.11.4 Permit Requirements, Conditions and Renewals**

- A. The Department may grant a permit in response to an Application for a Freshwater Wetlands Permit, without first requiring an Application for a Significant Alteration, provided, however, that any such permits shall only be issued after the Department has determined that all elements outlined in § 3.11.3(C) of this Part have been met and shall be subject to such conditions as the Department may require to protect the freshwater wetlands, buffers and floodplains.

- B. Any applicant or subsequent transferee receiving a permit under this Rule shall comply with all conditions of the permit and all provisions of the Act and these Rules. Any non-compliance with the permit violates the Act and these Rules, and constitutes sufficient grounds for an enforcement action.
- C. The permittee or subsequent transferee of the property to which the permit relates is responsible for the proper installation, operation, maintenance and stability of any mitigative features, facilities, and systems of treatment and control that are installed or used to comply with these Rules and any terms and conditions of the permit and to prevent harm to freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage. All applicants receiving a permit or subsequent transferees of the property shall avoid or minimize adverse impacts to any freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage and their functions and values, both during and after permitted activities.
- D. Unless specified in writing by the Department, any decision issued in response to an Application for a Freshwater Wetlands Permit applies only to the proposed project that is described in the Application and its supporting documentation, including the requisite site plans. Site plans shall bear a stamp of approval, signed by the Department, as well as the date of the permit letter and the assigned application number.
- E. Any permit issued in response to an Application for a Freshwater Wetlands Permit shall be valid for a period of five (5) years from the date of issuance.
  - 1. A permit shall be renewable by the permit holder for one (1) additional one (1) year period from the date of expiration (with the exception of permits granted under a Joint OWTS/Freshwater Wetlands Application which cannot be renewed) provided that:
    - a. The permit holder and project are in compliance with the permit; and
    - b. The permit holder submits an Application for Permit Renewal that meets the requirements of § 3.14.2 of this Part.
- F. Upon completion of the permitted project, the permit does not need to be renewed by the permit holder.
- G. Unless specifically limited by the terms and conditions of the permit, any permit issued by the Department, that relates to an approval of a project or a determination that the Act does not apply to a specific project, prior to April 7, 1994, is expired.

### **3.11.5 Department's Decision – Notification**

The Department will mail notice of its decision to the applicant and the applicant's representative, if any, consistent with R.I. Gen. Laws § 2-1-22(g) and § 3.8.2(C) of this Part. At least once each month, the Department will also provide copies of such decisions to the city or town clerk, the zoning board, the planning board, the building official and the conservation commission in the city or town within which the project is located.

### **3.11.6 Application Closure**

- A. The Department's consideration of any Application for a Freshwater Wetlands Permit shall be deemed to have terminated, and the applicant's file shall be deemed closed, when any of the following circumstances have occurred:
  - 1. The applicant fails to answer any notification of application deficiency or request for additional information by the Department within a period of one (1) year from the date such notification or request is issued; or
  - 2. The Department is notified of a change of ownership during the processing of the application, and the new owner does not comply with § 3.8.3(F) of this Part within sixty (60) days; or
  - 3. The Department has issued a permit or a written determination that the Act and these Rules do not apply, or that a proposed project represents a significant alteration.

## **3.12 Application for a Significant Alteration**

### **3.12.1 Purpose**

- A. An Application for a Significant Alteration will be required if a significant alteration is proposed. Such an application is subject to the application procedures and requirements as set forth in R.I. Gen. Laws § 2-1-22 and within these Rules.
- B. A significant alteration results from a project that:
  - 1. Because of its area, scope or duration, appears to represent more than a minimal change in or modification to the natural characteristics, functions or values of any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage;
  - 2. May be detrimental to the basic natural capabilities or values associated with such freshwater wetlands, buffers, floodplain, area subject to flooding or area subject to storm flowage; or
  - 3. Appears to be random, unnecessary or undesirable.
- C. Prior to filing an Application for a Significant Alteration, an applicant may file an Application for a Freshwater Wetlands Permit to determine whether or not a

project appears to represent a significant alteration to freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage.

### **3.12.2 Application Submittal Requirements**

- A. An applicant seeking a permit for a significant alteration must adhere to the following requirements and submit all written evaluations and documentation as set forth in § 3.12.2(A)(3) of this Part.
1. Project Scope. An Application for a Significant Alteration must include and describe the entire project proposed by the applicant. A request for a partial review or a review of fewer than all phases of a project may be considered by the Department only if:
    - a. The Department has previously reviewed the entire project and considered all project impacts on freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage; or
    - b. As a condition of a prior determination, permit, or consent agreement, or consent judgment, the Department required separate applications for individual portions of an overall project.
  2. Application Content. A completed Application for a Significant Alteration must comply with the general provisions set forth in § 3.8 of this Part as well as the following specific requirements:
    - a. An original completed application on forms provided by the Department (see §§ 3.8.2 and 3.8.3 of this Part);
    - b. Site plans prepared and stamped by a Rhode Island Registered Professional Engineer which accurately and clearly depict the project and provide, in the opinion of the Department, the correct location, extent, and type of all freshwater wetlands, buffers, buffer zones, floodplains, areas subject to flooding and areas subject to storm flowage within and near the project (§§ 3.8.4 and 3.8.5 of this Part);
    - c. A fee (§§ 3.8.8 and 3.8.9 of this Part);
    - d. Proof of ownership in the form of a current certified copy of the deed of the subject property;
    - e. A current list of the property owners whose properties lie within two hundred feet (200') of the proposed project. This list of property owners must contain the current mailing address of each property owner and must be accompanied by a separate map drawn to scale of not less than one inch (1") to one hundred feet (100') (1" =

100') showing the properties, lot numbers, and corresponding owners within a radius of two hundred feet (200') of the outermost boundary of the area of the proposed project. For the purposes of determining which properties are within two hundred feet (200') of the proposed project, the applicant shall measure from the outermost boundaries of the proposed wetland alterations. Such freshwater wetlands alteration boundaries must include at least the following:

- (1) The extent of all physical disturbance in jurisdictional area;
- (2) The extent of any impoundment or raising of water elevations of six inches (6") or more in freshwater wetlands, buffers or floodplain;
- (3) The extent of drainage of freshwater wetlands, including lowering of surface and sub-surface water elevations;
- (4) The relocation of flowing bodies of water or watercourses, including the original and proposed locations; and
- (5) The expansion of any jurisdictional area into adjacent properties.

- f. All written evaluations and documentation as set forth in § 3.12.2(A)(3) of this Part;
- g. Following notification from the Department, the required number of full-size and reduced site plans, drawn to scale and legible, which are necessary to provide to the municipality, the abutters, and other interested parties;
- h. Completed field work that includes field reference markers on the property and points on the site plans sufficient to outline the limits of the project and to identify the edge of the jurisdictional area within the project in a manner sufficient for the Department to properly complete its evaluation (see § 3.8.6 of this Part).
- i. Applicants for major land development or major subdivision projects, as defined in R.I. Gen. Laws § 45-23-32, must submit, at the time the application is submitted to the Department, documentation of one (1) of the following:
  - (1) Local Master Plan approval; or
  - (2) Local conditional approval of a combined Master and Preliminary Plan; or

- (3) A letter from an authorized municipal official (the Administrative Officer) certifying compliance with local low impact development site planning and design requirements as contained within the local zoning ordinance, land development and subdivision Regulations or other pertinent Regulations.
3. Written Documentation and Evaluation. All applicants must provide a written evaluation including all of the following elements:
  - a. A Table of Contents that lists all section titles and their corresponding page numbers.
  - b. A project description that includes:
    - (1) The project size, purpose, location, and type;
    - (2) A description of all applicable jurisdictional area;
    - (3) Site history and overall areas evaluated including nearby roadways and adjacent land uses; and
    - (4) A description of the documented occurrence of rare native plants, rare native animals or rare freshwater wetland types as specified on lists maintained by the Department.
  - c. A narrative description documenting how the proposed project will satisfy the variance criteria specified in § 3.7.3 of this Part.
  - d. A written Evaluation of Functions, Values, and Impacts (§ 3.12.2(A)(4) of this Part) that describes the evaluation methodology, qualifications of professional(s) performing the evaluation; identification of regulated jurisdictional area; description of freshwater wetland functions, values, and impacts, identification of the proposed measures to reduce such impacts; conclusions; and any literature citations as set forth in § 3.12.2(A)(4)(f) of this Part.
4. Evaluation of Functions, Values, and Impacts. All applicants must describe those functions and values provided and maintained by the subject freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage; describe and assess any anticipated impacts to their functions and values; and describe all structural or non-structural best management practices, best available technologies, schedules, and management plans which will be employed to avoid, or minimize impacts to freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage to the maximum extent possible. This written evaluation must clearly and fully explain how

the proposed project complies with all applicable review criteria set forth or referred to in § 3.7.2 of this Part and must describe the evaluation methodology, the qualifications of persons involved in the evaluation, and must describe all jurisdictional area.

- a. Evaluation Methodology: Identify the scientific techniques and methods which were used to complete the evaluation, including the dates and times of observations and field studies and the result of such observations and field studies. Identify each specific evaluation methodology that was used, and identify, describe, and explain any deviation from the methodology, and any assumptions made with a specific methodology. Identify and describe any limitation placed upon the study or evaluation which could affect the outcome of the results.
- b. Qualifications: List the names and qualifications of each person involved in the evaluation. Assessment of functions and values and impacts may require input by more than one (1) qualified professional consultant or more than one (1) individual familiar with the specific functions or values of the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage. The names, addresses and backgrounds of any individuals consulted for the evaluation must be submitted as well as a description of the extent of their participation.
- c. Jurisdictional Area: Describe all jurisdictional area on-site as well as any off-site freshwater wetlands that are hydrologically connected to the on-site freshwater wetland(s) and identify all freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage evaluated, including any areas of potential impact associated with the project within a jurisdictional area.
- d. In addition to the evaluation elements required above, the applicant must address the following requirements in the written evaluation:

(1) Wildlife and Wildlife Habitat

- (AA) Characteristics. Provide the size of the freshwater wetland(s), and describe the topography, microtopography (i.e., leaf litter, mound and pool, exposed soil, rocks), soils, hydrology, dominant plant communities and vegetation in each stratum (i.e., tree, shrub, and herbaceous layers) of the freshwater wetlands and buffer or, if a pond, vernal pool or watercourse, the dominant aquatic vegetation; identify and describe any standing or flowing water bodies, water quality, nearby land uses within one hundred

fifty feet (150') of the edge of the subject freshwater wetlands and buffers; and identify other freshwater wetland(s) which are hydrologically connected to the on-site freshwater wetland(s) with distances between freshwater wetlands provided;

- (BB) Wildlife Indicators. Detail and describe the indications of wildlife use (e.g., direct observation of wildlife or indicators such as burrows, scat, tree cavities, tracks, trails, nests, scrapes, and any other observable signs or vocalizations). Detail those species known to be present or that can be anticipated to use the habitat that is present. Note the presence of wildlife habitat which is likely to be used by game or non-game species;
- (CC) Values. Identify and describe the current and potential ability of the freshwater wetlands and buffers to provide or maintain the functions and values relating to wildlife and wildlife habitat; and
- (DD) Proposed Impacts. Identify and describe the physical, chemical and biological impacts, both short-term and long-term, to the wildlife habitat associated with the freshwater wetlands and buffers resulting from the project which include, but are not limited to: impacts to travel, nesting, feeding, spawning, resting, nursery or brood rearing, escape cover, seasonal breeding, migration, and over-wintering for resident, seasonal or transient species; impacts to any rare species; impacts to any game or non-game species managed by State or Federal fish and game agencies; impacts to wildlife habitat functions and values due to changes associated with lighting, noise, temperature, water quality, air quality, water velocity, flow patterns, water elevations, water temperature, fragmentation of habitat, predator/prey relationships, composition of plant or animal communities, intrusion of exotic or invasive species; whether the project may result in displacement, reduction or extirpation of any wildlife species; and whether the project will result in any cumulative loss of wildlife habitat, wildlife species or wildlife populations.

(2) Recreation and Aesthetics



- (AA) Characteristics. Provide the size of the freshwater wetland(s), and describe topography, soils, hydrology, dominant plant communities and vegetation in each stratum (i.e., tree, shrub, and herbaceous layers) of the freshwater wetlands and buffers, or if a pond, vernal pool or watercourse, the dominant aquatic vegetation; identify and describe any standing or flowing water bodies, water quality, nearby land uses within one hundred fifty feet (150') from the edge of the subject freshwater wetland(s) and buffers, and identify other freshwater wetland(s) which are hydrologically connected to the on-site freshwater wetland(s) with distances between freshwater wetlands provided. Also, identify and describe the location of the freshwater wetland(s) and buffers and the availability of public access and viewing sites;
- (BB) Values. Identify and describe the current and potential ability of the freshwater wetlands and buffers to provide or maintain the functions and values as defined herein relating to recreation and aesthetics; and
- (CC) Proposed Impacts. Describe the probable individual and cumulative impacts of the project on the recreational and aesthetic values of the freshwater wetlands and buffers, and any potential reduction in the current or potential ability of the freshwater wetlands and buffers to provide aesthetic values and active or passive recreational activities to the public. Consider the impacts to: wildlife habitat; rare species; vegetation and plant communities; water quality; water temperature, water velocity, water volume and water elevation; wildlife which can be fished, hunted, trapped, observed, heard, studied, or photographed; open space value; public access and public's view of the wetland; the freshwater wetlands' or buffer's prominence as a distinct feature in the local area; the use and enjoyment of watercourses or water bodies within, adjacent to, or nearby the project; and the freshwater wetlands' functions and values as a rare freshwater wetland type.

(3) Flood Protection

- (AA) Drainage Characteristics. Identify and describe the drainage characteristics of the site of the project,

including any areas contributing stormwater runoff to freshwater wetlands or buffers; describe the drainage characteristics of any surface water flows, including any flowing bodies of water or areas subject to storm flowage within the project site, or within any freshwater wetlands on or off-site that may be impacted by the project; and identify and describe the extent of flooding up to and including a one hundred (100) year frequency storm flood event. Include a map which delineates the watershed of: the site of the project; any freshwater wetlands or buffers receiving water from the site of the project; and any off-site freshwater wetlands or buffers which may be impacted by the project.

(BB) Values. Identify and describe the functions and values of the freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage relating to their ability to temporarily store or meter out flood waters from storm events, and to accommodate surface water and drainage into, out of, between, through or within these jurisdictional area under pre-project conditions.

(CC) Analysis of Proposed Impacts.

(i) Projects proposing changes in run-off towards freshwater wetlands and buffers: Submit a stormwater analysis for pre and post-project runoff rates based upon the one (1) year, ten (10) year, and one hundred (100) year, twenty-four (24) hour, Type III storm events. The analysis must be performed using the methodologies as allowed and contained in the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter. In the event that the stormwater analysis reveals any increase above pre-project runoff rates, or any increase in peak flood elevations within receiving waters/wetlands, identify and describe the impact such proposed increase may have upon all functions and values as defined herein. Describe the anticipated impacts to the freshwater wetlands and buffers using supporting calculations, data, diagrams, graphs, and observations.

- (ii) Projects proposing changes in drainage characteristics of freshwater wetlands, buffers, floodplains, areas subject to flooding or area subject to storm flowage or affecting their ability to store, meter out, or reduce the impacts of flooding and flood flows: Identify and describe all project components that may decrease the ability of freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage ability to meter out flood waters or decrease their ability to maintain surface flows and natural drainage characteristics. Such project components include, but are not limited to: changes in topography from filling or excavation; changes in vegetative characteristics; additions of buildings or structures; and piping, culverting, bridging, excavating, channelization, relocation, filling, damming or diking. Identify and describe the impacts the project may have upon all freshwater wetlands functions and values. Describe the anticipated impacts of all projects using supporting calculations, data, diagrams, figures, graphs or observations as appropriate. Such impact evaluation must be supported by a flood flow analysis based upon the one (1) year, ten (10) year, and one hundred (100) year, twenty-four (24) hour, Type III storm event for pre and post-project conditions.
- (DD) Compensation for Loss of Flood Storage. Projects which propose filling or placement of structures in a floodplain or area subject to flooding may provide compensatory flood storage in order to comply with the review criteria as set forth in § 3.7.2 of this Part by excavation or by permanently eliminating structures which currently displace flood waters; however, compensatory storage may not be proposed beneath or within the confines of any building or structures. Where applicable, compensatory flood storage must be proposed in accordance with the following requirements:
  - (i) The volume of compensatory flood storage must be equal to or greater than the volume of floodwaters displaced by the project on a foot-

by-foot elevation basis unless otherwise specified by the Department;

- (ii) The compensation area must have an unrestricted hydraulic connection to the affected floodplain and provide the same rate of flood storage capture and discharge over the course of the flood event as in pre-project conditions;
- (iii) Compensatory storage must be located within the same reach of the river or flowing body of water (i.e., between the nearest features controlling the flood water elevations upstream and downstream from the proposed displacement area) as the project involving flood water displacement, and must be located as close to the proposed displacement area as possible;
- (iv) Creation of compensatory storage must precede or occur simultaneously with the construction of any portion of the project which displaces flood waters;
- (v) Where the applicant proposes a compensatory storage area on property owned by others, the applicant must submit a written agreement between such landowner and the applicant wherein the landowner agrees to convey an easement or other property interest or right to the applicant allowing compensatory storage, and to permanently maintain such area for flood storage purposes in the event that the Department approves the applicant's project; and
- (vi) The design must include all features and best management practices to ensure that impacts to the functions and values of other freshwater wetlands and buffers have been mitigated.

(4) Groundwater and Surface Water Supplies

- (AA) Hydrologic Characteristics. Identify and describe the current hydrologic characteristics, including both surface and groundwater flows, within and to any

freshwater wetlands or buffers that may be affected by the project. Identify the pre-project elevation range of the surface or groundwater on a seasonal and annual basis in the freshwater wetlands and buffers and in the vicinity of the proposed alteration. Describe the extent to which the surface or groundwater levels deviate from long-term ranges and averages. Include a map delineating the watershed of: the site of the project; any freshwater wetlands or buffers receiving water from such site; and any off-site freshwater wetlands or buffers which may be impacted by the project.

- (BB) Functions and Values. Identify and describe the functions and values of the freshwater wetlands and buffers relating to surface water or groundwater supplies.
- (CC) Proposed Impacts. Identify and describe all components and activities of the project that may directly or indirectly divert, reduce or contain surface or groundwater flow to, away from, or within any freshwater wetlands or buffers, including a description of the volumes of water which may be diverted, reduced or contained, and the rate and duration of such diversion, reduction or containment. Identify and describe the impacts the project may have upon all functions and values. Describe the anticipated impacts using supporting calculations, data, figures, diagrams, graphs and observations as appropriate.

(5) Water Quality

- (AA) Drainage Characteristics. Identify and describe the current drainage characteristics of the area of the project, including any on or off-site freshwater wetlands that may be impacted by the project.
- (BB) Functions and Values. Identify and describe the functions and values of the freshwater wetlands and buffers relating to water quality; and describe the present water quality classification and impairment status of any water body as set forth by the Department. Include a description of the water quality conditions of all freshwater wetlands within the project area, as well as any off-site freshwater wetlands that may be affected by the project. Identify how the

project will avoid contributing to a violation of the standards or contributing to any further degradation of currently degraded surface or groundwater resources.

(CC) Water Quality Analysis

- (i) As may be required in accordance with the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter, submit a pollutant loading analysis which quantifies the pollutants in stormwater runoff for both pre and post-project conditions by utilizing the methodology contained in the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter, or by another widely accepted method. If the methods used incorporate the best available technology, but are different from those in the manual or deviate from its guidelines, the applicant must describe why they were used and submit and document all data, calculations, and methods used. The acceptance of these alternative methods is subject to Department approval; and
- (ii) Submit a water quality analysis which quantifies the pollutant concentrations or loadings from Land Uses with Higher Potential Pollutant Loads (LUHPPLs) as defined in the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter, as well as plant nurseries and other land uses involving use of fertilizers, herbicides, pesticides, for both pre and post-project conditions by utilizing one (1) or more accepted and scientifically supported methodologies. The acceptance of the method(s) utilized for such calculations is subject to Department approval.

- (DD) Proposed Impacts. Identify and describe all components and activities of the proposed project that may result in any degradation of water quality associated with freshwater wetlands by increasing pollutant sources; nutrient loading; increasing turbidity; decreasing oxygen; altering temperature regimes; reducing stream or river flows; altering the

freshwater wetlands' or buffer's ability to retain or remove nutrients; or by withdrawing water from or near any freshwater wetlands. Identify and describe the impacts the proposed project may have upon all functions and values as defined herein. Describe the anticipated impacts to the freshwater wetlands and buffers using supporting calculations, data, figures, diagrams, graphs and observations.

(6) Soil Erosion and Sediment Control

(AA) Identify and describe all proposed land disturbance activities; current site conditions, including soil conditions and topography; drainage characteristics of the site of the proposed project; any critical erosion areas; and all proposed non-structural and structural temporary and permanent erosion and sediment control methods. Further, describe how and why such erosion and sediment control measures will protect functions and values and meet the review criteria as set forth in § 3.7.2 of this Part. The written evaluation must include supporting calculations, data, figures, diagrams, graphs and observations. For projects involving one (1) acre or more of land disturbance, this requirement must be satisfied with the submittal of a Soil Erosion and Sediment Control Plan as outlined in the Department's General Permit for Storm Water Discharge Associated with Construction Activity.

- e. Conclusion. Identify and detail how the project meets all review criteria as set forth in § 3.7.2 of this Part. Describe any measures to reduce impacts which were considered and rejected and indicate why they cannot or should not be employed.
- f. Literature Citations. Provide citations for all literature used to support the evaluation.

### **3.12.3 Completeness Determination**

Prior to the public notice of any Application for a Significant Alteration, the Department will review the application to determine whether or not it is a completed application for public notice purposes only (see § 3.12.2(A)(2) of this Part). Once an application is determined to be complete for public notice purposes, no further information may be submitted by the applicant in support of the application unless such information is requested by the Department.

### **3.12.4 Public Notice and Participation – Public Hearings**

#### **A. Public Notice**

1. Notice: An Application for a Significant Alteration shall be publicly noticed in accordance with R.I. Gen. Laws § 2-1-22(a).
2. Public Comment – Period of Time: Within fourteen (14) days after the receipt of an application that has been determined by the Department to be complete, the Department shall send a notice of the application to the appropriate parties, as defined in R.I. Gen. Laws § 2-1-22(a). The public notice period shall commence upon the day of mailing of the notice and end forty-five (45) calendar days thereafter, or as extended to accommodate weekends or holidays.
3. Notice for Public Comment – Delivery: Notice of the application shall be made by first class mail or, if available and appropriate, e-mail. The Department will rely upon those names and addresses provided by the applicant to notify abutting property owners. Prior to the notice, the applicant must ensure that the list of abutters is current and accurate.
4. In the case of a full or partial removal of a dam as described in § 3.8.3(D) of this Part, impounding a flowing body of water, proposed for the purpose of habitat improvement, restoration, or dam safety, the Department may require the applicants to place, at their own expense, a public notice of the proposed project in a daily or weekly newspaper with circulation in the area of the project. This notice must allow at least a thirty (30) day period for comment to the Department, ending no later than the end date of the notice specified in accordance with § 3.12.4(A)(2) of this Part.

#### **B. Content**

1. Notice for Public Comment:
  - a. The notice shall include the name of the applicant seeking permission to alter, the applicant's address, the purpose of the project as described by the site plans, the jurisdictional area to be altered, the proposed alterations, a reduced set of site plans provided by the applicant, and the date upon which the forty-five (45) day comment period shall end.
  - b. The Department shall furnish the notice and one (1) full-size copy of the site plans to the city or town council and the city or town clerk within whose borders the project is proposed. The Department shall request that the city or town clerk maintain the notice, site plans and application within that office for public viewing during the forty-five (45) day notice period.



2. Public Notice – Disclaimer: Notice of the application is not a notice of approval or any intent by the Department to approve or issue a permit for the project.
3. Review During Public Notice: The Department will not make a decision on an application as to whether any alteration is random, unnecessary, or undesirable during the public notice period.

C. Public Comments

1. Comments filed with the Department will be considered and reviewed if they are in writing, are legible, contain a discernable name and address of the objector, are signed and are received during the forty-five (45) day notice period. The commenter must identify the application number noted in the public notice or must otherwise identify or reference the project about which they are objecting. The Department will not consider or review comments to projects which do not contain sufficient information to properly relate the objection to a specific application.
2. A comment will be considered timely filed if received within the forty-five (45) day public comment period. If the last day of the forty-five (45) day notice period ends on a weekend or holiday, the end of the public notice period will be extended through the next working day.
3. The Department shall determine whether a comment is an objection of a substantive nature. Pursuant to R.I. Gen. Laws § 2-1-22, a determination that a comment is a substantive objection will necessitate a public hearing. All comments received by the Department will remain part of the application file. An objection of a substantive nature is any written comment offered in opposition to a project that:
  - a. Relates to the functions and values of the freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage;
  - b. Has not been clearly addressed by the applicant in his or her application;
  - c. Has not been assessed by the Department during its review of the application; and
  - d. Cannot be resolved by the Department's evaluation of the application.
4. The applicant will be notified by certified mail if a comment is determined to be a substantive objection. The applicant may then withdraw the application or, if the applicant wishes to proceed, must authorize the scheduling of a public hearing in writing and must submit a fee to cover

the costs of the public hearing (§§ 3.8.8 and 3.8.9(D) of this Part). The Department will schedule the public hearing under the provisions of R.I. Gen. Laws § 2-1-22 following receipt of the fee and authorization from the applicant. The written authorization and fee must be received by the Department within thirty (30) days following the receipt of notification from the Department of a substantive objection. If written authorization and the required fee are not received within the thirty (30) days following notification of a substantive objection, the Department will consider the application withdrawn. The Department will terminate any further action on the subject application and will not re-open the application at a later date. In this case, a new application would be required.

5. An objector may withdraw, in writing, the objection any time prior to the scheduling of a public hearing. The Department will notify the applicant if any substantive objection is withdrawn. If all substantive objections are withdrawn in sufficient time to prevent the notice of a public hearing, the public hearing will not be held, any remaining hearing fees will be refunded to the applicant, and the Department will proceed with a decision on the application.
6. An applicant may withdraw, in writing, the authorization for a public hearing any time prior to the scheduling of a public hearing. Upon receipt of notification from the applicant that authorization for a public hearing has been withdrawn, the Department will consider the application withdrawn and shall terminate any further action on the application. Any remaining hearing fees will be refunded to the applicant.

#### D. Public Hearings

1. When necessary, in accordance with R.I. Gen. Laws § 2-1-22, the Department will hold public hearings on proposed alterations to freshwater wetlands when a request for such hearing is made in accordance with § 3.12.4(C)(4) of this Part. The purpose of such hearings shall be to elicit comments from the public regarding the impact of the proposed alteration on the functions and values provided by the subject freshwater wetlands, buffers, floodplains, areas subject to flooding and areas subject to storm flowage. Such hearings are not adjudicatory, evidentiary hearings, but they are held to obtain comments to assist the Department in its review of the application.
2. Public hearings will be held at a place designated by the Department. When a public hearing is required, such place shall be reasonably convenient to the site of the project.
3. The time of hearing shall be designated by the Department.

4. The presiding officer of a public hearing shall be the Department's or the Director's designee.

### **3.12.5 Decision on Application for a Significant Alteration**

#### **A. General**

1. Consistent with R.I. Gen. Laws §§ 2-1-22(b) and (c), the Department insofar as possible will issue a decision in response to an Application for a Significant Alteration forty-two (42) days after the end of the public comment period or, if applicable, the public hearing.
2. Applicants shall be notified in writing of the Department's decision by certified mail. The Department shall notify the applicant's attorney or other designated representative, if any, by first class mail or e-mail. Any person who objects in writing during the forty-five (45) day public comment period shall be notified of the decision by first class mail or e-mail if the objector provides the Department with a mailing address.

#### **B. Decision to Deny**

1. Approval of a proposed alteration to any freshwater wetland, buffer, floodplain, area subject to flooding or area subject to storm flowage will be denied by the Department if the project as proposed does not satisfy the review criteria (§ 3.7.2 of this Part) contained herein or would result in a random, unnecessary, or undesirable alteration of a freshwater wetland, as those terms are defined herein, since such alterations are not in the best public interest. Such projects are therefore inconsistent with R.I. Gen. Laws §§ 2-1-18 and 2-1-19 and these Rules, and the Department will deny such applications in accordance with R.I. Gen. Laws § 2-1-21.
2. The decision to deny approval shall be in the form of a letter which will state the reasons for denial.

- C. Decision to Permit and Grant Variance. The Department shall issue a permit and grant applicable variances from standards for an application which, in the opinion of the Department, does satisfy the review criteria (§ 3.7.2 of this Part) contained herein, does not represent a random, unnecessary, or undesirable alteration of freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage, and satisfies all variance criteria or requirements as specified in § 3.7.3 of this Part. All permits shall be in the form of a letter which makes detailed reference to the subject application and the plans submitted in support of the application.

### **3.12.6 Permit Requirements and Conditions**

- A. Conditions and terms of the permit may require modification of portions of the project, as described by plans provided by the applicant.

- B. Plans referenced within the permit letter shall be stamped "approved with conditions" by the Department and shall contain the application number, date of the permit letter, and signature of an authorized agent of the Department.
- C. A copy of the permit letter and one (1) set of the approved site plans must be maintained at the project site at all times during construction and up to the time of project completion. Prior to commencement of site alterations, the permittee shall erect or post a sign, resistant to the weather and at least twelve inches (12") wide and eighteen inches (18") long, which boldly identifies the initials "DEM" and the application number of the permit. The sign must be maintained at the site in a conspicuous location until such time that the Department issues a Notice of Completion of Work for the project.
- D. When required by permit condition, the permit letter shall be recorded at the expense of the owner, in the land evidence records of the city/town where the subject property is located within ten (10) days of receipt of the permit letter. The applicant must submit written documentation from the city or town showing that the permit letter was received for recording immediately upon recordation.
- E. Unless otherwise ordered by the Department, or renewal of a permit is obtained, all permits issued under an Application for a Significant Alteration are limited to a period of one (1) year from the date of issuance and shall expire thereafter.
- F. The maximum period of years for a permit to remain valid consists of the original one (1) year permit period and three (3) additional one (1) year renewal permit periods, which must be consecutive and thus total four (4) consecutive years from the original date the permit was issued. Any renewal must be requested by Application for Renewal that meets the requirements of § 3.14.2 of this Part.
- G. Construction activities affecting freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage occurring or ongoing at the expiration deadline of any permit or any renewal permit must cease until such time that a new permit has been issued by the Department in accordance with these Rules.
- H. The original permittee or subsequent transferee is required to notify the Department in writing prior to the commencement of the work described or referenced in the permit, indicating the anticipated date of commencement. Additionally, the permittee or subsequent transferee is required to notify the Department in writing upon the completion of the permitted activities.
- I. After receipt of notification of the completion of work described or referenced in the permit, the Department shall issue to the original permittee or subsequent transferee a Notice of Completion of Work, in the form of a letter, provided that an on-site inspection of the project by the Department determines that the work has been completed in accordance with the permit and any conditions of approval or renewals thereof. The Department may first require the permittee or

subsequent transferee to provide written certification from the appropriate regulated professional attesting to the completion of the approved project that is described or referenced in the permit or on the approved site plans.

- J. When required by the Department, the original permittee or subsequent transferee shall record, at his or her expense, the Notice of Completion of Work in the land evidence records of the city/town where the subject project is located. Immediately upon recordation, the permittee or subsequent transferee must submit written documentation from the city or town showing that the Notice of Completion of Work was received for recording.

### **3.12.7 Permit Compliance**

The applicant may only proceed with the approved project within freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage in strict compliance with such terms and conditions, including time of completion, as the Department may require to ensure the protection of freshwater wetlands, buffers or floodplains and the functions and values they provide. Any non-compliance with a permit term or condition or these Rules represents a violation of the permit, the Act and these Rules and constitutes grounds for enforcement action.

### **3.12.8 Appeal of Decisions**

- A. Request for Appeal. Within thirty (30) days of the receipt of a decision from the Department regarding an Application for a Significant Alteration, the applicant may request an adjudicatory hearing to appeal the decision, or portions thereof. The request for an adjudicatory hearing must be in writing, must comply in form and content for such requests as required by the Rules and Regulations for the Administrative Adjudication Division, Part 10-00-1 of this Title, and must be filed directly with the AAD. A copy of such request must also be forwarded to both the Freshwater Wetlands Program and the Office of Legal Services. Any request for an adjudicatory hearing on an application must be accompanied by a fee as specified in §§ 3.8.8 and 3.8.9(D) of this Part. A request for an adjudicatory hearing will not be considered timely filed unless accompanied by the full required fee. A request for an adjudicatory hearing automatically stays any permit issued.
- B. Adjudicatory Hearings
  - 1. Applicable Rules: Following an appeal of a decision regarding an Application for a Significant Alteration, all adjudicatory hearings shall be held in accordance with R.I. Gen. Laws § 42-35-1 *et seq.* [hereinafter the Administrative Procedures Act (APA)], the Rules and Regulations for the Administrative Adjudication Division, Part 10-00-1 of this Title, and other governing laws, Rules and Regulations adopted by the Department.

2. Burden of Proof: It shall be the applicant's burden to demonstrate by a preponderance of the evidence that the project, as proposed and sent out for public comment pursuant to R.I. Gen. Laws § 2-1-22, is consistent with the purposes of the Act, complies with these Rules, and is protective of the environment and the health, welfare and general well-being of the populace.
- C. Permit Issuance Following Exhaustion of Legal Remedies. After exhaustion of available legal remedies the Department, when ordered, will issue a permit with terms and conditions as established by the Department in accordance with the requirements set forth in the Act and these Rules to ensure the protection of freshwater wetlands, buffers and floodplains, and the functions and values they provide.

### **3.12.9 Negotiated Settlements – Consent Agreements**

- A. Following denial of an application, the Department and the applicant may enter into settlement negotiations in only those cases where the proposed resolution does not represent, in the opinion of the Department, a substantial modification of the original project.
- B. A proposed resolution will be considered a substantial modification of the original project when the freshwater wetlands, buffer or floodplain alterations contemplated by such resolutions are:
1. Proposed in different areas of the jurisdictional area so as to require public notice to additional or new parties as set forth in R.I. Gen. Laws § 2-1-22; or
  2. Proposing impact(s) which were not evaluated by the Department pursuant to its review of the original application.
- C. When a proposed resolution represents only a reduction or elimination of freshwater wetlands, buffer or floodplain alterations from those proposed in the original application, such proposed resolution will not be considered a substantial modification.
- D. Any request by the applicant to submit revised plans in accordance with settlement negotiations shall require a fee §§ 3.8.8 and 3.8.9(A)(10) of this Part. As a result of settlement negotiations, a Consent Agreement may be executed by the parties whereby a permit is issued. Such an agreement is deemed a final order of the Department and is enforceable by resort to Superior Court.

### **3.12.10 Application Closure**

- A. An Application for a Significant Alteration shall be considered closed under the following circumstances:

1. The applicant fails to answer any notification of application deficiency or any request for additional information by the Department within a period of one (1) year from the date the deficiency letter is issued;
2. A permit or a letter of denial is issued and the applicant fails to appeal the decision within thirty (30) days of receipt of the decision;
3. The Department is notified in writing of a change of ownership during the processing of the application and the new owner does not comply with § 3.8.3(F) of this Part within sixty (60) days;
4. The applicant is notified in writing that a substantive objection related to the subject application was received and fails to provide a written authorization and fee for a public hearing within thirty (30) days following receipt of such notification; or
5. Upon receipt of notification from the applicant that authorization for a public hearing has been withdrawn (§ 3.12.4(C)(6) of this Part).

### **3.13 Application Relating to Farmers**

#### **3.13.1 Definition of Farmer**

A farmer, as defined in these Rules, means an individual, partnership or corporation that operates a farm and has filed a Form 1040F or comparable instrument with the U.S. Internal Revenue Service, has a State of Rhode Island farm tax number, and has earned ten thousand dollars (\$10,000.00) gross income on farm products in each of the preceding four (4) years.

#### **3.13.2 Regulated Areas for Certain Farming and Ranching Activities by Farmers**

- A. The regulated areas for farmers, as defined herein, conducting normal farming and ranching activities or proposing to construct new farm ponds, new farm roads or new drainage structures, as specified in §§ 3.13.3 and 3.13.4 of this Part, shall include the following areas:
1. Freshwater wetlands;
  2. Floodplains;
  3. Areas subject to storm flowage;
  4. Areas subject to flooding;
  5. The land area within two hundred feet (200') of a flowing body of water having a width of ten feet (10') or more during normal flow;

6. The area of land within one hundred feet (100') of a flowing body of water having a width of less than ten feet (10') during normal flow;
7. The area of land within fifty feet (50') of a bog, marsh of one (1) acre or greater, swamp of three (3) acres or greater, and pond not less than one quarter (1/4) acre in extent.

### **3.13.3 Normal Farming and Ranching Activities by Farmers**

Within the areas specified in § 3.13.2 of this Part, it is permissible for farmers, as defined herein, to conduct normal farming and ranching activities in accordance with best farm management practices that assure the adverse effects to the chemical, biological and hydrologic characteristics of freshwater wetlands and the aquatic environment are minimized. Normal farming and ranching activities by farmers include plowing, seeding, cultivating, land clearing for routine agricultural purposes, harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes, upland soil and water conservation practices, and maintenance of existing farm drainage structures, existing farm ponds and existing farm roads.

### **3.13.4 New Farm Ponds, New Farm Roads or New Drainage Structures Proposed by Farmers**

- A. Within the areas specified in § 3.13.2 of this Part, farmers, as defined herein, proposing to construct new farm ponds, new farm roads or new drainage structures are required to submit an application to the Department's Division of Agriculture in accordance with the following procedure:
  1. Applications shall be in writing and on a form prescribed by the Division of Agriculture.
  2. The farmer shall include appropriate plans and drawings to a scale of not less than one inch (1") to one hundred feet (100') (1" = 100') with the application. The plans, designs and drawings shall be in accordance with the standards set by the United States Department of Agriculture, Natural Resource Conservation Service, the Division of Agriculture, or §§ 3.8.4 and 3.8.5 of this Part.
  3. The Division of Agriculture shall review each application for its conformance to R.I. Gen. Laws § 2-1-22(i).
  4. A written permit from the Division of Agriculture may be issued to a farmer for a proposed project or activity that is determined to be an insignificant alteration to freshwater wetlands and to the areas specified in § 3.13.2 of this Part.



5. If the proposed project or activity is a significant alteration, then the applicant is required to submit an Application for a Significant Alteration to the Department in accordance with § 3.12 of this Part.
- B. Permits are not required for new farm ponds, new drainage structures or new farm roads proposed by farmers and which are to be located outside of freshwater wetlands and the areas specified in § 3.13.2 of this Part, provided that they do not result in the alteration of freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage.

### **3.13.5 Agricultural Practices by Other Persons**

- A. Continuing or Expansion of Limited Agricultural Practices
  1. Continuing agricultural practices in a jurisdictional area, including cutting or clearing of invasive plant species, by any property owner other than a farmer are permissible in accordance with § 3.6.1 of this Part provided that the activities are restricted to existing or approved gardens, pastures, and fields which have been in use on a regular basis. In regular use shall mean fields that are tilled, planted, or produce crops at least once within a twenty-four (24) month period; or pastures that are maintained to manage the growth of woody vegetation.
  2. Expansion of existing gardens, pastures, and fields within a jurisdictional area is exempt, in accordance with § 3.6.1 of this Part, provided that:
    - a. No freshwater wetlands are altered; and
    - b. All activity is located outside of any designated buffer zone (see § 3.23 of this Part) and does not cause filling of any floodplains, areas subject to flooding or areas subject to storm flowage.
  3. New farm ponds, new drainage structures or new farm roads proposed by persons not meeting the definition of a farmer in § 3.4(A)(26) of this Part, and located within a jurisdictional area, are subject to these Rules including the permitting provisions in §§ 3.7 through 3.14 of this Part.
  4. Persons not meeting the definition of farmer in § 3.4(A)(26) of this Part proposing to establish new agricultural operations, including the clearing of land for agriculture purposes, are subject to these Rules including the permitting provisions in §§ 3.7 through 3.14 of this Part.

## **3.14 Other Application Types**

### **3.14.1 Application for Emergency Alterations**

- A. An emergency alteration is one that is required to protect the public from imminent harm to its health or safety; and is authorized by the Department. Oral

approval of an emergency alteration, other than those alterations specified in § 3.6 of this Part, may be granted by the Department consistent with the requirements set forth below. Applicants who are not considered an appropriate official of a town, city, State or Federal agency or public utility responsible for correcting problems which arise on an emergency basis and pose an imminent threat to the public health and safety should contact the Freshwater Wetlands Program for consideration of individual emergency situations.

1. An oral or written request for permission to proceed with an emergency alteration must be made to the Freshwater Wetlands Program, Office of Water Resources, by the owner of the property or easement where the emergency alteration is proposed or by an appropriate official of a town, city, State or Federal agency or public utility responsible for correcting problems which arise on an emergency basis and pose an imminent threat to the public health and safety;
2. At a minimum, the request must inform the Department of the following:
  - a. An explanation of the problem necessitating an emergency alteration;
  - b. The reason why the problem represents an imminent threat to health and safety;
  - c. The location of the area in which corrective activity is required;
  - d. The proposed actions necessary to correct the problems;
  - e. The person responsible for overseeing the activity, including immediate means of contact; and
  - f. The means proposed to restore the freshwater wetlands, buffer, floodplain, area subject to flooding or area subject to storm flowage following the emergency alteration, as appropriate.
3. Any emergency alteration undertaken shall not result in a permanent alteration of any freshwater wetland, buffer or floodplain except as allowed for dam safety as approved by the Department in accordance with the Rules and Regulations for Dam Safety, Part 130-05-1 of this Title. The applicant must, in so far as possible, restore the areas to prevent or minimize any permanent alteration. Such restoration must be undertaken in accordance with requirements provided by the Department;
4. Alteration of a jurisdictional area shall not exceed work beyond that necessary to abate the emergency;
5. Unless otherwise informed by the Department following its inspection of the site, the applicant must submit an as-built site plan or a plan of

restoration to the Department no later than forty-five (45) days following the action necessary to correct the emergency problem. The site plan must illustrate the emergency activity undertaken, the jurisdictional area affected, any alteration which resulted from the activity, and all restoration activities undertaken, or which are still required. The required site plan must comply with §§ 3.8.4 and 3.8.5 of this Part;

6. The time limitation for performance of an emergency alteration shall not exceed ten (10) days following initial approval by the Department unless written approval for an extension is obtained from the Department; and
7. Following submission of the as-built site plan required in § 3.14.1(A)(5) of this Part, the applicant is required to comply with any additional activities necessary to prevent any permanent alteration or to finalize wetland restoration as detailed in writing by the Department.

### **3.14.2 Application for Permit Renewal**

- A. An Application for Renewal is required to renew any permit issued as a result of an Application for a Significant Alteration or an Application for a Freshwater Wetlands Permit.
- B. The application shall be made on a form specified by the Department on which the applicant must stipulate that the application is to renew the permit for the original or subsequently modified permitted project. For renewal of a permit, the applicant must further stipulate that the permit limitations are understood and the applicant will comply with any and all conditions of the permit.
- C. Only the original permittee or subsequent transferee may request renewal of the permit.
- D. Any Application for Renewal should be submitted no later than sixty (60) days before the permit or renewal permit expiration date.
- E. An Application for Renewal of a permit shall be limited to requests to continue or complete the originally permitted alterations. Any modifications to the original proposal, other than permitted modifications, shall require a new application, or an Application for Permit Modification.
- F. An Application for Renewal of a permit will not be granted, if, in the opinion of the Department, work has taken place in non-compliance with the original permit or any renewal thereof, in non-compliance with the Act or any of these Rules, or if the applicant revises the project such that there is a change in proposed alterations of freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage.

### **3.14.3 Application for Permit Modification**

- A. Prior to the expiration of a valid permit, a permittee may apply to the Department requesting approval to incorporate minor modification(s) to the originally permitted project. Such modification(s) in all cases may not increase the limits of disturbance of freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage previously permitted unless such increases occur in existing paved, lawn, or otherwise developed areas, or increase the anticipated impacts from that previously permitted by the Department. Any modifications must be minor in nature in relation to the originally permitted project.
- B. The application shall be made on a form prescribed by the Department and must be completed and submitted with revised plans for the Department's review including the appropriate fee. The revised plans submitted with the application shall clearly depict the proposed modification and shall comply with all requirements stipulated in the original application and with these Rules. (See site plan requirements in §§ 3.8.4 and 3.8.5 of this Part).
- C. In addition to revised plans and appropriate fee, the permittee must submit a written narrative and any additional data which describes and details the minor changes or modification proposed and the reasons for the modification.
- D. An Application for Permit Modification will not be approved if, in the opinion of the Department, the modification(s): are not minor in nature in relation to the originally permitted project; involve increases of disturbance into vegetated areas not previously evaluated by the Department; or increase the anticipated impacts from that previously permitted by the Department.
- E. Following receipt of an Application for Permit Modification, the Department may:
  - 1. Issue a revised permit for the modified project; or
  - 2. Inform the applicant that the modifications requested require a new application.
- F. The filing of this application shall not stay or modify any time limitation or condition of the permit.

#### **3.14.4 Application for Permit Transfer**

- A. Any valid permit issued by the Department that has been recorded in the land evidence records of the municipality or municipalities in which the property subject to the permit is located is automatically transferred upon the sale of the property to the new owner.
- B. Any subsequent transferee of the property subject to a permit for a significant alteration shall, within ten (10) days of the property transfer, notify the Department by forwarding to the Department a certified copy of the deed of transfer.

- C. A new property owner may complete and submit an Application for Permit Transfer to have a permit transferred to his or her name provided that the following information is submitted:
1. A certified copy of the deed of transfer of the property subject to the permit;
  2. A notarized statement signed by the new owner or authorized individual as required stating that he or she has reviewed the approved plan, the permit letter, and agrees to abide by the conditions of the permit, including the time limits; and
  3. A completed application form §§ 3.8.2 and 3.8.3 of this Part and the application fee in § 3.8.9(A)(7) of this Part.
- D. The filing of this application shall not stay or modify any time limitation or condition of the permit.
- E. The limit of disturbance, the conditions of approval and any other requirements set forth in any recorded permit shall apply to and be enforceable against all subsequent owners of the land subject to the permit, unless a new or modified permit has been obtained from the Department.

### **3.15 Enforcement**

#### **3.15.1 Enforcement**

Pursuant to R.I. Gen. Laws §§ 42-17.1-2 *et seq.*, 42-17.6-1 *et seq.*, 2-1-18 *et seq.* and the Rules and Regulations for Assessment of Administrative Penalties, Part 130-00-1 of this Title, the Department has the authority to issue enforcement notices, orders or requirements to ensure compliance with the Act and these Rules and to assess administrative penalties. The Department may also provide written or oral warning of its intent to undertake enforcement action, but is not required to do so.

#### **3.15.2 Revocation or Suspension of Determination or Permit**

- A. The Department may revoke or suspend any determination or permit under one (1) or more of the following conditions:
1. The information or data submitted by the applicant or permittee either on the form(s) required or in any other material in support of the application is found to be false, misleading or erroneous;
  2. The project is not undertaken in strict compliance with the conditions or provisions of any determination or permit issued by the Department; or

3. The Department is in receipt of reliable information that, without immediate action to suspend or revoke the determination or permit, the project is likely to harm the environment or pose a threat to the health, safety or welfare of the public. In such cases, the Department may issue a summary suspension.

### **3.15.3 Right to Request Administrative Hearing**

- A. Enforcement actions: The Respondent is entitled to request a hearing before the Department regarding the orders or penalties set forth in an enforcement action.
- B. Revocation or Suspension of a Determination or Permit: The Respondent is entitled to request a hearing before the Department regarding the Revocation or Suspension of a Determination or Permit.
- C. All requests for hearings on enforcement actions or revocation or suspension of a determination or permit must follow the requirements set forth in the Rules and Regulations for the Administrative Adjudication Division, Part 10-00-1 of this Title.

### **3.16 Municipal Petition Process**

- A. A municipality may petition the Department to amend the buffer standard to increase the width of a designated buffer zone protecting one (1) or more freshwater wetland resources within the associated contiguous jurisdictional area. The Municipal Petition shall specify the buffer zone increase requested.
- B. A Municipal Petition shall be submitted in writing, and it shall be accompanied by a formal Council Resolution passed by the municipal government.
- C. Municipal Petitions must include:
  1. A detailed description of the freshwater wetland resource(s) to be protected.
  2. The technical justification for the proposed buffer zone increase, including an assessment of the freshwater wetland resources' functions and values that contribute to the need for the buffer zone increase. The assessment may include, but is not limited to, the freshwater wetland size(s), classification, flood protection value, water quality improvement function, plant and wildlife habitat and diversity, the presence of rare plant or animal species, and the freshwater wetland resources' condition. The Municipal Petition shall be based on Rhode Island-specific information or other relevant data or studies that support the need for the additional buffer zone protection.
  3. A map depicting the location of the freshwater wetland resource(s) subject to the increased buffer zone distance.

4. Any additional information that the Director determines is necessary to properly evaluate the Municipal Petition.
- D. Upon submittal of a Municipal Petition, the Director shall either deny the Petition in writing (stating the reasons for the denial) or initiate rulemaking proceedings.
- E. The approved increased buffer zone distance shall not be retroactively applied to prior agency decisions.

### **3.17 Public Access to Records**

- A. Information, forms, or other materials related to the Act, these Rules, and actions taken are available at the Department. Office hours are 8:30 a.m. to 4:00 p.m. daily except Saturdays, Sundays, and State holidays. As appropriate, an appointment during office hours may be scheduled in advance.
- B. Access to records on file shall be in accordance with R.I. Gen. Laws § 38-2-1 *et seq.* A fee shall be required to cover the costs of copying, and may be required to cover the costs of search and retrieval of documents.

### **3.18 Severability**

If any provision of these Rules or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

### **3.19 Superseded Rules**

- A. On the effective date of this Section, all previous Rules regarding the administration and enforcement of the Freshwater Wetlands Act shall be superseded notwithstanding the following:
  1. Any application submitted to the Department prior to July 1, 2022 shall be governed by Part 1 of this Subchapter.
  2. Any enforcement action taken by the Department between January 15, 2022 and July 1, 2022 shall be governed by Part 1 of this Subchapter. Any enforcement action taken by the Department prior to January 15, 2022 shall be governed by the Rule in effect at the time the violation occurred.
  3. Applicants for projects that have obtained a valid Master Plan Approval from a municipality on or before July 1, 2022 may elect to comply with the prior Freshwater Wetlands Rules, in effect as of July 16, 2014, provided that a complete application for the project is submitted to the Department on or within sixty (60) days from the effective date specified in § 3.20(B) of this Part. A copy of Master Plan Approval shall be submitted with the application to demonstrate eligibility under this Rule; and

4. A project within a jurisdictional area for which a valid building permit has been issued prior to July 1, 2022 and that was not required to obtain a permit under Part 1 of this Subchapter may be constructed in accordance with the building permit without a requirement to obtain a freshwater wetlands permit for the subject project.

### **3.20 Effective Date**

- A. §§ 3.19 and 3.20 of these Rules shall become effective twenty (20) days after filing with the Secretary of State.
- B. All other sections herein shall become effective on July 1, 2022.

### **3.21 Specific Criteria for Identifying Freshwater Wetlands and Floodplain Edges**

#### **3.21.1 Vegetated Freshwater Wetlands**

- A. The landward edge of vegetated freshwater wetlands (i.e., bogs; marshes; swamps; emergent wetlands; or similar types, including complexes of these types), shall, under normal conditions, be identified as the place where the plant community associated with the vegetated wetland is no longer dominated by hydrophytes/hydrophytic vegetation (i.e., the plant community is composed of less than or equal to fifty percent (50%) hydrophytes/hydrophytic vegetation).
- B. Hydrophytes/hydrophytic vegetation includes, but is not limited to:
  1. Those typical plant species listed in the Act under R.I. Gen. Laws §§ 2-1-20(3) "bog", (10) "marsh" and (16) "swamp"; or
  2. Those plant species listed as having a wetland indicator status of Obligate (OBL) according to the most recent edition of the National Wetland Plant List: State of Rhode Island Wetland Plant List, as prepared by the U.S. Army Corps of Engineers incorporated above at § 3.3(C) of this Part; or
  3. Those plant species listed as having a wetland indicator status of Facultative Wetland (FACW), Facultative (FAC) or Facultative Upland (FACU) according to the National Wetland Plant List: State of Rhode Island incorporated above at § 3.3(C) of this Part, where such plants are present along with other clear hydrologic indicators of wetland.
- C. Where no distinct edge is apparent based upon examination of vegetation alone (e.g., the plant community is transitional in nature and dominated by species having an indicator status of FACW, FAC or FACU), other hydrologic indicators must be considered before determining the location of the landward edge of vegetated freshwater wetlands. Where such indicators are present, the FACW, FAC, or FACU plant species are considered hydrophytes/hydrophytic vegetation;



however, the landward edge of vegetated wetland in such transitional areas is located where other hydrologic indicators are no longer present.

- D. Other hydrologic indicators are those characteristics, other than vegetation, which provide evidence that an area is continuously or periodically saturated, inundated, flooded, or ponded; has standing or slowly moving water; or frequently collects surface run-off or drainage. Examples of other hydrologic indicators include, but are not limited to, the following: (Those features in §§ 3.20.1(D)(3), (5), and (7) through (9) of this Part are valid indicators only when at least one (1) additional hydrologic indicator is present.)
1. Morphologic features or properties associated with hydric soils in accordance with the most recent version of the Field Indicators for Identifying Hydric Soils in New England;
  2. Visual observation of soil saturation within twelve inches (12") of the soil surface (considering both seasonal and recent weather conditions);
  3. Distinct water marks on vegetation or other fixed objects;
  4. Sulfidic materials (H<sub>2</sub>S – rotten egg odor) within twelve inches (12") of the soil surface;
  5. Mound and pool microtopography;
  6. Patches of peat mosses (*Sphagnum* spp.);
  7. Soil morphologic evidence of recent or periodic flooding (e.g., stratification associated with flood plains);
  8. Visual observation of surface inundation (considering both seasonal and recent weather conditions);
  9. Dark or water-stained leaves on the ground surface;
  10. Drift or wrack lines of water-borne materials;
  11. Wetland drainage features or patterns such as scoured channels;
  12. Morphological plant adaptations (e.g., buttressed trees trunks, adventitious roots, exposed or shallow root systems);
  13. Distinct or prominent pore linings (oxidized rhizospheres) along live roots within twelve inches (12") of the soil surface.
- E. For purposes of locating and identifying the edge of vegetated freshwater wetlands for applications submitted to the Department, the Department will accept the methodology described and incorporated within the Corps of

Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January, 1987, Prepared for: Department of The Army, U.S. Army Corps of Engineers and Regional Supplement to the Corps of Engineers Wetlands Delineation Manual Northcentral and Northeast Region, 2012, prepared by the U.S. Army Corps of Engineers, Technical Report 12-0 ERDC/EL under the following conditions:

1. The use of this methodology is intended to facilitate the location and identification of the edge of "vegetated" wetlands, but must not be interpreted as redefining freshwater wetlands regulated under the Act and these Rules.
2. All edge locations and delineations are subject to the Department's review and acceptance under the procedures set forth in § 3.9.2 of this Part for Requests to Determine the Presence of Jurisdictional Area. Accordingly, all requests to verify the edge of these types of wetlands will require on-site inspection and analysis.
3. Areas discovered during the delineation of freshwater wetlands which appear to have altered conditions (e.g., removal of vegetation, ditching, draining, filling or other alterations that have changed or appear to change normal conditions) must be documented.

### **3.21.2 Flowing and Standing Water Freshwater Wetlands**

- A. The edge of rivers, streams, intermittent streams, ponds, vernal pools, areas subject to storm flowage, areas subject to flooding and other areas dominated by open or flowing water shall be identified as follows:
  1. The edge of rivers, streams, intermittent streams, ponds, vernal pools, areas subject to storm flowage, areas subject to flooding and other areas dominated by open or flowing water shall be the ordinary high water mark of standing or flowing water. The ordinary high water mark is the line separating land flooded at high water and land exposed at high water. This line may be determined and documented by using recorded hydrologic data (e.g., data obtained from site specific planning and design documents; in-stream flow studies; stream gauge data; the Department's file data; or flood data), or, in the absence of these, by observing physical characteristics, such as evidence of a clear demarcation line between terrestrial and aquatic conditions as a result of standing or flowing water; shelving; permanent watermarks and stains on woody vegetation or other fixed objects, such as bridges, stones, walls, docks, or piers; changes in the character of the soil; the presence of water-borne natural litter and debris; evidence of surface scouring; or other appropriate means.
  2. The edge of any pond and incoming or outgoing flowing body of water shall be that location where characteristics associated with a lentic ecosystem and a lotic ecosystem are both present.

### **3.21.3 Floodplain**

- A. The edge of any floodplain shall be identified as the maximum horizontal extent of flood water which will result from the statistical one hundred (100) year frequency storm event.
- B. The one hundred (100) year floodplain elevation shall be determined by the most recently available flood profile data prepared under the National Flood Insurance Program of the Federal Emergency Management Agency (FEMA); or
- C. In instances where FEMA has not established the elevation of the one hundred (100) year floodplain, the floodplain elevation and floodplain edge shall be determined through calculations completed by a Registered Professional Engineer. These calculations shall be based upon the following:
  - 1. Calculation of one hundred (100) year flood discharge based on a one hundred (100) year rainfall event identified in the Stormwater Management, Design and Installation Rules, Subchapter 10 Part 8 of this Chapter, and a generally accepted hydrologic model including, but not limited to, TR-20, TR-55 or commercially available software based on TR-20 or TR-55. In certain cases involving very large watersheds an acceptable regression equation methodology may be used, such as a U.S.G.S regression for Rhode Island.
  - 2. Using the flood discharge established as described in § 3.21.1(C)(1) of this Part along with detailed topography mapping, prepare a determination of peak one hundred (100) year flood elevation using a widely accepted hydraulic model such as the U.S. Army Corps of Engineers' Hydrologic Engineering Center River Analysis System (HEC-RAS). Once this elevation is established the edge of the one hundred (100) year floodplain must be plotted on a detailed site topography map.
- D. The flood plain edge must coincide with the flood plain elevation and topographic contour elevations as depicted on submitted plans. Transposing flood boundaries from FEMA maps by using horizontal scaling is not acceptable for plans submitted to the Department. Identification of the one hundred (100) year flood elevation must be expressed as North American Vertical Datum 1988 (NAVD88).

### **3.21.4 Floodway**

- A. The edge of floodway for all rivers and streams will be depicted and recognized as follows:
  - 1. Where FEMA has designated a floodway for any river or stream on a FEMA Flood Insurance Rate Map (FIRM), the Department will recognize the same floodway; or

2. Where no FEMA floodway has been established for a river or stream, the edge of the channel as identified in § 3.21.2(A) of this Part shall also be considered the edge of the floodway.

### **3.21.5 Criteria for Identification of Freshwater Wetlands for Farmers Conducting Normal Farming and Ranching Activities**

- A. For the purpose of R.I. Gen. Laws § 2-1-22(k), identification of the edges of vegetated freshwater wetlands, flowing and standing water freshwater wetlands, and floodplains shall be consistent with the criteria specified in §§ 3.21.1, 3.21.2, and 3.21.3 of this Part.
- B. The “area of land within fifty feet (50’)” shall be identified as the line measured landward horizontally, without regard for topography, fifty feet (50’) from the edge of any bog; marsh one (1) acre or greater; swamp three (3) acres or greater; or pond not less than one quarter (1/4) acre in size as those freshwater wetlands are defined herein.
- C. The area of land within two hundred feet (200’) of a flowing body of water greater than or equal to ten feet (10’) wide and the area of land within one hundred feet (100’) of a flowing body of water less than ten feet (10’) wide shall be referred to as riverbank. The edge of riverbanks along a river, stream, intermittent stream, or flowing body of water shall be determined by the method described herein:
  1. The Department may compile designated riverbank widths (one hundred feet (100’) or two hundred feet (200’)) for flowing water body segments and maintain this information on file. Such designations shall be based upon currently available maps, aerial photographs, observations, and past determinations by the Department. All applicants may consult with the Department regarding the availability of designated riverbank widths along any flowing bodies of water segments in the project area. If a riverbank width has been determined by the Department, this designation can be used to preclude the need for the applicant to undertake field measurements or observations.
  2. When designated riverbank widths are not available, the identification and assignment of a riverbank width shall, if the width is not obvious, be conducted using the following method, without regard to topography:
    - a. The width of the flowing body of water shall be measured along the channel’s length at a minimum of five (5) locations upstream and at a minimum of five (5) locations downstream from a measured midpoint within the project area or area of concern.
    - b. The measurements shall be taken at the midpoint, and at approximately equal intervals along the channel’s length with the minimum distance between intervals not less than twenty feet (20’)

and the maximum distance between intervals not exceeding fifty feet (50').

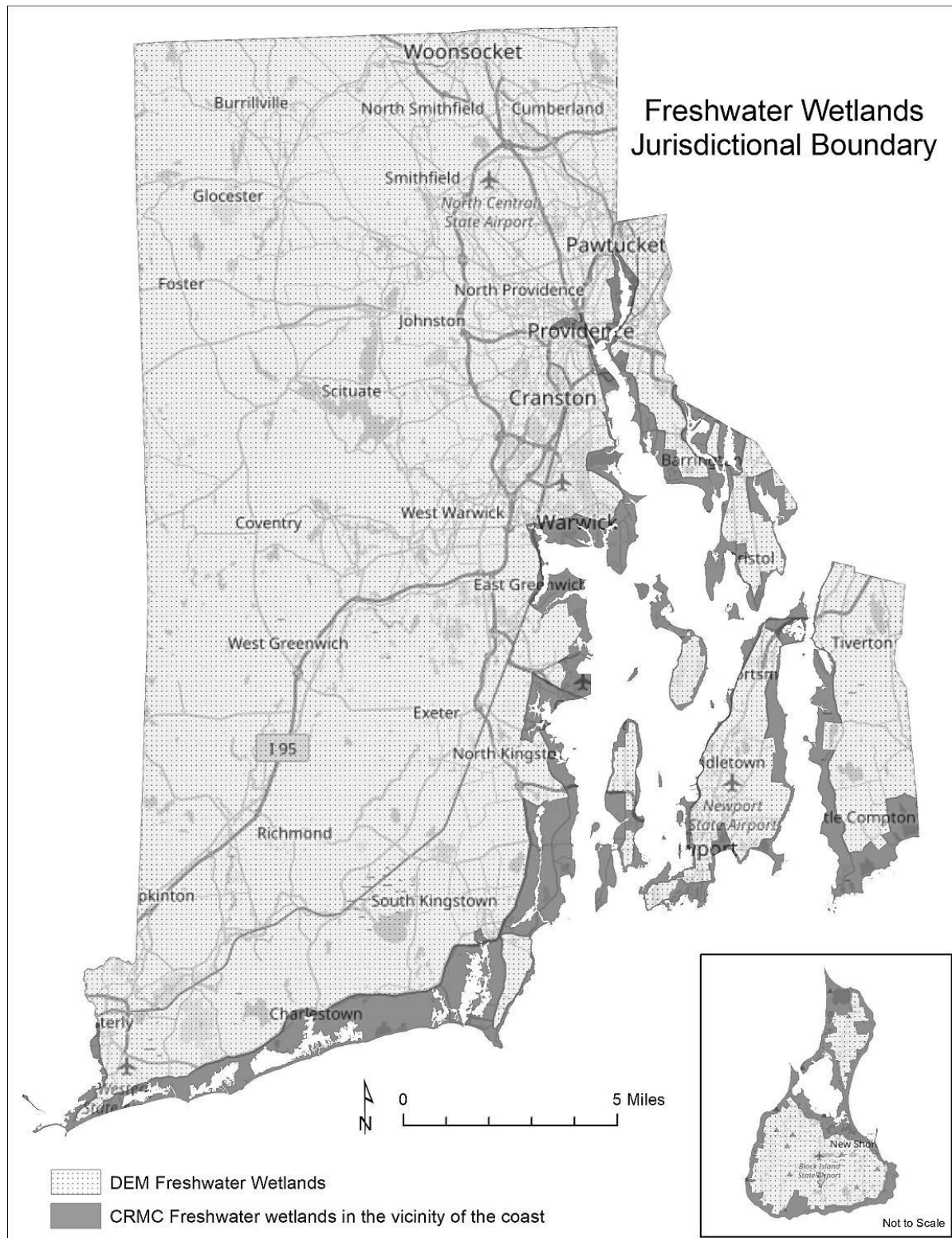
- c. The midpoint of the measurements shall be near the midpoint of the project area or area of concern.
  - d. The measurements shall be taken between the edges of the flowing body of water or channel as delineated according to § 3.21.2(A)(1) of this Part.
  - e. All measurements shall be taken at locations that are representative of the water body segment, must be documented as to the locations, and must be able to be reproduced. Measurements taken at any human-induced restrictions which are less than the natural conditions or within sections of the flowing body of water subject to unauthorized alterations are not applicable or acceptable.
3. The arithmetic average or mean of the channel width measurements shall serve as the average channel width for the purposes of assigning riverbank. The mean shall be calculated using the formula:

$$\frac{X_1 + X_2 + \dots + X_n}{n}$$

where "X" equals each channel width measurement and "n" equals the number of measurements.

4. When the mean channel width is less than ten feet (10'), the riverbank shall be one hundred feet (100'). When the mean channel width is ten feet (10') or more, the riverbank shall be two hundred feet (200').

### 3.22 Freshwater Wetlands Jurisdictional Boundary Map



### 3.23 Statewide Buffer Zone Designations

- A. § 3.23 of this Part presents the statewide buffer zones designated by the Director to protect freshwater wetlands, including rivers and ponds, consistent with § 3.7 of this Part. The buffer zones are applicable to projects or activities that are subject to freshwater wetlands permitting requirements, except as otherwise provided for in §§ 3.5.7 and 3.13.1 through 3.13.4 of this Part which govern freshwater wetlands for farmers conducting farming activities.
- B. The designated buffer zones are organized into regions which are depicted on a map described in § 3.23(C) of this Part and included in § 3.24 of this Part. The regions are:
  - 1. Non-urban River Protection Region 1 and River Protection Region 2: These Regions includes watershed areas that are high priorities for conservation of fish and wildlife habitat, including rivers which rank highest on a Rhode Island stream condition index, as well as areas of the State that exhibit a mix of land uses, watershed characteristics and settings.
  - 2. Urban Region: This Region includes densely developed areas of the State including portions of watersheds that contain high percentages of impervious cover and areas that are already developed or altered.
- C. The Freshwater Wetlands Buffer Regions map prepared by the Department is adopted by reference with the promulgation of these Rules (§ 3.24 of this Part). The map shall be on file and made available for review at the Department. Additionally, the map information will be made available for viewing through the Department's website. The map should be used to identify the Region within which a property is located and the buffer zone requirements that correspond to that Region as specified within § 3.23 of this Part.
- D. Buffer zone requirements applicable to public drinking water supply reservoirs and their watersheds are presented in §§ 3.23(H)(1), (H)(2)(a) and (H)(4) of this Part.
- E. The buffer zone requirements in each region are specified for various types of freshwater wetlands including ponds, vegetated freshwater wetlands, vernal pools, and rivers and streams. The following freshwater wetland subtypes are described to guide their proper identification:
  - 1. Wet meadow: A marsh that does not typically have standing water and is periodically grazed or mowed
  - 2. Phragmites marsh: A marsh whose plant community is composed of more than seventy-five percent (75%) non-native common reed (*Phragmites australis*)

3. Shrub swamp: A swamp or portion of a swamp whose plant community is composed of greater than fifty percent (50%) woody plants less than twenty feet (20') tall
4. Evergreen forested swamp: A swamp or portion of a swamp whose overstory is composed of greater than fifty percent (50%) Atlantic white cedar (*Chamaecyparis thyoides*) or Eastern hemlock (*Tsuga canadensis*) trees
5. Swamp with great-laurel Rhododendron: A swamp or portion of a swamp whose understory is composed of great-laurel Rhododendron (*Rhododendron maximum*) shrubs
6. For the purpose of identifying freshwater wetlands and their associated buffer zones, an emergent plant community shall be considered a marsh and a submergent plant community shall be considered a pond.
7. Fens are open canopy, groundwater-fed freshwater wetlands with less than fifty percent (50%) cover of trees. Shrubs are frequently present (less than fifty percent (50%) cover) as are grasses and mosses. The dominant plants are sedges.
8. Floodplain forests are hardwood swamps on lower terraces of river floodplains characterized by a flooding regime in which low areas are flooded annually, usually in the spring. In northern Rhode Island (along the Blackstone River and smaller rivers in Providence County) they are characterized by silver maple (*Acer saccharinum*) and sycamore (*Platanus occidentalis*) trees, while in southern Rhode Island (along the lower Pawcatuck River) they are characterized by red maple (*Acer rubrum*), pin oak (*Quercus palustris*) and green ash (*Fraxinus pensylvanica*) trees.
9. Freshwater pond shores that support coastal plain species are gently sloping sandy-gravelly shores of kettle ponds or pond depressions within Rhode Island's coastal region. They may be seasonally or semi-permanently flooded, and they support distinct assemblages of grasses, sedges, rushes and other herbaceous plants.

F. Measurement of Freshwater Wetland Buffer Zones

1. The buffer zone shall be measured perpendicularly, without regard for topography, outward from the edge of the freshwater wetland as a horizontal distance. The freshwater wetland edge shall be determined consistent with § 3.21 of this Part.
2. The buffer zone associated with vegetated freshwater wetlands shall be designated based upon the wetland type or subtype identified at the edge in accordance with § 3.23 of this Part. An additional twenty-five feet (25') will be added to the buffer zone width when one (1) or more differing



freshwater wetland types or subtypes are present within fifty feet (50') inward of the freshwater wetland edge, but in no case will a buffer zone exceed the limit of a jurisdictional area. In large freshwater wetland systems, it is not necessary to map all of the interior wetland types.

3. For the purpose of designating a buffer zone, it may be necessary to determine the size of a freshwater wetland.
4. In the event that a property straddles a Region boundary, a buffer zone width shall be designated consistent with the Region within which its' associated freshwater wetland is located.
5. In the event of the documented presence of a rare plant, rare animal or rare freshwater wetland type, the Department reserves the right to increase the associated buffer zone width designated in §§ 3.23(H) or (I) of this Part.

G. Identifying the Existing Buffer within a Buffer Zone: On properties where a portion of the designated buffer zone has been developed or altered, the extent of existing undeveloped vegetated land shall include all areas adjacent to the freshwater wetlands that are not existing building, pavement, lawn or bare gravel.

H. Designated Buffer Zones in the non-urban River Protection Region 1 and River Protection Region 2

1. The following Public Drinking Water Supply Reservoirs are designated a two hundred foot (200') buffer zone:

Public Drinking Water Supply	Reservoir Name	Reservoir Location
a. Cumberland Water Supply	Sneech Pond	Cumberland
b. Eleanor Slater Hospital/Zambarano Unit	Wallum Lake	Burrillville
c. Jamestown Water Supply	North Carr Pond and South Watson Pond	Jamestown
d. New Shoreham Water Supply	Fresh Pond and Sands Pond	New Shoreham
e. Newport Water Supply	Lawton Valley Reservoir and St. Mary's Pond	Portsmouth

f. Newport Water Supply	(South) Easton Pond and Green End Pond (North Easton Pond)	Middletown, Newport
g. Newport Water Supply	Nelson (Paradise) Pond and Gardiner Pond	Middletown
h. Newport Water Supply	Sisson Pond	Portsmouth
i. Newport Water Supply	Nonquit Pond	Tiverton
j. Newport Water Supply	Watson Reservoir	Little Compton
k. Pawtucket Water Supply Board	Arnold Mills Reservoir, Diamond Hill Reservoir, Happy Hollow Pond, and Robin Hollow Pond	Cumberland
l. Providence Water Supply Board	Barden Reservoir	Foster, Scituate
m. Providence Water Supply Board	Moswansicut Pond	Johnston, Scituate
n. Providence Water Supply Board	Scituate Reservoir and Regulating Reservoir	Scituate
o. Providence Water Supply Board	Westconnaug Reservoir	Foster
p. Stone Bridge Water Supply	Stafford Pond	Tiverton
q. Woonsocket Water Supply	Reservoir #1	North Smithfield
r. Woonsocket Water Supply	Reservoir #3	North Smithfield, Smithfield

s. Woonsocket Water Supply	Harris Pond	Woonsocket
t. Yawgoog Scout Reservation	Yawgoog Pond	Hopkinton

2. Ponds within River Protection Region 1 or River Protection Region 2 are designated the following buffer zones:

Resource	Criteria		Buffer Zone Width (Feet)
a. Ponds	Contiguous to a River within the watershed of a Public Drinking Water Supply Reservoir named in § 3.23(H)(1) of this Part		100
b. Ponds	Greater than or equal to ten (10) acres,		100
	Except the following:		50
	Boone Lake	Exeter	
	Central Pond (Turner Reservoir North)	East Providence	
	Designated portions of Flat River Reservoir	Coventry	
	Echo Lake (Pascoag Reservoir)	Burrillville and Glocester	
	Lake Washington	Glocester	
	Little Maschaug Pond	Westerly	
	Lower Sprague Reservoir	Smithfield	
	Maple Root Pond	Coventry	

	Mishnock Lake	West Greenwich	
	Sand Pond/Little Pond	Warwick	
	Scott Pond	Lincoln	
	Tiogoue Lake	Coventry	
	Oak Swamp Reservoir	Johnston	
	Slacks Reservoir	Smithfield	
	Spring Lake	Burrillville	
c. Ponds	Greater than or equal to one quarter (1/4) acre and less than ten (10) acres		50
d. Ponds	Less than one quarter (1/4) acre		25
e. Highway ponds	Any size, located within a highway center median or a highway entrance or exit ramp that are not designed as stormwater treatment systems		25

3. Vegetated freshwater wetlands and vernal pools within River Protection Region 1 or River Protection Region 2 are designated the following buffer zones:

Resource Type	Criteria	Buffer Zone Width (Feet)
a. Bogs	Any size	100
b. Marshes	Any size	100
	Except, a wet meadow or Phragmites marsh greater than or equal to one (1) acre; or	50

	Except, a wet meadow or Phragmites marsh less than one (1) acre	25
c. Swamps – Evergreen forested	Greater than or equal to one (1) acre	100
d. Swamps – with great-laurel ( <i>Rhododendron maximum</i> )	Greater than or equal to one (1) acre	100
e. Swamps – Deciduous forested	Greater than or equal to ten (10) acres	75
f. Swamps – Shrub swamp	Greater than or equal to one (1) acre	75
g. Swamps – Deciduous forested	Greater than or equal to one (1) acre and less than ten (10) acres	50
h. Swamps – Any	Less than one (1) acre	25
i. Vernal pools	Greater than or equal to fifty percent (50%) undeveloped vegetated land within one hundred feet (100') of its edge	100
	Less than fifty percent (50%) undeveloped vegetated land within one hundred feet (100') of its edge	50
j. Highway wetlands	Any size located within a highway center median or a highway entrance or exit ramp that are not designed as stormwater treatment systems	25

4. Rivers within the watersheds of the Public Drinking Water Supply Reservoirs named in § 3.23(H)(1) of this Part are designated a two hundred foot (200') buffer zone.
5. The following rivers within River Protection Region 1 or River Protection Region 2 are designated a two hundred foot (200') buffer zone:

River Name	Municipality	Description	
		Start	End
Acid Factory Brook	West Greenwich	Headwaters: 41.64957, - 71.71866	Outlet at Eisenhower Lake
Adamsville Brook	Tiverton, Little Compton	King Road	MA/RI Border
Ashaway River	Hopkinton	Headwaters: 41.43762, - 71.79151	Confluence with Pawcatuck River
Bear Brook	Coventry	Harkney Hill Rd. Crossing: 41.67681, - 71.65409	Outlet at Reynolds Pond
Bear Brook Tributary	Coventry	Outlet of unnamed pond: 41.667, - 71.649	Confluence of Bear Brook
Beaver River	Exeter, Richmond	Outlet of James Pond	Confluence with Pawcatuck River
Big River	West Greenwich	Confluence of the Congdon River and Nooseneck River	Outlet at Reynolds Pond
Blackstone River	North Smithfield	MA/RI Border at 42.014, -71.553	MA/RI Border at 42.014, -71.543

Blackstone River	Woonsocket, Cumberland, Lincoln	Power line crossing at 41.987, -71.491	Non-urban and urban region boundary at Broad Street
Branch River	Burrillville	Confluence of the Chepachet River and the Clear River	Outlet at Slatersville Reservoir
Brandy Brook	Glocester	Outlet of Burlingame Reservoir	Outlet at Echo Lake
Breakheart Brook	Exeter, West Greenwich	Headwaters: 41.65257, -71.69632	Confluence with Flat River
Brushy Brook	Hopkinton	Exeter-Hopkinton town line	Outlet at Locustville Pond
Bucks Horn Brook	Coventry	Headwaters: 41.70469, -71.71060	Confluence with Moosup River
Canonchet Brook	Hopkinton	Headwaters: 41.496, -71.771	Confluence with Wood River
Carr River	West Greenwich	Outlet of Carr Pond	Confluence with Big River
Chepachet River	Burrillville, Glocester	Outlet of Smith & Sayles Reservoir	Confluence with Clear River
Chickasheen Brook	South Kingstown	Northern Crossing of Route 2, Approximately 41.52354, -71.55326	Confluence with Usquepaug River
Chipuxet River	Exeter, South Kingstown	Outlet of The Reservoir	Outlet at Worden Pond

Chockalog River	Burrillville	MA/RI Border	Confluence with Nipmuc River
Clear River	Burrillville, Gloucester	Headwaters: 42.00024, - 71.75811	Confluence with Chepachet River
Coney Brook	West Greenwich	Outlet of Tillinghast Pond	Confluence with Kelley Brook
Congdon River	Exeter, West Greenwich	Outlet of Millbrook Pond	Confluence with Nooseneck River
Diamond Brook	Richmond	Outlet of Carolina Trout Pond	Confluence with Wood River
Dry Arm Brook	Burrillville	Outlet of Round Lake	Confluence with Clear River
Dundery Brook	Little Compton	Holly Berry Hill	Outlet at Briggs Pond
Dutemple Brook	Exeter	Widow Sweets Rd. Crossing	Confluence with Fisherville Brook
Factory Brook	Coventry	Outlet of Eisenhower Lake	Confluence with Flat River
Fisherville Brook	Coventry, Exeter	Henry Brown Farm Rd. Crossing	Confluence with Sodom Brook
Flat River	Coventry	Confluence of Negro Sawmill Brook and Pine Swamp Brook	Outlet at Flat River Reservoir (Johnson's Pond)
Glen Rock Brook	Richmond, South Kingstown	Headwaters: 41.54083, - 71.62463	Outlet at Glen Rock Reservoir



Herring Brook	Burrillville	Outlet of Spring Lake	Confluence with Clear River
Kelley Brook	Coventry	Outlet of Wickaboxet Pond	Confluence with Wood River
Leland Brook	Burrillville	Jackson Schoolhouse Rd. Crossing	Outlet at Wilson Reservoir
Locke Brook	Exeter	Outlet of Metcalf Wildlife Marsh	Confluence with Queen River
Log House Brook	Hopkinton	Headwaters: 41.543, -71.772	Moscow Brook
McCuster Brook	Coventry	Victory Falls Rd. Crossing	Confluence with Flat River
Mattatuxet River	North Kingstown	Outlet at Silver Spring Lake	Outlet at Pettasquamscutt River
Meadow Brook	Richmond	Carolina Nooseneck Rd. Northern Crossing	Confluence with Pawcatuck River
Moosup River	Coventry, Exeter	Clark Pond, Foster	CT/RI Border
Moscow Brook	Hopkinton	Outlet of Winchek Pond	Confluence with Brushy Brook
Mowry Brook	Burrillville	Powerline Crossing: 41.98744, -71.72239	Confluence with Clear River
Negro Sawmill Brook	Coventry	Waterman Hill Rd. Crossing	Confluence with Flat River
Nipmuc River	Burrillville	Confluence with Round Top Brook	Confluence with Clear River

		and Chockolog River	
Nooseneck River	West Greenwich	Sharpe St. Crossing	Confluence with Congdon River
Parris Brook	Exeter	Outlet of Tippecansett Pond	Confluence with Wood River
Pasquiset Brook	Charlestown	Outlet of Pasquiset Pond	Confluence with Pawcatuck River
Pawcatuck River	Charlestown, South Kingstown, Westerly	Outlet of Worden Pond	Confluence of Ashaway River
Pawcatuck River	Westerly	Confluence with Ashaway River	Non-urban and urban region boundary at Canal St.; approx. 540 feet south of intersection with Arch St.
Perry Healy Brook	Westerly, Charlestown	Outlet of Unnamed Impound in Woody Hill Mgt. Area (approx. 41.37671, -71.73844)	Outlet at Watchaug Pond
Phillips Brook	West Greenwich	Pond at Elevation 456' Upstream of Plain Meeting House Rd. (Approximately 41.6469, -71.74053)	Confluence with Factory Brook
Pine Swamp Brook	Foster	Pierce Rd. Crossing	Confluence with Flat River
Poquiant Brook	Charlestown	Outlet of Watchaug Pond	Confluence with Pawcatuck River

Queens Fort Brook	Exeter	Stony Lane Crossing	Confluence with Queen River
Queen River	Exeter	Dead Swamp (41.61015, - 71.55392)	Outlet at Glen Rock Reservoir
Quidneck Brook	Coventry	Outlet of Quidneck Reservoir	Outlet at Stump Pond
Raccoon Brook	West Greenwich	Interstate 95 Southbound Crossing	Confluence with Nooseneck River
Reuben Brown Brook	Exeter	Stony Lane Crossing	Confluence with Queens Fort Brook
Roaring Brook	Exeter, Richmond, West Greenwich	Interstate 95 Southbound Crossing	Confluence with Wood River
Roaring Brook	Coventry	Outlet of Arnold Pond	Confluence with Moosup River
Round Top Brook	Burrillville	MA/RI Border	Confluence with Nipmuc River
Saugatucket River	South Kingstown	Headwaters: 41.50671, - 71.48833	Saugatucket Road
Saunders Brook	Glocester	Headwaters: 41.89360, - 71.73540	Outlet at Keech Pond
Sherman Brook	Exeter, South Kingstown	Hog House Hill Rd. Crossing	Confluence with Glen Rock Brook
Sodom Brook	Exeter	Rt. 102 (Ten Rod Rd.) Crossing	Confluence with Queen River

Stingo Brook	Glocester	Headwaters: 41.91393, - 71.69894	Confluence with Chepachet River
Taney Brook	Richmond	Headwaters: 41.478, -71.643	Confluence with Pawcatuck River
Tomaquag Brook	Hopkinton	Headwaters: 41.47282, - 71.77506	Confluence with Pawcatuck River
Turkey Meadow Brook	Foster, Coventry	Headwaters: 41.74391, - 71.71160	Confluence with Negro Sawmill Brook
Usquepaug River	Charlestown, South Kingstown	Outlet of Glen Rock Reservoir	Confluence with Pawcatuck River
Warwick Brook	Coventry	Nelson Capwell Rd. Crossing	Confluence with Bucks Horn Brook
West Meadow Brook	Foster	Headwaters: 41.77496, - 71.74226	Confluence with Moosup River
Whaley Brook	Coventry, Foster	Headwaters: 41.73285, - 71.67340	Confluence with Flat River
White Brook	Richmond	Headwaters: 41.48170, - 71.66533	Confluence with Pawcatuck River
White Horn Brook	South Kingstown	Rt. 138 Crossing	Confluence with Chipuxet River
Wood River	West Greenwich, Exeter, Charlestown, Hopkinton, Richmond	Outlet of Hazard Pond	Confluence with Pawcatuck River

6. The following rivers within River Protection Region 2 are designated a one hundred fifty foot (150') buffer zone:

River Name	Municipality	Description	
		Start	End
Annaquatucket River	North Kingstown	Fish Hatchery	Bissel Cove
Blackstone Canal	Lincoln	Divergence from Blackstone River at Ashton Dam	Outlet at Scott Pond
Branch River	North Smithfield	Outlet of the Slatersville Reservoir	Confluence with Blackstone River
Buckeye Brook	Warwick	Non-urban and urban region boundary at Warwick Avenue	Tidewater Drive, Warwick
Cherry Brook	North Smithfield, Woonsocket	Headwaters: 41.98166, -71.53613	Non-urban and urban region boundary at Rockland Avenue
Cocumscussoc Brook	North Kingstown	Headwaters: 41.58454, -71.48074	Outlet at Wickford Harbor
Cutler Brook	Glocester	Headwaters: 41.90633, -71.61426	Outlet at Waterman Reservoir
Dark Entry Brook	Warwick, East Greenwich	41°40'57.26"N; 071°28'14.10"W	Confluence with Bleachery Pond/Maskerchugg River
Dry Brook	Johnston	Outlet of Oak Swamp Reservoir	Confluence with Pocasset River

Frenchtown Brook	West Greenwich, East Greenwich	Headwaters: 41.62188, -71.54634	Confluence with Hunt River
Furnace Hill Brook	Johnston, Cranston	Headwaters: 41.79580, -71.55239	Confluence with Meshanticut
Hardig Brook	Warwick	41°41'19.15"N; 071°31'2.69"W	Outlet at Apponaug Cove
Harris Brook	Smithfield	Outlet of Harris Pond	Outlet at Georgiaville Pond
Hunt River	East Greenwich, North Kingstown	Headwaters: 41.61148, -71.50471	Outlet at Potowomut River
Lockwood Brook	Warwick	Outlet of unnamed pond at 41°43'15.65"N; 071°23'58.46"W	Confluence with Old Mill Creek
Maskerchugg River	Warwick, East Greenwich	Headwaters: 41.68193, -71.48196	Outlet at Greenwich Cove
Meshanticut Brook	Cranston, Warwick	Headwaters: 41.77353, -71.47209	Confluence with the Main Stem of the Pawtuxet River
Moshassuck River	Lincoln, Central Falls, Pawtucket, and Providence	Wellington Road, Lincoln	Non-urban and urban region boundary at Walker Street
Pawtuxet River Main Stem	West Warwick,	Confluence of the North Branch Pawtuxet River and	Non-urban and urban region

	Warwick, Cranston	South Branch Pawtuxet River	boundary at Bald Hill Road
Pawtuxet River North Branch	Scituate, Coventry, Cranston, West Warwick	Outlet of Gainer Memorial Dam (Scituate Reservoir)	Confluence with Pawtuxet River Main Stem
Pawtuxet River South Branch	Coventry, West Warwick, Warwick	Outlet of Flat River Reservoir	Non-urban and urban region boundary at Main Street (Rt. 117)
Pawtuxet River South Branch	West Warwick	Non-urban and urban region boundary at Washington Secondary Bikeway	Confluence with Pawtuxet River Main Stem
Pocasset River	Johnston	Rt. 6, Johnston	Non-urban and urban region boundary at Plainfield Street
Runnins River	East Providence	Non-urban and urban region boundary at Mink St.	Outlet at Barrington River
Sandhill Brook	North Kingstown	Outlet of Sawmill Pond	Confluence with Hunt River
Saugatucket River	South Kingstown	Saugatucket Road	Outlet at Point Judith Pond
Simmons Brook	Johnston	Outlet of Simmons Reservoir	Non-urban and urban region boundary at Mill Street
Sin and Flesh Brook	Tiverton	Industrial Way, Tiverton	Highland Rd, Tiverton

Tarkiln Brook	Burrillville, Glocester, North Smithfield	Outlet of Nichols Pond	Outlet at Slatersville Reservoir
Ten Mile River	East Providence, Pawtucket	MA/RI Border	Non-urban and urban region boundary at Pawtucket Ave.
Tuscatucket Brook	Warwick	Non-urban and urban region boundary at West Shore Rd	Outlet at Brush Neck Cove
West River	North Providence, Providence, Lincoln, Smithfield	Greenwood Lane, Lincoln	Non-urban and urban region boundary at Mineral Spring Ave.
Woonasquatucket River	Smithfield, North Providence, Providence, Johnston	Headwaters: 41.95183, -71.55528	Non-urban and urban region boundary at Smith Street (Rt. 44)

7. All rivers within River Protection Region 1 that are not identified above in §§ 3.23(H)(4) or (5) of this Part are designated a one hundred fifty foot (150') buffer zone.
  8. All rivers within River Protection Region 2 identified by the Department as cold water fisheries are designated a one hundred fifty foot (150') buffer zone.
  9. All other rivers within River Protection Region 2 that are not identified above in §§ 3.23(H)(4), (5), (6) or (8) of this Part are designated a one hundred foot (100') buffer zone.
  10. All streams in River Protection Region 1 or River Protection Region 2 are designated a one hundred foot (100') buffer zone.
- I. Designated Buffer Zones in the Urban Region
1. The following ponds within the urban region are designated a fifty foot (50') buffer zone:



Name	Location
a. Blackamore Pond	Cranston
b. Canada Pond	Providence
c. Davol Pond	North Kingstown
d. Fenner Pond	Cranston
e. Mashapaug Pond	Providence
f. Omega Pond	East Providence
g. Posnegansett Pond	Warwick
h. Print Works Pond	Cranston
i. Randall Pond	Cranston
j. Roger Williams Park Ponds	Providence
k. Sand Pond (No. of Airport)	Warwick
l. Spectacle Pond	Cranston
m. Three Ponds	Warwick
n. Turner Reservoir (South)	East Providence
o. Warwick Pond	Warwick

2. All other ponds, including highway ponds, in the urban region are designated a twenty-five foot (25') buffer zone.
3. Vegetated freshwater wetlands and vernal pools in the urban region are designated the following buffer zones:

Resource Type	Criteria	Buffer Zone Width (Feet)
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a. Bogs	Any size	100
b. Marshes	Any size	100
	Except, a wet meadow or Phragmites marsh greater than or equal to one (1) acre; or	50
	Except, a wet meadow or Phragmites marsh less than one (1) acre	25
c. Swamps – Evergreen forested	Greater than or equal to one (1) acre	100
d. Swamps – all other	Any size	25
e. Vernal pools	Greater than or equal to fifty percent (50%) undeveloped vegetated land within one hundred feet (100') of its edge	100
	Less than fifty percent (50%) undeveloped vegetated land within one hundred feet (100') of its edge	50
f. Highway wetlands	Any size located within a highway center median or a highway entrance or exit ramp that is not designed as stormwater treatment systems	25

4. The following rivers in the urban region are designated a one hundred fifty foot (150') buffer zone:

River Name	Municipality	Description	
		Start	End

Blackstone River	Woonsocket	MA/RI Border at 42.015, -71.529	Power line crossing at 41.987, -71.491
Blackstone River	Cumberland, Central Falls, Pawtucket	Non-urban and urban region boundary at Broad Street	Outlet to Seekonk River
Pawtuxet River South Branch	West Warwick	Main Street (Rt. 117)	Washington Secondary Bikeway

5. The following rivers in the urban region are designated a one hundred foot (100') buffer zone:

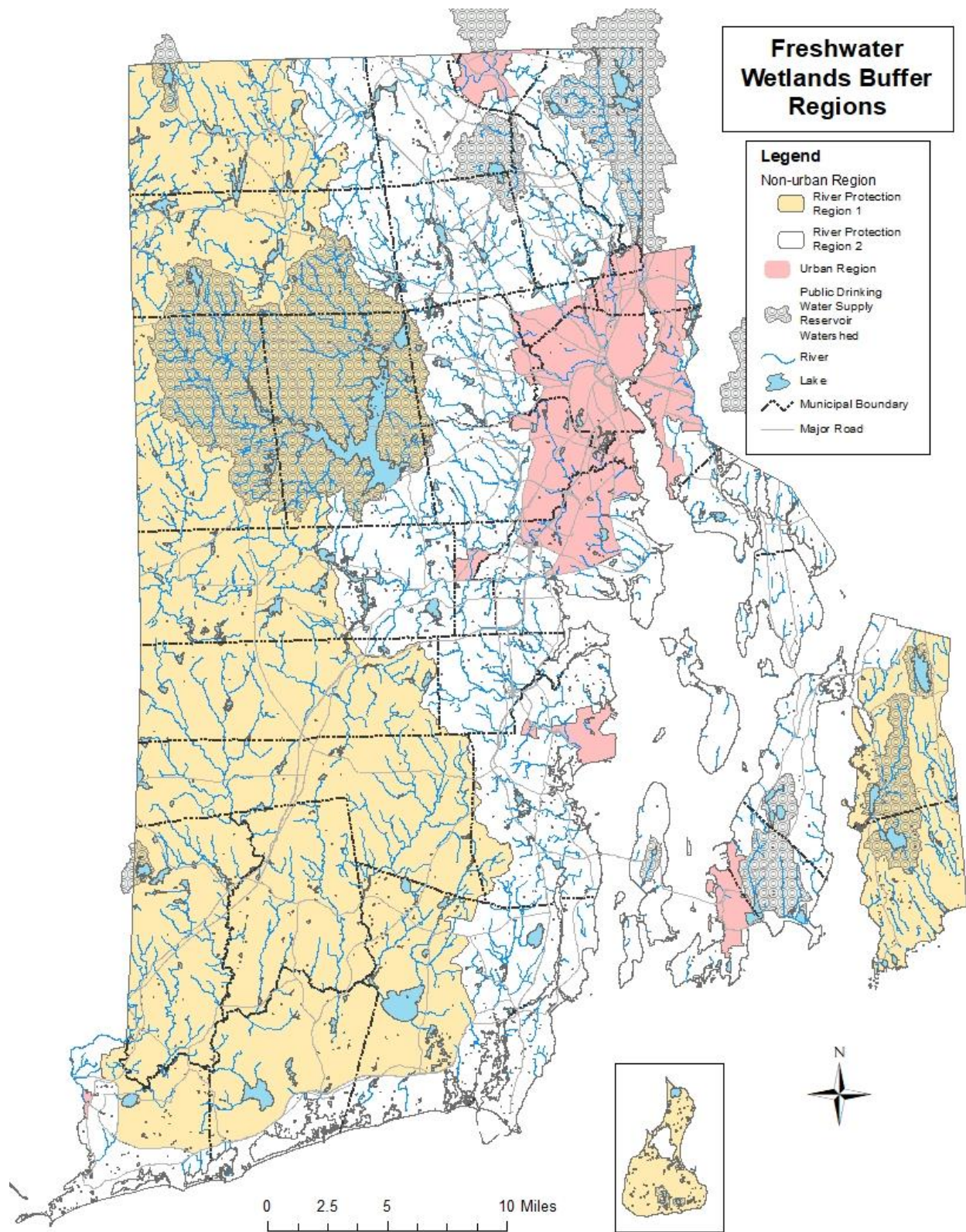
River Name	Municipality	Description	
		Start	End
Buckeye Brook	Warwick	Unnamed tributary at Airport Road	Non-urban and urban region boundary at Warwick Avenue
Cherry Brook	Woonsocket	Non-urban and urban region boundary at Rockland Avenue	Confluence with the Blackstone River
Mill River	Woonsocket	MA/RI Border	Confluence with Blackstone River
Moshassuck River	Lincoln, Central Falls, Pawtucket, and Providence	Non-urban and urban region boundary at Walker St.	Confluence with the Woonasquaket River

Pawcatuck River	Westerly	Non-urban and urban region boundary at Canal St., approx. five hundred forty feet (540') north of intersection with Arch St.	Outlet at Little Narragansett Bay
Pawtuxet River Main Stem	West Warwick, Warwick, Cranston	Non-urban and urban region boundary at Bald Hill Road	Outlet at Pawtuxet Cove
Peters River	Woonsocket	MA/RI Border	Confluence with the Blackstone River
Pocasset River	Cranston, Johnston	Non-urban and urban region boundary at Plainfield Street	Confluence with Main Stem Pawtuxet River
Runnins River	Providence, East Providence	MA/RI Border at County St.	Non-urban and urban region boundary at Mink St.
Simmons Brook	Johnston	Non-urban and urban region boundary at Mill Street	Non-urban and urban region boundary at Atwood Ave.
Ten Mile River	East Providence, Pawtucket	Non-urban and urban region boundary at Pawtucket Avenue	Outlet at Omega Pond

Tuscatucket Brook	Warwick	Headwaters: 41.711, -71.432	Non-urban and urban region boundary at West Shore Road
West River	North Providence, Providence	Non-urban and urban region boundary at Mineral Spring Avenue	Confluence with Moshassuck River
Woonasquaket River	Smithfield, North Providence, Providence, Johnston	Non-urban and urban region boundary at Smith Street	Confluence with Moshassuck River

6. All other rivers in the urban region (see § 3.24 of this Part) not identified in §§ 3.23(l)(4) and (5) of this Part are designated a fifty foot (50') buffer zone.
7. All streams in the urban region (see § 3.24 of this Part) are designated a fifty foot (50') buffer zone.

### 3.24 Freshwater Wetlands Buffer Regions Map



**250-RICR-150-15-3**

**TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**CHAPTER 150 - WATER RESOURCES**

**SUBCHAPTER 15 - WETLANDS**

**PART 3 - RULES AND REGULATIONS GOVERNING THE ADMINISTRATION AND  
ENFORCEMENT OF THE FRESHWATER WETLANDS ACT**

Type of Filing: Amendment

**Agency Signature**

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Agency Head Signature

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Agency Signing Date

**Department of State**

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Regulation Effective Date

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Department of State Initials

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Department of State Date