

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN RE: RICHARD BZDYRA
FRESHWATER WETLANDS APPLICATION NO.
88-126F, 88-127F, 88-128F

DECISION AND ORDER

This matter is before this Hearing Officer on the application of Richard Bzdyra, agent for Profile Construction Company, to alter freshwater wetlands by clearing, grading, filling, and landscaping for the purposes of constructing three (3) single family homes within a 100 foot riverbank wetland associated with an unnamed perennial stream less than ten (10) feet in width, and also within 50 feet of a wooded swamp. The location of the proposed alterations is commonly referred to as Wingate Village Subdivision in the City of Warwick and more particularly as Lots 20, 21 and 26 of that subdivision, all designated as portions of Lot 105 of Assessor's Plat 295. An administrative hearing concerning the above-cited application was held on June 18 and 19, 1990 at respectively the Knight Campus of CCRI in the City of Warwick and at 291 Promenade Street in the City of Providence. The hearing was conducted pursuant to the Administrative Procedures Act (R.I.G.L. 42-35-1 et seq.),

and the Administrative Rules of Practice and Procedure of the Department of Environmental Management. Dennis J. Esposito, Esq. represented the applicant. Sandra J. Calvert, Esq. represented the Department of Environmental Management.

PREHEARING CONFERENCE

Pursuant to Section 11.03(g) of the Freshwater Wetlands Act and Regulation 13 of the Department's Rules of Practice and Procedure a Pre-Hearing Conference was conducted at 9:30 a.m. on June 4, 1990 at 291 Promenade Street, Providence, Rhode Island. Public Notice of this proceeding was issued on May 25, 1990. All interested persons who wished to intervene in the hearing process were directed to notify the Hearing Officer, in writing, on or before the date set for the Pre-Hearing Conference and were invited to participate. No petitions to intervene were received.

The following matters were disposed of at the Pre-Hearing Conference:

1. Stipulated as to Fact:

- (a) The Applicant has filed all necessary documents and paid all necessary fees to be properly before the Hearing Officer in the above-entitled matter.

- (b) The subject sites are located west of Sumner Avenue, south of Pawtucket Avenue. Assessor's Plat 295, Lot 105, Wingate Subdivision Lot Nos. 21, 21, and 26, Warwick, Rhode Island.
- (c) The Applications propose the alteration of a 100 foot riverbank wetland and a 50 foot perimeter wetland surrounding a swamp by clearing, grading, landscaping, and construction for the purpose of landscaping and house construction on each of the three (3) lots subject to this hearing.
- (d) The formal Application, 88-126F, 88-127F and 88-128F, were filed on July 17, 1988.
- (e) The site plan subject to this hearing in Application No. 88-0126F is entitled "Wetland Application, Wingate Village Lot 20, Warwick, RI" sheet 1 of 1, dated July 19, 1988 and received by this Department November 2, 1988.
- (f) The site plan subject to this hearing in Application No. 88-0127F is entitled "Wetland Application, Wingate Village, Lot 21, Warwick, RI" sheet 1 of 1, dated July 19, 1988 and received by this Office November 2, 1988.
- (g) The site plan subject to this hearing in Application NO. 88-0128F is entitled "Wetland Application, Wingate Village, Lot 26, Warwick, RI" Sheet 1 of 1, dated July 19, 1988 and received by this Department November 2, 1988.
- (h) The above-entitled site plans were sent to public notice on November 11, 1988. The forty-five (45) day public notice period expired on January 5, 1990.
- (i) The three (3) lots subject to this hearing were issued Notices of Violation on February 8, 1989. This action suspended the formal application process until such time as the altered area was restored and the violations released. These lots were restored and the violations were released on June 16, 1989.

- (j) The Department denied all three (3) applications in three (3) separate letters each dated July 17, 1989 and each addressed to Richard T. Bzdyra and signed by Brian C. Tefft on behalf of the Department.
- (k) The Applicant filed a timely request for hearing on July 31, 1989.
- (l) The wetlands proposed to be altered and subject to the Department's jurisdiction are that area of land within fifty (50) feet of a swamp and within a 100 foot riverbank wetland which is that area within ten (10) feet of a flowing body of water less than 100 feet wide for the purpose of driveway installation and construction.
- (m) Counsel for the Applicant and counsel for the Department have agreed to consolidate these three (3) applications for purposes of the hearing. The three (3) lots, subdivision Lot Nos. 20, 21, and 26, are contiguous and all three propose similar alterations to the same wetland complex on each of the three (3) lots.
- (n) The Department issued its approval on the subdivision Plan which included the cul-de-sac known as Wingate Court on December 9, 1987 in file no. 86-0442D.
- (o) On September 18, 1972, the Department approved the installation of a sewer line within the subject area in file no. 402.

2. Disputed Issues:

- (a) Whether the subject wetland is a "valuable" wetland pursuant to the definition provided in Section 7.06(b) of the Rules and Regulations?
- (b) Whether the proposed alterations will result in loss, disturbance, encroachment and permanent alteration of a valuable wetland wildlife habitat associated with the subject wetland area?

- (c) Whether the proposed alterations will reduce the value of a valuable recreational environment?
- (d) Whether the proposed alterations will reduce and negatively impact the aesthetic and natural character of the undeveloped wetland and buffer zone?
- (e) Whether the proposed alterations will cause undesirable destruction of freshwater wetlands pursuant to Sections 5.03(b) and (e) (7) of the Rules and Regulations?
- (f) Whether the proposed alterations are inconsistent with the policies, intents and purposes of the Act and the Rules and Regulations?

3. Joint Exhibits:

- (1) Formal Application Forms to Alter a Freshwater Wetland received by the Department on July 19, 1988.
 - (a) 88-0126F (1 page).
 - (b) 88-0127F (1 page).
 - (c) 88-0128F (1 page).
- (2) Site Plan submitted in Application No. 88-0126F entitled "Wetland Application, Wingate Village, Lot 20, Warwick, RI", Sheet 1 of 1, dated July 19, 1988 and received by this Department November 2, 1988.
- (3) Site Plan submitted in Application No. 88-0127F entitled "Wetland Application, Wingate Village, Lot 21, Warwick, R.I." sheet 1 of 1, dated July 19, 1988 and received by this Department November 2, 1988.
- (4) Site Plan submitted in Application No. 88-0128F entitled "Wetland Application, Wingate Village, Lot 26, Warwick, R.I." sheet 1 of 1, dated July 19, 1988 and received by this Department November 2, 1988.

- (5) Official notice regarding public notice dates, dated November 21, 1988 and signed by Brian C. Tefft.
 - (a) 88-0126F (2 pages)
 - (b) 88-0127F (2 pages)
 - (c) 88-0128F (2 pages)
- (6) A letter dated December 20, 1988 to Brian C. Tefft from Jennie Senerchia, City Clerk for the City of Warwick. This letter applies to all three (3) applications. (2 pages).
- (7) Wetland Wildlife/Recreational Evaluation by Martin D. Wencek dated January 11, 1989. (14 pages).
- (8) Letter dated July 17, 1989 to Richard T. Bzdyra from Brian C. Tefft denying Application No. 88-126F. (3 pages).
- (9) Letter dated July 17, 1988 to Richard T. Bzdyra from Brian C. Tefft denying Application No. 88-0127F. (3 pages).
- (10) Letter dated July 17, 1988 to Richard T. Bzdyra from Brian C. Tefft denying Application No. 88-0128F. (3 pages).
- (11) Letter dated July 31, 1989 to Brian C. Tefft from Kevin M. Brill, Esq. requesting an adjudicatory hearing on behalf of the Applicant. (7 pages).
- (12) Notice of Administrative Hearing and Prehearing Conference, certification dated May 25, 1990. (4 pages).
- (13) Resume of Brian C. Tefft. (3 pages).
- (14) Resume of Martin D. Wencek. (3 pages).

4. Identification of Witnesses:

- a. Brian C. Tefft, Supervising Environmental Planner, Freshwater Wetlands Program (for DEM).

- b. Martin C. Wencek, Principal Natural Resources Specialist, Freshwater Wetlands Program (for DEM).
- c. Richard T. Bzdyra, Professional Land Surveyor, Ocean State Planners, Inc. (for the applicant).
- d. Scott P. Rabideau, President Natural Resource Services, Inc. (for the applicant).

ADDITIONAL EXHIBITS ENTERED AT THE HEARING

- a. Resume of Richard T. Bzdyra (applicant's #1).
- b. Resume of Scott P. Rabideau (applicant's #2).
- c. Preliminary Subdivision Plan of Wingate Village, Revised Date 2/19/87, sheet 3 of 3 (applicant's #3).
- d. Photograph of riverbank and bridge (Scott Rabideau) (Applicant's #4).
- e. Photograph of Lots 21 and 26 (Scott Rabideau) (Applicant's #5).
- f. Photograph of Lot 26 (Scott Rabideau) (Applicant's #6).
- g. Photograph of Lot 20 (Scott Rabideau) (Applicant's #7).
- h. Proposed Wetlands Site Plan, Lot 20, Wingate Court, Dated 9/18/89, Sheet 1 of 3 (Applicant's #8a).
- i. Proposed Wetlands Site Plan, Lot 21, Wingate Court, dated 9/18/89, Sheet 1 of 3 (Applicant's #8b).

- j. Proposed Wetlands Site Plan, Lot 26, Wingate Court, dated 9/18/89, Sheet 1 of 3 (Applicant's #8c).
- k. As-Built Wetlands Site Plan, Lot 20, Wingate Court, Dated 6/5/89, Sheet 1 of 1 (DEM #1a).
- l. As-Built Wetlands Site Plan, Lot 21, Wingate Court, Dated 6/5/89, Sheet 1 of 1 (DEM #1b).
- m. As-Built Wetlands Site Plan, Lot 26, Wingate Court, Dated 6/5/89, sheet 1 of 1 (DEM #1c).
- n. Four photographs of site views (Brian Tefft) (DEM #2).

QUALIFICATION OF EXPERTS

Brian Tefft and Martin Wencek for the Division and Scott Rabideau for the applicant were all qualified as experts in the areas of wetlands ecology, habitat, recreational environment, evaluation, and assessment, as well as environmental impact on said areas. Mr. Bzdyra testified as the owner's agent.

APPLICANT'S MOTION TO INVALIDATE THE
CITY OF WARWICK'S DENIAL:

Joint Exhibit 6 is a photostatic copy of a December 20, 1988 letter sent by the Warwick City Clerk to the Freshwater Wetlands Section on behalf of the City Council which advises DEM that the council had "denied" the applications before this hearing officer. In both his Pre-Hearing Statement and subsequent oral argument at the June 18, 1990 hearing Mr. Esposito moved for the applicant that the Hearing Officer find this denial invalid due to

various procedural irregularities by the City which were alleged to have denied the applicant due process under law. This issue is of interest to the parties because provisions of the R.I. Freshwater Wetlands Act, as amended (Section 2-1-21) baldly prohibit DEM from approving an application which has been disapproved by the host municipality within the specified forty-five day notice period.

In its Response to the Applicant's motion and in subsequent oral argument, again at the June 18, 1990 hearing, Ms. Calvert argued that DEM's Administrative Hearing is not the proper legal forum to adjudicate the applicant's grievance with the City of Warwick and that the legal adequacy of the City's denial is not properly a matter before this Hearing Officer. However, Ms. Calvert cited extensively from a 1987 opinion issued from the bench by Superior Court Justice Giannini in the case of Siravo v. Bendick to the effect that an applicant is nonetheless entitled to a decision from DEM even in those instances that a municipal denial effectively estops DEM from issuing a permit.

Having reviewed the memoranda submitted by counsel and the record of their oral argument I conclude as a matter of law that:

- (1) I have no jurisdiction by law or regulation to sit in judgement of the actions of the City of Warwick as to their December 20, 1988 denial of these applications.
- (2) Because the City's letter of denial was submitted in accordance with Section 2-1-27(a) of the General Laws I am estopped from granting permits in this matter.
- (3) I remain nonetheless obligated to render a decision pursuant to the Rhode Island Freshwater Wetlands Act on the matter before me.

THE DIVISION'S MOTION TO STRIKE ALL TESTIMONY
REGARDING PROPOSED MODIFICATIONS
TO THESE APPLICATIONS

At the June 18, 1990 hearing Mr. Esposito solicited testimony from his witness, Mr. Bzdyra, regarding modifications which the applicant purportedly was willing to make to the applications before the hearing to reduce wetlands impacts. Ms. Calvert objected to the introduction by the applicant of plans which described these modifications on the basis that they had been the subject of settlement negotiations between the parties and were, therefore, privileged.

The hearing officer overruled Ms. Calvert's objection on the basis that he has the authority to attach conditions to a permit and the modifications proposed by the applicant might well be germane to his determination of whether such conditions were appropriate in this instance. The hearing officer and the parties agreed, however, that the applicant's burden of proof remained with the original project plans described in the May 25, 1990 Notice of Public Hearing and was not by the hearing officer's decision transferred in some fashion to the applicant's proposed modifications as set forth in Applicant's Exhibits 8a, b, and c and testified to by Mr. Bzdyra.

At the June 19 hearing Ms. Calvert submitted a written Motion to Strike testimony regarding Applicant's Exhibits 8a, b and c and brief oral argument was entertained. For the various reasons noted above the Hearing Officer denied the Motion to Strike.

IS THE SUBJECT WETLAND A "VALUABLE" WETLAND FOR
REGULATORY PURPOSES BY VIRTUE OF ITS PROVIDING
VALUABLE WILDLIFE HABITAT? (Rule 7.06 (b)(1))

Rule 7.06 (b)(1) identifies "valuable wildlife habitat" in relation to an established wetland rating system, the Wetland Wildlife Evaluation Model, more commonly known as the Modified Golet System for its author. More specifically, the rule defines as "valuable" those wetlands scoring in the high range for wildlife diversity and production.

The hearing record shows no meaningful disagreements relative to this wetland's value between the applicant's wetlands expert, Scott Rabideau, and the Division's experts, Martin Wencek and Brian Tefft on the following points:

- a. Under the Modified Golet System one is obligated to evaluate an entire functional wetland unit and not just that portion thereof proposed to be altered.
- b. The functional wetland unit in this instance is a 15 acre complex including a pond or bog, a perennial stream less than ten feet wide, a wooded swamp bordering that stream and a one hundred foot wide so-called jurisdictional wetland buffer called a riverbank wetland per the Freshwater Wetlands Act.
- c. Application of the Modified Golet Rating System to this wetland complex results in a score in the high range for wildlife production and diversity.

d. The wetlands complex as a whole consequently meets the regulatory standard of being a "valuable" wetland by virtue of its providing valuable wildlife habitat.

I find as fact, therefore, that the riverbank wetland proposed to be altered is "valuable" as defined by Rule 7.06(b)(1) by virtue of its being a component of a wetlands complex determined to be providing valuable wetlands habitat; this by competent application of the required rating system.

IS THE SUBJECT WETLAND A "VALAUBLE" WETLAND FOR REGULATORY PURPOSES BY VIRTUE OF ITS PROVIDING A VALUABLE RECREATIONAL ENVIRONMENT? (Rule 7.06 (b))

Rule 7.06(b) characterizes a valuable recreational environment as a "relatively natural or undeveloped area which, in its natural state, is capable of supporting recreation by the general public."

The applicant through its witnesses attempted to draw a sharp distinction between a biological (river and wooded swamp) wetland represented as being unaffected or possibly

even enhanced by the proposed alteration and a one hundred foot jurisdictional wetland buffer which was represented as having been previously and extensively altered and was, therefore, neither "relatively natural," "undeveloped", nor as consequence, capable of supporting (wetland oriented) public recreational opportunities. Applicant's witness, Mr. Bzdyra, testified that much of this previous alteration of the jurisdictional wetland had been permitted by DEM in granting approval to the City for a sewer line in 1972 and to the applicant approval of a cul-de-sac and bridge crossing in 1987. He acknowledged, however, that unauthorized clearing performed by the applicant in 1988 also contributed to the altered condition he had previously testified to.

Mr. Rabideau testified on many of the same points in support of Mr. Bzdyra's observations. He testified to his expert opinion that the applicant's proposal would have minimal to no impacts on the various types of public recreational activities enumerated in the DEM's rules, most of which in his opinion were for various reasons not practical in the area of proposed alteration.

The Division's witnesses, Mssr.'s Wencek and Tefft minimized the actual impact of the sewer line, cul-de-sac and to a lesser extent, bridge crossing on the wetland complex. Both testified to their opinion based on site visits and Mr. Tefft's examination of aerial photographs that considerable portions of the jurisdictional riverbank wetland were vegetated in scrub, brush, and small trees prior to the illegal clearing undertaken by the applicant in 1988. Mr. Tefft likewise testified to his expert opinion that the present altered state of the jurisdictional wetland was a transitory condition that would be corrected over time as the vegetation that the applicant had been ordered to plant to correct its violation established itself.

Mr. Wencek further testified to his expert opinion that the subject wetland complex demonstrated a diversity which enhanced its recreational value, which he testified to as being high. He concluded that most of the recreational opportunities which Mr. Rabideau had discounted were, indeed, present.

In reviewing the record before me I find no basis in science, fact, or regulation to isolate, as the applicant would have me, consideration of the one hundred foot jurisdictional riverbank wetland from the biological

wetlands complex with which it is associated and in fact a part. Whether the subject wetland provides a valuable recreational environment is consequently a determination that must accommodate the entire wetlands complex or unit, not just one of its constituent parts in isolation.

Likewise, in reviewing the record I find limited support for the applicant's representation that the jurisdictional riverbank wetland has been so altered, with DEM's concurrence, as to fail the regulatory standard of being "relatively natural" or "undeveloped". Again, this jurisdictional wetland (buffer) is but a part of an overall complex to which even the applicant's witnesses have assigned considerable value. Even more to point, I find credible evidence that the condition of the jurisdictional wetland prior to the applicant's unauthorized clearing in 1988 constituted a "relatively natural" and "undeveloped" environment (was vegetated) and that if the area of vegetative restoration ordered by DEM in 1989 is left undisturbed this "relatively natural" and "undeveloped" condition will return. The question remains, then, this being so, does there exist any

practical opportunity or prospect for public recreational enjoyment of this wetlands complex?

The record will show that this entire wetland complex is privately owned and under multiple title, factors which certainly complicate and/or compromise public recreational opportunities. The record will also show that many of the specific recreational activities discounted by applicant's witness Rabideau are, indeed, impractical in the project area or are at least not unique to or dependent on the wetland complex.

This Hearing Officer believes strongly that the Freshwater Wetlands Act, in weighing recreational value contemplates a reasonable and realistic prospect of public recreational enjoyment even if it does not require actual public ownership or present public use.

While, as noted, I find as fact that this wetland complex including the recreational buffer meets the regulatory test of being relatively natural and undeveloped, I cannot, however, find a corresponding reasonable prospect of public recreational use sufficient to elevate the subject to the level of a "valuable recreational environment" as contemplated by law and regulation.

WILL THE PROPOSED ALTERATIONS RESULT IN LOSS,
DISTURBANCE, ENCROACHMENT, AND PERMANENT ALTERATION
OF A VALUABLE WETLAND WILDLIFE HABITAT ASSOCIATED
WITH THE SUBJECT WETLAND AREA?

The previously described themes of an already altered and degraded jurisdictional riverbank wetland buffer functioning as distinct and apart from the abutting biological wetlands complex underpins the applicant's effort to demonstrate that its proposed alterations will not adversely affect and will in fact enhance the biological wetland. In this latter regard, applicant's witness, Mr. Rabideau, testified that construction of three residential dwellings in the one hundred foot jurisdictional riverbank wetland would protect wildlife habitat and values in the adjacent biological wetland by precluding use by neighborhood children, Mr. Bzdyra having testified to having witnessed children employing the subject area for play, although the maximum number he had observed at any one time was two or three.

Mr. Rabideau testified that the modified plans described to the hearing officer by Mr. Bzdyra (Applicant's Exhibits 8a-c) would establish an enhanced vegetative screen, a grassy swale and a rail fence as further barriers to human intrusion into the biological wetland.

The modified plans would also according to Mr. Bzdyra remove the proposed dwellings away from the biological wetland edge by as much as eighteen feet on Lot 20 and by six feet on Lots 21 and 26. Mr. Rabideau while acknowledging that all of Lots 21 and 26 and most of Lot 20 are in the one hundred foot jurisdictional wetland further minimized the significance of this fact by observing that this wetlands buffer exhibited no wetlands vegetative or soil characteristics and in fact was not a wetland at all in the biological sense of the word.

The DEM's Mssr.'s Wencek and Tefft testified at length to the valuable wildlife habitat created by the subject wetlands complex, particularly in the context of its urban setting. Both witnesses testified to the contribution of the one hundred foot jurisdictional riverbank wetland buffer to the health of the overall wetlands system of which it is an integral part both in terms of the buffer's own habitat values and also in terms of its intended regulatory function of physically separating intrusive upland human activities from the natural processes of the biological wetland, a function acknowledged readily by the applicant's own wetlands expert.

As noted previously, Mr. Tefft testified to his expert opinion that if left undisturbed the vegetative cover planted by the applicant pursuant to the DEM's February, 1989 Notice of Violation would in fact regenerate an effective natural vegetative wetlands buffer and wildlife habitat, thereby in large measure restoring a pre-existing condition destroyed by the applicant's unauthorized 1988 alterations. Both Tefft and Wencek testified to their expert opinions that residential construction in the subject jurisdictional wetland buffer would have a significant and detrimental effect on the wildlife habitat values of this valuable wetlands complex and that this adverse impact would only marginally and insignificantly be reduced by modifying the proposed alterations in the manner set forth in Applicant's Exhibits 8a-c.

In reviewing the record before me I find that the one hundred foot jurisdictional wetland proposed for alteration is capable of serving as an effective buffer to upland human encroachment on the adjacent valuable biological wetland complex if the vegetation planted by the applicant to remedy its 1988 violation is allowed to restore a pre-existing condition. I further find that construction of three residences in the jurisdictional

wetland either as originally proposed or as relocated per Applicant's Exhibits 8a-c is entirely incompatible with the intended function of this jurisdictional riverbank wetland buffer to separate upland human activities from wetland wildlife functions.

For the various reasons cited above I find as fact that the proposed alterations to Lots 20, 21, and 26 will result in loss, disturbance, encroachment, and permanent alteration of a valuable wetland wildlife habitat associated with a valuable wetland complex.

WILL THE PROPOSED ALTERATIONS REDUCE THE VALUE OF A VALUABLE RECREATIONAL ENVIRONMENT?

The hearing officer has previously found as fact that the subject project areas do not constitute a valuable recreational environment, rendering this question moot.

WILL THE PROPOSED ALTERATIONS REDUCE AND NEGATIVELY IMPACT THE AESTHETIC AND NATURAL CHARACTER OF THE UNDEVELOPED WETLAND AND BUFFER ZONE?

While stipulated to by the parties as being an issue in dispute, this hearing officer has searched the Freshwater Wetlands Act and DEM's implementing Regulations

in vain for any indication that the applicant has an obligation to address this issue as stated. I have likewise found no testimony in the record on point.

I find as fact, the parties stipulation not withstanding, that this issue is not properly before me.

CONCLUSIONS OF LAW

1. Pursuant to Section 11.02 of the Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act ("Act"), adopted June, 1981, the applicant bore the burden of proof that the subject proposal is not inconsistent with the Freshwater Wetlands Act and the Regulations adopted thereunder.
2. Notice of the Pre-Hearing Conference and Public Hearing was published in compliance with R.I.G.L. Section 2-1-22 on May 25, 1990.
3. A Public Hearing was held on June 18 and 19, 1990 in accordance with R.I.G.L. Section 2-1-22, Section 42-35-9, Wetlands Regulation 11.00 and the Administrative Rules of Practice and Procedure for the Department of Environmental Management.
4. All issues before the Hearing Officer including testimony of expert witnesses and written evidence submitted by or on behalf of the applicant and the Freshwater Wetlands Section was fully and fairly heard and considered and said consideration is reflected in this Decision and Order.

5. The subject wetland is not a valuable recreational environment as contemplated by law and regulation.
6. Approval of these applications individually and/or collectively will cause random, unnecessary, and/or undesirable destruction of freshwater wetlands, is inconsistent with the public interest and public policy as stated in Sections 2-1-18 and 2-1-19 of the Freshwater Wetlands Act and Section 1.00 of the Rules and Regulations Governing the Enforcement of the Freshwater Wetlands Act, and is, therefore, prohibited by Section 5.03(b) and (c) of said Rules and Regulations.
7. More particularly, approval will reduce the value of a wetland which is "valuable" by virtue of its providing valuable wildlife habitat in contravention of Section 5.03(c) (7) of said Rules and Regulations and as the terms "valuable wetland" and "valuable wildlife habitat" are defined under Section 7.06 (b) of said Rules and Regulations.

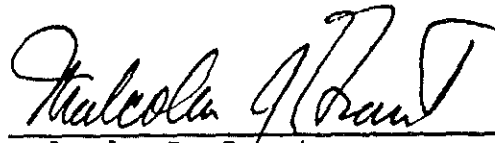
8. Approval of these applications to alter a freshwater wetland would not be in the best public interest, so as to satisfy R.I.G.L. Section 2-1-24(a).

ORDERED

Approval of Applications No. 88-126F, 127F and 128F by Richard T. Bzdrya for Permits to Alter Freshwater Wetlands shall be DENIED. This constitutes a final agency Decision and Order.

9/7/90

Date



Malcolm J. Grant
In his capacities as
Administrative Officer and
Designated Director for the
Department of Environmental
Management

October
I hereby certify that on this 18 day of ~~September~~, 1990 a true and accurate copy of the within DECISION AND ORDER has been mailed first class mail to Dennis H. Esposito, Esq., Attorney and Counselor At Law, 200 Shakespeare Hall, 128 Dorrance Street, Providence, RI 02903; and sent by Interoffice Mail to Sandra Calvert, Esq., Office of Legal Services, R.I. Department of Environmental Management, 9 Hayes Street, Providence, RI 02908.

Archie J. Hand

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