



Rhode Island Department of Environmental Management

Office of Water Resources – Groundwater and Freshwater Wetlands Protection

235 Promenade Street | Providence, RI 02908 | 401.222.6820 | www.dem.ri.gov | @RhodeIslandDEM

Questions and Answers

Training Workshop February 28, 2022

DEM Freshwater Wetlands Rules (250-RICR-150-15-3)

Session 1. Permitting Framework and Standards Overview

Question: How does floodplain rule - no reduction of storage capacity apply to coastal floodplain - where there is an outlet to tidal waters or a salt pond?

Answer from CRMC: If the project is within the CRMC freshwater wetland in the vicinity of the coast jurisdiction, the agency practice is that flood capacity storage is not required where there is a direct discharge to tidal waters. The downstream impact is to tidal waters of the state. There are no downstream impacts to downstream properties as if you were on a freshwater river system located hundreds of yards if not miles upstream and could potentially cause downstream flooding if you didn't address the flood storage standard. Within the CRMC Red Book (650-RICR-20-00-1), under the stormwater section, CRMC has the provision: applicants may not be required to control post development peak discharge rates at pre-development peak discharge rates provided the design provides for non-erosive discharges to tidal waters.

Question: Regarding Town zoning variances - there are times when the requested front setback relief is excessive, but the applicant insists RIDEM or CRMC requires it. If the Zoning Board were to give partial setback relief would that doom the project?

Answer from CRMC: Under the variance standards, if an applicant is required to obtain a variance to a standard that could be alleviated if you were to get relief from the local zoning authority, that is the requirement. At a minimum, the applicant must demonstrate that they made a good faith attempt to receive zoning relief. If the municipality doesn't grant it, the applicant will include their request and the municipality's response as part of the application as documentation of a good faith effort.

Answer from RIDEM: The relevant portion of the Variance Requirements reads, "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 [or CRMC]" (emphasis added). If an applicant exhausts their remedies with the municipality prior to submitting to the Department or CRMC as required and provides documentation that the municipality granted only partial

relief (or even if no relief is granted at all), then the Variance requirement would still be satisfied. Whether or not such partial relief would be sufficient for the project to receive approval would depend on whether the applicant met all other requirements for a Variance, including whether all of the Review Criteria were met.

Question: Does protection of rare, threatened, and endangered (RTE) species in the new wetland rules extend to species that do not utilize wetland habitats?

Answer from RIDEM: Potentially, but only if the species in question relies on the wetlands for some part of their lifecycle. If you look at the standard, it's not really protecting the species; it's protecting the wetlands' ability to support or provide habitat requirements for that species. If it's an upland species and does not rely on the wetlands for any part of its life cycle, then it would not receive protection under the Freshwater Wetlands Rules. See Rule 3.7.1.D. "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."

Session 2: Application Types

Question: If a permit is issued under the current regulations, do the extension periods under the upcoming regulations apply?

Answer: For permits issued under the current regulations prior to July 1, 2022, the expiration date from the current regulations applies. The new expiration dates will only take effect on the permits that are issued under the new Freshwater Wetlands Rules effective on July 1, 2022.

Question: If we submit an application (that proposes a project) under the current Freshwater regulations, we will need to reapply after the new regulations going into effect?

Answer: No. If someone applies today, the rules in effect today apply to that project. Any application submitted to the Department or CRMC prior to July 1, 2022 shall be governed by the previous rules. The new rules will only apply to projects with applications that are filed on or after July 1, 2022. There are provisions, like a grace period, after those rules go into effect for a limited amount of time and limited types of projects. 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 or CRMC on or within sixty (60) days from the effective date of the new Rules (July 1, 2022). 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 the old Rules may be constructed in accordance with the building permit without a requirement to obtain a freshwater wetlands permit.

Question: Will application signatures still need to be originals?

Response from RIDEM: For now, yes. RIDEM is working to roll out a new e-permitting platform over the next two years to replace its current permitting database where electronic signatures and application materials will be accepted.

Session 3: Submittal Requirements

Question: Could you please reiterate the need to submit an application when in JA but clearly out of the Buffer Zone.

Answer from RIDEM: Under the statute and Rules and Regulations going into effect, if you are proposing a project within the established jurisdictional area limit (that 100 feet from any wetland or 200 feet from river, stream, or public drinking water reservoir), you will need to obtain a permit unless you are exempt. There's a significant list of projects that are exempt and do not require a permit to move forward. For certain projects that are within the jurisdictional area but outside the buffer zone, we are hoping to develop a general permit for more efficient processing. If you are outside the buffer zone, RIDEM/CRMC know that you meet the freshwater wetland standard, the buffer standard, and the setback standard. Then it's a matter of meeting the standards that have always been in place.

Question: Who determines if a project is a Major Land Development project, the TOWN or RIDEM?

Answer: Neither. Major land development is defined in RIGL Title 45, Chapter 23. If it meets the statutory definition, then it has to go through the municipal review process specified in state law.

Question: Can application forms be signed digitally, then followed up with an original signature by mail? Would this slow down the application from being accepted?

Response from RIDEM: We will be evaluating this and addressing in application workshops in April and May.