



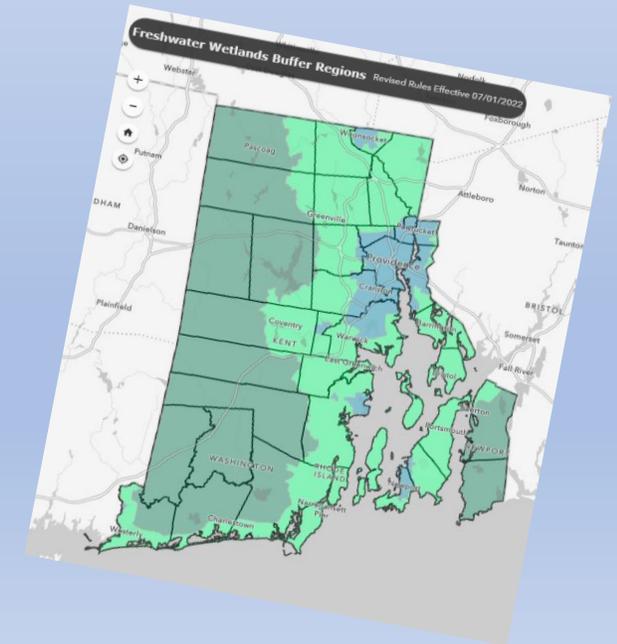
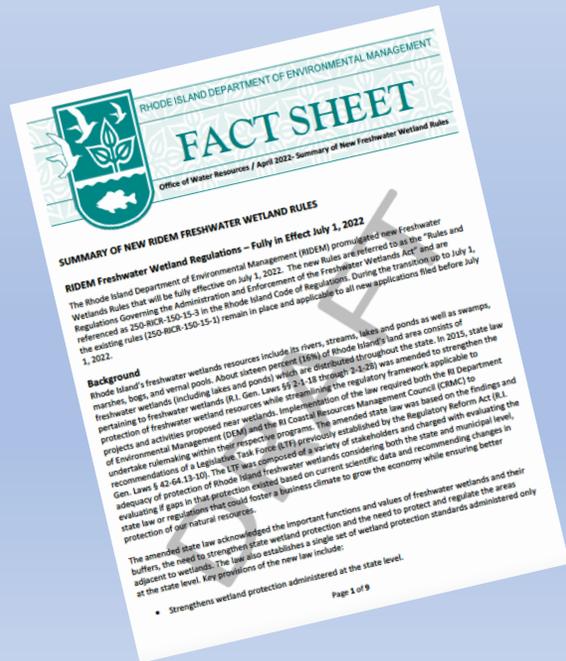
# Wetland Rules Workshop

## Focus: The Rules in Practice

Groundwater & Freshwater Wetlands Protection

RIDEM Office of Water Resources

May 4<sup>th</sup>, 2022





# Presentation Outline

- Rule Applicability
- Permitting Pathways and Application Types
- Jurisdictional Areas, Buffer Zones and Buffers
- Examples of “Buffer” Case Studies
- Next Steps & Questions

# Which Rules Apply When



State Programs: What happens as of July 1, 2022? See Rule 3.19

- What if I have already filed an application with DEM before 7/1/2022?

Freshwater Wetland applications accepted for filing prior to 7/1/2022 will be governed by the rules in effect at the time (DEM 250-RICR-150-15-1 or “Part 1 Rules”). Application needs to be reasonably complete and will be assigned an application number.

- What if I filed a DEM application before 7/1/2022 and I need to make changes to it to address comments after July 1?

The application would still be processed under the Part 1 rules. The new Part 3 rules would not apply unless the changes resulted in a determination that a new application is required.

# Which Rules Apply When



State Programs: What happens as of July 1, 2022? See Rule 3.19

- What if I am planning on filing a new DEM application soon?

Applicants prepared to file a complete application with the State before 7/1/2022 are advised to follow the Part 1 Rules.

All new Freshwater Wetland permit applications **filed on or after 7/1/2022** need to follow the **new Part 3 rules** with one exception related to Master Planning.

- Do the new rules affect my existing state Freshwater Wetland permit?

Existing state permits remain valid for their authorized period and may be renewed in accordance with the rules under which the permit was issued.

All specified permit conditions remain applicable.

# Master Plan Exception to New Effective Date



- Projects that obtained Master Plan Approval from a municipality on or before 7/1/2022 **may** elect to follow the Part 1 Rules provided a complete Freshwater Wetlands Application is submitted to DEM on or before **August 30, 2022**.
- This 60-day additional period is provided to facilitate the transition for those projects that may obtain Master Plan approval in May or June 2022.





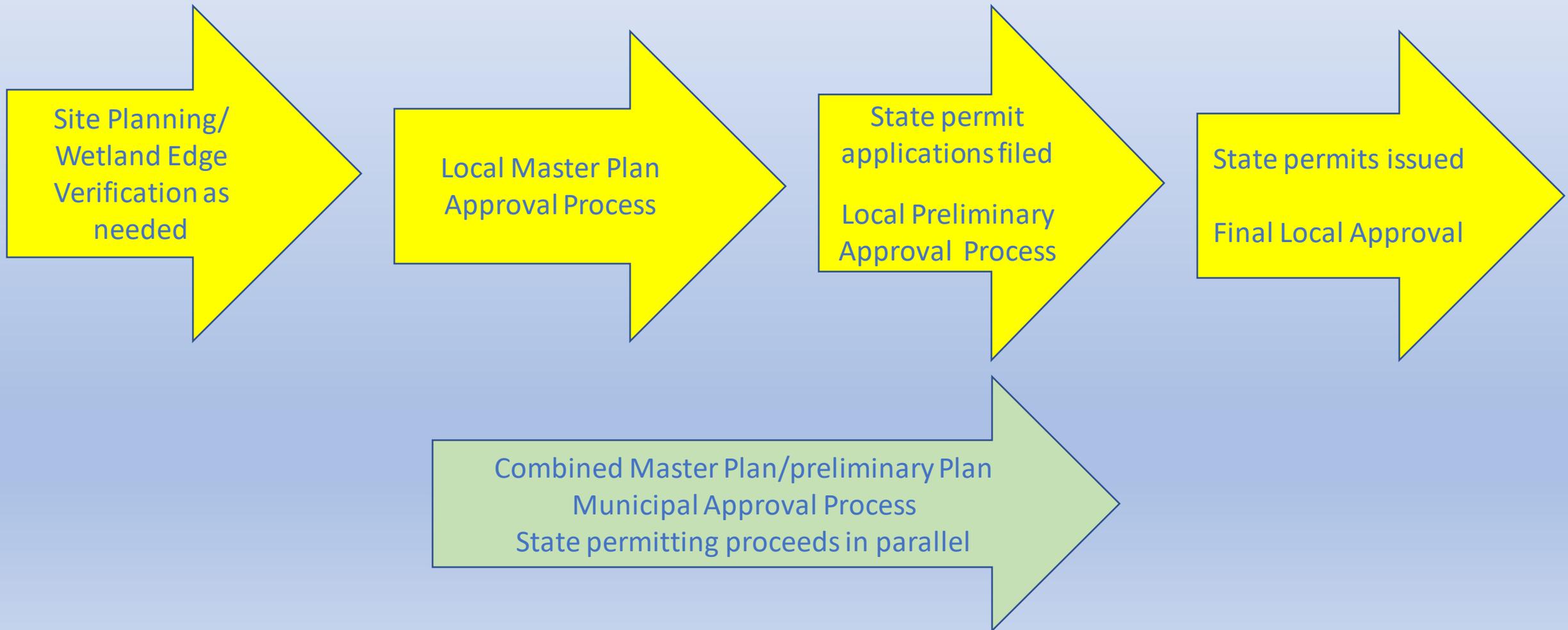
# Coordination with Master Plan Approvals

Rule 3.8.11 Municipal Coordination and Rule 3.11.2 (4) Application Submittal Requirements now requires that applicants for major land development or major subdivision projects must submit documentation of one of the following with their application to the Freshwater Wetlands Program:

- 1) Local Master Plan Approval
- 2) Local conditional approval of a combined Master Plan and Preliminary Plan; or
- 3) Letter from municipal authority certifying compliance with low impact development site planning and design requirements as contained in local ordinances or regulations.



# Master Planning Permitting Pathway



# Relationship to Issued Building Permits "Grandfathered Permits"



- I have a valid build permit for my project? Do I now need a wetland permit too?

As part of the transition, the Part 3 rules allow projects to proceed when:

- \* A valid building permit issued **before 7/1/2022** is in place; **and**
- \* The project was not previously required to obtain a Freshwater Wetlands permit under Part 1 Rules.

This situation applies to the additional land area that will be newly regulated under the new Freshwater Wetland Rules (Part 3).

# Rule Applicability Outside of Jurisdictional Area ("JA")



**Reminder:** There are situations when the Freshwater Wetland Rules apply to **locations outside the defined JA**. Per Rule 3.5.6 (B) Regulatory Applicability these include:

1. Result in a change in the normal surface runoff characteristics which increases the rate or volume of water flowing into, or draining or diverting water away from, freshwater wetlands or buffers.
2. Result in the diversion of groundwater into or away from the freshwater wetlands or buffers.
3. Result in the modification of the quality of water reaching freshwater wetlands or buffers that could alter their natural character.

**Examples:** Large new water wells, large excavations affecting water tables, various types of hydromodifications.

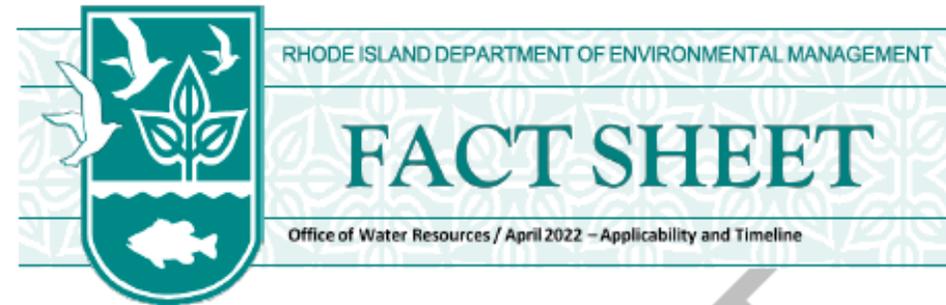


# Municipal Coordination

- State Agencies will be notifying municipal contacts by email of new Freshwater Wetland permit applications under part 3 Rules;
- Municipalities have 15 days to provide input;
- DEM encourages pre-application meetings as a means of fostering coordination;
- Process for formal notice of Applications for Significant Alterations has not changed (involves public comment, etc.)

# Applicability Fact Sheet

- Developing a Factsheet that answers commonly asked questions about the Part 3 Rules.
- Available on the DEM FWW website soon ([www.dem.ri.gov/newwetlandrules](http://www.dem.ri.gov/newwetlandrules))



## FRESHWATER WETLANDS QUESTIONS: APPLICABILITY AND TIMELINE

The following questions and responses are compiled from the online RIDEM Freshwater Wetlands Question & Answer system that was created to facilitate and organize questions about the "new" Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, referenced as 250-RICR-150-15-3 or Part 3. Where mentioned, the "current" rules are the Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act, 250-RICR-150-15-1 or Part 1.

- |           |  |
|-----------|--|
| Question  | Could you please confirm the effective date for the implementation of the new wetlands Rules?  |
| Answer    | The new effective date for the New Freshwater Wetlands Rules (250-RICR-150-15-3) is July 1, 2022   |
| Question  | To be reviewed under the current Rules (250-RICR-150-15-1), would applications need to be filed, or deemed administratively complete, prior to July 1, 2022?   |
| Answer    | With a couple of exceptions, yes, an application will need to be filed prior to July 1, 2022, the effective date of the new Rules. See Rule 3.19 "Superseded Rules."   |
| Question: | If you have a Formal application in prior to July 1, but you decide to downgrade it to a Preliminary Determination application and you re-apply after July 1, are you then locked into the new Rules?  |
| Answer:   | No. DEM's decision to downgrade a Formal application to a Preliminary Determination would not require a re-application. Once the applicant agrees to the downgrade (if the Program offers it) we would just issue an Insignificant Alteration under the Part 1 Rules in effect at the time of the original Formal application. |
| Question: | I file a Preliminary Determination application prior to July 1, and DEM says I should submit an Application for a Significant Alteration. If the application is submitted after July 1, am I locked into the new Rules?  |
| Answer:   | Yes, in that case the new Rules would apply, unless any of the scenarios described under Rule 3.19 (Superseded Rules) apply to the project.  |
| Question: | If a permit is issued under the current Rules, do the expiration periods under the new Rules apply?  |
| Answer:   | For permits issued under the current Rules prior to July 1, 2022, the expiration date from the current Rules applies. The new expiration dates will only take effect on the permits that are issued  |

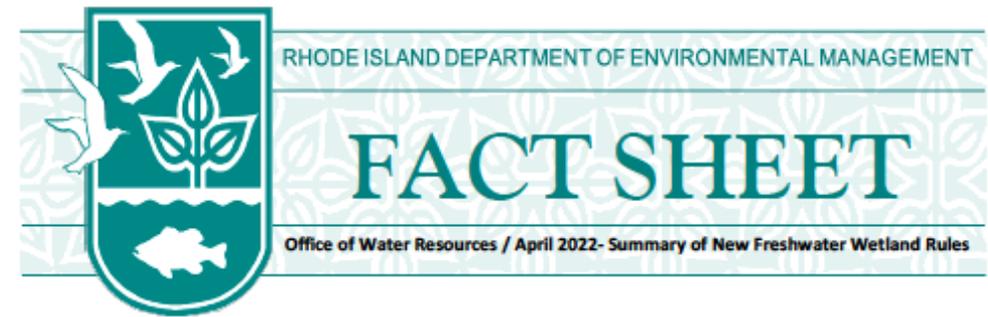


# Questions on Rule Applicability?



# *New Guidance -* Summary of Rules

- This nine (9) page document provides an illustrated summary of the new FWW Rules.
- History of the law and rule-making.
- An overview of each of the major sections of the Rules.
- Available on the DEM FWW website soon.



## SUMMARY OF NEW RIDEM FRESHWATER WETLAND RULES

### RIDEM Freshwater Wetland Regulations – Fully in Effect July 1, 2022

The Rhode Island Department of Environmental Management (RIDEM) promulgated new Freshwater Wetlands Rules that will be fully effective on July 1, 2022. The new Rules are referred to as the “Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act” and are referenced as 250-RICR-150-15-3 in the Rhode Island Code of Regulations. During the transition up to July 1, the existing rules (250-RICR-150-15-1) remain in place and applicable to all new applications filed before July 1, 2022.

### Background

Rhode Island’s freshwater wetlands resources include its rivers, streams, lakes and ponds as well as swamps, marshes, bogs, and vernal pools. About sixteen percent (16%) of Rhode Island’s land area consists of freshwater wetlands (including lakes and ponds) which are distributed throughout the state. In 2015, state law pertaining to freshwater wetlands (R.I. Gen. Laws §§ 2-1-18 through 2-1-28) was amended to strengthen the protection of freshwater wetland resources while streamlining the regulatory framework applicable to projects and activities proposed near wetlands. Implementation of the law required both the RI Department of Environmental Management (DEM) and the RI Coastal Resources Management Council (CRMC) to undertake rulemaking within their respective programs. The amended state law was based on the findings and recommendations of a Legislative Task Force (LTF) previously established by the Regulatory Reform Act (R.I. Gen. Laws § 42-64.13-10). The LTF was composed of a variety of stakeholders and charged with evaluating the adequacy of protection of Rhode Island freshwater wetlands considering both the state and municipal level, evaluating if gaps in that protection existed based on current scientific data and recommending changes in state law or regulations that could foster a business climate to grow the economy while ensuring better protection of our natural resources.

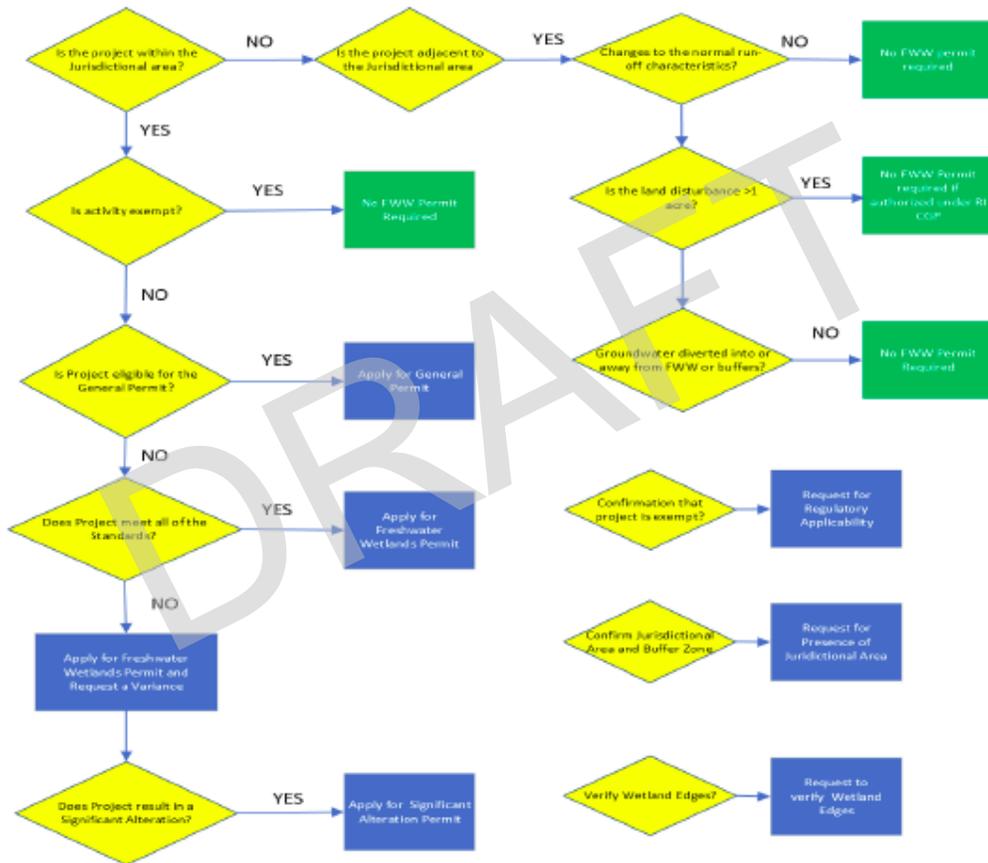
The amended state law acknowledged the important functions and values of freshwater wetlands and their buffers, the need to strengthen state wetland protection and the need to protect and regulate the areas adjacent to wetlands. The law also establishes a single set of wetland protection standards administered only at the state level. Key provisions of the new law include:

- Strengthens wetland protection administered at the state level.



## *New Guidance* Permitting Pathways

Wetland Application Process - Pathways to Permits



- Process flow chart of the FWW Permitting process
- Identifies which application should be filed based on common scenarios.
- Available on the DEM FWW website soon.

# *New Guidance* Application Types

- Updated Factsheet describing different types of applications and when to use them.
  - **NEW** Request to Determine the Presence of Jurisdictional Area
  - Request to Verify Freshwater Wetland Edges
  - Request for Regulatory Applicability
  - **NEW** Application for a Freshwater Wetlands General Permit
  - **NEW** Application for a Freshwater Wetlands Permit
  - Application for a Significant Alteration
  - Application for Emergency Alterations
  - Application for Permit Renewal
  - Application for Permit Modification
  - Application for Permit Transfer

QUESTIONS? Visit [dem.ri.gov/newwetlandrules](https://dem.ri.gov/newwetlandrules)



## FRESHWATER WETLANDS APPLICATION TYPES

### Introduction

The Department of Environmental Management's (DEM) Freshwater Wetlands Program has different types of applications. Each of the application types is geared to a very specific purpose. The type of application a property owner prepares depends upon what his or her objectives are. This Fact Sheet presents and briefly explains the purposes of each of the application types. Once you determine which application best suits your needs, you can find details about the submittal requirements in the [Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act \(250-RICR-150-15-3\)](#). DEM recommends that you, as the property owner and applicant, be familiar with the application requirements even if a professional consultant prepares the application package for you. Pre-application assistance is available from the DEM Office of Customer and Technical Assistance. Meetings can be scheduled by contacting Ron Gagnon at 401-222-4700, ext. 2777500, or Joseph Antonio, ext. 2774410.

### I. Applications Related to Understanding Your Property

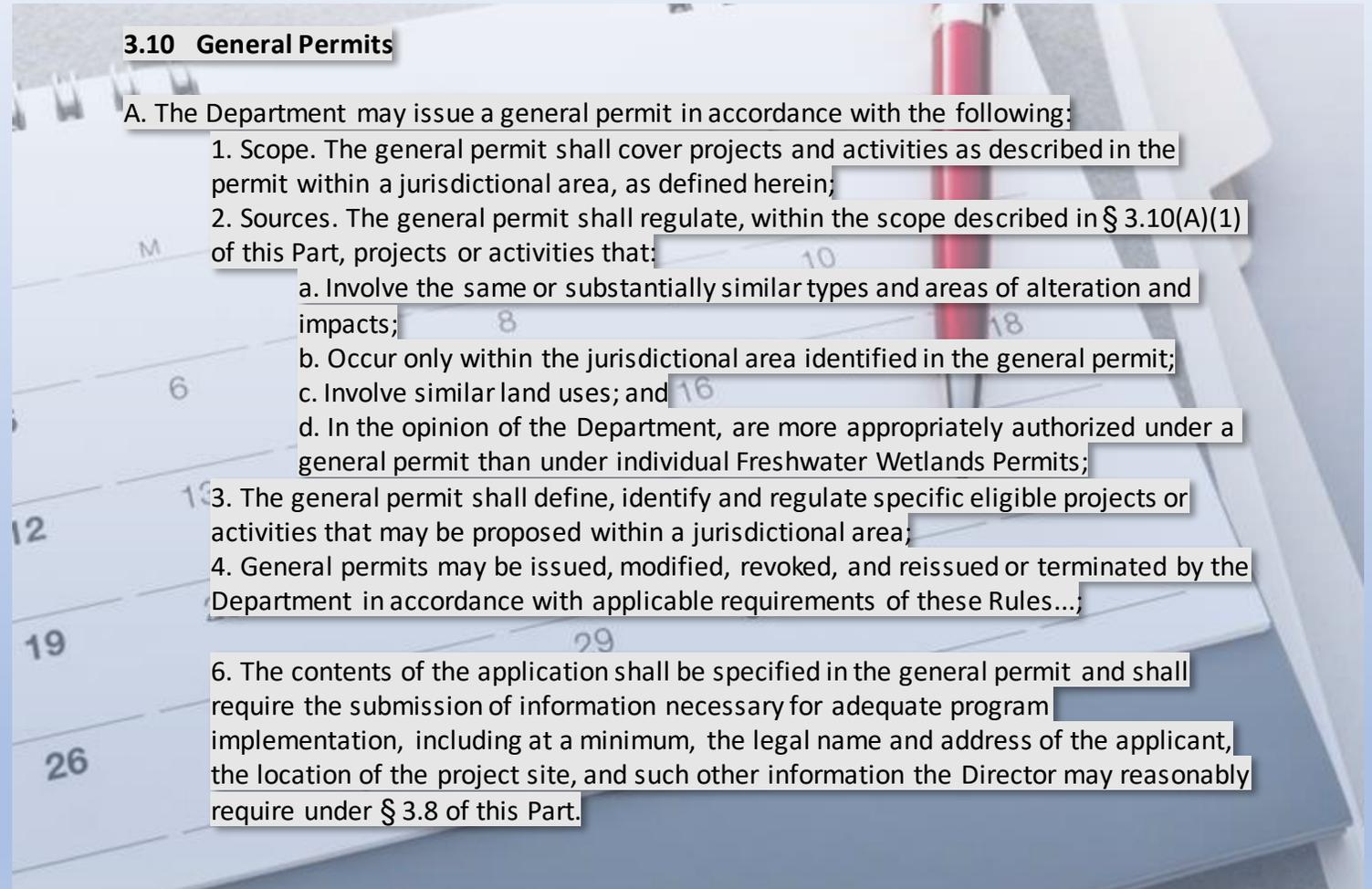
#### **NEW** Request to Determine the Presence of Jurisdictional Area (Rule 3.8.1(A)(1))

This application may be submitted to request that the Department determine if regulated freshwater wetlands or other jurisdictional areas are present on the applicant's property. 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. The purpose of the Request to Determine the Presence of Jurisdictional Area application is to learn from DEM whether there are Jurisdictional Area as defined in the Rules on your property. You, as the property owner, are required to submit an application form, property plan, and fee check (see Rule 3.9.2). The site plans must not include a proposed project. In response, you will receive a "determination" letter from DEM that identifies the types of Jurisdictional Area on your property, if any, and their approximate locations. This "determination" is valid for 5



# Update on General Permit

- ✓ Small group stakeholder meetings in May 2022
- ✓ Public Workshop mid- June 2022
- ✓ Public Notice July 1, 2022
- ✓ Public Comment Period July 1 – August 15th, 2022
- ✓ Effective Date Projected to be September 1, 2022.



# New Application Forms

Updated Forms for all Application Types will provide instruction with links to applicable Rules and Submission Requirements.

## Highlights:

- New **Fillable PDF** format for most forms
- New **Online Form** format for General Permit
- Process
  - Submit FWW signed paper forms, fee, required plans and documents.
  - **DIGITAL SIGNATURES** will be accepted! Detailed instructions to follow.
  - Concurrent submission of Stormwater, WQC or OWTS forms, plans and documents, as needed.

## Timeline:

- Finalize draft forms and internal review - May 18, 2022.
- Close small group stakeholder review & comment period - May 30, 2022.
- **Forms available online by June 1, 2022.**

	<b>RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT</b> <b>OFFICE OF WATER RESOURCES</b> <b>FRESHWATER WETLANDS PROGRAM</b> 235 Promenade Street, Providence, Rhode Island 02908 Telephone: 401-222-6820; Rhode Island Relay 711 <a href="http://www.dem.ri.gov/wetlands">www.dem.ri.gov/wetlands</a>	<b>AGENCY USE ONLY</b> Date Stamp Here:  Application No.:
	<b>APPLICATION FOR A FRESHWATER WETLANDS PERMIT</b>	
<p>Purpose: Use this application form to request a Freshwater Wetlands Permit. Complete this form electronically (by entering information for each shaded area) then print and submit with all required documentation and fee to:</p> <p><b>Permit Application Center (PAC)</b> Rhode Island Department of Environmental Management 235 Promenade Street, Room 260 Providence, RI 02908-5767</p>		<ul style="list-style-type: none"><li>• Freshwater Rules available at: <a href="#">250-RICR-150-15-3</a></li><li>• Check or money order must be made payable to the Rhode Island General Treasurer.</li><li>• If a Stormwater Construction Permit (RIPDES CGP or GWD/UIC) or Water Quality Certification (WQC) Permit is required, <a href="#">this form</a> must be submitted in addition.</li><li>• For applications that include a variance or significant alteration, see the second page of this form.</li></ul>
<b>PART A - APPLICANT INFORMATION:</b> Applicant's Name (see 250-RICR-150-15-3.8.3): _____ <i>Note: The applicant must be the owner of the property or easement which is the subject of this application or must be the government agency or entity with power of condemnation over such property or easement.</i> Applicant's Mailing Address: _____ Street Number and Name _____ P.O. Box _____ City/Town _____ State _____ Zip Code _____ Applicant's Email Address: _____ Applicant's Phone Number: _____		
<b>PART B - PROPERTY LOCATION SUBJECT TO THIS APPLICATION:</b> Street Number and Name (if applicable) _____ If no Street Number, Street Abutting Site _____ City/Town _____ Zip Code _____ Distance (in feet) and direction from site to nearest street intersection _____ Nearest utility pole number(s) _____ Tax Assessor's Plat and Lot No(s): _____ Recorded Plat and Lot No(s) (if Assessor's are not available): _____		
<b>PART C - GENERAL INFORMATION:</b> Any previous application(s) for this site? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide Application Number(s): _____ Any previous enforcement action(s) for this site? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide File Number(s): _____ Are you proposing to alter any floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No Within which river buffer zone region is the site located? <a href="#">Click here to access the interactive map.</a> Are you proposing to alter an area subject to storm flowage? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Urban Region <input type="checkbox"/> River Region 1 <input type="checkbox"/> River Region 2 Are you proposing to alter an area subject to flooding? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>PART D - PAYMENT INFORMATION:</b> Use the Fee Schedule in 250-RICR-150-15-3.8.9 to determine the fee for this application (i.e. Construction of New Single-Family Lot, no significant alteration - \$450): Project Type: _____ Permit Fee: _____ Check Number: _____		
fwwgenapp 05/03/22		www.dem.ri.gov



# Streamlining of Application Forms

- Companion Application Instructions will be created to supplement the application forms. These separate documents will include guidance and instructions to assist application preparers while minimizing the text on the application forms themselves.
- Separate application forms will be created for:
  - Administrative permits (permit renewal and transfer)
  - Pre-application determinations (request to determine presence of jurisdictional area, request to verify freshwater wetland edges)

Access

## New Application Forms

at: [www.dem.ri.gov](http://www.dem.ri.gov)

Select

1. Online Services
2. Applications & Forms
3. Wetlands

Or <http://www.dem.ri.gov/documents/forms/index.php#wetlands>

The screenshot shows the DEM Rhode Island website. The navigation menu is open, and the path to the Wetlands application forms is highlighted with red circles and numbered 1 through 3. The path is: Online Services > Applications & Forms > Wetlands. Below the navigation menu, the Wetlands section is displayed, featuring a list of application forms for applications received before July 1, 2022 (under Part 1 Rules). The list includes: Application Instructions, General Application Form, Request for Regulatory Applicability Form, Site Work Affidavit, Wetland Edge Delineation Forms, Joint OWTS/Wetlands Permit Application Form, and Notice of Start of Construction (SOC) Form. A yellow box next to the list contains the text "Links to dem.ri.gov/wetlands". Below this, there is a section for applications received on or after July 1, 2022 (under Part 3 Rules), which includes a notice: "New Application Forms Coming Soon! Available by June 1st". A yellow box next to this notice contains the text "Links to dem.ri.gov/newwetlandrules".

QUESTIONS? Visit [dem.ri.gov/newwetlandrules](http://dem.ri.gov/newwetlandrules)



# New Forms Available June 1<sup>st</sup>

Access New  
**Application Forms**  
from New Freshwater  
Wetlands Rules webpage  
at:

[www.dem.ri.gov/  
Newwetlandrules](http://www.dem.ri.gov/Newwetlandrules)

Video tutorials will be also  
be added to the website  
to provide instructions on  
how to fill out the new  
forms.

OFFICE OF WATER RESOURCES / PERMITTING / RHODE ISLAND WETLANDS  
/ NEW FRESHWATER WETLANDS RULES

## New Freshwater Wetlands Rules

**Important Update:** The DEM has promulgated new Freshwater Wetlands rules (250-RICR-150-15-3) that postpone the effective date for implementing the rules to July 1, 2022. Until that date, the existing Freshwater Wetlands Rules (250-RICR-150-15-1) remain in place. Due to requirements of the Secretary of State, the new rules have been re-numbered as Part 3 and pursuant to Sections 3.19 and 3.20 ("Effective Date"), have been modified to specify and align with the new effective date of July 1, 2022.

**PRIMARY RESOURCES**

- [New Part 3 Freshwater Wetland rules \(250-RICR-150-15-3\)](#)

**Applications and Forms** - For applications received On or AFTER July 1, 2022 (under [Part 3 Rules](#))

- New Application Forms Coming Soon!**  
Available by June 1<sup>st</sup>

Quick Links

- About
- Army Corps General Permit
- Guidance and Assistance for Applicants
- Flood Plain Maps / Flooding
- Dam Safety

PERMITS & LICENSES



# Questions on Permitting Pathways, Application Types, or the General Permit?



# Jurisdictional Areas, Buffer Zones and Buffers

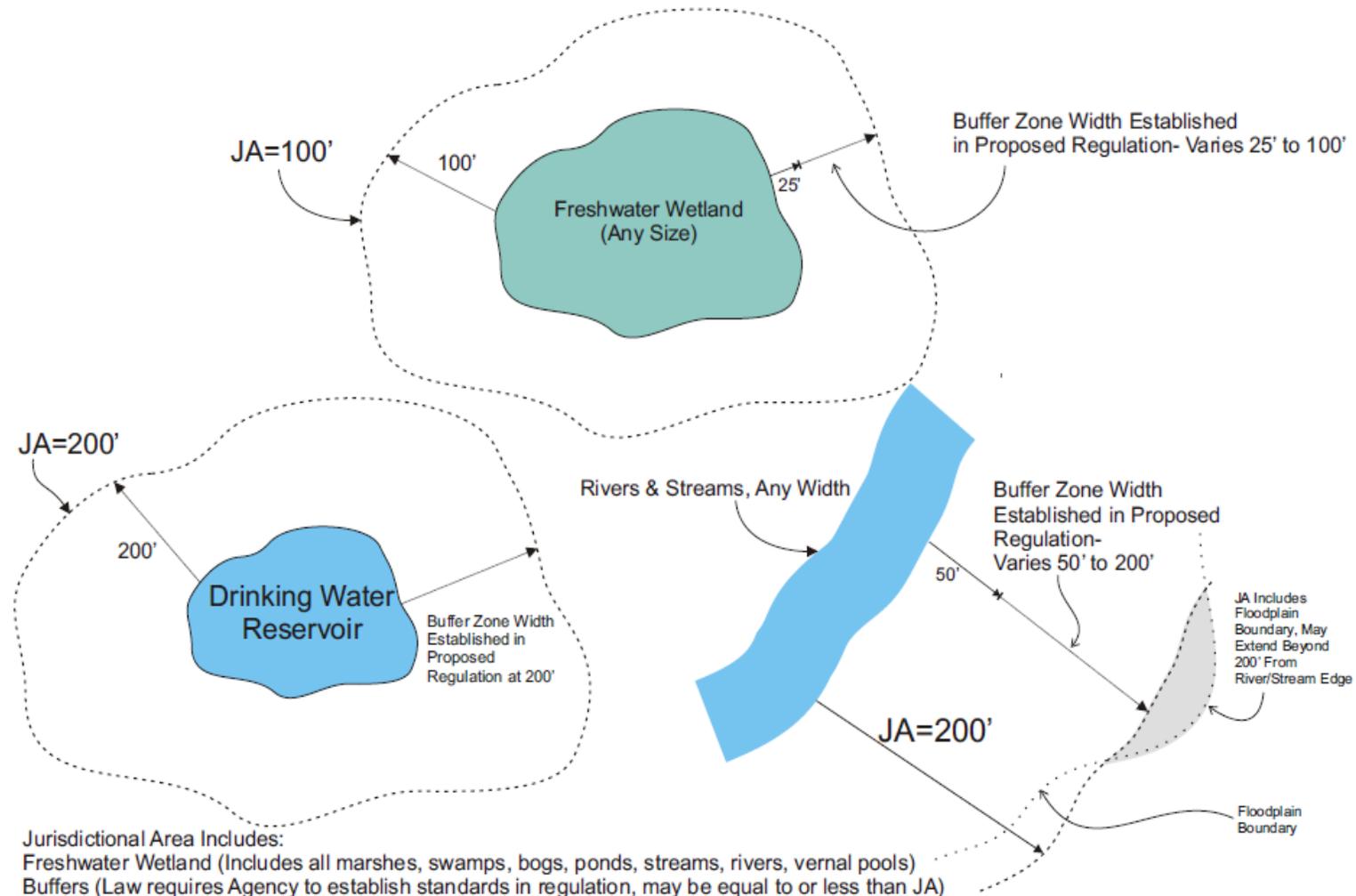
A brief review of the definitions followed by an introduction to some new available tools and real-world case studies.



- **Jurisdictional Area** – area to be regulated includes - freshwater wetlands, buffers, floodplains, areas subject to storm flowage (ASSF), areas subject to flooding (ASF), 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 (including ponds).



## New Regulated Area: Jurisdictional Area (JA) Designated in Law As Defined Below



### Jurisdictional Area Includes:

- Freshwater Wetland (Includes all marshes, swamps, bogs, ponds, streams, rivers, vernal pools)
- Buffers (Law requires Agency to establish standards in regulation, may be equal to or less than JA)
- Floodplains and Areas Subject to Flooding and Storm Flowage
- 200' Contiguous areas to rivers/streams and drinking water reservoirs
- 100' Contiguous areas from edge of all Freshwater Wetlands

**Note: Freshwater Wetlands, Buffers, Floodplains are to be protected as directed by Law.**

11/4/16



# Buffer Zone

- Established in rule and designated for all freshwater wetland resources.
- Variable width that may include all of, but cannot extend further than, the “**Jurisdictional Area**” limit.
- A Buffer Zone does not always consist entirely of “**buffer**”.
- Buffer standard (Rule 3.7.1) refers to avoiding alteration of “buffer” within the buffer zone and in some cases requiring creation of buffers.





# Determining Buffer Zone

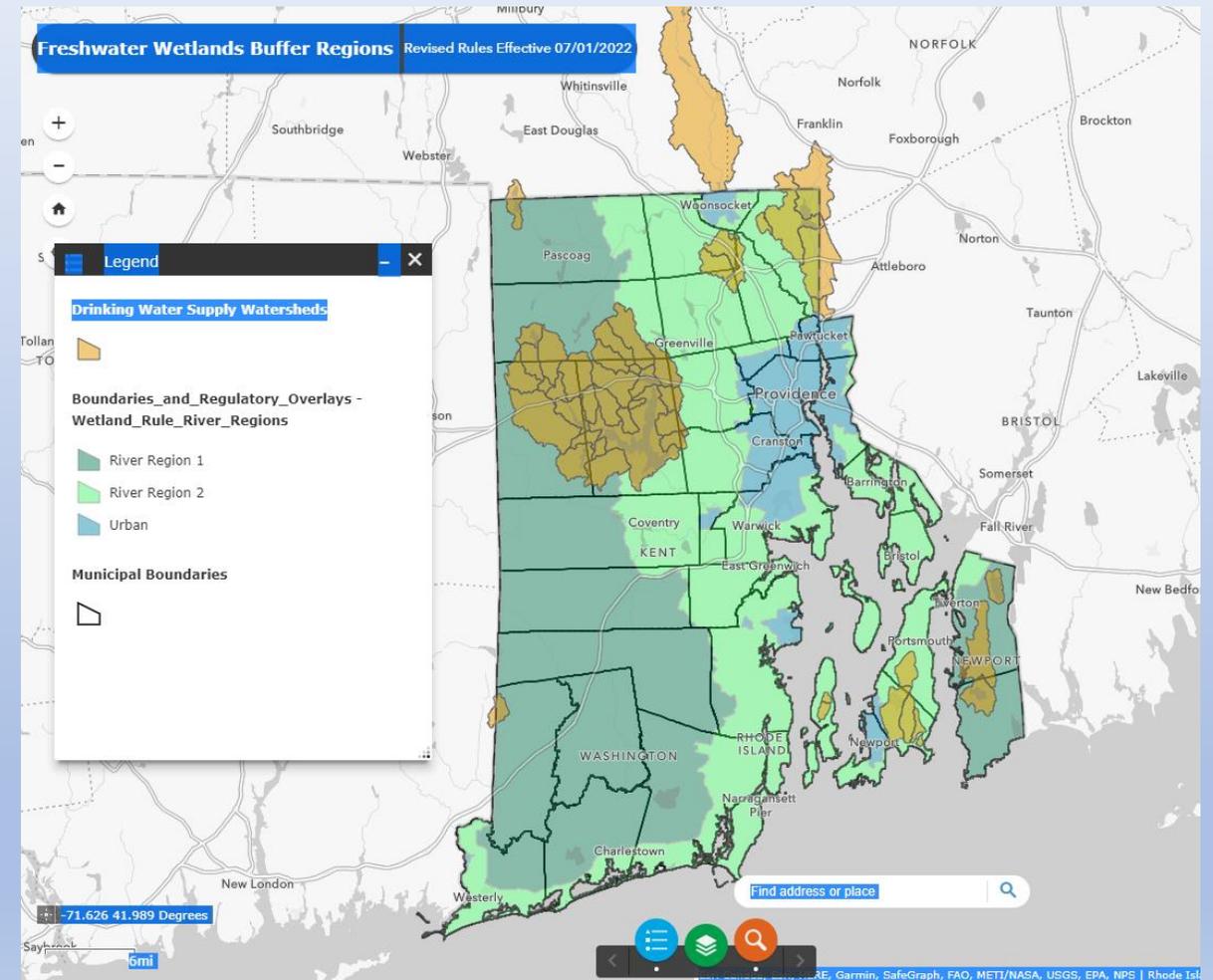
- **Step 1:** Determine what **Region** the property or project is in, as well as whether or not it is within the Watershed of a Drinking Water Supply Reservoir.
- **Step 2:** Determine presence of rare animal or plant species, or rare wetland type. This may affect size of buffer zone.
- **Step 3:** Determine wetland type, and applicable buffer zone – Rule 3.23(H) & (I) including Tables.
  - May require determining size (for vegetated wetlands and ponds)
  - May require identification of specific segments (for rivers)
- **Step 4:** For vegetated wetland types only - Determine if a different wetland type or sub-type is present 50 feet or less inward of the upland/wetland edge. This may affect size of buffer zone.

# Online Tool to Assist in Identifying Buffer Zone Region



- Interactive Map of Freshwater Wetland Buffer Regions is available at:

<https://ridemgis.maps.arcgis.com/apps/webappviewer/index.html?id=9a067e507b514a5397cd1ea041f9ba0f>



QUESTIONS? Visit [dem.ri.gov/newwetlandrules](http://dem.ri.gov/newwetlandrules)

# Buffer Zones for Rare Species or Rare Wetland Type



- Applicants advised to submit a “Request to Determine Presence of Jurisdictional Area” or “Request to Verify Freshwater Wetland Edges” – Let DEM make the call up front.
- Propose a Buffer Zone based on the needs of the identified species or wetland type (will require supporting documentation from a consulting biologist)...**this may be adjusted by RIDEM.**
- Design the project to remain outside of Jurisdictional Area limit...or at least outside of all “buffer”.

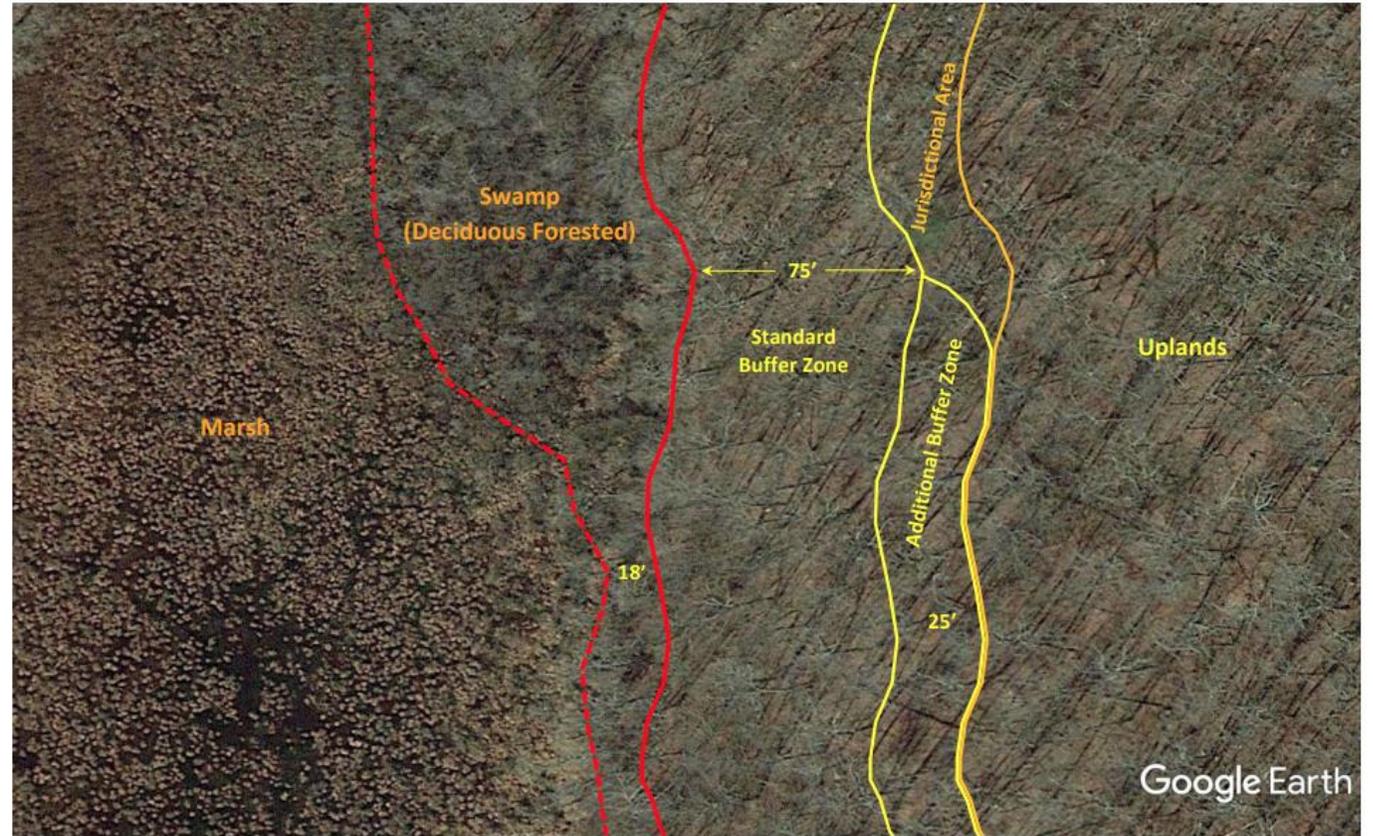




# Additional 25' added to Buffer Zone

- Rule 3.23(F)(2): An additional 25' will be added to the buffer zone width when one or more differing FWW types or subtypes are present within 50' inward of the FWW edge, but in no case will a buffer zone exceed the jurisdictional area.

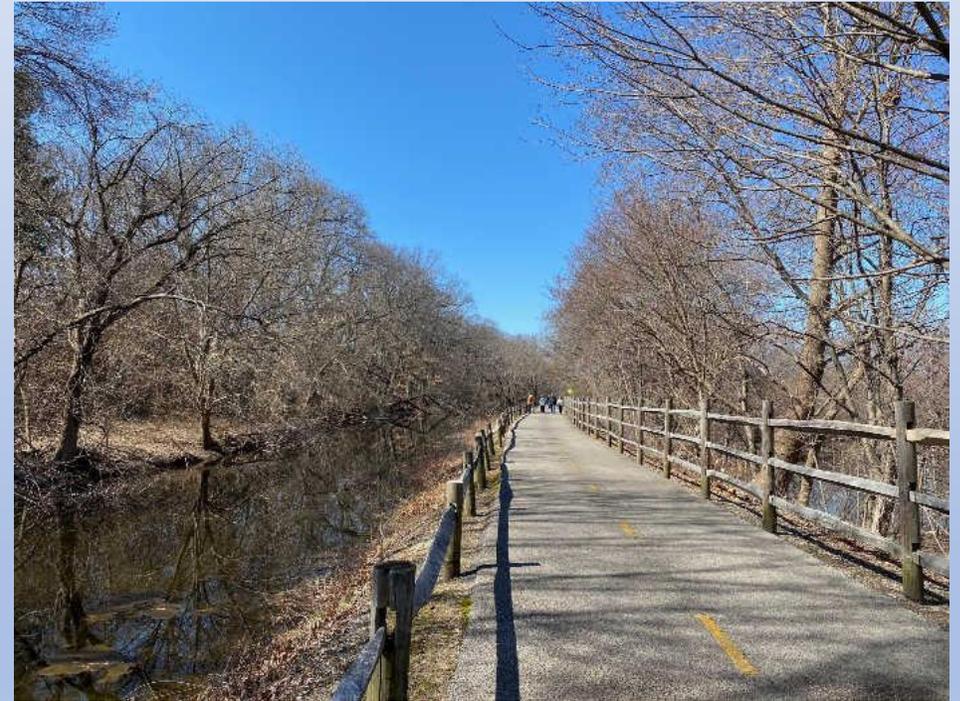
Hypothetical Buffer Zone Assignment  
for Two Wetland Types Located Within 50 feet of a Delineated Wetland Edge  
in River Protection Region 2





# Guidelines for Determining Wetland Connections Across Barriers for Purposes of Determining Size of Wetland units

- To identify the appropriate buffer designation, the size of the wetland in question must be determined.
- Straight-forward for unfragmented wetland units.
- For fragmented wetlands, must determine if wetland units on either side of a barrier are considered one wetland unit or two independent units.
- Barriers may be physical/manmade (e.g. roadway crossings) or natural (watercourse channels or narrow upland areas)





# Man-Made Barriers

1. Wetland units separated by barriers such as **four-lane highways, Interstate highways or other similar barriers of 50 feet or greater in width** (measured toe-of-slope to toe-of-slope) will be considered connected if the **barrier spans the entirety of the wetland with a bridge.**
2. Wetland units separated by **barriers less than 50-feet wide such as two-lane roadways, railways, driveways, bike paths or buildings** will be considered connected if the wetland units are **connected by bridges and/or culverts of any size, with wetlands on either side of the road exhibiting similar hydrological characteristics.**
3. Wetland units separated by **unpaved cart paths, fire lanes, farm lanes, forestry roads, utility access roads, stone walls** or similar features equal or **less than 10-feet in width** will be considered connected **regardless of whether a culvert is present.**
4. Wetland units separated by a **man-made dam will not be considered connected.**



# Natural Barriers

1. Wetland units separated by **upland areas with no surface water connection will not be considered connected as the same unit**, regardless of the distance of separation.
2. Wetland units connected **only by an Area Subject to Storm Flowage** will be considered connected **if separated by a distance of 10 feet or less**.
3. Wetland units connected **only by an open water body, river or stream channel** will be considered connected as one **unit if separated by a distance of less than 50 feet**.
4. Wetland units separated by **beaver dams will be considered connected**.



# Questions on Jurisdictional Area, Buffer Zones or Buffers?



# Online Tool Demo and Case Studies



# Questions?



<http://www.dem.ri.gov/newwetlandrules>

Please see the chat for a link to submit a question on the Rules and a link to a short survey for feedback on this presentation.