RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
PUBLIC NOTICE

Pursuant to the provisions of Chapters 42-17.1 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Director of the Department of Environmental Management (DEM) proposes amendments to the Air Pollution Control Permits, Dredging, Wetlands, and Water Quality regulations and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the following proposed regulations that the Department of Environmental Management proposes to promulgate to comply with the requirements of R.I. Gen. Laws Section 42-17.1-25 pursuant to which the dates of certain permits were continued until June 30, 2011. The Department initially adopted these regulations as emergency regulations and these rules are currently in effect at this time in order to satisfy DEM's obligations under the Statute:

- Air Pollution Control Regulation No. 9- Air Pollution Control Permits
- Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act
- Water Quality Regulations
- Rules and Regulations for Dredging and the Management of Dredged Material

The public hearing will commence at 10:00 AM on Wednesday, June 23, 2010 in Room 300 of the Foundry Building, located at 235 Promenade Street, Providence, RI 02908. The hearing room is handicap accessible. A taped record of the hearing will be made and the DEM will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for this service can be made in writing or by calling (401) 222-6800 or TDD (401) 831-5508. Written comments concerning the regulations proposed for promulgation by the DEM may also be submitted to the Division of Water Resources, 235 Promenade Street, Providence, RI 02908 no later than 9:00 p.m. on June 23, 2010.

The Department has determined that small businesses shall not be adversely impacted by the proposed regulations. The public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may believe that they may be adversely affected. Interested parties are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the proposed regulations will be available for examination from May 24, 2010 through June 23, 2010 by mail or at the office of the Division of Water Resources located at 235 Promenade Street, Providence, RI 02908. Electronic copies of the proposed regulations will also be available on the DEM website at the following address: http://www.dem.ri.gov/programs/benviron/water/tollregs.htm.

Signed May 24, 2010

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W. Michael Sullivan, PhD
Director, Department of Environmental Management

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULES AND REGULATIONS GOVERNING THE ADMINISTRATION AND ENFORCEMENT OF THE FRESH WATER WETLANDS ACT

December 2009

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws Chapters 2-1-20.1, 42-17.1, and 42-17.6, as amended, and R.I. Public Laws 09-198 and 09-199; and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R. I. Gen. Laws Chapter 42-35.

State of Rhode Island and Providence Plantations
Department of Environmental Management

RULES AND REGULATIONS GOVERNING THE ADMINISTRATION AND ENFORCEMENT OF THE FRESH WATER WETLANDS ACT

TABLE OF CONTENTS

Rule 1.00 AUTHORITY AND PURPOSE 1

Rule 2.00 ADMINISTRATIVE FINDINGS 1

Rule 3.00 GENERAL ADMINISTRATION 3

3.01 Freshwater Wetlands 3
3.02 Freshwater Wetlands in the Vicinity of the Coast 3
3.03 Projects that Lie on or Cross the Jurisdictional Boundary 3

Rule 4.00 DEFINITIONS 5

Rule 5.00 REGULATED ACTIVITIES 14

5.01 Prohibitions 14
5.02 Application Types and Decisions Available 15

Rule 6.00 EXEMPT ACTIVITIES 17

6.01 General Conditions for Exempt Activities 17
6.02 Limited Cutting or Clearing of Vegetation 17
6.03 Limited Maintenance and Repair Activities 19
6.04 Demolition of Buildings or Accessory Structures 21
6.05 Single-Family Residences and Accessory Structures 22
6.06 Nonresidential Buildings or Multifamily Residences and Accessory Structures 22
6.07 Emergency Environmental Protection 23
6.08 Site Remediation 23
6.09 Utility Emergencies 23
6.10 New Utility Lines 24
6.11 Agricultural Practices 24
6.12 Normal Farming and Ranching Activities 24
6.13 Conservation Activities 24
6.14 Monitoring and Research Activities 25
6.15 Temporary Recreational Structures 25
6.16 Moorings and Anchorage for Single Boats 25
6.17 Emergency Water Withdrawal for Fighting Fires 25
6.18 Planting in Perimeter Wetland or Riverbank Wetland 26
6.19 High Hazard and Significant Hazard Dams 26
6.20 Low Hazard Dams 26

Rule 7.00 GENERAL APPLICATION REQUIREMENTS 28

7.01 Application Forms and Their Submission 28
7.02 Signatures 28
7.03 Site Plan Requirements 30
7.04 Wetland Edge Requirements 32
7.05 Additional Site Work 33
7.06 Requirements Regarding Use of Professionals 33
7.07 Application Processing 34
7.08 Suspension of Application Processing 36
7.09 Transfer of Permits 36
7.10 General Fee Requirements 37
7.11 Fee Schedule 38

Rule 8.00 REQUEST TO DETERMINE THE PRESENCE OF WETLANDS, REQUEST TO VERIFY WETLAND EDGES, OR REQUEST FOR REGULATORY APPLICABILITY 42

8.01 Purpose 42
8.02 Request to Determine the Presence of Wetlands 42
8.03 Request to Verify Wetland Edges 42
8.04 Request for Regulatory Applicability 44

Rule 9.00 REQUEST FOR PRELIMINARY DETERMINATION 45

9.01 Purpose and Outcomes 45
9.02 Application Requirements 45
9.03 Review by the Department 48
9.04 Permit Requirements, Conditions and Renewals 49
9.05 Department's Decision – Notification 50
9.06 Application Closure 50

Rule 10.00 APPLICATION TO ALTER A FRESHWATER WETLAND 52

10.01 Purpose 52
10.02 Application Requirements 52
10.03 Completeness Determination 60
10.04 Public Notice and Participation – Public Hearings 61
10.05 Review Criteria 64
10.06 Decision on Application to Alter Freshwater Wetlands 66
10.07 Permit Requirements and Conditions 67
10.08 Compliance 68
10.09 Appeal of Decisions 68
10.10 Negotiated Settlements – Consent Agreements 69
10.11 Closing of an Application 69

Rule 11.00 OTHER APPLICATION TYPES 70

11.01 Application for Emergency Alterations 70
11.02 Application for Permit Renewal 71
11.03 Application for Permit Modification 71
11.04 Application for Permit Transfer 72
11.05 Application Relating to Farmers 72

Rule 12.00 ENFORCEMENT 74

12.01 Enforcement 74
12.02 Revocation or Suspension of Determination or Permit 74
12.03 Right to Request Administrative Hearing 74

Rule 13.00 PUBLIC ACCESS TO RECORDS 74

Rule 14.00 SEVERABILITY 75

Rule 15.00 SUPERSEDED RULES 75

Rule 16.00 EFFECTIVE DATE 75

Appendix 1 INSIGNIFICANT ALTERATIONS 76

Appendix 2 SPECIFIC CRITERIA FOR IDENTIFYING WETLAND EDGES 80

NOTE: All terms defined in Rule 4.00 are italicized when used in these Rules, except when they appear in (i) the table of contents; (ii) a defined term's own definition in Rule 4.00; and (iii) headings.

RULE 1.00 - AUTHORITY AND PURPOSE

1.01 These Rules and Regulations (the *Rules*) are promulgated by the Rhode Island Department of Environmental Management (the *Department*) pursuant to the requirements and provisions of Sections 2-1-20.1, 42-17.1-1 *et seq*., 42-17.6-1 *et seq.*, R.I. Public Laws 09-198 and 09-199; and 42-35-1 *et seq*. of the Rhode Island General Laws of 1956, as from time to time amended (the *R.I.G.L.).*

1.02 These *Rules* are promulgated to:

A. Describe the *Department's* authority to administer and enforce Sections 2-1-18 through 2-1-25, inclusive, of the *R.I.G.L.*, the *Fresh Water Wetlands Act* (the *Act*); and

B. Preserve, protect and restore the purity and integrity of all *freshwater wetlands* in the state of Rhode Island so that these wetlands 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.

1.03 These *Rules* shall be liberally construed to permit the *Department* to effectuate the purposes of the *Act*.

1.04 These *Rules* supersede all previous rules and regulations adopted by the *Department* pursuant to the *Act*.

RULE 2.00 – ADMINISTRATIVE FINDINGS

2.01 The declarations of intent and public policy enumerated by the General Assembly in Sections 2-1-18 and 2-1-19 of the *Act* are hereby adopted as the administrative findings upon which these *Rules* are based.

2.02 Consistent with these declarations, the *Department* makes the following findings:

A. *Freshwater wetlands* are ecological systems performing functions that directly benefit the health, welfare and general well being of people and the environment.

B. Any such *freshwater wetland* functions as an integrated ecological system, no portion or component of which is less worthy of regulatory protection than the wetland as a whole. *Riverbank* and *perimeter wetlands* are important integral components of the *flowing body of water*, or the *swamp, marsh, bog, pond* with which they are associated.

C. *Freshwater wetlands* perform specific functions and support specific values, including but not limited to the following:

1) Wildlife and Wildlife Habitat: *Freshwater wetlands* are important areas for the production and maintenance of a diversity of *wildlife*. Wetlands 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 seasonal or transient in nature. 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*. Wetlands provide critical habitat for some plant and animal species, and provide habitat for *rare* animal and *rare* plant species.

2) Recreation and Aesthetics: *Freshwater wetlands* support active and passive recreational and aesthetic values that are important to the general public. Wetlands 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 wetland. Without limitation, these include the wetland's prominence as a distinct feature in the local area, including its value as open space; whether it is a *rare* 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; and whether it contains or may contain material of archaeological, historical, or cultural significance.

3) Flood Protection: *Freshwater wetlands* protect life and property from flooding and flood flows by storing, retaining, metering out and otherwise controlling flood waters from storm events. Wetlands also control the damaging impacts of flood flows by providing frictional resistance to flood flows, dissipating erosive forces, and helping to anchor the shoreline.

4) Surface Water and Groundwater: *Freshwater wetlands* provide and maintain surface and groundwater supplies by acting as recharge or discharge areas, and, in the case of some *pond*s, acting as *surface water* reservoirs. Although groundwater recharge and discharge functions and values may vary seasonally, *freshwater wetland*s, 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.

5) Water Quality: *Freshwater wetland*s protect and maintain water quality by retaining and removing nutrients; filtering and removing *pollutants*; removing *sediment*s; 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.

D. The *cumulative impact* of incremental *alterations* to *freshwater wetlands* that occur at different times or in different locations within the same wetland system, or both, may constitute a *significant alteration*, even if a single proposed *alteration* may not in and of itself constitute a *significant alteration*.

E. 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* in Rhode Island. *Random, unnecessary or undesirable alteration* of any *freshwater wetland* is contrary to the *Act* and not in the best public interest because of the adverse impacts of such *alterations* on wetland functions and values. The *Department* will deny any application for a *project* that will so *alter* any wetland.

F. The *Department* recognizes that *dams* have created *freshwater wetlands* 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.G.L. 46-19, Inspection of Dams and Reservoirs, the *Department* finds that many *dam*s 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*.

RULE 3.00 - GENERAL ADMINISTRATION

3.01 **Freshwater Wetlands**. The *Department* shall be responsible for administering and enforcing the *Act* and these *Rules*.

3.02 FRESHWATER WETLANDS IN THE VICINITY OF THE COAST. PURSUANT TO R.I.G.L. 46-23-6, AS AMENDED, *FRESHWATER WETLANDS IN THE VICINITY OF THE COAST* ARE UNDER THE EXCLUSIVE JURISDICTION OF THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL (*CRMC*), INCLUDING, AFTER JANUARY 1, 2002, THE RENEWAL, TRANSFER, MODIFICATION AND ENFORCEMENT OF *PERMITS* ORIGINALLY ISSUED BY THE *DEPARTMENT*, WITH THESE EXCEPTIONS:

A. The *Department* shall retain jurisdiction over farming-related activities involving *freshwater wetlands in the vicinity of the coast*.

B. Any determination or *permit*, including any *terms and conditions*, issued by the *Department* prior to August 18, 1999, shall remain valid for the time period specified in such determination or *permit*.

C. The *Department* shall retain jurisdiction over any *permit*s 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.

D. The *Department* shall retain sufficient jurisdiction over any *permit*s 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.

E. 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.

F. *Permit*s issued by the *Department* for *projects* that lie on or that straddle the *jurisdictional boundary* shall be administered by the *Department* in accordance with Rule 3.03 below.

3.03 **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* established pursuant to R.I.G. L. 46-23-6 will be reviewed as follows:

1) If the *project* is located entirely or partially either within a *CRMC* Special Area Management Plan or within 200 feet 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 any *CRMC* Special Area Management Plan and beyond 200 feet 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* established pursuant to R.I.G. L. 46-23-6 will be reviewed as follows:

1) If all of the *freshwater wetland*s are located seaward of the boundary, then *CRMC* shall be the *freshwater wetland* review agency.

2) If all of the *freshwater wetland*s are located inland of the boundary, then the *Department* shall be the *freshwater wetland* review agency.

3) If the wetlands lie 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 a *CRMC* Special Area Management Plan or within 200 feet of a coastal or shoreline feature, as defined by *CRMC*, then *CRMC* shall be the *freshwater wetland* review agency; or

   (b) Where the *project* is entirely outside of any Special Area Management Plan and is beyond 200 feet of a coastal or shoreline feature, as defined by *CRMC*, then the *Department* shall be the *freshwater wetland* review 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 *freshwater wetland* review 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 *freshwater wetland* or wetlands, 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 alteration* in both jurisdictional areas, the *Department* and *CRMC* reserve the right to jointly exercise their jurisdiction.

C. The permitting agency for a *project* that is on the boundary or on both sides of the boundary shall renew, modify, transfer and enforce the *permit* according to the *Rules* (in the case of the *Department*) or the rules and regulations (in the case of *CRMC*) that were in effect at the time the *permit* was issued.

D. The *Department* and *CRMC* maintain at their respective offices maps illustrating the *jurisdictional boundary* between *freshwater wetland*s and *freshwater wetlands in the vicinity of the coast*.

RULE 4.00 - DEFINITIONS

For the purposes of these *Rules*, the following terms shall have the following meanings:

AAD: The *Department's* Administrative Adjudication Division for Environmental Matters.

Accessory Structure: A structure that has an ancillary or supplementary function to the main use of the property. Accessory structures include 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 500 gallons a day; walls; stairs; walks; and pervious driveways.

Act: The Fresh Water Wetlands Act as set forth in Sections 2-1-18 through 2-1-25, inclusive, of the *R.I.G.L.*, as from time to time amended.

Alter (and Alteration): To change (act of changing) the character of a *freshwater wetland* as a result of activities within or outside of the wetland. 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*.

Aquatic Base Flow (ABF): Minimum *river* or *stream* flow conditions necessary to sustain indigenous aquatic fauna and flora, determined as follows:

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 0.5 cubic feet per second per square mile of drainage (cfsm), unless spawning and incubation requirements exceed this minimum; or
C. Where concerns exist regarding spawning and incubation flow requirements, the ABF shall be 1.0 cfsm in October/November and 4.0 cfsm 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*.
E. Where the Department issues a more specific policy, aquatic base flow shall conform to the requirements of that policy.

Area of Land Within Fifty Feet (50'): (used interchangeably with *Perimeter Wetland*) A *freshwater wetland* consisting of the area of land within fifty feet (50') of the *edge* of any *freshwater wetland* consisting in part, or in whole, of a *bog*, *marsh*, *swamp* or *pond*, as defined by these *Rules*. For purposes of identification, this area shall be measured horizontally, without regard for topography, from the *edge* of such a wetland.

Area Subject to Flooding (ASF): This shall include, but not be limited to, *flood plains*, depressions or low-lying areas flooded by *rivers, streams, intermittent streams*, or areas subject to storm flowage which collect, hold or meter out storm and flood waters.

Area Subject to Storm Flowage (ASSF): 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.

Best Management Practices (BMPs): 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*.

Bog: Consistent with Section 2-1-20(1) of the *Act*, 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 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*), bog cotton (*Eriophorum*).

Buffer Zone: An area of undeveloped vegetated land retained in its natural undisturbed condition, or created to resemble a naturally occurring vegetated area that *mitigates* the negative impact of human activities on wetland functions and values.

Completed Application: Any application that, in the opinion of the *Department*, provides all of the requisite information necessary to process the application in accordance with Section 2-1-22(a) of the *Act*, and these *Rules*. For public notice purposes relating to an Application to Alter, the criteria for a completed application are set forth in Rules 10.02 and 10.03.

CRMC: The Rhode Island Coastal Resources Management Council.

CRMC Regulations: The "Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast" adopted by the Coastal Resources Management Council pursuant to Chapter 46-23-6 of the *R.I.G.L.*

Cumulative Impact: The combined impact on the wetland environment and its functions and values which may result from past, present and future *alterations* to the same wetland system, regardless of what agency or *person* undertakes such *alterations*.

Dam (and Damming): Any barrier made by humans, including appurtenant works, that impounds or diverts *surface water*. To impound water by means of a dam.

Department: The Department of Environmental Management or 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*.

Detention Facility: A basin, depression, or other artificial structure *excavated*, constructed, or installed to intercept and temporarily store surface runoff and release the stored water at a controlled rate.

Dike: A berm or structure that impedes, redirects, diverts, or otherwise controls the flow or elevation of water.

Director: As defined by Section 2-1-20(2) of the *Act*, the Director of the *Department*, or his or her duly authorized agent or agents.

Drain: To lower the *surface water* or groundwater elevation, either temporarily or on a permanent basis.

Edge: The line of intersection or division between:

A. Any *swamp*, *marsh*, *pond*, *bog*, or wetland complex containing these wetland types and that *area of land within fifty feet (50')* (i.e., *perimeter wetland*) of these wetland types;
B. Any *flowing body of water* and its associated *riverbank* wetland; or
C. Any wetland other than those listed above and any adjacent non-wetland area.

The edge of wetlands shall be identified according to those procedures set forth in these *Rules* (Appendix 2).

Emergent Plant Community: A 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.

Excavate: 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.

Existing: (1) a condition that was present as of the enactment of the *Act* or its applicable amendments and that has continually remained in the same condition; or (2) a condition that is present and was approved under the *Act* or its applicable amendments; or (3) a condition that has naturally occurred and is currently present.

Facultative Wildlife Species: *Wildlife* that utilize wetlands as habitat, but generally do not require wetlands for survival or reproduction.

Farmer/Qualified Farmer (herein after Farmer): 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) gross income on farm products in each of the preceding four (4) years.

Feasible: Capable of being done, executed, accomplished or brought about by engineering standards.

Fill: 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*; or any action that places such material in a *freshwater wetland*.

Flood Plain: As defined in Section 2-1-20(3) of the *Act*, that land area adjacent to a *river* or *stream* or other *flowing body of water* that is, on average, likely to be covered with flood waters resulting from a one hundred (100) year frequency storm. A storm of this nature is one that is to be expected to be equaled or exceeded once in one hundred (100) years, and hence may be said to have a one percent (1%) probability of being equaled or exceeded in any given year. Rainfall intensity data for such a storm are those established for New England locations by the National Weather Service (formerly the U.S. Weather Bureau).

Floodway: 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.

Flowing Body of Water: 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.

Forested Wetland: A *freshwater wetland* dominated by woody plants (trees) greater than twenty feet (20') tall.

Freshwater Wetland: Consistent with Section 2-1-20(4) of the *Act*, freshwater wetland includes:

A. A *bog*, *flood plain*, *pond*, *marsh*, *riverbank*, *swamp*, *river*, *area of land within fifty feet (50')*, area(s) subject to flooding, area(s) subject to storm flowage, *floodway*, *flowing body of water*, *stream*, *intermittent stream*, *perimeter wetland*, submergent and emergent plant communities, *special aquatic sites*, shrub and *forested wetland* or any combination thereof;
B. 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; or
C. Any or all 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 wetlands; value replacement wetlands created to compensate for wetland loss such as *flood plain* excavations; biofiltration areas; and any wetlands created, *altered* or modified after July 16, 1971.

Freshwater Wetlands in the Vicinity of the Coast: Consistent with the R.I.G.L. Sections 46-23-6, *freshwater wetlands* 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."

Growing Season: The period from April 1 to November 15 of any calendar year.

Hydrophyte/Hydrophytic Vegetation: 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 excessive water content.

Insignificant Alteration: 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)*, and is not *random, unnecessary or undesirable.*

Invasive Species: An alien species whose introduction does or is likely to cause economic or environmental harm, or harm to human health.

Jurisdictional Boundary: The line determined by the *Department* and the Coastal Resources Management Council, pursuant to Chapter 46-23-6 of the *R.I.G.L.*, that designates areas of *freshwater wetland* jurisdiction. The jurisdictional boundary is depicted on original maps dated June 1997, revised April 2001 (effective September 2001) and June 2007, and maintained on file at the *Department* and the Coastal Resources Management Council.

Lentic: A habitat or ecosystem characterized by *standing water*.

Lotic: A habitat or ecosystem characterized by flowing water.

Low-Flow Period: Under normal conditions, the period from July 1 to October 31 of any calendar year.

Low Hazard Dam: A *dam* where failure or misoperation results in no probable loss of human life and low economic losses.

Marsh: Consistent with Section 2-1-20(5) of the *Act*, a place not less than one (1) acre in extent 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 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), burreeds (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*), buttonbush (*Cephalanthus occidentalis*).

Mitigate/Mitigation: A process undertaken by single or cumulative actions to avoid or lessen the damaging effects of human activities upon *freshwater wetlands* and the functions and values that they provide prior to, during, or after the completion of any *project*.

Near or at the Surface: As defined in Section 2-1-20(6) of the *Act*, within thirty-six inches (36") of the surface.

Normal Farming and Ranching Activities: Consistent with Section 2-1-22(i)(1) of the *Act*, *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.

Obligate Wildlife Species: *Wildlife* that depend upon *freshwater wetlands* for all or part of their life cycle.

Open Standing Water: *Surface water* areas that are not dominated by persistent vegetative cover, specifically, where less than fifty percent (50%) of the water body surface is covered by persistent emergent vegetation, shrubs, or trees either as a single life form or in the aggregate.

Perimeter Wetland: (See the definition of *Area of Land within Fifty Feet (50')*).

Permit: An authorization in the form of a document issued and signed by the *Department*, allowing the *alteration* of *freshwater wetlands* subject to specific *terms and conditions*.

Person: 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.

Pollutant: 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 or more of the following: the aesthetic, physical, chemical, biological or radiological characteristics or integrity of any *freshwater wetland*.

Pollution: The human-made or human-induced *alteration* of the aesthetic, physical, chemical, biological or radiological characteristics or integrity of any *freshwater wetland* as a result of the introduction of any *pollutant* to any *freshwater wetland*.

Pond: Consistent with Section 2-1-20(7) of the *Act*, a place not less than one-quarter (1/4) acre in extent, 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.

Project: For the purpose of the *Rules*, the term project also indicates activities.

Random, Unnecessary, or Undesirable Alteration:

A. A random *alteration* is any *alteration* to *freshwater wetlands* 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-wetland alternatives.
C. An undesirable *alteration* is any *alteration* to *freshwater wetlands* that individually or cumulatively may reduce or degrade any *freshwater wetland* functions and values as set forth herein, which does not avoid and minimize to the maximum extent possible any damaging effects on wetland functions and values, or does not satisfy the review criteria in Rule 10.05.

Rare: 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 under the *Department's* Rhode Island Natural Heritage Program; by the *Department's* Division of Fish and Wildlife; or under the federal Endangered Species Act.

Recreational Activities: 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 wetland environments as a whole or in part.

Restoration: The result of actions that, in the opinion of the *Department*, reinstate or will reinstate, insofar as possible, the functions and values of a wetland that has been altered.

Retention Facility: A basin, depression, or other artificial structure *excavated*, constructed, or installed to hold stormwater flows or runoff.

R.I.G.L.: The Rhode Island General Laws of 1956, as from time to time amended.

River: As defined in Section 2-1-20(8) of the *Act*, 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*.

Riverbank: As defined in Section 2-1-20(9) of the *Act*, that area of land within two hundred feet (200') of the *edge* of any *flowing body of water* having a width of ten feet (10') or more, and that area of land within one hundred feet (100') of the *edge* of any *flowing body of water* having a width of less than ten feet (10') during normal flow.

Rules: These Rules and Regulations, 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*.

Sediment: 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.

Sediment Facility: Any basin, depression or other artificial structure *excavated*, constructed or installed to retain *sediment* or debris, and prevent *sediment* or debris from entering any *freshwater wetlands*.

Selective Cut/Cutting: 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.

Shrub Wetland: A *freshwater wetland* dominated by woody plants less than twenty feet (20') tall.

Significant Alteration: 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);* may be detrimental to the basic natural capabilities or values associated with any *freshwater wetland(s)*; or appears to be *random, unnecessary or undesirable.*

Special Aquatic Site: A body of open *standing water*, either natural or artificial, which does not meet the definition of *pond*, but which is capable of supporting and providing habitat for aquatic life forms, as documented by the:

A. Presence of *standing water* during most years, as documented on site or by aerial photographs; and
B. Presence of habitat features necessary to support aquatic life forms of *obligate wildlife species*, or the presence of or evidence of, or use by aquatic life forms of *obligate wildlife species* (excluding biting flies).

Standing Water: Non-flowing water of any depth lying on the ground surface.

Stream/Intermittent Stream: Any *flowing body of water* or watercourse other than a *river* that flows long enough each year to develop and maintain a defined channel. Such watercourses 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*.

Submergent Plant Community: 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.

Substantial Alteration of a Dam: Consistent with the Rules and Regulations for Dam Safety, 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*.

Surface Water: Water lying on the substrate or soil surface, regardless of depth.

Swamp: Consistent with Section 2-1-20(10) of the *Act*, a place not less than three (3) acres in extent 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 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*), sphagnums (*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.

Terms and Conditions: 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*; prevent any *significant alteration* which is not authorized; prevent the destruction of any *freshwater wetland* or portion thereof; or protect the health, welfare, and general well being of the public. These terms and conditions may include without limitation the following:

A. Soil stability, including prevention of erosion and deposition of *sediment* in any *freshwater wetland*;
B. Flood prevention;
C. Protection of *wildlife* and *wildlife habitat* and its functions and values;
D. Preservation of *recreational activities* and values;
E. Protection of water quality;
F. Development and maintenance of mitigative features;
G. Limitation on time for completion;
H. Statutory or regulatory requirements and limitations;
I. Construction phasing; and
J. Monitoring and reporting for compliance and enforcement.

Utility: Any electricity, water, sewer, gas, oil or communication transmission line or pipe.

Water Quality Improvement Project: A *project* whose sole purpose is to eliminate or correct those ongoing activities or problems that cause or contribute to water quality degradation.

Width During Normal Flow: The distance between the opposite *edges* of the flow channel of a *river*, *stream*, or *intermittent stream*, as determined by the criteria set forth in Appendix 2C of these *Rules*.

Wildlife: Any vertebrate or invertebrate animal species which may reproduce in, rest in, feed in, or otherwise utilize any *freshwater wetland* regulated by these *Rules*.

Wildlife Habitat: Those *freshwater wetlands* 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* that may provide food, cover, breeding sites, or other support systems for these life forms.

Wildlife Habitat Project: A *project* whose sole purpose is to create, restore or enhance *wildlife habitat*.

RULE 5.00 – REGULATED ACTIVITIES

5.01 Prohibitions

A. Except as provided in Rule 6.00, a proposed *project* or activity which may *alter* any *freshwater wetland* may not be undertaken without a *permit* from the *Department*. Specifically, 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 change the character of any *freshwater wetland* as defined herein, in any way, without first obtaining a *permit* from the *Department*.

B. In addition to those *projects* or activities proposed either partially or wholly within *freshwater wetlands*, *projects* or activities taking place outside of *freshwater wetlands* which in all likelihood, because of their close proximity to wetlands, or because the size or nature of the *project* or activity will result in an *alteration* of the natural character of any *freshwater wetland*, may not be undertaken without a *permit* from the *Department*.

Such *projects* generally include those which:

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* by such activities as:
   a) Creating or significantly increasing impervious areas;
   b) Modifying run-off characteristics by grading significant amounts of land area or clearing and permanently modifying significant amounts of vegetative cover on areas draining to *freshwater wetlands*;
   c) Diversion of and concentration of surface run-off through swales, ditches, grading, drainage systems and other surface run-off conveyance systems to or away from *freshwater wetlands*; or

2) Result in diversion of groundwater into or away from *freshwater wetlands* by:
   a) Installation of subdrains which will lower groundwater elevations supplying *freshwater wetlands* or increase flow into wetlands;
   b) Installation of underground utilities bedded in pervious materials which may act as a subdrain to divert groundwater away from, or concentrate such water to *freshwater wetlands*;
   c) Installation of wells, other than wells intended for a single family home, which will remove significant amounts of water supplying or affecting any *freshwater wetland*; or

3) Result in a modification to the quality of water reaching *freshwater wetlands* which could change their natural character; or

4) Result in construction of a "new" individual sewage disposal system as defined by the Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems (ISDS Regulations), where the leaching field of the ISDS is located within fifty feet (50') of any emergent, shrub or *forested wetland*; *special aquatic site*; *area subject to flooding*; or *area subject to storm flowage*.

C. No *project* or activity that may or will *alter* a *freshwater wetland* pursuant to Rule 5.01A and B above 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.

5.02 Application Types and Decisions Available

These *Rules* provide for the following types of application, with the *Department's* actions and potential results as noted:

A. Request to Determine the Presence of Wetlands: The *Department* will inspect the applicant's property to determine whether a regulated wetland is present on the property. If a regulated wetland is identified, the *Department* will identify the type(s) of such wetlands (see Rule 8.02). The *Department* possesses the sole authority to determine which areas are deemed *freshwater wetlands*.

B. Request to Verify Wetland Edges: The *Department* will inspect wetland *edge(s)* delineated by the applicant and, if in substantial agreement with the documentation provided, will confirm the presence of identified wetlands and the location of their delineated *edges* (see Rule 8.03). Furthermore, the *Department* will identify the type(s) of wetland(s) verified.

C. Request for Regulatory Applicability: The *Department* will review information provided by the applicant and will either confirm that a proposed project does not require a permit or will inform the applicant that further application is required in accordance with these *Rules* (see Rule 8.04).

D. Request for Preliminary Determination: The *Department* will review documents submitted by the applicant in support of the proposed project and will 1) issue a *permit*, with conditions, for an *insignificant alteration* of *freshwater wetlands*; 2) issue a determination that a *significant alteration* has been proposed; or 3) issue a determination that a *permit* is not required (see Rule 9.01). A determination that a *project* represents a *significant alteration* is not a denial of a *permit*.

E. Application to Alter a Freshwater Wetland: 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 wetland*. After thorough review of the application, including public comments received during the required 45-day notice period, the *Department* may either issue a *permit* to *alter freshwater wetlands* or deny the application (see Rule 10.00).

F. 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 11.01).

G. Application for Permit Renewal: This application must be submitted to renew a *freshwater wetland permit* that was granted as a result of a Request for Preliminary Determination or an Application to Alter a Freshwater Wetland (see Rule 11.02).

H. Application for Permit Modification: This application must be submitted to request approval of a minor modification to a previously permitted *project* (see Rule 11.03).

I. Application for Permit Transfer: This application may be submitted to request the transfer of a valid *permit* to a new property owner (see Rule 11.04).

J. Application Relating to *Farmers*: In general, this application must be submitted directly to the *Department's* Division of Agriculture and Resource Marketing for a determination as to whether the *project* represents an insignificant or a *significant alteration* in accordance with these *Rules* (see Rule 11.05).

RULE 6.00 - EXEMPT ACTIVITIES

6.01 General Conditions for Exempt Activities

A. Certain limited activities that may *alter freshwater wetlands* may proceed without a written *permit* from the *Department*, subject to the conditions and restrictions set forth below. Nonetheless, the *Department* strongly recommends that all such exempt activities or *projects* occur as far away from *freshwater wetlands* as possible.

B. Nothing in this Rule 6.00 shall be deemed to:

1) Limit or reduce, in any way, the *Department's* jurisdiction over *freshwater wetlands*; 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.

Any activities not described within this Rule that could *alter* the character of any *freshwater wetlands* require a written *permit*.

C. Nothing in this Rule 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.

D. The following general restrictions apply to all activities performed under this Rule:

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 this Rule shall be properly maintained to ensure public safety, and to protect 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. (For guidance see "Rhode Island Soil Erosion and Sediment Control Handbook" and "Rhode Island Stormwater Design and Installation Standards Manual".);
4) No activity exempted herein may jeopardize the continued existence of a *rare* wetland type, or a *rare* species; likewise, no activity exempted herein may destroy or adversely modify the critical habitat of such species;
5) Following the limited activity, all equipment used in installation or maintenance activities shall be removed from any wetland; and
6) All wetland functions and values must be protected to the maximum extent possible so as to prevent *pollutants*, *sediment*, direct discharge of stormwater runoff, or any material foreign to a wetland or hazardous to life, from entering any wetland.

6.02 Limited Cutting or Clearing of Vegetation

Limited cutting or clearing of vegetation in *freshwater wetlands* is allowed in accordance with Rule 6.01 only when:

A. The cutting is to remove tree limbs or dead or diseased trees or shrubs which, if left unattended, pose a threat to individuals, dwellings, structures, or safe vehicle movement over roads and driveways; or

B. The cutting is for purposes of trimming back and removing grasses, weeds, or shrubs encroaching upon *existing* or approved 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

C. 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 *swamp*; *marsh*; *bog*; *pond*; *special aquatic site*; or forested, shrub or emergent wetland is prohibited; or

D. The cutting is selective, and is carried out under the supervision of and in cooperation with the *Department's* Division of Forest Environment (DFE) and:

1) The DFE or property owner 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 or the Stewardship Incentives Program is on file with the DFE; and
2) The cutting operation proceeds under those *best management practices* developed and approved by the DFE; and
3) The cutting operation results in no permanent degradation or loss of any *wildlife habitat* associated with any *freshwater wetland*, including perimeter and *riverbank* wetland; and
4) Equipment crossings are limited to wetland types consisting of areas subject to storm flowage or *intermittent streams* or a *river* less than ten feet (10') wide through the use of temporary "corduroy" log roads. This log crossing must not restrict natural flow patterns and *wildlife* movements, and must be removed immediately following the harvesting operation. All disturbed wetland areas in the vicinity of the crossing must be restored to a natural condition and stabilized; and
5) Best management practices for erosion and *sediment* control are followed throughout the life of the *project*; (See Rhode Island Soil Erosion and Sediment Control Handbook); or

E. The cutting is for the maintenance of *existing* or approved footpaths or pedestrian trails, or maintaining 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

F. 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

G. 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

H. Clearing or removal of any floating or submergent plants is limited to that area immediately adjacent to, but no more than fifteen feet (15') from, *existing* or permitted docks; beaches; or swimming areas. The clearing or removal of such vegetation is accomplished only through the manual use of hand-held implements; or

I. The cutting is restricted to *existing* drainage ditches, swales, or embankments of detention and retention facilities as a normal maintenance activity or *best management practice*; or

J. 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.

K. The cutting is for *invasive species* control, including removal of invasive trees, shrubs, vines, or emergent vegetation, where necessary to facilitate the growth of native plants, provided that the project plans and details are submitted to the *Department's* Water Quality and Wetland Restoration Team for review, and the project is deemed by the *Department* to contain the necessary controls, expertise and follow-up monitoring to ensure success of the invasive control project.

6.03 Limited Maintenance and Repair Activities

Limited repair and maintenance of an *existing* structure located in a wetland is allowed under Rule 6.01 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 this Rule 6.03, 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*.

A. Exterior and interior work on a structure necessary to maintain its integrity and condition; or

B. Replacement of functional drainage structures, provided that:

1) Culverts of more than fifty feet (50') are the same type, size, length, capacity and invert elevation as the present structure;
2) 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;
3) The *project* does not result in *sediment* transport to wetlands or any filling, draining, or impoundment of wetlands beyond what was approved or *existing*; and
4) 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

C. Normal maintenance of *existing* or approved *accessory structures* and lawns; or

D. Cleaning of drainage pipes, culverts, catch basins, manholes and drainage swales (for purposes of this Rule 6.03D, a drainage swale is a conveyance owned or maintained by a municipal or state

governmental body that facilitates the drainage of stormwater from paved roadways, but is not an *area subject to storm flowage*); or

E. Repaving of, or undertaking normal roadway maintenance of, paved public and private roadways, bikeways or footpaths. 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; and structural repairs to, or in-place replacement of manholes, catch basins or grates. Paving or oiling of dirt roads, however, is considered an *alteration* which requires a *permit*; or

F. 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 wetland beyond the present toe of slope, and 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

G. Repair of docks and footbridges. This does not include enlargements or extensions; or

H. Repair to boat ramps which does not include enlargements; or

I. Repair to any bridge, provided that the repair is undertaken from the deck or roadway, that no equipment is placed in any watercourse or wetland for the purpose of the repair, and that any material removed from the structure during repair is disposed of properly; or

J. Removal of manmade trash from watercourses and other wetlands without causing any change in the profile or general character of any watercourse or other wetlands. 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 the watercourses and other wetlands 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

K. Repair to or in-kind, in-place replacement of shoreline stabilization structures such as stone or masonry walls, provided that there is no expansion 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

L. Maintenance of soil erosion and *sediment* control management practices and stormwater management practices in accordance with a plan approved by the *Department*; or

M. Maintenance of *existing* or approved bathing beach that does not expand or otherwise change the size or shape of the beach; or

N. 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

O. Replacement of *utility* poles, including changes in physical size, without any change to *existing* or approved cleared rights of way; or

P. 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 wetlands; or

Q. 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 Section 2-1-21 (a) of the *Act*; or

R. Repair and replacement of drinking water wells and their supply lines, provided that the following conditions are met:

1) All cleared vegetation is allowed to re-grow naturally;
2) The volume of withdrawal from the replacement well is no greater than 500 gallons per day;
3) The repair/replacement well is for the same use as its predecessor;
4) The repair/replacement well will service the same lot as its predecessor;
5) No other *feasible* upland alternative is available; and
6) All wetland disturbance is limited to the maximum extent possible; or

S. Repair of failed individual sewage disposal system, made in accordance with the *Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal System*; or

T. In-kind replacement of *existing* or approved buildings and constructed *accessory structures* if destroyed by fire or natural causes.

6.04 Demolition of Buildings or Accessory Structures

Demolition of buildings, parking areas or *accessory structures* is allowed in accordance with Rule 6.01 only where:

A. Building, parking area or *accessory structure* is not to be rebuilt;

B. Disposal of material is accomplished in accordance with all state laws and rules and the material is not disposed of or stockpiled in wetlands;

C. All pre-demolition grades are restored and all disturbed soils are stabilized;

D. Clean *fill* is used, where foundation holes or cellars of demolished buildings are to be filled;

E. All rubble and demolition debris are removed from the soil surface when demolition is complete;

F. Demolition activity and equipment operation are maintained within *existing* or approved disturbed areas on the property; and

G. All disturbed soils are loamed and seeded.

6.05 Single-Family Residences and Accessory Structures

The following limited changes to *existing* or approved single family residences and *accessory structures* are exempt in accordance with Rule 6.01 provided that: (1) No vegetated wetlands are altered or artificially illuminated; (2) All construction activity is located within *existing* or approved cleared areas, such as parking areas, lawns or cultivated fields; and (3) All construction activity is located outside of *flood plains* and at least 25 feet from any *pond*, *marsh*, *swamp*, or wetland complex and at least 50 feet from any *flowing body of water* or *bog*:

A. Horizontal addition, such as a family room, bedroom, attached garage, or house wing, that is no larger than 600 square feet in footprint;

B. Vertical addition of no more than two stories;

C. Attached deck, enclosed porch, exterior ramp, or patio no more than 600 square feet in footprint;

D. Stand-alone garage, shed, or greenhouse no more than 600 square feet in footprint;

E. Pervious driveway of no more than 600 square feet; or

F. *Alteration* to an individual sewage disposal system approved in accordance with the Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems.

G. Other *accessory structures* except as limited in Rule 6.05 (A-F).

6.06 Nonresidential Buildings or Multifamily Residences and Accessory Structures

The following limited changes to *existing* or approved nonresidential buildings or multifamily residences and *accessory structures* are exempt in accordance with Rule 6.01 provided that: (1) No vegetated wetlands are altered or artificially illuminated; (2) All construction activity is located within *existing* or approved cleared areas, such as parking areas, lawns or cultivated fields; and (3) All construction activity is located outside of *flood plains* and at least 25 feet from any *pond*, *marsh*, *swamp* or wetlands complex and at least 50 feet from any *flowing body of water* or *bog*:

A. Vertical addition limited to no more than two stories with no expansion of the building footprint;

B. Foundation and enclosure limited, per lot, to no more than: one storage cooler, one dumpster, one equipment shed, or one garage, each of which is no larger than 600 square feet in footprint;

C. Attached exterior ramp; or

D. *Alteration* to an individual sewage disposal system approved in accordance with the Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance or Individual Sewage Disposal Systems.

6.07 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 wetlands, including the resolution of leaking underground storage tanks, is permissible in accordance with Rule 6.01 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* 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 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.

6.08 Site Remediation

Activities which may affect *freshwater wetlands* and which are required by the *Department* for remediation of contamination resulting from releases of oil or hazardous materials are allowed in accordance with Rule 6.01 provided that:

A. The initial document or plan identifying potential impacts to *freshwater wetlands* and all subsequent action plans are submitted, whenever necessary, for the Freshwater Wetland Program review;

B. All site remediation activities which may affect *freshwater wetlands* are under the direct oversight or control of the *Department*;

C. The remediation activities are only those necessary to protect or restore *freshwater wetlands* from impacts or substantial threats resulting from actual releases of hazardous materials; and

D. The remediation activities incorporate all measures necessary to fully protect, replace, restore or *mitigate* the harm to any affected wetlands including *best management practices*, best available technologies, and any other measures which, in the opinion of the *Department* are necessary to:

   1) Comply with the substance and intent of these *Rules*;
   2) Protect the wetland environment; and
   3) Protect the functions and values provided by *freshwater wetlands*.

6.09 Utility Emergencies

Emergency access and repair or replacement of *utility* lines, poles, 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 Rule 6.01 provided that all affected wetlands are fully restored following completion of the repair or replacement.

6.10 New Utility Lines

Installation, in accordance with Rule 6.01, of new *utility* lines, poles, structures, equipment or facilities only where installation occurs on, above, or beneath *existing* or approved paved or unpaved roadways and their *existing* or approved cleared shoulders, or *existing* or approved railroad beds and their *existing* or approved cleared shoulders; and anti-seepage collars are used as appropriate to prevent sub-draining effects on wetlands provided that:

A. *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;
B. The *project* does not cause any diversion of ground or *surface water* to or from any wetlands;
C. The preconstruction contours are restored immediately upon installation;
D. All work in any wetlands in the easement is undertaken during *low-flow periods*;
E. All disturbed areas are revegetated after restoring contours; and
F. The *project* design incorporates *best management practices* for dewatering *excavated* areas.

6.11 Agricultural Practices

Continuing agricultural practices in wetlands by any property owner other than a *farmer* are permissible in accordance with Rule 6.01 provided that the activities are restricted to *existing* or approved gardens, pastures, and fields which have been in use on a regular basis. Expansion of gardens, pastures, and fields within regulated wetlands is prohibited without written authorization except as provided under Rule 6.12.

6.12 Normal Farming and Ranching Activities

Normal farming and ranching activities carried out in wetlands by *farmers* are exempt in accordance with Section 2-1-22(i)(1) of the *Act*.

6.13 Conservation Activities

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 Rule 6.01. Such activities are limited to the following:

A. Manipulation of water elevations within impoundment areas on state or federal property for the purpose of habitat and species management;

B. Management of species and habitat conditions by cutting, clearing, planting, plowing, or prescribed burning;

C. The installation of in-stream structures for manipulation and management of fisheries habitat including fish ladders, fish diversions, fish traps and structures to moderate *stream* velocities/volumes for fisheries management objectives; and

D. 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.

This Rule does not allow for the installation of new *dams*, construction of new *ponds*, or filling or permanent drainage of wetlands.

6.14 Monitoring and Research Activities

The following monitoring and research activities are authorized in accordance with Rule 6.01 provided that there is no permanent loss of wetland, and that any soil disturbance is stabilized and the area is allowed to revert to its natural condition.

A. Installing groundwater monitoring wells to determine the depth to the water table or the extent of subsurface contaminants; installing groundwater table test pipes necessary for the testing of individual sewage disposal system design; and taking exploratory borings for soil and ledge/bedrock assessments;

B. Installing *stream* flow gauging stations by the United States Geological Survey, Water Resources Division;

C. Harvesting limited quantities of vegetation to estimate plant productivity or biomass;

D. Clearing footpaths or transect lines no greater than five feet (5') in width to permit *wildlife* surveys or access to sampling stations or plots;

E. Excavation of temporary pits for examination of soil properties and for the collection of soil samples; or

F. Construction of temporary blinds for *wildlife* observation.

6.15 Temporary Recreational Structures

The placement of temporary recreational structures for use during specific events such as water-skiing competitions and boat races is permissible in accordance with Rule 6.01, provided that such structures are removed immediately after the specific event. Such structures consist of temporary buoys, markers, floating docks under one hundred fifty (150) square feet in size, and other similar structures.

6.16 Moorings and Anchorage for Single Boats

One mooring or anchorage (not to exceed a weight of 100 pounds) per waterfront lot for use by a single boat may be placed in accordance with Rule 6.01.

6.17 Emergency Water Withdrawal for Fighting Fires

Emergency withdrawal of water from a *pond* or *flowing body of water* for the purpose of fighting fires is permissible in accordance with Rule 6.01, 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.

6.18 Planting in Perimeter Wetland or Riverbank Wetland

A. Planting in that land area that can only be classified as a *perimeter wetland* or *riverbank* wetland is permissible in accordance with Rule 6.01, provided that the following conditions are met:

1) The sole 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 trees or shrubs will occur. Cutting of existing groundcover or invasive vegetation 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 rootball;
3) Pavement removal is limited to that area that will be planted;
4) All plantings must be native species and suitable for the site condition;
5) No excavation, filling, draining or grading is allowed except for a minimal addition of topsoil for each new plant and the application of a layer of mulch or woodchips less than three inches deep around each new plant;
6) All disturbed soils must be stabilized with a southern New England native seed mix;
7) All plantings must be maintained until they are established; and
8) No soil disturbance is allowed from May 15 through September 15 to safeguard potential turtle nesting areas.

For tracking purposes, the property owner is asked to notify the *Department's* Water Quality and Wetland Restoration Team, in writing, within ten (10) days after completion of the plantings.

6.19 High hazard and significant hazard dams

Maintenance, repair and emergency repair of high hazard and significant hazard *dams* are permissible, provided that all proposed *projects* and activities adhere to the requirements of the *Department's* Rules and Regulations for Dam Safety, and provided that the *project* will not result in a *substantial alteration of a dam*, as defined herein. A high hazard *dam* is one where failure or misoperation will result in a probable loss of human life. A significant hazard *dam* is one where failure or misoperation results in no probable loss of human life, but can cause major economic loss, disruption of lifeline facilities or impact other concerns detrimental to the public's health, safety or welfare.

6.20 Low hazard dams

A. Limited cutting or clearing of vegetation is permissible, in accordance with Rule 6.01, 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 (15) feet from the perimeter of the *dam*, including the toe; or
2) It 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 Rule 6.01, and 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.

RULE 7.00 - GENERAL APPLICATION REQUIREMENTS

Rule 7.00 describes general application requirements and provisions. Specific requirements are described in Rules 8.00 through 11.00.

7.01 Application Forms and Their Submission

A. Forms Available

Forms for submitting all applications as set forth in the *Act* and these *Rules* are available at the *Department*, except that applications involving farming activities referred to in Section 2-1-22(i)(2) of the *Act* and Rule 11.04 herein, are available at the Division of Agriculture and Resource Marketing.

B. Where To Submit

All applications involving *freshwater wetlands* must be submitted for processing directly to the Freshwater Wetlands Program, except that any applications involving farming activities specifically referred to in Section 2-1-22(i)(2) of the *Act* must be submitted directly to the Division of Agriculture and Resource Marketing.

C. What To Submit

It is the responsibility of each applicant to submit a complete application package, including an original application form and any additional supporting information required by the *Department*. The application must be accompanied by full payment of the application fee (Rules 7.10 and 7.11).

D. 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.

E. 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 address.

7.02 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 Rule 7.02B: 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 geographic 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 that involve wetland *alterations* either partially or wholly on property owned or controlled by others must obtain written notarized authorization from the landowner of the property within which *freshwater wetlands* 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 Rule 7.01 (D) by granting such written notarized authorization to an applicant. 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.*

D. If the applicant is a government agency or entity, the agency or entity must demonstrate that it (1) owns the property or holds an easement of sufficient scope to cover the proposed *project*; or (2) has the requisite power of condemnation with regard to the relevant area. In such cases, authorization from each property owner who owns property containing *freshwater wetlands* that will be altered as a result of a proposed *project* is not required.

E. 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 Applications to Alter only.

7.03 Site Plan Requirements

A. Site plans must be submitted with the following application types: Request to Verify Wetland Edges (Rule 8.03); Request for Preliminary Determination (Rule 9.00); Application to Alter a Freshwater Wetland (Rule 10.00); and Request for Permit Modification (Rule 11.03). Site plans may be required for other application types as specified below and in Rules 8.00 through 11.00.

   1) For a Request to Determine the Presence of Wetlands, a site plan, while desirable, is not required, as described in Rule 8.02.

   2) For a Request for Regulatory Applicability, plan requirements are described in Rule 8.04.

   3) For a Request for Emergency *Alteration*, a site plan may be required, as described in Rule 11.01.

B. The correct number of site plans required by the application package must be provided at the time of submission. If additional plans are required, the applicant will be informed and must submit them.

C. All site plans must be drawn to scale. The scale of all plans must be no smaller than one inch = one hundred feet (1" = 100'); however, a larger scale is preferred (e.g., one inch = forty feet (1" = 40'). Where additional detail is required to complete its evaluation, the *Department* may require larger scaled details.

D. All site plans must be at least 8-1/2" x 11" in size but no larger than 24" x 36".

E. 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.

F. All site plans containing more than one (1) sheet must be numbered consecutively (specifically: “page 1 of [total number of sheets],” and so forth).

G. All site plans must contain a legend which explains all markings or symbols.

H. 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. Blueline or blackline prints or photocopies of originals are acceptable.

I. All site plans must depict at least 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 including, but not limited to, stone walls, buildings, fences, edge of fields/woods, trails, access roads, and parking lots; and

7) Scale of plans.

J. All site plans indicating physical features, distances, contour elevations, property lines, 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.

K. All site plans submitted with a Request to Verify Wetland Edges, a Request for Preliminary Determination or an Application to Alter a Freshwater Wetland must accurately depict the *edge* of all *freshwater wetlands* in accordance with Rule 7.04.

L. 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 which may affect any wetland including the height of planned buildings;

8) Any additional specific requirements contained in the application package checklist for proposed *projects*; and

9) A maintenance schedule of all proposed water quality and stormwater control structures.

M. 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 to Alter a Freshwater Wetland must, pursuant to *R.I.G.L.* Section 2-1-22, bear the stamp and signature of a Registered Professional Engineer.

7.04 Wetland Edge Requirements

A. Depiction on Site Plans – All site plans must accurately depict the following *freshwater wetland edges* as follows:

1) The *edge* of any *swamp*, *marsh*, *bog*; *pond*, *emergent* or *submergent plant community*, *shrub* or *forested wetland*, or any *special aquatic site*;
2) The *edge* of any *river*, *stream*, *intermittent stream*, *area subject to flooding* or *area subject to storm flowage*;
3) The *edge* of any fifty-foot (50') *perimeter wetland*;
4) The *edge* of any one hundred foot (100') or two hundred foot (200') *riverbank* wetland;
5) The *edge* and elevation of any *flood plain* and the limit of any *floodway* (Note: The *Department* may grant an exception to this requirement when a) pre-determined 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 100-year flood elevation); and
6) The name of any surface or flowing water body or any other wetland where applicable.

B. Delineation of Wetland Edges – Each wetland *edge* shall be identified on the property as follows:

1) The wetland *edge* shall be flagged with sequentially numbered or lettered flags. Flags must be placed at the wetland *edge* in sufficient numbers to clearly identify the *edge*. The distance between flags must allow for adequate visibility from one flag to another;

2) The 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 wetland *edges* may not be required in the following instances:

a) The 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 wetland *edges* (in such cases, depiction on site plans of approximate wetland *edges* will be acceptable); or

c) The wetland is on adjacent or nearby property, provided that the depiction of 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 *river*s, streams, *areas subject to storm flowage*, *perimeter wetlands*, *riverbank* wetlands or *floodplains* is not required.

C. Use of Global Position System (GPS) technology to delineate 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 standard ground survey.

7.05 <u>Additional Site Work</u>

A. To facilitate site inspection by the *Department*, the applicant must perform site work to clearly identify and label the following activities and features:

1) Property boundaries in or adjacent to wetlands, if few or no fixed reference points are available;
2) Wetland *edges*, in accordance with Rule 7.04 and Appendix 2, 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 detention and retention basins;
6) Subdivision lots and numbers;
7) Corner locations of proposed structures in or adjacent to wetlands;
8) Corner locations of proposed septic systems on proposed lots containing wetlands (staked and labeled);
9) Center lines of roadways, pipelines and *utility* lines, with station numbers indicated; and
10) Centerlines of proposed drainage channels.

7.06 <u>Requirements Regarding Use of Professionals</u>

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.G.L* Section 2-1-22, site plans submitted for an Application to Alter a Freshwater Wetland 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 100-year *flood plain* data are unavailable from FEMA.

3) Where pre-determined 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 100-year flood elevation.

4) With regard to an Application to Alter a Freshwater Wetland, 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* (Rule 7.04 and Appendix 2); and
2) Evaluation of wetland functions, values, and impacts (Rule 10.02 (E)).

E. The Estimated Construction Cost (ECC) for certain types of proposed *projects* or activities must be documented and prepared by an appraiser, general contractor, engineer, land surveyor, architect, landscape architect or another appropriately qualified professional (Rule 7.10).

F. Professionals who have prepared assessments, evaluations, recommendations, or reports on behalf of an applicant or respondent in matters involving enforcement of these *Rules* must document their participation in such matters**.**

G. For a determination that a proposed *project* involving certain new construction meets or exceeds all wetland *best management practices*, the *project* must be certified by an appropriate licensed professional.

7.07 <u>Application Processing</u>

A. Preapplication and Other Meetings. Any *person* may request a meeting with representatives of the *Department* to discuss regulatory procedures and requirements, to introduce a proposed *project* for an initial response and discussion, to discuss potential *project* design alternatives, and to discuss modifications to *project* designs. The following stipulations will apply:

1) If the *Department* has determined the presence of wetlands on or adjacent to the subject property, verified the wetland *edges* on the property, or if the property is the subject of a previous or ongoing wetland *permit* application, a *person* may request a meeting directly with the Wetlands Program. A meeting will be granted at the discretion of the Program based upon any statutory limitations.

2) If there are no prior wetland determinations or decisions by the *Department* about the subject property, a *person* may request a Pre-application meeting with the Office of Technical and Customer Assistance (OTCA) according to the policy established by that Office. The Wetlands Program may participate in the Pre-application meeting.

B. Coordination with Municipalities.

1) Applicants are encouraged to review local zoning, planning and building ordinances that may be relevant to a proposed *project* as part of preparing a *freshwater wetlands* application for the *Department*.

2) Coordination with appropriate municipal officials, as to aspects of a proposed *project* that may involve conflicts with requirements under these *Rule*s, should be undertaken prior to the submission of an application to the *Department* for review and approval of a proposed *project*.

3) The applicant may invite any appropriate municipal officials to preapplication meetings conducted at the *Department*, and the applicant is encouraged to do so for major land development *project*s.

C. Coordination with the Department's Individual Sewage Disposal System (ISDS) Program. The Department reserves the right to require that applications for the same proposed *project* be submitted concurrently to the Wetlands Program and to the ISDS Program to enable the *Department* to undertake a joint review.

D. Order in which Processed.

1) The *Department* will assign a number for identification purposes to each application, and shall notify the applicant of the receipt of the application and the number assigned to it. It is the responsibility of the applicant to refer to the assigned application number in all correspondence and inquiries regarding the subject application.

2) The *Department* staff 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. The *Department* may process applications out of sequence when those applications are submitted with a Certificate of Critical Economic Concern in accordance with Section 42-117, *et seq*. of the *R.I.G.L.* Requests for Emergency *Alterations* (Rule 11.01) will be processed immediately upon receipt.

E. Review for Completeness.

1) After the *Department* receives an application and assigns an application number, it will conduct a completeness review that will focus on administrative and technical reviews to determine whether the application's essential elements, in proper form, have been received and are considered complete. If the *Department* finds that an application is not administratively or technically complete, the applicant will be so informed through a notice of deficiency from the *Department*.

2) A Request for a Preliminary Determination or an Application to Alter is complete when in the opinion of the *Department* it provides all of the requisite information necessary to process the application in accordance with Section 2-1-22(a) of the *Act* and these *Rules*. With respect to an Application to Alter, when the *Department* determines that the application is technically complete, it also will issue the required public notice (see Rule 10.03).

F. Written Response. All *Department* decisions, determinations or authorizations, with the exception of responses to Requests for Emergency *Alterations*, will be issued in writing only and signed by the *Department*.

G. Any determination, verification or permit received from 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.

7.08 Suspension of Application Process

In any of the following circumstances, the *Department* may at its discretion suspend the processing of an application, provided that it so advises the applicant in writing and where appropriate it conducts an investigation of the matter alleged in any of the following circumstances:

A. Where the property with respect to which an application has been submitted is alleged to contain unauthorized *alterations* of *freshwater wetlands*, discovered either during the review of an application or during investigation of a complaint.

B. 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*.

C. Where information provided on the application form or in support of the application is misleading, false, erroneous, inconsistent with these *Rules*, incomplete or nonresponsive to deficiencies identified by the Department.

7.09 Recording and Transfer of Permits

A. Pursuant to *R.I.G.L.* 2-1-22 (f), 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.

B. 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 sale of the property to the new owner.

C. Pursuant to *R.I.G.L.* 2-1-22 (e), any subsequent transferee of the property subject to a *permit* to *alter* a *freshwater wetland* 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.

D. In the event a new property owner desires or needs a permit in his or her name, an Application for Permit Transfer may be submitted to the Department in accordance with Rule 11.04.

E. Pursuant to *R.I.G.L.* 2-1-22 (f), 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*.

7.10 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 Rule 7.11.)

C. The fees for certain proposed *projects* (e.g., reconstruction or new construction of roads, railways, or airport facilities and new *utility* installation, such as installation of major *utility* lines, pipes, etc.) shall be based on the Estimated Construction Cost ("ECC") of certain portions of such *projects*. The ECC must include the costs of construction activities such as materials, labor and equipment. The ECC shall not include the cost of land acquisition and consultant fees for planning, design and construction supervision. The ECC must be determined for all portions of the *project* that are proposed in or above any *freshwater wetlands*, and for those portions that are proposed in areas sloping/draining into on-site or adjacent *freshwater wetlands*.

D. The ECC for proposed *projects* must be documented and prepared by an appraiser, general contractor, engineer, land surveyor, architect, landscape architect or other appropriately qualified professional. Such documentation must be submitted by the applicant with the application. All ECCs shall be subject to review and acceptance by the *Department*. The *Department* may, when deemed necessary, require additional documentation and specific information regarding the ECC.

E. The *Department* will process an application only after receipt of the appropriate fee paid in full.

1) Fees not based upon an ECC: If the *Department* determines that a fee not based upon an ECC is incorrect, the *Department* will inform the applicant what additional monies must be submitted.
2) Fees based upon an ECC: If the *Department* determines that a fee based upon an ECC is substantially incorrect, the *Department* will so notify the applicant. The applicant must then either submit written documentation supporting its original calculation of the fee or submit additional monies to resolve any deficiency. When, in the opinion of the *Department*, the fee remains substantially incorrect, the *Department* will consider the application withdrawn, and will so notify the applicant.

F. 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 a Request for Preliminary Determination to the cost of a new application for the *project*, if:

1) A determination of *significant alteration* is issued and the original applicant subsequently files an Application to Alter Freshwater Wetlands for the proposed *project* within six (6) months of the date the preliminary 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 Request for Preliminary Determination that

incorporates the recommendations, within six (6) months of the date of issue of the original Preliminary Determination.

G. All fees must be paid by check or money order made payable to the Rhode Island General Treasurer. Fees in excess of Five Hundred Dollars ($500.00) must be in the form of a certified bank check.

H. No application fees pursuant to these *Rules* are required for *projects* where the *Department* is the applicant.

7.11 Fee Schedule

A. Request to Determine the Presence of Wetlands (Rule 8.02) where the total property area is:

1) Less than four (4) acres = $150.00.
2) Four (4) acres up to twenty (20) acres = $250.00.
3) Greater than twenty (20) acres up to forty (40) acres = $300.00.
4) Greater than forty (40) acres = $400.00.

B. Request to Verify Wetland Edge (Rule 8.03) where the wetland *edges* to be verified are:

1) Less than 500 feet in length. = $300.00.
2) From 500 to 999 feet in length = $600.00.
3) For edges 1000 feet or more, the fee shall be $900.00 plus $300.00 for every additional 500 feet of edge (examples: 1100 feet = $900.00 and 1500 feet = $1200.00)

C. Request for Regulatory Applicability (Rule 8.04) - $150.00

D. Request for Preliminary Determination (Rule 9.00) and Application to Alter a Freshwater Wetland (Rule 10.00)

Project Type	Preliminary Determination	Application to Alter
1) *Projects* associated with developed individual residential lots, e.g., additions, garages, decks, sheds, pools, tennis courts, walls, landscaping; ISDS, new wells, new *utility* lines, etc.	$150.00	$300.00
2) Construction of new individual residential lots, e.g., new single family dwellings and duplexes, and all associated utilities, ISDS, wells, garages, driveways, landscaping, sheds, pools, etc.	$450.00	$900.00
3) Limited *projects* associated with developed apartments, condominiums, offices, schools, churches and commercial/individual lots, e.g., additions, garages, decks, sheds, pools, tennis courts, walls, landscaping; ISDS, new wells, new *utility* lines, parking areas.	$300.00	$600.00

4) Construction of new apartments, condominiums, offices, schools, churches, commercial/industrial *projects*, including all associated site amenities, utilities and infrastructure, where all proposed work is confined to *existing* developed areas (buildings, parking areas, pavement, lawn) and where the 'total project area'* is: a) less than 1 acre; b) 1 acre to 4 acres; c) greater than 4 acres to 20 acres; d) greater that 20 acres. For proposed *projects* within Providence, Pawtucket, Central Falls, Newport, and Woonsocket and for properly certified Growth Center *projects* (when a copy of the certification is submitted with the wetland application and fee): * The 'total project area' is that land area enclosed within the Limit of Disturbance as described in Rule 7.03 L (3).	 $450.00 $900.00 $1800.00 $3600.00 The fee is 25% less than the applicable fee in a-d above.	 $900.00 $1800.00 $3600.00 $4500.00 The fee is 25% less than the applicable fee in a-d above.
5) Construction of new apartments, condominiums, offices, schools, churches, commercial/industrial lots including all associated site amenities, utilities and infrastructure, on undeveloped property or where work is not confined to *existing* developed areas and where the 'total project area' is: a) less than 1 acre; b) 1 acre to 4 acres; c) greater than 4 acres to 20 acres; d) greater that 20 acres. * The 'total project area' is that land area enclosed within the Limit of Disturbance as described in Rule 7.03 L (3).	 $750.00 $1500.00 $3000.00 $6000.00	 $1500.00 $3000.00 $6000.00 $7500.00
6) New subdivisions and multiple lot *projects* (including residential, commercial, and industrial development) with all associated infrastructure: 2 lots 3 lots 4 or 5 lots each additional lot* *The maximum total fee for any new subdivision is	 $900.00 $1200.00 $1500.00 $175.00 $6500.00	 $1800.00 $2700.00 $3000.00 $250.00 $10,500.00
7) Miscellaneous separate *projects*:		
a) (1) Individual docks, floats; (2) *Wildlife habitat project* or *water quality improvement project*; (3) Dry hydrants, (4) Wetland *restoration project*	$100.00	$300.00

b) (1) Land redevelopment/reuse *projects* limited to conversion of sand and gravel banks, mill sites, abandoned commercial/industrial property to public recreation facilities; (2) Rehabilitation of *existing* parks or recreational areas of any size or new parks less than or equal to 4 acres; (3) Multiple docks, floats, or individual boat launches; (4) Pedestrian trails, paths, foot bridges; (5) Irrigation *projects*, subdrains; (6) Low hazard *dam* repairs; and (7) *Dam* removal *projects*.	$300.00	$750.00
c) (1) Wells other than for single family house lots; (2) New *pond* construction; (3) New or replacement drainage structures/facilities, e.g., culverts and detention basins; and (4) Aquatic plant control *projects.* If done pursuant to a lake management plan in accordance with guidance prepared by the *Department*, the fee will be reduced by 50%.	$600.00	$1500.00
d) (1) Construction of all new *dams*; (2) *Substantial alteration of a dam* (high, significant, or low hazard).	$600.00	$2000.00 plus $200.00/ acre impoundment
e) (1) New parks or recreational areas where the total *project* area is greater than 4 acres; (2) Land clearing and/or grading operations; (3) Industrial processing/cooling, hydroelectric *projects*; and (4) Bike paths.	$1200.00	$4000.00
f) (1) Surface mining, e.g. gravel quarry; and (2) New golf courses:	$6500.00	$10,500.00
g) *River*/*stream* relocation and/or channelization: (1) *River*/*stream* length to be altered (2) *Area subject to storm flowage* to be altered	$10.00/linear ft $6.00/linear ft to maximum of $20,000.00	$50.00/ linear ft $25.00/ linear ft to maximum of $20,000.00
h) Other new construction, reconstruction, demolition, or modification *projects* not otherwise listed above;	$1200.00	$4000.00
8) Fees based on Estimated Construction Costs (see Rule 8.06 for how ECC is computed), including all associated drainage systems/facilities, bridges and utilities. (a) Reconstruction of *existing* or approved roads, railways, or airport facilities:		
(i) Less than or equal to $200,000.00	$1000.00	$2000.00
a. Greater than $200,000.00 but less than $500,000.00	$2000.00	$3000.00

b. Greater than $500,000.00 but less than $1,000,000.00	$3000.00	$4000.00
c. Greater than $1,000,000.00	$6000.00	$8000.00
(b) New road, railway, or airport facility construction:		
Less than or equal to $200,000.00	$2000.00	$4000.00
(ii) Greater than $200,000.00 but less than $500,000.00	$4000.00	$7000.00
Greater than $500,000.00 but less than $1,000,000.00	$6000.00	$10,000.00
(iv) Greater than $1,000,000.00	$8000.00	$20,000.00
(c) New *utility* installation not exempt under Rule 6.10		
(i) Less than or equal to $200,000.00	$800.00	$2,000.00
(ii) Greater than $200,000.00 but less than $500,000.00	$1,500.00	$3000.00
(iii) Greater than $500,000.00 but less than $1,000,000.00	$2,000.00	$4,000.00
(iv) Greater than $1,000,000.00	$4,000.00	$6,000.00

E. Application for Permit Modification (Rule 11.03) = $150.00

F. Application for Permit Renewal (Rule 11.02) = $200.00

G. Application for Permit Transfer (Rule 11.04) = $50.00

H. Negotiated Settlements (Rule 10.10) = 25% of original application fee.

I. 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 = $2,500.00

2) Adjudicatory Hearings = $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.

J. Change in Owner During Application Processing = $50.00.

RULE 8.00 – REQUEST FOR DETERMINATION OF THE PRESENCE OF WETLANDS, WETLAND EDGE VERIFICATION, OR REQUEST FOR REGULATORY APPLICABILITY

8.01 Purpose

An application may be made to the *Department* to request a determination regarding:

A. The presence of wetlands on the property which are regulated under the *Act* (Rule 8.02).

B. The verification of the delineated *edge* of wetlands on the property (Rule 8.03); or

C. Whether the *Rules* apply to a proposed *project*, or not, or confirmation that a *project* is exempt according to Rule 6.00 (Rule 8.04).

8.02 Request to Determine the Presence of Wetlands

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

1) A completed application form (Rule 7.01 and 7.02);

2) The appropriate fee (Rule 7.11 (A)); and

3) A site plan of the subject property (Rule 7.03), while desirable, is not required. At a minimum, a tax assessor's map that includes a title block and locus map, drawn to a scale no smaller than 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 or not regulated wetlands are present. The purpose of this determination is to determine whether wetlands are present on the property and the type of such wetlands, not to verify the specific location of any such wetlands.

C. Any determination regarding the presence of wetlands issued by the *Department* in accordance with this Rule shall be valid for a period of four (4) years from the date of issue; any such determination issued prior to the April 7, 1994 *Rules* is no longer valid.

8.03 Request to Verify Wetland Edges

A. An applicant seeking a Request to Verify Wetland Edge must submit the following documents and adhere to the following requirements:

1) A completed application form (Rule 7.01 and 7.02);
2) The appropriate fee (Rule 7.11 (B));

3) A site plan of the subject property (Rule 7.03 and 7.04) prepared by a qualified professional (Rule 7.06), that identifies the wetlands and their *edges* that the applicant requests the *Department* to verify; and

4) Completed wetland *edge* documentation forms (Rule 8.03 (E)(3)).

B. Site plans submitted for Request to Verify 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 Appendix 2.

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 Appendix 2).

E. For verification purposes, the applicant must undertake the following steps:

1) Identify each wetland *edge* that the applicant wishes to have verified on the property, and record the edge on a site plan.

(a) The wetland *edge* on the property shall be flagged with sequentially numbered or lettered flags, and the flags must be placed at the wetland *edge* in sufficient numbers to clearly identify the *edge* to be verified. The distance between flags must allow for adequate visibility from one flag to another during the growing season.

(b) The 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 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 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 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 (i) a request to verify the *edge* of the 100-year *flood plain* has been made; or (ii) the wetland *edge* is located along or within a parcel exceeding ten (10) acres.

G. The *Department* will inspect the wetland *edge(s)* delineated by the applicant and, if in substantial agreement with the documentation provided by the applicant, confirm the presence of identified wetlands and the location of their delineated *edges*.

H. Any verification of a wetland *edge* or series of edges issued by the *Department* shall be valid for a period of four (4) years from the date of issue; any such determination issued prior to the April 7, 1994 *Rules* is no longer valid.

I. A Request to Verify 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.

8.04 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 (Rule 7.01 and 7.02);

2) The appropriate fee (Rule 7.11 (C));

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 wetlands or wetland *edges* of concern;

4) A written *project* description including the purpose, size, and location of the *project*;

5) A written description of how potential 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 wetland *edge* may facilitate the applicability decision.

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 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.

RULE 9.00 – REQUEST FOR PRELIMINARY DETERMINATION

9.01 Purpose and Outcomes

A. A Request for Preliminary Determination application may be submitted to the *Department* to receive a determination as to whether or not a proposed *project* represents a *significant alteration*.

B. The *Department's* review of a Request for Preliminary Determination may result in one of the following outcomes:

1) Issuance of a *permit*, with conditions, for an *insignificant alteration* of *freshwater wetlands*. Appendix 1 of these *Rules* provides examples of *insignificant alterations*; or

2) Issuance of a determination, in accordance with Section 2-1-22(a) of the *Act*, that a *significant alteration* has been proposed and that a *permit* may be sought only by filing an Application to Alter a Freshwater Wetland (Rule 10.00); 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.

9.02 Application Requirements

An applicant seeking a Request for Preliminary Determination must submit the following documents and must adhere to the following requirements:

A. Project Scope. The application must include and describe the entire *project* either proposed or contemplated 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:

1) The *Department* has previously reviewed the entire *project* and has considered all *project* impacts on *freshwater wetlands*; or

2) 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*.

B. General Requirements. The applicant must satisfy the general requirements set forth in Rule 7.00 which include the following:

1) A completed application form (Rules 7.01 and 7.02);

2) The appropriate fee (Rules 7.10 and 7.11);

3) A completed site plan that accurately depicts the wetlands *edges* that are on the property (Rules 7.03 and 7.04); and
4) Site requirements to identify the proposed *project* (Rule 7.05).

C. Project Description. The applicant must provide an overall description of the *project*, including *project* size, purpose, location and type; site history; and a description of the areas evaluated, including nearby roadways and adjacent land uses.

D. Avoidance and Minimization Requirement

1) Avoidance: All *persons* must satisfactorily demonstrate to the *Department* in the form of a written narrative that all probable impacts to *freshwater wetlands* 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*. At a minimum, applicants must consider and address the following issues:

a) Whether the primary proposed activity is water-dependent or whether it requires access to *freshwater wetlands* as a central element of its primary purpose (e.g., a pier);

b) 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*;

c) 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 wetland *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;

d) Whether alternative designs, layouts or technologies could be used to avoid *freshwater wetlands* 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 wetlands;

e) Whether the applicant has made any attempts (and if so what they were) to avoid *alterations* to *freshwater wetlands* by overcoming or removing constraints imposed by zoning, infrastructure, parcel size or the like; and

f) Whether the *feasible* alternatives that would not *alter* the natural character of any *freshwater wetlands* 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.

2) Minimization: For any impact to *freshwater wetlands* that cannot be avoided, the applicant must satisfactorily demonstrate to the *Department* in the written narrative that the impact to wetland functions and values have been reduced to the maximum extent possible. At a minimum, applicants must consider and address the following issues:

a) Whether the proposed *project* is necessary at the proposed scale or whether the scale of the wetland *alteration* could be reduced and still achieve the *project* purpose;

b) 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 impact to the wetland;

c) Whether there are *feasible* alternative designs, layouts, densities or technologies, that would result in less impact to the wetland while still achieving the *project* purpose; and

d) Whether reduction in the scale or relocation of the proposed *project* to minimize impact to the wetland would result in adverse consequences to public health, safety or the environment.

3) Mitigation Measures. Measures, methods, or *best management practices* to avoid *alterations* of and minimize impacts to wetlands include, but are not limited to:

a) Preserving natural areas in and around wetlands;

b) Minimizing the extent of disturbed areas and encouraging the preservation of land in its natural state;

c) Designing dense plantings of shrubs and trees between the developed areas and the remaining natural areas (i) to "buffer" impacts from loss of *wildlife habitat* and loss of natural areas and (ii) to reduce the impacts of noise, lighting and other disturbances upon *wildlife* and the remaining natural areas;

d) Maintaining unrestricted fish and *wildlife* passage;

e) Designing structures and *alterations* so that they are located outside of *flood plain*, *floodway*, areas subject to flooding, flowing bodies of water or other *freshwater wetlands*;

f) Using *best management practices* for the stabilization of disturbed areas and the selection, use, and maintenance of temporary or permanent soil erosion and *sediment* controls in accordance with or equivalent to the latest version of the Rhode Island Soil Erosion and Sediment Control Handbook;

g) Using *best management practice* selection and design criteria in accordance with or equivalent to the Rhode Island Stormwater Design and Installation Standards Manual to maximize the control, treatment and maintenance of stormwater flows;

h) Minimizing impervious surface areas such as roads, parking, paving or other surfaces;

i) Incorporating compensatory flood storage area(s) where necessary and in compliance with these *Rules*;

j) Encouraging infiltration of non-contaminated run-off into uncontaminated soils;

k) Preventing channelization or piping of run-off and encouraging sheet flow;

l) Landscaping with gradual slopes to maximize sheet flow and infiltration while minimizing channelization;

m) Minimizing or eliminating the use or increase of any *pollutants*, fertilizers, pesticides, herbicides, or any other chemical or organic application which increase *pollutant* and nutrient loadings;

n) Maximizing setbacks of septic systems and other land disturbances from wetlands; and

o) Minimizing the withdrawal of surface water or groundwater from wetlands or uplands adjacent to wetlands, especially during dry periods, and minimizing any reduction in *river* or *stream* flow.

E. Engineering Requirements

1) Applicants must submit supporting calculations, documents, and reports to demonstrate that the proposed *project* meets or exceeds the review criteria set forth in Rule 9.03 below and in Rule 10.05. Applicants should refer to the written evaluation – required elements in Rule 10.02 (E)(4)(c - e) for guidance.

2) Engineering calculations are not required for individual residential lots except where *areas subject to storm flowage, rivers, streams*, or *flood plains* will be altered.

3) 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.

F. Compliance with Water Quality Regulations. Applicants must comply with the *Department*'s Water Quality Regulations and standards. A separate application is not required unless specified in said Regulations.

9.03 Review by the Department

A. On-Site Review and Evaluation. Pursuant to Section 2-1-22(a) of the *Act*, the *Department* will act on a Request for Preliminary Determination 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*.

B. Significant Alteration. The *Department* will evaluate all Requests for Preliminary Determination to ascertain whether such *projects* will result in *significant alterations* of *freshwater wetlands*. The *Department* will consider the following criteria in making this evaluation, as well as the criteria in Rule 10.05. A proposed *alteration* may be considered significant whenever any one of the following conditions exist:

1) A *project* does not satisfactorily avoid, minimize or *mitigate* impacts to *freshwater wetlands*;

2) A *project* appears to propose a *random, unnecessary, or undesirable alteration* to *freshwater wetlands*;

3) A *project* appears to *alter* the character, functions or values of any *freshwater wetland* in a way that could result in the following:

a) More than a minimal change of any portion of any *swamp, marsh, pond, bog*; *special aquatic site*, emergent, submergent, shrub or *forested wetland, river, stream, intermittent stream* or other watercourse from wetland to upland;

b) The detrimental modification of the biological, chemical or hydrologic characteristics of any wetland areas which could reduce the natural values associated with the wetland;

c) Reduction of the value of any fifty-foot (50') *perimeter wetland*, or one hundred foot (100') and two hundred foot (200') *riverbank* wetland through permanent loss or change in characteristics;

d) More than minimal displacement of any flood waters onto or into property owned by others;

e) Increased flooding by a change in runoff;

f) Reduction of the groundwater recharge or discharge value of any wetland;

g) Reduction of *river*, *stream* or *intermittent stream* flows as a result of diversion or withdrawal of water;

h) Permanent change or conversion from one habitat type in a wetland to another; or

i) The disturbance or destruction of any *rare* species or *rare* wetland type or the degradation of habitat for *rare* species.

4) A *project* proposes temporary *alterations* which over time may cause significant permanent *alterations* to *freshwater wetlands* and their functions and values; or

5) Any individual *alteration* that may, when evaluated cumulatively with other *alterations*, cause significant impacts to *freshwater wetlands* and their functions and values.

C. Insignificant Alteration. In order to obtain a *permit* for an *insignificant alteration*, the *Department* must be satisfied, either by supporting site plan(s) and documentation provided by the applicant and his or her qualified professionals or by staff evaluation, that:

1) All probable impacts to *freshwater wetland* functions and values have been avoided to the maximum extent possible;

2) Any impacts resulting from physical loss or permanent change of wetland characteristics are so limited in scope, area or duration that they could only result in minimal change to the characteristics, functions and values of the *freshwater wetland*;

3) The *project* does not appear to propose any *random, unnecessary, or undesirable alteration* to any *freshwater wetland*;

4) *Best management practices* and other mitigative features were incorporated to avoid a *significant alteration* of wetlands and to protect wetland functions and values; and

5) The *project* complies with the review criteria set forth in Rule 10.05.

9.04 Permit Requirements, Conditions and Renewals

A. The *Department* may grant a *permit* in response to a Request for Preliminary Determination, without first requiring an Application to Alter a Freshwater Wetland under Section 2-1-22(a) of the

Act, provided, however, that any such *permits* shall only be issued for *insignificant alterations* and shall be subject to such conditions, including time of completion, as the *Department* may require to protect the wetlands.

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*. All applicants receiving a *permit* or subsequent transferees of the property shall avoid or minimize adverse impacts to any *freshwater wetlands* 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 a Request for Preliminary Determination applies only to the proposed *project* that is described in the Request 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 correct application number.

E. Any permit issued in response to a Request for Preliminary Determination shall be valid for a period of four (4) years from the date of issuance, except that such permits that relate to the development of property that were in effect on November 9, 2009 at the time of passage of Rhode Island Public Laws Chapters 09-198 and 09-199 are subject to tolling pursuant to R.I. Gen. Laws §42-17.1-2.5 and shall not expire prior to June 30, 2011 or four (4) years from the date of issuance whichever occurs later. The permit shall be renewable by the permit holder for one additional two year period from the date of expiration, provided that:

1. The permit holder and project are in compliance with the permit; and
2. The permit holder submits an Application for Renewal that meets the requirements of Rule 11.02.

F. Upon completion of the construction 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 *Department*'s *permit*, any Preliminary Determination issued by the *Department*, that relates to an approval of a project as an *insignificant alteration* or a determination that the *Act* does not apply to a specific project, prior to April 7, 1994, is expired.

9.05 Department's Decision – Notification

The *Department* will mail notice of its decision to the applicant and the applicant's representative, if any, consistent with Section 2-1-22(g) of the *Act* and Rule 7.01E. At least once each month, the *Department*

will also mail 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* lies.

9.06 Application Closure

A. The *Department's* consideration of any Request for Preliminary Determination shall be deemed to have terminated, and the applicant's file shall be deemed closed, when any of the following circumstances has 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 Rule 7.02 (E) within 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* of *freshwater wetland*.

RULE 10.00 - APPLICATION TO ALTER A FRESHWATER WETLAND

10.01 Purpose

A. In accordance with Section 2-1-22(a) of the *Act*, an Application to Alter a Freshwater Wetland will be required if a *significant alteration* is proposed. Such an application is subject to the application procedures and requirements as set forth in Section 2-1-22 of the *Act* and 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*; 2) may be detrimental to the basic natural capabilities or values associated with such *freshwater wetland*; or 3) appears to be *random, unnecessary or undesirable*.

C. Prior to filing an Application to Alter, an applicant may file a Request for Preliminary Determination to determine whether or not a *project* appears to represent a *significant alteration* to *freshwater wetlands*. The *Department* recommends that an applicant file a Request for Preliminary Determination prior to filing an Application to Alter, unless the applicant is confident that the *project* represents a *significant alteration* to *freshwater wetlands*.

10.02 Application Requirements

An applicant seeking a *permit* for a *significant alteration* through an Application to Alter a Freshwater Wetland must adhere to the following requirements and submit all written evaluations and documentation as set forth in Rule 10.02 (C).

A. Project Scope. An Application to Alter a Freshwater Wetland must include and describe the entire *project* proposed or contemplated 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:

1) The *Department* has previously reviewed the entire *project* and considered all *project* impacts on *freshwater wetlands*; or

2) 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*.

B. General Provisions. A completed Application to Alter must comply with the general provisions set forth in Rule 7.00 as well as the following specific requirements:

1) An original completed application form (See Rule 7.01);

2) Site plans which accurately and clearly depict the *project* and provide, in the opinion of the *Department*, the correct location, extent, and type of all wetlands within and near the *project* (Rule 7.03 and 7.04);

3) A fee (Rule 7.10 and 7.11);

4) Proof of ownership in the form of a current certified copy of the deed of the subject property;

5) Pursuant to Section 2-1-22(a) of the *Act*, 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 map drawn to scale of not less than one inch to one hundred feet (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 wetland *alteration(s).*

   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 wetland *alteration* boundaries must include at least the following:

   a) The extent of all physical disturbance in regulated wetlands;

   b) The extent of any impoundment or raising of water elevations in wetlands;

   c) The extent of drainage of wetlands, including lowering of surface and sub-*surface water* elevations;

   d) The relocation of flowing bodies of water or watercourses, including the original and proposed locations; and

   e) The expansion of any regulated wetland areas into adjacent properties.

6) All written evaluations and documentation as set forth in Rule 10.02 (C);

7) 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;

8) 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 all wetlands within the *project* in a manner sufficient for the *Department* to properly complete its evaluation.

C. <u>Written Documentation and Evaluation</u>

All applicants must provide a written evaluation including a table of contents, a *project* description, an avoidance and minimization statement, and an evaluation of the wetland functions, values and impacts:

1) The Table of Contents shall list all section titles and their corresponding page numbers.

2) The Project Description shall describe the overall *project*, including the *project* size, purpose, location, and type; site history; and overall areas evaluated including nearby roadways and adjacent land uses.

3) The Avoidance and Minimization Statement must satisfy the avoidance and minimization requirements as set forth in Rule 10.02 D below.

4) The Evaluation of Functions, Values, and Impacts must describe the evaluation methodology, qualifications of professional(s) performing the evaluation; identification of regulated *freshwater wetlands*; description of wetland functions, values, and impacts, identification of the proposed measures to reduce such impacts; conclusions; and any literature citations as set forth in Rule 10.02 E below.

D. Avoidance and Minimization Requirement

1) Avoidance: All *persons* must satisfactorily demonstrate to the *Department* in the form of a written narrative that all probable impacts to *freshwater wetlands* 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*. At a minimum, applicants must consider and address the following issues:

a) Whether the primary proposed activity is water-dependent, or whether it requires access to *freshwater wetlands* as a central element of its primary purpose (e.g., a pier);

b) 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*;

c) 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 wetland *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;

d) Whether alternative designs, layouts or technologies could be used to avoid *freshwater wetlands* 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 wetlands;

e) Whether the applicant has made any attempts (and if so what they were) to avoid *alterations* to *freshwater wetlands* by overcoming or removing constraints imposed by zoning, infrastructure, parcel size or the like; and

f) Whether *feasible* alternatives that would not *alter* the natural character of any *freshwater wetlands* 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.

2) Minimization: For any impact to *freshwater wetlands* that cannot be avoided, the applicant must satisfactorily demonstrate to the *Department* in the written narrative that the impact to wetland functions and values have been reduced to the maximum extent possible. At a minimum, applicants must consider and address the following issues:

a) Whether the proposed *project* is necessary at the proposed scale or whether the scale of the wetland *alteration* could be reduced and still achieve the *project* purpose;

b) 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 impact to the wetland;

c) Whether there are *feasible* alternative designs, layouts, densities or technologies, that would result in less impact to the wetland while still achieving the *project* purpose; and

d) Whether reduction in the scale or relocation of the proposed *project* to minimize impact to the wetland would result in adverse consequences to public health, safety or the environment.

3) Mitigation Measures: Measures, methods, or *best management practices* to avoid *alterations* of and minimize impacts to wetlands are described in Rule 9.02 (D) (3).

E. Evaluation of Wetland Functions, Values, and Impacts

All applicants must describe those functions and values provided and maintained by the subject *freshwater wetland*; describe and assess any anticipated impacts to the wetland's 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* to the maximum extent possible. This written evaluation must clearly and fully explain how the proposed project complies with the applicable review criteria set forth or referred to in Rule 10.05 and must describe the evaluation methodology, the qualifications of persons involved in the evaluation, and must describe all freshwater wetlands.

1) 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.

2) Qualifications: List the names and qualifications of each *person* involved in the evaluation. Assessment of wetland functions and values and impacts may require input by more than one qualified professional consultant or more than one individual familiar with the specific functions or values of the wetland. 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.

3) Freshwater Wetlands: Describe all *freshwater wetlands* on-site as well as any off-site wetlands that are hydrologically connected to the on-site wetland(s) and identify all wetlands evaluated, including any areas of potential impact associated with the *project* within *freshwater wetlands*.

4) In addition to the evaluation elements required above, the applicant must address the following requirements in the written evaluation:

a) Wildlife and Wildlife Habitat

(i) Wetland Characteristics. Provide the size of the 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) or, if a *pond*, *special aquatic site* or watercourse, the dominant aquatic vegetation; identify and describe any standing or flowing water bodies, water quality, nearby land uses within one hundred and fifty feet (150') of the *edge* of the subject wetlands; and identify the wetland(s) which are hydrologically connected to the on-site wetland(s) with distances between wetlands provided;

(ii) 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;

(iii) Wetland Values. Identify and describe the current and potential ability of the wetlands to provide or maintain the functions and values as defined herein relating to *wildlife* and *wildlife habitat*; and

(iv) Proposed Impacts. Identify and describe the physical, chemical and biological impacts, both short-term and long-term, to the *wildlife habitat* associated with the wetland 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.

b) Recreation and Aesthetics

(i) Wetland Characteristics. Provide the size of the wetland(s), and describe topography, soils, hydrology, dominant plant communities and vegetation in each stratum (i.e., tree, shrub, and herbaceous layers), or if a *pond* or watercourse, the dominant aquatic vegetation; identify and describe any standing or flowing water bodies, water quality, nearby land uses within one hundred and fifty feet (150') from the *edge* of the subject wetland(s), and identify the wetland(s) which are hydrologically connected to the on-site wetland(s) with distances between wetlands provided. Also, identify and describe the location of the wetland(s) and the availability of public access and viewing sites;

(ii) Wetland Values. Identify and describe the current and potential ability of the wetland to provide or maintain the functions and values as defined herein relating to recreation and aesthetics; and

(iii) Proposed Impacts. Describe the probable individual and *cumulative impacts* of the *project* on the wetland's recreational and aesthetic values and any potential reduction in the wetland's current or potential ability 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; wetland'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 wetland's functions and values as a *rare* wetland type.

c) Flood Protection

(i) Drainage Characteristics. Identify and describe the drainage characteristics of the site of the *project*, including any areas contributing stormwater runoff to *freshwater wetlands*; describe the drainage characteristics of any *surface water* flows 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 100-year frequency storm flood event. Include a map which delineates the watershed of: the site of the *project*; any wetlands receiving water from the site of the *project*; and any off-site wetlands which may be impacted by the *project*.

(ii) Wetland Values. Identify and describe the wetland functions and values as defined herein relating to the ability of the wetland to temporarily store or meter out flood waters from storm events, and to accommodate *surface water* and drainage through or within the wetland under pre-*project* conditions.

(iii) Analysis of Proposed Impacts.

(aa) *Projects* proposing changes in run-off towards *freshwater wetlands*:
Submit a stormwater analysis for pre- and post-*project* runoff rates based upon the 2-year, 10-year, 25-year and 100-year, 24-hour, Type III storm events. The analysis must be performed using acceptable methodology (e.g., Natural Resources Conservation Service TR-55 or TR-20 as appropriate, or other widely accepted methods). 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 wetland functions and values as defined herein. Describe the anticipated impacts to the wetlands using supporting calculations, data, diagrams, graphs, and observations.

(bb) *Projects* proposing changes in drainage characteristics of *freshwater wetlands* or affecting the wetland's ability to store, meter out, or reduce the impacts of flooding and flood flows: Identify and describe all *project* components that may

decrease the wetland's flood storage capacity, decrease the wetland's ability to meter out flood waters, or decrease the wetland's 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 wetland functions and values as defined herein. 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 2-year, 10-year, 25-year and 100-year, 24-hour, Type III storm event for pre- and post-*project* conditions.

(iv) Compensation for Loss of Flood Storage. *Projects* which propose filling or placement of structures in a *flood plain* or *area subject to flooding* may provide compensatory flood storage in order to comply with the review criteria as set forth in Rule 10.05 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:

(aa) The volume of compensatory flood storage must be equal to or greater than the volume of floodwaters displaced by the *project*;

(bb) The compensation area must have an unrestricted hydraulic connection to the affected wetland and provide the same rate of flood storage capture and discharge over the course of the flood event as in pre-*project* conditions;

(cc) 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;

(dd) Compensatory storage must precede the construction of any portion of the *project* which displaces flood waters;

(ee) 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

(ff) The design must include all features and *best management practices* to ensure that impacts to other *freshwater wetland* functions and values have been *mitigated*.

d) Groundwater and Surface Water Supplies

(i) Drainage Characteristics. Identify and describe the current drainage characteristics, including both surface and groundwater flows, within and to any wetland(s) 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 wetland(s) 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 wetlands receiving water from such site; and any off-site wetlands which may be impacted by the *project*.

(ii) Wetland Functions and Values. Identify and describe the wetland's functions and values as defined herein relating to *surface water* or groundwater supplies.

(iii) 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 wetland(s), 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 wetland functions and values. Describe the anticipated impacts to the wetland using supporting calculations, data, figures, diagrams, graphs and observations as appropriate.

e) Water Quality

(i) Drainage Characteristics. Identify and describe the current drainage characteristics of the area of the *project*, including any on- or off-site wetlands that may be impacted by the *project*.

(ii) Wetland Functions and Values. Identify and describe the wetland's functions and values as defined herein relating to water quality; and describe the present water quality classification of any water body as set forth in the most recent edition of the Rhode Island Department of Environmental Management 3.05(b) Report, State of the State's Waters. Include a description of the water quality conditions of all *freshwater wetlands* within the *project* area, as well as any off-site wetlands that may be affected by the *project*.

(iii) Water Quality Analysis. Submit a water quality analysis which:

(aa) Calculates the quantities of *pollutants* in stormwater runoff for both pre- and post-*project* conditions by utilizing the most recent edition of Rhode Island's Stormwater Design and Installation Standards Manual 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

(bb) Calculates the *pollutant* concentrations or loadings from land uses or *pollutant* sources other than stormwater run-off, including, but not limited to, fertilizers, herbicides, pesticides, or any other chemical or organic matter for both pre- and post-*project* conditions by utilizing the best available technology. The acceptance of the method utilized for such calculations is subject to *Department* approval.

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

f) Soil Erosion and Sediment Control.

(i) 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 wetland functions and values and meet the review criteria as set forth in Rule 10.05. The written evaluation must include supporting calculations, data, figures, diagrams, graphs and observations.

4) Conclusion

Identify and detail how the *project* meets the review criteria as set forth in Rule 10.05. Describe any measures to reduce impacts which were considered and rejected and indicate why they cannot or should not be employed.

5) Literature Citations

Provide citations for all literature used to support the evaluation.

F. Compliance with Water Quality Regulations. Applicants must comply with the *Department*'s Water Quality Regulations and standards. A separate application is not required unless specified in said Regulations.

10.03 Completeness Determination

Prior to the public notice of any Application to Alter Freshwater Wetlands, the *Department* will review the application to determine whether or not it is a *completed application* for public notice purposes only (see Rule 10.02 B). 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*.

10.04 Public Notice and Participation – Public Hearings

A. Public Notice

1) Notice: An Application to Alter a Freshwater Wetland shall be publicly noticed in accordance with Section 2-1-22(a) of the *Act*.

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 Section 2-1-22(a) of the *Act*. The public notice period shall commence upon the day of mailing of the notice and end forty-five (45) days thereafter.

3) Notice for Public Comment – Delivery: Notice of the application shall be made by first class 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 Rule 7.02C, 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 10.04 (A) (2).

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 wetland area(s) 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, one full-size copy of the site plans, and a copy of one completed application form as provided by the applicant 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 *permit* the *project*.

3) Review During Public Notice: The *Department* will not make a decision on an application as to whether any wetland *alteration* is *random, unnecessary, or undesirable* during the public notice period.

C. Public Comments

1) Comments filed with the *Department* under the provisions of Section 2-1-22 of the *Act* 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 Section 2-1-22(b) of the *Act*. In accordance with Section 2-1-22 of the *Act*, 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 (i) relates to the functions and values of the wetlands; (ii) has not been clearly addressed by the applicant in his or her application, (iii) has not been assessed by the *Department* during its review of the application, and (iv) cannot be resolved by the *Department's* evaluation of the application.

4) If a comment is determined to be a substantive objection, the applicant will be so notified by certified mail. The applicant may then withdraw his or her application or, if she or he 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 (Rules 7.10 and 7.11 (I)(1). The *Department* will schedule the public hearing under the provisions of Section 2-1-22 of the *Act* 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, his or her 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, his or her 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. City or Town Disapproval

1) Pursuant to Section 2-1-21(a) of the *Act*, the *Department* may not approve an application which is disapproved by the city or town.

2) In accordance with Section 2-1-21(a) of the *Act*, the *Department* shall consider the application disapproved by the city or town when the *Department* receives a letter which informs the *Department* that the city or town council has voted to disapprove the application within the forty-five (45) day comment period by objecting to; opposing; vetoing; or denying the *project* as noticed by the *Department***.** The *Department* will not consider any conditional or otherwise unclear responses by the city or town to constitute a disapproval. Any comment received from a city or town council that does not represent a disapproval shall be reviewed to determine whether or not the comment is a substantive objection.

3) When in receipt of a city or town disapproval, the *Department* shall render a decision which either:
   a) Denies the application based solely on the disapproval issued by the city or town; or
   b) Denies the application based upon the *Department's* own evaluation and findings in conjunction with the disapproval issued by the city or town.

4) Any request made by the applicant to the *Department* to modify an application or site plans in accordance with negotiations held between the city or town and the applicant shall require a new application to the *Department*.

5) In accordance with Section 2-1-21 of the *Act*, the *Department* is not precluded from granting an approval of *alterations* of wetlands relating to a highway *project* proposed by the Rhode Island Department of Transportation which has been submitted under a single application, despite city or town disapproval, when such state highway *project* passes through or crosses two or more municipalities, as reflected in the application to the *Department*. However, in the event that the city or town disapproves of an Application to Alter Freshwater Wetlands relating to a state highway *project* which is proposed to take place within only one municipality, the *Department* may not approve such application and will treat such application in accordance with this Rule regardless of whether or not additional applications have been or will be filed which extend the *project* into more than one municipality.

E. Public Hearings

1) When necessary, in accordance with Section 2-1-22 of the *Act*, the *Department* will hold public hearings on proposed *alterations* to wetlands when a request for such hearing is made in accordance with Rule 10.04 (C) (4)). 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 wetland. 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.

10.05 <u>Review Criteria</u>

A. The *Department* will evaluate all *projects* to determine the extent to which the proposed *project* will have an impact, either individually or cumulatively, upon wetland functions or values as described in this Rule.

B. All such *projects* shall:

1) Be subject to all of the review criteria contained herein and must incorporate those *best management practices*, best available technologies, and any maintenance or inspection schedules necessary to comply with the applicable criteria;

2) Not adversely affect any wetland so as to cause any of the impacts identified in Rule 10.05 (C) below; and

3) Shall not result in any *random, unnecessary or undesirable alteration* of freshwater wetland.

C. Before issuing a *permit*, the *Department* must be satisfied that a proposed *project* or *alteration* will not result in:

1) Significant reduction in the overall *wildlife* production or diversity of a wetland;

2) Significant reduction in the ability of a wetland to satisfy the needs of a particular *wildlife* species;

3) Significant displacement or extirpation of any *wildlife* species from a wetland or surrounding areas due to the *alteration* of the wetland;

4) Any reduction in the ability of the wetland 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* wetland type;

6) Significant reduction in the suitability of any wetland 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 wetland;

8) Significant reduction in the *wildlife habitat* functions and values of any wetland 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 wetland to provide active or passive *recreational activities* to the public;

10) Significant disruption of any on-going scientific studies or observations;

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*;

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 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 wetland area of unusually high visual quality;

16) Any decrease in the flood storage capacity of any *freshwater wetland* which could impair the wetland's 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 *freshwater wetland* during any flood event;

18) Restriction or significant modification of the path or velocities of flood flows for the 2-year, 10-year, 25-year, or 100-year frequency, 24-hour, Type III storm events so as to cause harm to life, property, or other functions and values provided by *freshwater wetlands*;

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*;

20) Any increase in run-off rates over pre-*project* levels or any increase in receiving water/wetlands peak flood elevations for the 2-year, 10-year, 25-year, or 100-year frequency, 24-hour, Type III storm events which could impair the wetland's 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 wetlands (e.g., those wetlands without inflow or outflow channels);

23) Placement of any structural *best management practices* within wetlands, or proposal to utilize wetlands as a detention or *retention facility*;

24) Any more than a short-term decrease in *surface water* or groundwater elevations within any wetland;

25) Non-compliance with the Rhode Island Department of Environmental Management Water Quality Regulations; or

26) Any detrimental modification of the wetland's ability to retain or remove nutrients or act as natural *pollution* filter.

10.06 Decision on Application to Alter Freshwater Wetlands

A. General

1) Consistent with Section 2-1-22(b) and (c) of the *Act*, the *Department* insofar as possible will issue a decision in response to an Application to Alter within 42 days after the end of the 45-day public comment period or, if applicable, the public hearing, both of which are described above.

2) Applicants shall be notified in writing of the *Department's* decision by registered mail. The *Department* shall notify applicant's attorney or other designated representative, if any, by first class 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 if the objector provides the *Department* with a mailing address.

B. Decision To Deny

1) In accordance with Section 2-1-21 of the *Act*, approval of a proposed *alteration* to any wetland will be denied by the *Department* if the *project* as proposed does not satisfy the review criteria 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 Sections 2-1-18 and 2-1-19 of the *Act* and these *Rules*, and the *Department* will deny such applications in accordance with Section 2-1-21 of the *Act*.

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

The *Department* shall issue a *permit* for an application which, in the opinion of the *Department*, does satisfy the review criteria contained herein and does not represent a *random, unnecessary, or undesirable alteration* of *freshwater wetlands*. 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.

10.07 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 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, or tolled pursuant to R.I. Gen. Laws §42-17.1-2.5, all permits issued under an Application to Alter application are limited to a period of one (1) year from the date of issuance and shall expire thereafter. Pursuant to R.I. Gen. Laws §42.17.1-2.5, permits relating to the development of property that were in effect on November 9, 2009 at the time of passage of Rhode Island Public Laws Chapters 09-198 and 09-199 are subject to tolling pursuant to R.I. Gen. Laws §42-17.1-2.5 and shall not expire prior to June 30, 2011 or one (1) year from the date of issuance whichever occurs later.

F. Except for permits eligible for tolling pursuant to RIGL 42-17.1-2.5, 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; provided, however, said 4-year period will be extended one additional year, if the original permittee or subsequent transferee can satisfactorily demonstrate to the Department that the permitted wetland alteration is being carried out in strict accordance with the permit and with these Rules, and that the alteration can be completed in a period of one (1) additional year or less. Pursuant to R.I. Gen. Laws §42.17.1-2.5, permits relating to the development of property that were in effect on November 9, 2009 at the time of passage of Rhode Island Public Laws Chapters 09-198 and 09-199 are subject to tolling pursuant to R.I. Gen. Laws §42-17.1-2.5 and shall not expire prior to June 30, 2011 or four (4) years from the date of issuance whichever occurs later and may be renewable prior to expiration in accordance with this paragraph. The effect of tolling on eligible permits is limited to extending the period of validity of the current permit or renewal only. Any renewal must be requested by Application for Renewal that meets the requirements of Rule 11.02.

G. Construction activities affecting *freshwater wetlands* 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 and the permittee or subsequent transferee is required to notify the *Department* in writing of 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 permit condition, 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.

10.08 Compliance

In accordance with Section 2-1-22(d) of the *Act*, the applicant may only proceed with the approved *project* within *freshwater wetlands* in strict compliance with such *terms and conditions*, including time of completion, as the *Department* may require to ensure the protection of *freshwater wetlands* 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.

10.09 Appeal of Decisions

A. Request for Appeal

Within thirty (30) days of the receipt of a decision from the *Department* regarding an Application to Alter Freshwater Wetlands, 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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division (*AAD*) for Environmental Matters ("Rules of Practice"), and must be filed directly with the *AAD*. A copy of such request must also be forwarded to the Freshwater Wetlands Program and with the Office of Legal Services. Any request for an adjudicatory hearing on an application must be accompanied by a fee as specified in Rules 7.10 and 7.11 (I)(2). 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 to Alter Freshwater Wetlands, all adjudicatory hearings shall be held in accordance with Chapter 42-35-1 et seq. of the *R.I.G.L.* [hereinafter the Administrative Procedures Act (APA)], the *AAD* Rules of Practice 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 application, as proposed and sent out for public comment pursuant to Section 2-1-22 of the *Act*, 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 wetlands and the functions and values they provide.

10.10 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 wetland *alterations* contemplated by such resolutions are:

1) proposed in different areas of the wetland(s) so as to require public notice to additional or new parties as set forth in Section 2-1-22 of the *Act*; 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 wetland *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 (Rules 7.10 and 7.11 (H)). 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.

10.11 Closing of an Application

An Application to Alter Freshwater Wetlands 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 Rule 7.02 (E) 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 (Rule 10.04 C (6)).

RULE 11.00 – OTHER APPLICATION TYPES

11.01 Application for Emergency Alterations

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 Rule 6.00, 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.

A. 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;

B. The request must inform the *Department* of at least the following:

   1) An explanation of the problem necessitating an emergency *alteration*;

   2) The reason why the problem represents an imminent threat to health and safety;

   3) The location of the area in which corrective activity is required;

   4) The proposed actions necessary to correct the problems;

   5) The *person* responsible for overseeing the activity, including immediate means of contact; and

   6) The means proposed to restore the wetland area following the emergency *alteration*, as appropriate.

C. Any emergency *alteration* undertaken shall not result in a permanent *alteration* of any wetland, except as allowed for *dam* safety as approved by the *Department* in accordance with the Rules and Regulations for Dam Safety. The applicant must, in so far as possible, restore the wetland area to prevent or minimize any permanent *alteration*. Such *restoration* must be undertaken in accordance with requirements provided by the *Department*;

D. *Alteration* of wetlands shall not exceed work beyond that necessary to abate the emergency;

E. 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 wetlands 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 Rule 7.03;

F. 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

G. Following submission of the as-built site plan required in paragraph E above, 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*.

11.02 Application for Permit Renewal

A. An Application for Renewal is required to renew any *permit* issued as a result of an Application to Alter or a Request for Preliminary Determination.

B. The application shall be made on a form specified by the *Department* on which the applicant must stipulate that she or he is requesting renewal of the *permit* for the original or subsequently modified permitted *project*. For renewal of a *permit*, the applicant must further stipulate that he or she understands the *permit* limitations and 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 *alteration* of wetlands. 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 his or her *project* such that there is a change in proposed wetland *alterations*.

11.03 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 wetland disturbance 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 Rule 7.03).

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 wetland disturbance into vegetated areas not previously evaluated by the *Department*; 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*.

11.04 <u>Application for Permit Transfer</u>

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. A new owner may complete and submit an Application for Permit Transfer to receive a *permit* in the new owner's 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 (Rule 7.01) and the application fee (Rule 7.11).

C. The filing of this application shall not stay or modify any time limitation or condition of the *permit*.

11.05 <u>Applications Relating to Farmers</u>

A. Applications relating to wetland *alterations* by *farmers*, except in accordance with Rule 11.05 (E) below, must be submitted by the *farmer* directly to the *Department's* Division of Agriculture and Resource Marketing. The Division of Agriculture and Resource Marketing requires documentation that the activity undertaken is in accordance with the definitions set forth in Sections 2-1-22(i) and (ii) of the *Act*.

B. Applications shall be in writing and on a form prescribed by the Division of Agriculture and Resource Marketing.

C. The *farmer* shall include appropriate plans and drawings to a scale of not less than one inch to

one hundred feet (1"=100') with the application. The Division of Agriculture and Resources Marketing requires that submitted plans, designs and drawings are in accordance with standards set by the United States Department of Agriculture, Natural Resources Conservation Service or these *Rules*.

D. The Division of Agriculture and Resource Marketing shall review such applications in conformance with Section 2-1-22(i) of the *Act*. Pursuant to this review, the Division of Agriculture and Resource Marketing shall notify the applicant and the Freshwater Wetlands Program, in writing, whether the proposal is an *insignificant alteration*. If so, the applicant will be issued a *permit* by the Division of Agriculture and Resource Marketing.

E. If the proposal is a *significant alteration*, the applicant must submit an Application to Alter a Freshwater Wetland to the Freshwater Wetlands Program consistent with these *Rules*.

RULE 12.00 – ENFORCEMENT

12.01 Enforcement

Pursuant to *R.I.G.L.* 42-17.1-2 *et seq*., 42-17.6-1 *et seq*., 2-1-18 et seq. and the Rules and Regulations for the Assessment of Administrative Penalties, 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.

12.02 Revocation or Suspension of Determination or Permit

The *Department* may revoke or suspend any determination or *permit* under one or more of the following conditions:

A. 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;

B. The *project* is not undertaken in strict compliance with the conditions or provisions of any determination or *permit* issued by the *Department*; or

C. 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.

12.03 Right to Request Administrative Hearing

A. Enforcement actions: Pursuant to *R.I.G.L.* 42-17.1-2(u)(1), 42-17.6-4 and Chapter 42-35, 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: Pursuant to *R.I.G.L.* 42-35-1 *et seq*., 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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

RULE 13.00 – PUBLIC ACCESS TO RECORDS

13.01 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.

13.02 Access to records on file shall be in accordance with Sections 38-2-1 et seq. of the *R.I.G.L.* 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.

RULE 14.00 – 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.

RULE 15.00 – SUPERSEDED RULES

On the effective date of these *Rules*, all previous rules, and any policies regarding the administration and enforcement of the Fresh Water Wetlands Act shall be superseded. However, any enforcement action taken by, or application submitted to, the *Department* prior to the effective date of these *Rules* shall be governed by the rules in effect at the time the enforcement action was taken, or application filed.

RULE 16.00 – EFFECTIVE DATE

The foregoing "Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act" are hereby adopted on an emergency basis and filed with the Secretary of State this ___day of _____, 2009 to become effective immediately upon filing, in accordance with the provisions of Sections 2-1-20.1, 42-17.1, 42-17.6 and 42-35 of the General Laws of Rhode Island of 1956, as amended.

_____

W. Michael Sullivan, Ph.D., Director
Department of Environmental Management

Notice given on: NA
Filing date: _____
Effective date:_____

APPENDIX 1: <u>INSIGNIFICANT ALTERATIONS</u>

A. In accordance with Rule 9.00, the *Department* may issue a *permit* for *projects* submitted under a Request for Preliminary Determination Application provided the *project* represents, in the opinion of the *Department*, an *insignificant alteration*. The purpose of this section of the Appendix is to allow applicants and the public to determine with some likelihood what, under normal circumstances, represents an *insignificant alteration*.

B. The following represent examples of *insignificant alterations*; however, other types of *alterations* not described in this Appendix 1 also may be considered insignificant. In addition, the applicant should be aware that certain circumstances peculiar to specific wetlands, the surrounding area, site conditions, and the *project*, may result in a determination by the *Department* that a particular proposal represents a *significant alteration* and therefore requires filing of an Application to Alter a wetland and a *permit* from the *Department*. Therefore, even if a *project* appears to fit within the examples of *insignificant alterations* in this Appendix, approval by the *Department* cannot be guaranteed. In addition, the proponent of a *project* that conforms or appears to conform to the examples of *insignificant alterations* still must seek a *permit* from the *Department* through a Request for Preliminary Determination before proceeding with the *project*. Further, the *project* must not result in the disturbance or destruction of any *rare* species or *rare* wetland type.

C. Examples of *insignificant alterations* include the following:

1) Construction and installation of a single new dock or single detached floats only where:
   (a) The dock is supported by floats or piles, extends perpendicular to the shoreline out to, but not exceeding, twenty feet (20'), and does not exceed six feet (6') in width;
   (b) The float does not exceed one hundred and twenty (120) square feet in area;
   (c) The installation and placement of the dock or float poses no hazard to boating safety or navigation in any body of water including any *pond*, *river*, or *stream*;
   (d) The dock or float is placed no closer than twenty feet (20') to any neighboring property line on land or superficially extending over the waterbody;
   (e) Any new access paths to the dock do not exceed five feet (5') in width, and do not result in *fill*, road construction, or any other clearing of the wetlands for access;
   (f) The dock does not extend into or obstruct a *floodway*; and
   (g) Pilings or posts permit reasonably unobstructed flow of water.

2) Minor revisions to residential or small lot commercial or industrial *projects* already approved by the *Department* only where:
   (a) The revised *alterations* do not expand the area of disturbance any farther into wetlands so as to negatively affect functions and values; and
   (b) Compensation for loss in flood storage volume is maintained as approved.

   Such *projects* may include the revised location or configuration of structures, the minor relocation of individual sewage disposal systems (consistent with Rule 10.05 C), walls, *utility* lines, or grade changes.

3) Construction and development activities that are not exempt pursuant to Rules 6.05 and 6.06 and are within wetland areas already developed for human activity only where:

(a) The area for proposed construction is now occupied by approved or *existing* buildings, parking or paved area, equipment storage, or materials storage;

(b) The construction and development does not propose to expand into wetlands which would result in impacts on wetland functions and values; and

(c) The applicant complies with all requirements in these *Rules* associated with changes in runoff, water quality, and flood storage.

In such *projects* where a more intensive use of the property is proposed which would result in increases in the level or duration of noise, lighting or other activities which could impact *wildlife* in adjacent natural wetlands, a well-designed *buffer zone* must be incorporated into the *project* design and placed between the *project* and any remaining undeveloped wetland.

4) Minor *excavated pond* construction (less than one-quarter (1/4) acre for new *ponds* and re-excavation for *existing ponds*) only where:

(a) The *pond* is located mostly adjacent to, or only partially in, any *swamp*, *marsh*, or other emergent, shrub or *forested wetland*;

(b) All spoils from excavation are removed to an upland location away from all wetlands;

(c) The construction or re-excavation does not result in the diversion, *damming,* or diking of any type of watercourse other than surface seepage from groundwater discharges;

(d) Re-excavation of an area less than 2,500 square feet of *existing pond* is accomplished for maintenance purposes to remove accumulated inorganic *sediments* or concentrated areas of problem emergents or aquatic weeds such as tall reed (*Phragmites australis*) or purple loosestrife (*Lythrum salicaria*). The excavation must be limited to concentrated problem areas and must incorporate all proper controls to protect the adjacent wetland environment; and

(e) The activity does not result in the loss of the only natural vegetated area adjacent to a *swamp*, *marsh*, or other emergent, shrub or *forested wetland*.

Such *projects* must either incorporate the use of a well-designed *buffer zone* to minimize impacts to *wildlife*, or be sufficiently away from human activity so as to minimize interaction between humans and *wildlife*.

5) New construction and development of residential homes, commercial or industrial buildings and subdivisions incorporating such construction only where:

(a) The construction and all associated activity is proposed outside of all wetlands (including perimeter and *riverbank* wetlands);

(b) The *project* is designed to meet or exceed, and the applicant's registered professional engineer certifies that the *project* will meet or exceed, all *best management practices* to prevent the *alteration* of *freshwater wetland* functions and values due to changes in run-off/stormwater flows, water quality, flood storage, and erosion and sedimentation. *Best management practices* in this case must, at a minimum, address the requirements and recommendations of the Rhode Island Stormwater Design and Installation Manual and the Rhode Island Soil Erosion and Sediment Control Handbook.

(c) The *project* design ensures the protection of all wetland functions and values (e.g., the design does not propose a building or structure at the *edge* of wetlands without considering

the extent of clearing, grading and soil disturbance which may be necessary for equipment access, safety and other normal construction activity and human use needs).

6) *Utility* line or pipe installation where:
   (a) The installation of the line or pipe is taking place within an *existing* maintained (cut/cleared) *utility* easement which already contains *utility* lines or pipes;
   (b) Wetlands within the maintained (cut/cleared) *existing utility* easement are only temporarily altered to install the line or pipe;
   (c) 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;
   (d) The *project* does not cause any diversion of ground or *surface water* to or from any wetlands;
   (e) The preconstruction contours are restored immediately upon installation;
   (f) All work in any wetlands in the easement is undertaken during *low-flow periods*;
   (g) All disturbed areas are revegetated after restoring contours; and
   (h) The *project* design incorporates *best management practices* for dewatering *excavated* areas.

7) Replacement of *existing* or approved bridges and culverts other than those exempt pursuant to Rule 6.03(B) only where:
   (a) The replacement structure is similar to the *existing* structure in terms of physical size, invert elevations and flow capacity;
   (b) Soil disturbance and construction activity in flowing water are reduced to the maximum extent possible; and
   (c) The replacement structure accommodates and provides for *wildlife* passage where applicable.

8) Driveway and access road construction over watercourses such as drainage ditches, and areas subject to storm flowage only where:
   (a) The watercourse and its adjacent banks are located within heavily developed residential, commercial or industrial areas;
   (b) The driveway or access road is designed only to widths necessary to safely pass vehicles;
   (c) The watercourse is not within another type of wetland such as a *swamp*, *marsh*, *bog*, *pond* or other emergent, shrub, or *forested wetland*, *special aquatic site*, *perimeter wetland*, or *riverbank*;
   (d) All culverts are designed to meet the protection requirements of wetland functions and values as specified in these *Rules*; and
   (e) All flood displacement issues in these *Rules* are addressed.

9) Rhode Island Department of Transportation roadway improvements to *existing* or approved state roads and highways only where:
   (a) *Alterations* are maintained within the *existing* limits of road or highway slopes and shoulders;
   (b) Drainage patterns are maintained similar to previous conditions and designs; and

(c) The design incorporates all requirements of these *Rules* for changes in runoff, stormwater, culvert design, flood control, water quality and sedimentation and erosion controls.

10) Well and water supply line installation for individual residential lots other than those exempt pursuant to Rule 6.03(R) or 6.05(G) where:

(a) The location of the well and water supply line are maintained outside of any *swamp*, *marsh*, *pond*, *bog*, *special aquatic site*, or other emergent, shrub, or *forested wetland*, *river*, *stream* or watercourse;

(b) Wells and water supply lines installed within a *perimeter wetland* or *riverbank* wetland meet other regulatory restrictions in these *Rules*, and no other *feasible* upland alternative is available;

(c) All wetland disturbance needed for access of well drilling equipment and installation of the well and any water supply line is limited to the maximum extent possible; and

(d) Following installation, the wetland area is revegetated.

APPENDIX 2: SPECIFIC CRITERIA FOR IDENTIFYING WETLAND EDGES

A. Vegetated Wetlands

1) The landward *edge* of vegetated wetlands (i.e., *bogs*; *marshes*; *swamps*; emergent, shrub or *forested wetlands*; or similar types, including wetland 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*).

2) *Hydrophytes/hydrophytic vegetation* includes, but is not limited to:
   (a) Those typical plant species listed in the *Act* under Sections 2-1-20 (1) "bog", (5) "marsh" and (10) "swamp"; or
   (b) Those plant species listed as having a wetland indicator status of Obligate (OBL) according to the most recent edition of the National List of Plant Species That Occur in Wetlands: Rhode Island (National List), as prepared by the U.S. Fish and Wildlife Service; or
   (c) Those plant species listed as having a wetland indicator status of Facultative Wetland (FACW), Facultative (FAC) or Facultative Upland (FACU) according to the National List, where such plants are present along with other clear hydrologic indicators of wetland.

3) 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 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.

4) 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: (Note: Those features followed by an asterisk (*) are valid indicators only when at least one additional hydrologic indicator is present.)
   - 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.
   - Visual observation of soil saturation within twelve inches (12") of the soil surface (considering both seasonal and recent weather conditions);
   - Distinct water marks on vegetation or other fixed objects;*
   - Sulfitic materials (H2S – rotten egg odor) within twelve inches (12”) of the soil surface;
   - Mound and pool microtopography;*
   - Patches of peat mosses (*Sphagnum spp*.)
   - Soil morphologic evidence of recent or periodic flooding (e.g., stratification associated with *flood plains*);*
   - Visual observation of surface inundation (considering both seasonal and recent weather conditions);*

Dark or water-stained leaves on the ground surface;*

- Drift or wrack lines of water-borne materials;*
- Wetland drainage features or patterns such as scoured channels;*
- Morphological plant adaptations (e.g., buttressed trees trunks, adventitious roots, exposed or shallow root systems);*
- Distinct or prominent pore linings (oxidized rhizopheres) along live roots within twelve inches (12") of the soil surface.*

5) For purposes of locating and identifying the *edge* of vegetated 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, (Corps) in addition to the Corps' September 9, 1991 regulatory guidance letter regarding Guidance for the Interpretation of Wetland Boundaries Using the 1987 Corps Manual in the Six New England States under the following conditions:

(a) 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 wetlands regulated under the *Act* and these *Rules*. For example, the *area of land within fifty feet (50')* of any *bog*; *marsh*; *swamp*; or *pond* is a regulated wetland according to Section 2-1-20(4) of the *Act*; however, the Manual, for purposes of Section 404 of the Clean Water Act, will refer to these areas as "nonwetlands."

(b) All *edge* locations and delineations are subject to the *Department's* review and acceptance under the procedures set forth in Rule8.02 for Requests to Determine the Presence of Wetlands. Accordingly, all requests to verify the *edge* of these types of wetlands will require on-site inspection and analysis.

(c) 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.

B. Perimeter Wetlands

The *edge* of *perimeter wetlands* shall be identified as the line fifty feet (50') from the landward *edge* of any *bog*, *marsh*, *swamp*, or *pond*.

C. Flowing and Standing Water Wetlands

The *edge* of *rivers*, *streams*, *intermittent streams*, *ponds*, *special aquatic sites*, 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*, *special aquatic sites*, 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.

D. Riverbank Wetlands

The *edge* of *riverbank* wetlands 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 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:
   (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.
      (i) 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').
      (ii) The midpoint of the measurements shall be near the midpoint of the *project* area or area of concern.
      (iii) The measurements shall be taken between the *edges* of the *flowing body of water* or channel as delineated according to paragraph C(1) above.
      (iv) 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.
   (b) 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:

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

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

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

E. Flood Plain Wetlands

The *edge* of any *flood plain* shall be identified as the maximum horizontal extent of flood water which will result from the statistical 100-year frequency storm event.

1) The 100-year *flood plain* 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

2) In the event that FEMA flood profile data are unavailable, or if the applicant disagrees with the data, the *flood plain edge* shall be determined by engineering calculations completed by a registered professional engineer. These calculations shall be:
   (a) Based upon a widely accepted hydrologic and hydraulic model (e.g., HEC-RAS). The applicant must demonstrate that the selected model is appropriate for the determination; and
   (b) Based upon a design storm of at least seven inches (7") of precipitation in twenty-four (24) hours (a Type III rainfall as defined by the National Weather Service).

3) 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 100-year flood elevation must be expressed in National Geodetic Vertical Datum as related to Mean Sea Level.

State of Rhode Island and Providence Plantations
Department of Administration
Budget Office

Fiscal Note for Proposed Administrative Rules (R.I.G.L. 22-12-1.1)

Air Pollution Control Regulation No. 9- Air Pollution Control Permits
ERLID Number: 5917
Agency: Environmental Management, Department of, *Air Resources*
Type of Filing: Emergency Amendment
Effective date:12/17/2009
Status: Currently in effect Will be Expired on 04/16/2010
Emergency Amends 5312
View Filing Form | View Regulation | View Details

Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act
ERLID Number: 5918
Agency: Environmental Management, Department of, *Water Resources*
Type of Filing: Emergency Amendment
Effective date:12/17/2009
Status: Currently in effect Will be Expired on 04/16/2010
Emergency Amends 5673
View Filing Form | View Regulation | View Details

Water Quality Regulations
ERLID Number: 5919
Agency: Environmental Management, Department of, *Water Resources*
Type of Filing: Emergency Amendment
Effective date:12/17/2009
Status: Currently in effect Will be Expired on 04/16/2010
Emergency Amends 5761
View Filing Form | View Regulation | View Details

Rules and Regulations for Dredging and the Management of Dredged Material
ERLID Number: 5922
Agency: Environmental Management, Department of, *Water Resources*
Type of Filing: Emergency Amendment
Effective date:12/17/2009
Status: Currently in effect Will be Expired on 04/16/2010
Emergency Amends 2444
View Filing Form | View Regulation | View Details

Date of Notice: May 24,, 2010
Date of Hearing: June 23, 2010

RIGL: Promulgated pursuant to Chapters 42-17.1 and 42-17.6

FISCAL IMPACT

Revenues		***State Expenditures***		***City/Town Expenditures***	
FY 2011	$0	FY 2011	$0	FY 2011	$0

Summary of Rule Changes:

The purpose of these proposed amendments is to extend the period of validity for certain permits issued under the subject regulations pursuant to legislation enacted November 9, 2009, commonly referred to as the "Tolling Statute." This law affects all DEM permits related to development that were in effect on November 9, 2009 that would have expired before June 30, 2011. All such permits now are considered valid to June 30, 2011. Changes to the subject regulations are proposed in order to effectuate the statute. (Emergency regulations are currently in effect pending this formal adoption process.)These amendments specify the categories of permits affected by the statute and stipulate that June 30, 2011 is the new expiration date for these permits.

The Department issued emergency regulations last December to enable immediate implementation of the new law. The Department may have a public hearing should significant concerns be raised about these rule changes.

Summary of State Fiscal Impact:

DEM has determined that administering the rules within the Office of Water Resources will not require additional funds. Some State-financed projects delayed due the current recession may find some savings from not needing to renew their permits or to reapply for new permits where permits could not be renewed.

Summary of City or Town Fiscal Impact:

Similar to permits issued to other state agencies, the fiscal impact to towns is either zero or a slight savings if delayed projects are not required to seek new permits from DEM though June 30, 2011.

If you have any questions or comments on the proposed Rules, please contact one of the following:

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Approved**:**

_____

Rosemary Booth Gallogly Date
Executive Director/State Budget Officer

RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
235 Promenade Street, Providence, RI 02908-5767 TDD 401-831-5508

May 24, 2010

TO: Peter Dennehy, RI Department of Administration
Sherri Lynn Carrera, RI Economic Development Corporation
Kerry King, Office of the Governor

FROM: Gary Powers, Deputy Chief, Legal Services
Department of Environmental Management

SUBJECT: **Economic Impact and Regulatory Flexibility**
Tolling of expiration periods of permits, RIGL 42-17.1 and R.I. Public Laws 09-198 and 09-199

Relevant Regulations Affected:

1.Air Pollution – Air Pollution Control No. 9- Air Pollution Control Permits
2.Freshwater Wetlands – Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act
3.Dredging – Rules and Regulations for Dredging and Management of Dredged Material
4..Water Quality Regulations

Authority:
These amendments are adopted in accordance with Chapter 42-35 pursuant to Chapters RIGL 42-17.1, as amended, and R.I. Public Laws 09-198 and 09-199.

Summary of Proposed Rule Changes:
The purpose of these proposed amendments is to extend the period of validity for certain permits issued under the subject regulations pursuant to legislation enacted November 9, 2009, commonly referred to as the "Tolling Statute". This law affects all DEM permits related to development that were in effect on November 9, 2009 that would have expired before June 30, 2011. All such permits now are considered valid to June 30, 2011. Changes to the subject regulations are proposed in order to effectuate the statute. (Emergency regulations are currently in effect pending this formal adoption process.)These amendments specify the categories of permits affected by the statute and indicate that June 10, 2011 is the new expiration date.

The analysis below is based on the impact of the tolling statute to the requirement of RI General Laws 42-35.1

Where to find the specific language changes:

Rules and Regulations for Governing the Administration and Enforcement of the Fresh Water Wetlands Act (Revised proposed filing attached)
Page 50, Section 9.04E
Page 67, Section 10.07E & 10.07F

Water Quality Regulations (Emergency Filing 12/17/09)
Page 31, Rule 17 E

Rules and Regulations for Groundwater Quality (Emergency Filing 12/17/09)
Page 32, Section 17.2

Rules and Regulations for Dredging and the Management of Dredged Material (Emergency Filing 12/17/09)
Page 23, Section 13.4.7

Categories of Application Types Not related to Development:

The Department issues many different types of permits and decisions, some of which are related to development and therefore are unaffected by the Tolling Statute. For example, a repair to a septic system is considered a necessary action to maintain a wastewater discharge and use in proper and safe condition, and therefore is not considered development related. Also, some other types of decisions are not related to any construction whatsoever, but merely are an acknowledgement by the Department that a particular condition exists. Verification of a wetland edge is one example of such a decision. Some decisions are not relevant under the Tolling Statute as they do not have expiration dates. Lastly, permits issued by the Department that have an enforceable timetable or schedule for performance related to a DEM issued order to correct a violation cannot be tolled. Accordingly, the following is a partial listing of the types of DEM applications that are not considered affected by the Tolling Statute.

Regulation	Permit or Decision Type	Why not applicable
Freshwater Wetlands	Application for Emergency Alteration	Applies only to temporary work required to address an imminent threat to public health or safety
Freshwater Wetlands	Application for Permit Modification	No expiration
Freshwater Wetlands	Application for Permit Renewal	Tolled permits are renewable as of their new expiration dates, but otherwise unaffected by the statute
Freshwater Wetlands	Application for Permit Transfer	No expiration
Freshwater Wetlands	Request for Regulatory Applicability	No expiration

Freshwater Wetlands	Request to Determine the Presence of Wetlands	No project or development proposed
Freshwater Wetlands	Request to Verify Wetland Edges	No project or development proposed (Rule 8.03H).

Economic Impact:
Per RIGL §42-35.1-3

1. No specific type of small business is directly impacted by these amendments. It is not possible for DEM to estimate the number of small businesses subject to the Tolling Statute. A small business is affected only if the business elects to delay development or construction of the project until after expiration of the original permit. Such a decision may be made at any time. In addition, file records generally provide no information on whether a permit is for or related to a small business.
2. There are no anticipated reporting, recordkeeping, or other administrative costs required for compliance with the proposed rules. If anything, such costs may be reduced if, by automatic extension of the permit validity periods provided for in these amendments, renewal or refilling of permit applications is obviated.
3. DEM has not identified a less intrusive or less costly alternative method to achieve the requirements mandated by the Tolling Statute

Regulatory Flexibility:
Per RIGL §42-35.1-4

DEM has considered, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses and determined that there is no alternative approach that would be as effective and less burdensome, given the requirements of the Tolling Statute:

1) The establishment of less stringent compliance or reporting requirements for small businesses;
2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
3) The consolidation or simplification of compliance or reporting requirements for small businesses;
4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation

These rules to implement the Tolling Statute will likely aid small businesses by foregoing the cost and time associated with reapplication for permits that would otherwise have expired prior to June 30, 2011.

If you have any questions or comments on the proposed Rules, please contact one of the following:

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