

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULES AND REGULATIONS

GOVERNING THE ADMINISTRATION AND

ENFORCEMENT OF THE

FRESHWATER WETLANDS ACT

April 1998

AUTHORITY:
THESE REGULATIONS ARE ADOPTED PURSUANT TO CHAPTERS 2-1-20.1, 42-17.1, 42-17.6, AND 42-35 OF THE GENERAL LAWS OF RHODE ISLAND, 1956, AS AMENDED.

**State of Rhode Island and Providence Plantations
Department of Environmental Management**

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AND ENFORCEMENT OF THE FRESH WATER WETLANDS ACT**

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RULE 1.00 - INTRODUCTION AND PURPOSE

1.01 These Rules and Regulations are promulgated by the Director of the Rhode Island Department of Environmental Management to preserve, protect, and/or restore the purity and integrity of all freshwater wetlands of the State of Rhode Island so that the freshwater wetlands shall be available for all beneficial uses and thus protect the health, welfare, and general well being of the general populace and the environment of the State.

These Rules and Regulations are further promulgated to administer and enforce Sections 2-1-18 through 2-1-24, inclusive, of the General Laws of 1956, as amended (the Freshwater Wetlands Act, hereinafter referred to as "the Act") and supersede all previous Rules, Regulations and policies therefor.

RULE 2.00 - AUTHORITY AND GENERAL ADMINISTRATION

2.01 These Regulations are adopted pursuant to chapters 2-1-20.1, 42-17.1-1 et seq., 42-17.6-1 et seq., and 42-35-1 et seq. of the General Laws of Rhode Island, as amended, (R.I.G.L.).

2.02 The Freshwater Wetlands Program, except for applications processed by the Division of Agriculture and Resource Marketing Program, shall be responsible for administering and enforcing the Act on behalf of the Director. The Freshwater Wetlands Program may at any time, when necessary, consult with and/or coordinate its responsibilities and duties with any other Division, Section, Office, or program of the Department of Environmental Management.

RULE 3.00 - ADMINISTRATIVE FINDINGS

3.01 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 Regulations are based. In addition, the following administrative findings are made as further basis for these Regulations:

- A. Sections 2-1-18 and 2-1-19 of the Act serve as a legislative mandate to preserve the purity and integrity of all freshwater wetlands from random, unnecessary, and/or undesirable alterations. Freshwater wetland functions and values must be preserved and protected in the best public interest. Random, unnecessary, and/or undesirable alterations of freshwater wetlands or the functions and values they provide and maintain are not in the best public interest.
- B. Freshwater wetlands provide functions and values which protect the health, welfare, and general well being of the populace and the environment. These functions and values include, but are not limited to, the following:
 - 1) Protection of life and/or property from flooding or flood flows by retaining, storing, metering, or slowing flood waters from storm events;
 - 2) Providing and maintaining surface and/or groundwater supplies by acting as a recharge or discharge area;
 - 3) Providing and maintaining valuable wildlife habitats;
 - 4) Providing and maintaining high value recreation areas; and

- 5) Protecting and maintaining water quality.
- C. The cumulative effect of incremental alterations to freshwater wetlands may be significant, even if a proposed alteration may in and of itself be insignificant.
- D. Riverbank and perimeter wetlands shall be considered important integral components of the flowing body of water or swamp, marsh, bog or pond with which they are associated.
- E. A freshwater wetland or wetland complex, as defined herein, functions as an integrated ecological unit or system, no portion or component of which is less worthy of regulatory protection than the wetland as a whole.

RULE 4.00 - APPLICATION OF THESE REGULATIONS

- 4.01 These Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of the Act.
- 4.02 Nothing in these Rules and Regulations shall be deemed to interfere with the Director's power and duty to issue an Immediate Compliance Order pursuant to Section 42-17.1-2(u)(2) of the R.I.G.L.
- 4.03 These Rules and Regulations apply to all freshwater wetlands of the State and all activities which could alter the character of any freshwater wetland or part thereof.

RULE 5.00 - DEFINITIONS

- 5.01 **AAD** means the Rhode Island Department of Environmental Management Administrative Adjudication Division for Environmental Matters.
- 5.02 **Act** means Sections 2-1-18 through 2-1-24 inclusive of the General Laws of 1956, as amended. Unless specifically noted, the terms "Act" and "Rules and Regulations" are interchangeable.
- 5.03 **Agent(s) of the Director** means a duly authorized agent(s) of the Director authorized by the Director to act on his/her behalf in carrying out the duties necessary to administer and/or enforce the Act and these Rules.
- 5.04 **Alteration** (See Alter the Character).
- 5.05 **Alter the Character** means those activities which occur within or outside of freshwater wetlands which impact their natural character, functions and/or values. Such activities include but are not limited to the following:
 - Excavating; draining; filling; placing trash, garbage, sewage, road runoff, drainage ditch effluents, 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 otherwise changing the character of any freshwater wetland as herein defined either individually or cumulatively.

- 5.06** **Applicant** means the person, firm, partnership, corporation, public utility, government agency and/or any other organization or association seeking a determination, permit, or decision from the Department through prescribed application procedures. The applicant must be the owner of the property or easement which is the subject of the application, or must be the government agency or entity with power of condemnation over such property or easement.
- 5.07** **Approval** means a permit or authorization issued by the Director.
- 5.08** **Aquatic Base Flow (ABF)** means those minimum river or stream flow conditions that are necessary to sustain and perpetuate indigenous aquatic fauna and flora and is based upon the following:
- A. Where a minimum of twenty-five (25) years of U.S. Geological Survey gauging records exist on a river or stream that is basically free-flowing, the ABF for all times of the year must 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. For rivers or streams where inadequate flow records exist or for rivers or streams regulated by dams or upstream diversions, the ABF shall be at least 0.5 cubic feet per second per square mile of drainage (cfs/m), unless spawning and incubation requirements exceed this minimum; or
 - C. Where concerns exist regarding spawning and incubation flow requirements, the ABF shall be 1.0 cfs/m in October/November and 4.0 cfs/m in April/May for the entire applicable spawning and incubation periods of aquatic fauna; or
 - D. Where a specific in-stream flow study determines the ABF based upon the specific needs of aquatic fauna and/or flora and such study is approved by the Department.
- 5.09** **Area of Land Within Fifty Feet (50')** (also known as, and may be used interchangeably with, Perimeter Wetland) means a freshwater wetland consisting of the area of land within fifty feet (50') of the edge of any 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 any bog, marsh, swamp, pond, or wetland complex containing any combination of these wetland types.
- 5.10** **Area Subject to Flooding** 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, and/or meter out storm and flood waters.
- 5.11** **Area Subject to Storm Flowage** means those drainage swales and channels which lead into, out of, and/or connect other freshwater wetlands or coastal wetlands, and which carry flows resulting from storm events but may remain relatively dry at other times.
- 5.12** **Best Management Practices (BMP)** means practices which include, but are not limited to, schedules of activities, prohibitions of practices, maintenance procedures, structural and non-structural methods, and other management practices approved by the Department to prevent or significantly limit any reduction of the functions and values associated with freshwater wetlands.

- 5.13 Bog** means, as defined in Section 2-1-20(a) 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*).
- 5.14 Buffer zone** means an area of undeveloped vegetated land retained in its natural undisturbed condition, or created to resemble a naturally occurring vegetated area which serves to mitigate impacts from human activities to wetland functions and values.
- 5.15 Completed Application** means any application which, in the opinion of the Director, 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.
- 5.16 Conditions** (see Terms and Conditions).
- 5.17 Cumulative Impact** means 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.
- 5.18 Dam** means to permanently or temporarily impound surface water above the wetland surface which existed prior to dam construction or above the bottom of any river, stream or intermittent stream; or any manmade structure which permanently or temporarily impounds normal and/or storm flows.
- 5.19 Department** means the Department of Environmental Management or DEM, and may be used interchangeably with Director.
- 5.20 Detention Facility** means a basin, depression, or other manmade structure excavated, constructed, or installed to intercept and temporarily store surface runoff and release the stored water at a controlled rate.
- 5.21 Dike** means a berm or structure which impedes, redirects, diverts, or otherwise controls the flow or elevation of water.
- 5.22 Director** means the Director of the Department or his/her authorized designee, and may be used interchangeably with Department or DEM.
- 5.23 Disapproved** means, for purpose of Section 2-1-22 of the Act, an action taken by the appropriate city or town council to notify the Department, in writing, and during the forty-five

(45) day notice period that said city or town council has voted to object; oppose; veto; or deny the proposed project as noticed by the Department.

- 5.24 Drain** means to lower the surface water and/or groundwater elevation either temporarily or on a permanent basis.
- 5.25 ECC** means the Estimated Construction Cost (See Rule 8.03).
- 5.26 Each Violation** means any failure to comply with the Act, Rules, or any condition of approval, permit, order, or determination issued by the Department which is distinct from any other violation by:
- A. The type of wetland affected; an unauthorized alteration shall be considered one violation if it occurs in a wetland which can be identified as more than one (1) wetland type;
 - B. The place, area, or time of commission of the violation; and/or
 - C. The nature of the violation.
- 5.27 Edge** means the line of intersection or division between:
- A. Any swamp, marsh, pond, bog, or any 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. (See Appendix 4).
- 5.28 Emergency Alteration** means an activity or alteration authorized by the Director within any wetland area which must be undertaken to protect the health and safety of the public from actual or threatened imminent harm.
- 5.29 Emergent Plant Community** means a wetland characterized by erect, rooted, herbaceous hydrophytic vegetation which is present for most of the growing season in most years, and which may be persistent or non-persistent in nature.
- 5.30 Excavate** means to dig into, cut, quarry, uncover, remove, displace, relocate, or grade any earth, soil, sand, gravel, rock, peat, organic, inorganic or any other similar material.
- 5.31 Existing** means: (1) a condition that was present as of the enactment of the Freshwater Wetlands Act or its applicable amendments and has continually remained in the same condition; or (2) a condition that is present and was approved under the Freshwater Wetlands Act or its applicable amendments; or (3) a condition that has naturally occurred and is currently present.
- 5.32 Facultative Wildlife Species** means wildlife which utilize wetlands as habitat, but generally do not require wetlands for survival or reproduction.

- 5.33 Farmer** means, as defined in Section 2-1-22(i) of the Act, an individual, partnership or corporation who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the 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.
- 5.34 Feasible** means capable of being done, executed, accomplished or brought about by engineering standards.
- 5.35 Fill** means to place dirt, soil, stones, gravel, sand, sediment, tree stumps, brush, leaves, solid waste, debris, garbage, trash, pollutants, or any other material, substance, or structure, either foreign or related, on or in any wetland or in such a way as to alter the natural character, function and/or value of any wetland.
- 5.36 Flood Plain** means, as defined in Section 2-1-20(c) of the Act, that land area adjacent to a river or stream or other body of flowing water which is, on the average, likely to be covered with flood waters resulting from a one hundred (100) year frequency storm. A one hundred (100) year frequency storm is one that is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to have a one percent (1%) probability of being equaled or exceeded in any given year. Rainfall intensity data for a one hundred (100) year frequency storm are those established for New England locations by the National Weather Service (formerly the U.S. Weather Bureau).
- 5.37 Floodway** means the channel of a river or stream, plus any immediate adjacent areas that must be kept free of encroachment in order that the 100-year flood waters can be carried without increase in flood heights or flows and without endangering life and/or property.
- 5.38 Flowing Body of Water** means any river, stream, or intermittent stream which flows long enough during the year to develop and maintain defined channels and generally has flowing waters 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.
- 5.39 Forested Wetland** means a wetland dominated by woody plants (trees) greater than twenty feet (20') tall.
- 5.40 Freshwater Wetland** means the following:
- A. Bog, flood plain, pond, marsh, river bank, 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, and shrub and forested wetland;
 - 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; and

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.

The Director has the sole authority to determine which areas are freshwater wetlands.

5.41 Growing Season means the period from April 1 to November 15 of any calendar year.

5.42 Hydrophyte/Hydrophytic Vegetation means a plant (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.

5.43 Insignificant Alteration means, in the opinion of the Director, a proposed alteration, limited in scope, area and/or duration, which appears to result in no more than a minimal change or modification to the natural characteristics, functions, and/or values of any freshwater wetland(s), and is not random, unnecessary and/or undesirable.

5.44 Intermittent Stream (See Stream).

5.45 Lentic means a habitat or ecosystem characterized by standing water.

5.46 Lotic means a habitat or ecosystem characterized by flowing water.

5.47 Low Flow Period means, under normal conditions, the period from July 1 to October 31 of any calendar year.

5.48 Maintenance Activities means those actions necessary to ensure the upkeep of manmade structures which were constructed with all necessary federal, state and/or local permits; and other limited activities as set forth in Rule 6.03.

5.49 Marsh means, as defined in Section 2-1-20(f) 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*).

5.50 Mitigate/Mitigation means a process undertaken as an individual action or by 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, and/or after the completion of any freshwater wetland alterations or projects.

- 5.51** **Near or at the Surface** means, as defined in Section 2-1-20(i) of the Act, within thirty-six inches (36") of the surface.
- 5.52** **Notice of Completion of Work** means a letter issued by the Director to a permittee or subsequent transferee indicating that the work in the wetland has been completed in accordance with the permit and any conditions of approval or renewals thereof.
- 5.53** **Objection of a Substantive Nature** means any written comment offered in opposition to a proposed project which:
- A. Relates to the functions and values of the wetlands; and
 - B. Has not been clearly addressed by the applicant in his or her application; has not been assessed by the Department during its review of the application; and cannot be resolved by the Department's evaluation of the application.
- 5.54** **Obligate Wildlife Species** means wildlife which depend upon wetlands for all or part of their life cycle.
- 5.55** **Open Standing** means those surface water areas which are not dominated by persistent vegetative cover (i.e., less than fifty percent (50%) of the water body surface is dominated by persistent emergent, shrub, or tree vegetation either as a single life form group or in the aggregate).
- 5.56** **Ordinary High Water Mark** means the line separating land flooded at high water from land exposed at high water and indicated by physical characteristics such as a clear, natural line exposed on the bank; shelving; changes in the character of soil; absence of terrestrial vegetation; the presence of water-borne natural litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.
- 5.57** **Perimeter Wetland** (See Area of Land Within Fifty Feet (50')).
- 5.58** **Permit** means an authorization, in the form of a document issued and signed by the Director, which allows the conditional alteration of freshwater wetlands.
- 5.59** **Person or Agent Responsible** means, for purposes of Sections 2-1-23 and 2-1-24 of the Act, any individual; firm; industry; company; corporation; city; town; municipal; state or federal agency; fire district; club; nonprofit agency; other individual, group, or association; or any combination of the above that conducts, allows to be conducted, or maintains any activity or condition in violation of the Act, and/or any order, Rule, or Regulation of the Director, without first obtaining the approval of the Director.
- 5.60** **Pollutant** means any material or effluent which may alter the aesthetic, chemical, physical, biological, or radiological characteristics and/or integrity of any freshwater wetland, including,

but not limited to, dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; dirt; sediment; industrial, municipal, agricultural or other wastes; and petroleum or petroleum products including, but not limited to, oil.

- 5.61** **Pollution** means the alteration of the aesthetic, chemical, physical, biological, or radiological characteristics and/or integrity of any freshwater wetland as a result of the introduction of any pollutant to any freshwater wetland.
- 5.62** **Pond** means, as defined in Section 2-1-20(e) 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.
- 5.63** **Preliminary Determination** means a notification, in the form of a letter issued and signed by the Director, which informs the applicant as to whether or not a proposed project represents a significant alteration as defined herein. Section 2-1-22 of the Act shall be determined to apply if the project represents a significant alteration.
- 5.64** **Property Accessory** means a structure that has an ancillary or supplementary function to the main use of the property. Property Accessories shall 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 to be no greater than 500 gallons per day, walls, stairs, walks, and pervious driveways.
- 5.65** **Proposed Project** for the purposes of notifying all landowners whose properties are within two hundred feet (200') as required in Section 2-1-22(a) of the Act, means the outermost boundary of the proposed wetland alterations. Such area must include at least the following:
- A. The extent of all physical disturbance in regulated wetlands;
 - B. The extent of any impoundment and/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.
- 5.66** **Random Alteration** means any alteration for which the applicant does not specify in writing through design plans and drawings, the final developed use of the property upon which an application is predicated; or any alteration proposed which is arbitrary or without justification.
- 5.67** **Rare Species or Rare Wetland Type** means those invertebrate and vertebrate animals or plant species (which exist either individually or as a group) or wetland types listed as threatened, endangered, of special interest or of special concern by the Department's Rhode

Island Natural Heritage Program; by the Department's Division of Fish and Wildlife; and/or under the Federal Endangered Species Act.

- 5.68** **Reasonably Available** for purposes of Rule 10.00 *et seq.*, means properties which, either in whole or in part, are financially obtainable without excessive cost based upon individual circumstances, or may be obtained without excessive hardship such as property owned or controlled by the same family, company, group of affiliated companies or corporate entities, or other organizations, municipality or state or federal governments.
- 5.69** **Recreational Activities** means those activities which include, but are not limited to, the following: education or nature studies, hunting, fishing, boating, canoeing, camping, trapping, waterskiing, swimming, ice skating, hiking, bird watching or other wildlife observations, photography, cross-country skiing, harvesting of natural foods or plant materials, and visual/aesthetic appreciation of natural wetland environments as a whole or in part.
- 5.70** **Renewal** means any approval or permit which has been reaffirmed or extended by the Department prior to the expiration date of the original permit granted.
- 5.71** **Restoration - Complete Restoration** means the result of actions which, in the opinion of the Director, reinstates or will reinstate, insofar as possible, the functions and values of a wetland which has been altered.
- 5.72** **Retention Facility** means a basin, depression, or other manmade structure excavated, constructed, or installed to hold stormwater flows or runoff.
- 5.73** **River** means, as defined in Section 2-1-20(j) of the Act, a body of water designated as a perennial stream by the United States Department of Interior Geologic Survey on 7.5 minute series topographic maps and which is not a "pond" as defined in these Rules.
- 5.74** **Riverbank/River Bank** means, as defined in Section 2-1-20(g) 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.
- 5.75** **Sediment** means any organic or inorganic material that is in suspension, has been deposited, is being transported, or has been moved from its site of origin by air, water, gravity, or ice.
- 5.76** **Sediment Facility** means any basin, depression or other manmade structure excavated, constructed or installed to retain sediment and/or debris, and prevent sediment and/or debris from entering any freshwater wetlands.
- 5.77** **Selective Cut/Cutting** means the cutting of trees or the mowing or cutting of shrubs and/or emergent vegetation which would result in:

- A. At least 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 75% crown cover of shrubs remaining within any shrub or forested wetland;
- C. At least 80% cover remaining in any emergent community.

5.78 **Shrub Wetland** means a wetland dominated by woody plants less than twenty feet (20') tall.

5.79 **Significant Alteration** means, in the opinion of the Director, a proposed project which by its area, scope and/or duration, appears to represent more than a minimal change or modification to the natural characteristics, functions and/or values of any freshwater wetland(s); may be detrimental to the basic natural capabilities or values associated with any freshwater wetland(s); and/or appears to be random, unnecessary and/or undesirable.

5.80 **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.

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

- 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, documented use, or evidence of aquatic life forms of obligate wildlife species (excluding biting flies).

5.82 **Standing Water** means any water above the ground surface regardless of its depth.

5.83 **State Highway Project** means a highway project proposed by the Rhode Island Department of Transportation which has been submitted under a single application for Department review.

5.84 **Stream/Intermittent Stream** means any flowing body of water or watercourse other than a river which flows during sufficient periods of the year to develop and maintain defined channels. Such watercourses carry groundwater discharge and/or surface runoff. Such watercourses may not have flowing water during extended dry periods but may contain isolated pools or standing water.

5.85 **Submergent Plant Community** means a 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.

5.86 **Surface Water** means water present above the substrate or soil surface.

5.87 **Swamp** means, as defined in Section 2-1-20(h) 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*), sphagnum (*Sphagnum*), azaleas (*Rhododendron*), black alder (*Ilex verticillata*), coast pepperbush (*Clethra alnifolia*), marsh marigold (*Caltha palustris*), blueberries (*Vaccinium*), buttonbush (*Cephalanthus occidentalis*), willow (Salicaceae), water willow (*Decodon verticillatus*), tupelo (*Nyssa sylvatica*), laurels (*Kalmia*), swamp white oak (*Quercus bicolor*), or species indicative of marsh.

5.88 **Terms and Conditions** means any requirements specified by the Director which, in his/her opinion, are necessary to prevent any authorized or permitted project or activity from reducing the functions and values associated with any wetland; prevent any significant alteration which is not authorized; prevent the destruction of any wetland or portion thereof; or protect the health, welfare, and general well being of the public. These terms and conditions may include, but not be limited to, 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. Time for completion including restrictions thereof;
- H. Statutory and/or regulatory requirements and limitations;
- I. Construction phasing; and
- J. Monitoring and reporting for compliance and enforcement.

5.89 **Undesirable Alteration** means any proposed activity or alteration which is likely to reduce or degrade any freshwater wetland functions and values as set forth herein. Any activity, alteration or proposed project will be considered "undesirable" unless the applicant shows that she or he has, to the maximum extent possible, mitigated for any damaging effects of the proposed project upon the functions and values provided by any freshwater wetlands.

5.90 **Unnecessary Alteration** means any proposed alteration which is not essential, vital, or indispensable to the proposed project and which can be achieved without altering or disturbing freshwater wetlands. Any activity, alteration, or project will be considered "unnecessary", unless the applicant shows that:

- A. Alterations of freshwater wetlands and the functions and values they provide have been avoided by exhausting all other non-wetland alternatives; and

B. The alterations planned for the wetland have been reduced to the maximum extent possible to prevent any damaging or detrimental effects upon wetland functions and values from activities which could otherwise be avoided.

5.91 Utility means any electric, water, sewer, gas, oil or communication transmission line or pipe.

5.92 Wetland Complex means any wetland ecosystem containing more than one wetland type as defined within the Act and these Rules.

5.93 Width During Normal Flow means the distance between the opposite edges of the flow channel of the river, stream, or intermittent stream. The channel edges are indicated by evidence of erosion, scouring, destruction or prevention of terrestrial vegetation, distinct banks, or other easily recognized or distinct characteristics indicating the confined area of a flowing body of water.

5.94 Wildlife means any vertebrate or invertebrate animal species which may reproduce in, rest in, feed in, or otherwise utilize any freshwater wetland regulated by the Act or these Rules.

5.95 Wildlife Habitat means 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/or abiotic characteristics of freshwater wetlands which may provide food, cover, breeding sites, or other life support systems for these forms of life.

RULE 6.00 - EXEMPT ACTIVITIES

6.01 General Conditions for Exempt Activities

A. Certain limited activities in freshwater wetlands may proceed without a specific written permit from the Department under the restrictions set forth below. Such restricted activities shall be considered exempt from the requirement to obtain a permit. It is strongly recommended that all exempt activities or projects occur as far away from freshwater wetlands as possible.

B. Nothing in this Rule 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 to any permit, or**
- 3) Interfere with the Director'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 which could alter the character of any freshwater wetlands require a specific written permit.

C. Nothing in this Rule shall preclude the Director 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, and/or shrubs encroaching upon existing or approved landscaped areas, fields, pastures and/or recreational areas, provided that the cutting is not taking place in an area designated to be planted, revegetated, and/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 has been required for dam safety maintenance by the Department's Dams Safety Program and all cutting is accomplished in accordance with that Program's specific limitations and requirements; or
 - F. 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
 - G. 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 and/or repair of poles, structures and equipment within the right-of-way; or
 - H. 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
 - I. 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; and/or swimming areas. The clearing or removal of such vegetation is accomplished only through the manual use of hand-held implements; or
 - J. The cutting is restricted to existing drainage ditches, swales, and/or embankments of detention and retention facilities as a normal maintenance activity and/or best management practice; or
 - K. 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.

6.03 Limited Maintenance and Repair Activities

The following limited repairs to, and maintenance of approved or existing structures in current use located in wetlands are allowed in accordance with Rule 6.01 and provided that the maintenance activity does not increase either vertically or horizontally the physical size of any existing structure. However, some limited structural changes may be exempt as specifically provided below.

- 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 which 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 property accessories and lawns; or
- D. Cleaning of drainage pipes, culverts, catch basins and manholes; or
- E. Repaving of, or undertaking normal roadway maintenance of, paved public and private roadways or bikeways. Normal roadway maintenance includes: resurfacing and/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 foot bridges. 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. Inspection, maintenance and repair to any water control structure within a dam provided that the Department receives written notification ten (10) days prior to the commencement of 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 specifically necessary to complete the inspection, maintenance and/or repair. Where possible, either normal water elevations or temporarily lowered water elevations must be maintained by the use of temporary coffer dams. Such coffer dams must remain in place until maintenance is completed and must be removed upon project completion; or

- K. 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
- L. Repair to or in-kind, in-place replacement of shoreline stabilization structures such as stone and/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
- M. Maintenance of soil erosion and sediment control management practices and stormwater management practices in accordance with an approved plan (as per Rule 5.07); or
- N. Maintenance of existing or approved bathing beach that does not expand or otherwise change the size or shape of the beach; or
- O. Inspection, maintenance and repair to those utility poles, structures, equipment and/or underground lines or pipes which are necessary to provide utility services to the public; or
- P. Replacement of utility poles, including changes in physical size, without any change to existing or approved cleared rights of way; or
- Q. Repair and replacement of utility lines attached to existing or approved bridges or in existing or approved roadways and railway beds provided antiseepage collars are used as appropriate to prevent subdraining effects on wetlands; or
- R. 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 Director with twenty (20) days advance written notice of such maintenance activity in accordance with Section 2-1-21 (a) of the Act; or
- S. Repair and replacement of drinking water wells and its supply lines provided that the following conditions are met:
 - 1) All cleared vegetation is allowed to regrow 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
- T. 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
- U. In-kind replacement of existing or approved buildings and constructed property accessories if destroyed by fire or natural causes.

6.04 Demolition of Buildings or Property Accessories

Demolition of buildings, parking areas or property accessories is allowed in accordance with Rule 6.01 only where:

- A. Building, parking area or property accessory 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 Property Accessories

The following limited changes to existing or approved single family residences and property accessories 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 floodplains 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 one story;
- 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 property accessories (see Rule 5.64 for definition of property accessory) except as limited in Rule 6.05 (A-F).

6.06 Nonresidential Buildings or Multifamily Residences and Property Accessories

The following limited changes to existing or approved nonresidential buildings or multifamily residences and property accessories 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 floodplains 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 one story 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 of 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 and/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 and/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 and/or control of the Department;
- C. The remediation activities are only those necessary to protect and/or restore freshwater wetlands from impacts and/or substantial threats resulting from actual releases of hazardous materials; and
- D. The remediation activities incorporate all measures necessary to fully protect, replace, restore and/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 Director 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 roadways and their existing or approved cleared shoulders, or existing or approved railroad beds and their existing or approved cleared shoulders; and antiseepage collars are used as appropriate to prevent subdraining 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; and
- 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.

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 permitted 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 and 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 provide 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.

RULE 7.00 - REGULATED ACTIVITIES AND GENERAL PROCEDURES FOR OBTAINING PERMITS

7.01 General

- A. A proposed project or activity which may alter freshwater wetlands requires a permit from the Director. Pursuant to Section 2-1-21(a) of the Act, except as exempt herein and except for farmers carrying out normal farming and ranching activities in accordance with Section 2-1-22(i)(1) of the Act, no person, firm, industry, company, corporation, city, town, municipal or state agency, fire district, club, non-profit agency, or other individual or group 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 Director.
- 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, due to their close proximity to wetlands or due to the size or nature of the project or activity will result in an alteration of the natural character of any freshwater wetland, require a permit from the Director. Such projects generally include those which:
- 1) Result in a change to the normal surface run-off characteristics which increases the rate and/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; and/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 and/or affecting any freshwater wetland; and/or
 - 3) Result in a modification to the quality of water reaching freshwater wetlands which could change their natural character; and

- 4) Result in construction of a "New" individual sewage disposal system as governed 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. Applicants may seek a permit from the Director for proposed projects or activities described above in paragraphs (A) and (B) by filing either a Request for Preliminary Determination or Application to Alter.

7.02 Requests for Preliminary Determination - Permits

Permits may be issued by the Director for those projects and activities which represent insignificant alterations to freshwater wetlands. Applicants may obtain a permit for an insignificant alteration by filing a Request for Preliminary Determination. (See Rule 9.03).

7.03 Applications to Alter Freshwater Wetlands - Permits

- A. Permits for significant alterations to freshwater wetlands may only be issued by the Director following the submission and processing of an Application to Alter. Such applications will be processed in accordance with Section 2-1-22 of the Act and Rule 9.05 of these Rules.
- B. Prior to filing an Application to Alter, an applicant may file a Request for Preliminary Determination (see Rule 9.03) 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, and that he or she cannot avoid and/or minimize wetland impacts so as to prevent any random, unnecessary and/or undesirable alterations to freshwater wetlands.

7.04 Emergency Alterations

- A. Applicants should refer to Rule 9.01 for requirements to obtain authorization for an emergency alteration.
- B. 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.

7.05 Renewal, Transfer, and Modification of Determinations or Permits Already Issued

Applicants should refer to Rules 9.07 (Application for Permit Renewal), 9.08 (Application for Permit Transfer) and 9.09 (Application for Permit Modification) for specific requirements and procedures.

7.06 Farmers

Farmers seeking a preliminary determination or a permit to alter freshwater wetlands should refer to Rule 9.04 and should contact the Division of Agriculture and Resource Marketing.

RULE 8.00 - GENERAL REQUIREMENTS FOR ALL APPLICATIONS

8.01 General Information for Applicants

- A. Forms for making any application as set forth in the Act and these Rules are available at the Department, or for agricultural activities under Section 2-1-22(i) of the Act and Rule 9.04 herein, at the Division of Agriculture and Resource Marketing.
- B. All applications involving freshwater wetlands must be submitted directly to the Freshwater Wetlands Program for processing, 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. Each applicant shall be required to submit a complete application package including an original application form and any additional supporting information required by the Department. Both the form and supporting information must be complete at the time of submission and must be accompanied by full payment of the application fee. (See Rules 8.03 and 8.04).
- D. Site plans and any specifications incorporated within the application package must be designed and prepared in accordance with these Rules.
- E. It is the responsibility of the applicant to inform the Department of the name and address of the applicant's attorney, agent or other representative she or he wishes to receive a copy of the Department's decision regarding the application.
- F. Any determination, verification, or permit received from the Department pursuant to any application involving freshwater wetlands does not preclude the need for the applicant to obtain any other necessary permits, and for the applicant and project to comply with other applicable federal, state and local laws, regulations and ordinances.
- G. Any applicant or subsequent transferee receiving any permit relating to freshwater wetlands shall comply with all conditions of the permit, and the Act. Any non-compliance constitutes a violation of the Act and/or these Rules, and is grounds for enforcement action.

8.02 Signatories to Applications

- A. All applications 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 corporation, company, partnership, city, town, municipal, state, or federal agency, fire district, association, club, non-profit agency or estate, the application shall be signed, accompanied by the titles of all signatories as follows:
 - 1) For a corporation, company, fire district, association, club, non-profit agency: by an officer with legal authority to bind the appropriate entity;

- 2) For a partnership: by a general partner;
 - 3) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a municipality or other 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 of the estate.
- C. Written, notarized authorization must be obtained from those property owners, other than the applicant, who own property containing freshwater wetlands that will be directly altered as a result of a proposed project. Such alterations include all those alterations as defined under the term "alter the character" in Rule 5.00.
- D. If the applicant is a government agency or entity with the power of condemnation, the government agency or entity must demonstrate that it has the requisite condemnation authority, or demonstrate that the proposed project area(s) lies within an easement that it maintains. In such cases, written, notarized authorization from each property owner who owns property containing freshwater wetlands that will be altered as a result of a proposed project may not be required.

8.03 General Fee Requirements

- A. All applicants must pay all required fees to the Director 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 8.04).
- C. The fees for certain individually proposed projects (i.e., reconstruction or new construction of roads or railways 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 or activity that are proposed in or above any freshwater wetlands, and those portions that are proposed in areas sloping/draining into on-site or adjacent freshwater wetlands.
- D. The ECC for proposed projects as described above in Rule 8.03(C) must be documented and prepared by an appraiser, general contractor, engineer, land surveyor, architect, landscape architect or another appropriate 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 Director will process an application only after receipt of the appropriate fee paid in full.
 1. Fees not based upon an ECC: If the Director determines that a fee not based upon an ECC is incorrect, the Director will inform the applicant what additional monies must be

- submitted. The applicant must submit any additional monies within ten (10) days of the date of the Director's notification.
2. Fees based upon an ECC: If the Director determines that a fee based upon an ECC is substantially incorrect, the Director will so notify the applicant. Within ten (10) days of the date of the Director's notification, the applicant must either submit written documentation supporting and explaining the original fee, or submit additional monies to resolve any deficiency. When, in the opinion of the Director, the fee remains substantially incorrect, the Director will consider the application withdrawn, and will so notify the applicant.
- F. Unless specified in the Fee Schedule (see Rule 8.04), fees submitted to the Department are not refundable; however, the Department will, for the original applicant only, apply fifty percent (50%) of the fee submitted for a Request for Preliminary Determination when:
1. A determination of significant alteration was issued and the original applicant files an Application to Alter for the proposed project within six (6) months of the date the preliminary determination was issued; or
 2. A determination of a significant alteration was issued with recommendations to prevent such an alteration and the original applicant files a new (second) Request for Preliminary Determination where the applicant has modified the project to prevent a significant alteration. This application must be received 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.

8.04 Fee Schedule

- A. **Request to Determine the Presence of Wetlands** (to determine presence of wetlands only) (See Rule 9.02) For this request, "area" means total property acreage of a single lot or multiple lots which border each other:
- 1) Area of less than five (5) acres = \$150.00.
 - 2) Area of five (5) acres up to twenty (20) acres = \$200.00.
 - 3) Area greater than twenty (20) acres up to forty (40) acres = \$250.00.
 - 4) Area greater than forty (40) acres = \$250.00 plus \$50.00 for every additional twenty (20) acres or less.
- B. **Request to Determine the Presence of Wetlands and Verify Location of Wetland Edge** (See Rule 9.02) For this request, "area" means total property acreage of a single lot or multiple lots which border each other:
- 1) Area of less than five (5) acres = \$300.00.
 - 2) Area of five (5) acres or greater, and/or linear easements or roads through or along multiple lots = \$300.00, plus \$0.20 for each linear foot of wetland edge to verify.
- C. **Application for Permit Renewal** (See Rule 9.07) = \$200.00.
- D. **Application for Permit Transfer** (See Rule 9.08) = \$50.00.
- E. **Request for Preliminary Determination and Application to Alter Freshwater Wetlands**

- 1) ***Developed residential lots***: Projects associated with individual residential lots already developed (e.g., proposed additions, garages, decks, sheds, pools, tennis courts, walls, landscaping activities, alteration or repair of ISDSs, new wells, new utility lines, etc.):
 - (a) Prelim. Det. = \$150.00.
 - (b) App. to Alt. = \$300.00.
- 2) ***New residential lots***: New development of individual residential lots (e.g., new construction of single family dwellings and duplexes, including all associated utilities, new ISDSs, garages, sheds, pools, driveways, tennis courts, landscaping activities, wells, etc.):
 - (a) Prelim. Det. = \$300.00, plus \$0.04 per square foot of site alterations in freshwater wetlands.
 - (b) App. to Alt. = \$600.00, plus \$0.08 per square foot of site alterations in freshwater wetlands.
- 3) ***Developed apartments, condominiums, offices, schools, churches and commercial/industrial lots***: Projects associated with apartments, condominiums, office complexes, schools, churches or commercial or industrial sites already developed (e.g., proposed additions, garages, decks, sheds, pools, tennis courts, walls, landscaping activities, parking areas, new wells, new utility lines, repair or alteration of ISDSs, etc.):
 - (a) Prelim. Det. = \$300.00.
 - (b) App. to Alt. = \$600.00.
- 4) ***New apartments, condominiums, offices, schools, churches, commercial, industrial lots*** : New development, including all associated site amenities, utilities and infrastructure:
 - (a) Prelim. Det. = \$600.00, plus \$0.04 per square foot of site alterations in freshwater wetlands.
 - (b) App. to Alt. = \$1,000.00, plus \$0.08 per square foot of site alterations in freshwater wetlands.
- 5) ***New subdivisions, multiple lots***: New development (e.g., residential, commercial, industrial, etc.), including all associated utilities and infrastructure = total of (a) and (b) below:

(a) # of Lots	Prelim Det.	App. to Alt.
up to 5	\$800.00	\$2000.00
6-15	\$1800.00	\$3000.00
16-25	\$2600.00	\$3500.00
26-35	\$3000.00	\$4000.00
36-45	\$3400.00	\$4500.00
46-55	\$3800.00	\$5500.00
56+	\$4200.00	\$7500.00

- (b) Plus, \$0.04 per square foot of site alterations in freshwater wetlands for Preliminary Determinations; \$0.08 per square foot of site alterations in freshwater wetlands for applications to Alter.

6) **Miscellaneous separate proposed projects:**

- (a) *Driveways and/or gravel access roads not exempt under Rule 6.00 up to one (1) lane in width:*
- (i) Prelim. Det. = \$450.00 plus \$0.50 per linear foot within freshwater wetlands.
 - (ii) App. to Alt. = \$850.00 plus \$1.00 per linear foot within freshwater wetlands.
- (b) *Surface mining (e.g., gravel, quarry), park or recreational area development, golf course construction, land clearing and/or grading operations:*
- (i) Prelim. Det. = \$900.00, plus \$0.04 per square foot of site alterations in freshwater wetlands.
 - (ii) App. to Alt. = \$3,000.00, plus \$0.08 per square foot of site alterations in freshwater wetlands.
- (c) *Water diversion projects (e.g., irrigation, hydroelectric, industrial processing/cooling, subdrains, wells (other than individual wells for single family house lots), dry hydrants):*

	Prelim Det.	App. to Alt.
Irrigation, Subdrains	\$300.00	\$1000.00
Indus. Proc., Hydro.	\$1200.00	\$4000.00
Wells	\$600.00	\$1200.00
Dry hydrants	\$150.00	\$500.00

- (d) *River/stream relocation and/or channelization* (includes areas subject to storm flowage (ASSF)) Note: linear foot is based upon length of river/stream/ASSF altered:

	Prelim. Det.	App. to Alt.
River, stream	\$10.00/ linear foot	\$50.00/ linear foot
ASSF	\$6.00/ linear foot	\$25.00/ linear foot

- (e) *New or replacement drainage structures/facilities (e.g., storm drainage, culverts, detention basins):*
- (i) Prelim. Det. = \$600.00.
 - (ii) App. to Alt. = \$2,000.00.
- (f) *New dam construction*
- (i) Prelim. Det. = \$600.00.
 - (ii) App. to Alt. = \$2,000.00 plus \$200.00 per acre of impoundment.
- (g) *New pond construction*
- (i) Prelim. Det. = \$400.00 plus \$100.00 per acre of site alteration.
 - (ii) App. to Alt. = \$800.00 plus \$200.00 per acre of site alteration.
- (h) *Pedestrian/bicycle trails, paths, foot bridges*
- (i) Prelim. Det. = \$150.00 plus \$0.30 per linear foot within freshwater wetlands.
 - (ii) App. to Alt. = \$500.00 plus \$0.50 per linear foot within freshwater wetlands.
- (i) *Individual docks, floats*
- (i) Prelim. Det. = \$100.00.
 - (ii) App. to Alt. = \$300.00.
- (j) *Multiple docks, floats (e.g., marinas), or individual boat launches*
- (i) Prelim. Det. = \$300.00.
 - (ii) App. to Alt. = \$800.00.
- (k) *Miscellaneous new construction; reconstruction; demolition; or modification projects other than those above*
- (i) Prelim. Det. = \$450.00 plus \$0.04 per square foot of site alterations in freshwater wetlands; or if linear project, \$0.40 per linear foot within freshwater wetlands.
 - (ii) App. to Alt. = \$850.00 plus \$0.08 per square foot of site alterations within freshwater wetlands; or if linear project, \$0.80 per linear foot within freshwater wetlands.

Fees based on ECC (see Rule 8.03 for explanation of how ECC is computed):

- (l) *Reconstruction of existing or approved roads or railways, including all associated drainage systems/facilities, bridges and utilities:*
- Prelim. Det. = Proposed projects with an ECC that is:
- (i) Less than or equal to \$200,000.00 = \$1,000.00.
 - (ii) Greater than \$200,000.00 but less than \$500,000.00 = \$2,000.00.
 - (iii) Greater than \$500,000.00 but less than \$1,000,000.00 = \$3,000.00.
 - (iv) Greater than \$1,000,000.00 = \$6,000.00.
- App. to Alter = Proposed projects with an ECC that is:
- (i) Less than or equal to \$200,000.00 = \$2,000.00.
 - (ii) Greater than \$200,000.00 but less than \$500,000.00 = \$3,000.00.

- (iii) Greater than \$500,000.00 but less than \$1,000,000.00 = \$4,000.00.
- (iv) Greater than \$1,000,000.00 = \$8,000.00.
- (m) *New road or railway construction*, including: all associated drainage systems/facilities, bridges and utilities:
 - Prelim. Det. = Proposed projects with an ECC that is:
 - (i) Less than or equal to \$200,000.00 = \$2,000.00.
 - (ii) Greater than \$200,000.00 but less than \$500,000.00 = \$4,000.00.
 - (iii) Greater than \$500,000.00 but less than \$1,000,000.00 = \$6,000.00.
 - (iv) Greater than \$1,000,000.00 = \$8,000.00.
 - App. to Alter = Proposed projects with an ECC that is:
 - (i) Less than or equal to \$200,000.00 = \$4,000.00.
 - (ii) Greater than \$200,000.00 but less than \$500,000.00 = \$7,000.00.
 - (iii) Greater than \$500,000.00 but less than \$1,000,000.00 = \$10,000.00.
 - (iv) Greater than \$1,000,000.00 = \$20,000.00.
- (n) *New utility installation not exempt under Rule 6.10 (i.e., individual major utility projects)*
 - Prelim. Det. = Proposed projects with an ECC that is:
 - (i) Less than or equal to \$200,000.00 = \$800.00.
 - (ii) Greater than \$200,000.00 but less than \$500,000.00 = \$1,500.00.
 - (iii) Greater than \$500,000.00 but less than \$1,000,000.00 = \$2,000.00.
 - (iv) Greater than \$1,000,000.00 = \$4,000.00.
 - App. to Alter = Proposed projects with an ECC that is:
 - (i) Less than or equal to \$200,000.00 = \$2,000.00.
 - (ii) Greater than \$200,000.00 but less than \$500,000.00 = \$3,000.00.
 - (iii) Greater than \$500,000.00 but less than \$1,000,000.00 = \$4,000.00.
 - (iv) Greater than \$1,000,000.00 = \$6,000.00.

F. Application for Permit Modification (See Rule 9.09)

Project Type	<u>App. for Permit Modification</u>	
	<u>Preliminary Det.</u>	<u>App. to Alter</u>
Indiv. resid. lot	\$100.00	\$200.00
Apartment, condo., office	\$200.00	\$400.00
Indiv. comm./indust. lot	\$200.00	\$400.00
Subdivision, mult. lot	\$200.00	\$400.00
Driveways, access road	\$200.00	\$400.00
Road, rail, utilities	\$300.00	\$600.00
Surface mining, etc.	\$200.00	\$400.00
Water diversion	\$200.00	\$400.00
Dry Hydrants	\$ 50.00	\$100.00
Stream relic.	\$200.00	\$400.00
Drainage	\$200.00	\$400.00
Dams, ponds	\$200.00	\$400.00
Trails, paths	\$ 50.00	\$100.00
Docks	\$ 50.00	\$100.00
Misc. projects	\$200.00	\$400.00

G. Negotiated Settlements (See Rule 9.06(D)) = 25% of original application fee.

H. Application Hearings:

- 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.
- I. **Change in Owner During Application Processing** (See Rule 8.06) = \$50.00.

8.05 Application Processing

- A. The Department shall assign an application number to each complete application for identification purposes and shall notify the applicant of the receipt of the complete application and the number assigned. It shall be the responsibility of the applicant to utilize the assigned application number in all correspondence and inquiries regarding the subject application.
- B. No application will be processed unless the entire application package, including any and all forms and other information required for submission, is complete.
- C. All complete applications will be processed as closely as practicable in the order received. The Director may, at his or her discretion, process applications out of sequence when those applications are submitted with a Certificate of Critical Economic Concern. (See Rhode Island General Laws Section 42-117 et seq.). Requests for Emergency Alterations (see Rule 9.01) will be processed immediately upon receipt.
- D. The Department may not, at the discretion of the Director, process an application for any property which the Department alleges contains unauthorized alterations of freshwater wetlands, discovered either during the review of an application or during investigation of a complaint.
- E. The Department may not, at the discretion of the Director, process an application for property which is the subject of any unresolved violation as cited by the Department 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.
- F. The Director may suspend the processing of any application if, in the opinion of the Director, information provided on the application form or in support of the application is misleading, false, or erroneous, or is inconsistent with these Rules. In such a case, the Department will not process the application and will so advise the applicant.
- G. The Director may suspend the processing of any application where a change of ownership occurs during processing and the new owner does not comply with Rule 8.06 within sixty (60) days of the transfer of the subject property or within ten (10) days following notification by the Department. In this case, a new application would be required.

- H. Any and all responses or answers to any application submitted to the Department except for Requests for Emergency Alteration will be made in writing, signed by the Director. No verbal permits or verbal authorizations of any application relating to freshwater wetlands, except Requests for Emergency Alterations, shall be issued, recognized or accepted by the Department.

8.06 Change in Owner During Application Processing

Any change in owner during the processing of any application will require the following:

- A. The submission of a new application form which updates the owner with appropriate signatures;
- B. A certified copy of the deed of transfer for Applications to Alter only; and
- C. The submission of an appropriate fee to cover the cost of administrative charges. (See Rules 8.03 and 8.04).

8.07 Meetings

- A. An applicant may request a meeting with representatives from the Department to discuss regulatory procedures, modifications to project designs, or to introduce a proposed project to the Department for initial response and discussion.
- B. An applicant may request a meeting with representatives from the Department to discuss potential project design alternatives and potential areas of concern; provided that the applicant has, at a minimum, obtained a verification of the wetland edge, or a determination of the presence of wetlands on or adjacent to the subject property.
- C. All requests for meetings must be submitted in writing to the Freshwater Wetlands Program specifying the need or purpose for the meeting, and advising the Department whether or not the applicant(s) will be accompanied by legal counsel at the meeting. Such requests may be granted at the discretion of the Department based upon need, availability of staff, and any statutory limitations.

RULE 9.00 - APPLICATION TYPES - SPECIFIC REQUIREMENTS AND CONDITIONS

9.01 Request for Emergency Alterations

Verbal approval of an emergency alteration, other than those alterations specified in Rule 6.07, may be granted by the Director consistent with the following requirements:

- A. Verbal or written request for permission to proceed with an emergency alteration must be made 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 the public's 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 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. 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 Director following Department inspection of the site, the applicant must submit an as-built site plan and/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 Appendix 5 of these Rules;
 - 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.

9.02 Request to Determine the Presence of Wetlands

- A. An application may be made to the Department to request a determination regarding either:
 - 1) The presence of wetlands on the property which are regulated under the Act, or
 - 2) The verification of the delineated edge of wetlands on the property.
- B. Under Rule 9.02(A)(1) above, the Department will inspect the property and issue a determination stating whether or not regulated wetlands are present. The purpose of this determination is not to verify the specific location of wetlands, but to generally determine whether wetlands are present on the property and the type of such wetlands.
- C. Under Rule 9.02(A)(2) above, 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.
- D. For purposes of determining the presence of wetlands on property under Rule 9.02(A)(1) above, the applicant must submit a site plan of the subject property which clearly indicates the property location and property boundaries. The required site plan must meet all applicable site plan requirements as set forth in Appendix 5 of these Rules. If property boundaries are not clearly identifiable on the subject property, the applicant must clearly identify the boundaries on the property with labeled markers such as flags or stakes.
- E. For verification purposes under Rule 9.02(A)(2) above, the applicant must undertake the following:

- 1) Submit site plans prepared by a qualified professional (see Rule 12.00) which identify the wetlands and their edges that the applicant wishes the Department to verify on the property and which conform to all site plan requirements. (See Appendix 5). Each wetland edge which the applicant wishes to have verified shall be identified on the property and recorded on the site plans as follows:
 - (a) The wetland edge on the property 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 to be verified. The distance between flags must allow for adequate visibility from one flag to another;
 - (b) The wetland edge shall be surveyed and recorded on a site plan showing the location and number/letter of the flag corresponding with those flags at the site; and
 - (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 which indicate 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 which allow confirmation of the location of the flagged wetland edge by field measurements;
 - 2) Identify the professional(s) conducting the delineation; and
 - 3) Provide documentation on forms provided by the Department which describes the reasoning used to delineate a particular wetland edge or any series of edges.
- F. Any determination regarding the presence of wetlands, or any verification of a wetland edge issued by the Department in accordance with Rule 9.02(A) shall be valid for a period of four (4) years from the date of issue.
- G. Any determination regarding the presence of wetlands, or any verification of a wetland edge issued by the Department within four (4) years prior to the effective date of these Rules shall be valid for a limited period of four (4) years from the effective date of these Rules. Any other determination of the presence or absence of wetlands, or other verifications of wetland edges shall be considered outdated and superseded as of the effective date of these Rules.

9.03 Request for Preliminary Determination

A. Purpose

A Request for Preliminary Determination may be submitted to:

- 1) Determine, in accordance with Section 2-1-22(a) of the Act, whether or not a specific proposed project constitutes a significant alteration;
- 2) Obtain a permit as an insignificant alteration; or
- 3) Obtain a determination of non-jurisdiction.

B. General Information

- 1) A Request for Preliminary Determination must include the overall project proposed or contemplated by the applicant. A request for partial review or review of a phase of any overall project may be considered by the Department when:
 - (a) The Department has previously reviewed the overall project which allowed the Department to contemplate full project impacts to freshwater wetlands; and/or

- (b) The Department required, as a condition of a prior determination, permit, or consent agreement/judgment, separate applications for individual portions of an overall project.
- 2) Pursuant to Section 2-1-22(a) of the Act, the Director shall only issue a preliminary determination following on-site review and preliminary evaluation of the project and its anticipated impacts to the wetlands' natural characteristics, functions, and/or values.
- 3) In addition to the applicant, the Director, in accordance with Section 2-1-22(g) of the Act, will notify the applicant's attorney, agent, or other representative of his/her decision on an application only when the applicant has advised the Director in writing, at the time of the filing of the application, of the names and addresses of the individuals she or he wishes to have notified.
- 4) A Request for Preliminary Determination file shall be considered closed under the following circumstances:
 - (a) 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 the deficiency letter is issued;
 - (b) A permit or determination of non-jurisdiction or significant alteration is issued by the Department; and/or
 - (c) The Director is notified in writing of a change of ownership during the processing of the application and the new owner does not comply with Rule 8.06.
- 5) Notification of the Director's decisions on Requests for Preliminary Determinations will be forwarded, at least once each month, to the appropriate city or town clerk for distribution to local officials, as specified in Section 2-1-22(g) of the Act.

C. Determination of Non-Jurisdiction

- 1) The Director may determine that a project does not represent, in any way, an alteration of a wetland and therefore does not require a specific written permit in accordance with Section 2-1-21(a) of the Act. Such projects shall receive a Determination of Non-Jurisdiction which will be issued to the applicant in letter form.
- 2) In order to facilitate receiving a Determination of Non-Jurisdiction by the Director, applicants should, at a minimum, identify the type and location of all freshwater wetlands on the property in question and/or those freshwater wetlands that exist on adjacent property immediately along or in close proximity to the property boundaries within which the project or activity is proposed.
- 3) Once the Department confirms that the project or activity does not, in any way, represent an alteration of any freshwater wetland, the Director shall issue a Determination of Non-Jurisdiction for the project or activity. In such cases, no permit is required.
- 4) Determinations of Non-Jurisdiction may be issued by the Director with conditions deemed necessary to ensure that the project or activity will remain non-jurisdictional.

D. Insignificant Alterations - Permit

- 1) The Director may grant a permit for proposed projects submitted under a Request for Preliminary Determination Application without requiring an Application to Alter a Freshwater Wetland in accordance with Section 2-1-22 of the Act. Such permits shall only be issued for insignificant alterations and shall be subject to such conditions, including requirements for transfer and time of completion, as the Director may require to protect the wetlands.

- 2) In order to obtain a permit through a Request for Preliminary Determination, the Director must be satisfied either by supporting site plan(s) and/or documentation provided by the applicant and his/her qualified professionals, or through staff evaluation, or both, that:
 - (a) Any impacts, due to projects or activities which could alter freshwater wetlands and/or wetland functions and values have been avoided;
 - (b) Best management practices and other mitigative features were incorporated to avoid a significant alteration of wetlands and to protect wetland functions and values;
 - (c) Any impacts resulting from physical loss or permanent change of wetland characteristics are so limited in scope, area and/or duration that they could only result in minimal change or modification to the natural characteristics, functions and/or values;
 - (d) The project and/or activities will not result in any random, unnecessary and/or undesirable alteration to any freshwater wetland; and
 - (e) The project and/or activities comply with the review criteria set forth in Rule 11.02.
- 3) Under normal circumstances, the alterations described in Appendix 1 represent insignificant alterations; however, other types of alterations not indicated in the Appendix may also be considered insignificant. The applicant should also be aware that certain circumstances peculiar to specific wetlands, the surrounding area, site conditions and the proposed project may result in a determination by the Director that a particular proposal represents a significant alteration and therefore requires the applicant to file an Application to Alter a Freshwater Wetland in order to obtain a permit from the Director. Therefore, even if a proposed project appears to conform with the examples of insignificant alterations as described in the Appendix, approval by the Department cannot be guaranteed. In addition, an applicant proposing a project that conforms or appears to conform with the examples of insignificant alterations still must seek a permit from the Department through a Request for Preliminary Determination Application before proceeding with the proposed project. The only projects altering the natural characteristics, functions, and/or values of freshwater wetlands that may proceed without Department approval are those described as exempt activities in Rule 6.00.
- 4) Any permit issued under a Request for Preliminary Determination must, unless specified in the response letter, be in concert with site plans containing a stamp of approval signed by the Director. Such stamp shall also contain the date of the permit letter and the appropriate application number.
- 5) The permittee or any subsequent transferee of the property is responsible for the proper operation, maintenance, and stability of any mitigative features, facilities, and systems of treatment and control which are installed or used by the permittee to achieve compliance with these Rules and any terms and conditions of the permit and to prevent harm to adjacent wetlands. All applicants and/or subsequent transferees receiving a permit shall take all reasonable steps to minimize or prevent adverse impacts to any adjacent wetland environment and the functions and values provided by such environments during and after permitted activities.
- 6) Any permit for wetland alterations issued under a Request for Preliminary Determination shall be valid for a period of four (4) years from the date of issue. Such permits may be renewed for one additional two year period following submission of an Application for

Renewal (see Rule 9.07) provided that the permittee remains in compliance with the permit.

- 7) Unless specifically limited by the terms and conditions of the Department's permit, any preliminary determination issued by the Department prior to April 7, 1990 which relates to:
 - (a) An approval of a project as an insignificant alteration, or
 - (b) A determination that the Act does not apply to a specific project, shall be valid through April 7, 1998 and may not be renewed.
- 8) Unless specifically limited by the terms and conditions of the Department's permit, any preliminary determination issued by the department on or after April 7, 1990 but prior to April 7, 1994 that relates to:
 - (a) An approval of a project as an insignificant alteration, or
 - (b) A determination that the act does not apply to a specific project, shall be valid through April 7, 1999 and may not be renewed.
- 9) Notwithstanding Rule 9.03(D)(7) and 9.03(D)(8), any determination of permit issued prior to April 7, 1994 that contains a specific expiration date within the terms of the Department's permit shall be valid only for the time period specified in such determinations or permit and may not be renewed.

E. Significant Alterations

If the Department determines that a proposed project appears to contemplate a significant alteration, an Application to Alter a Freshwater Wetland will be required. (See Rule 9.05). A determination by the Department that a project appears to contemplate a significant alteration is not a denial of a permit.

9.04 Applications Relating to Farmers

- A. Applications relating to wetland alterations by farmers, except in accordance with Rule 9.04(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.

9.05 Application to Alter a Freshwater Wetland

A. General Requirements

- 1) 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.
- 2) An Application to Alter a Freshwater Wetland must include the overall project proposed or contemplated by the applicant. A request for partial review or review of a phase of any overall project may be considered by the Department when:
 - (a) The Department has previously reviewed the overall project which allowed the Department to contemplate full project impacts to freshwater wetlands; and/or
 - (b) The Department required, as a condition of a prior determination, permit, or consent agreement/judgment, separate applications for individual portions of an overall project.
- 3) In order to obtain a permit through an Application to Alter a Freshwater Wetland, the applicant must demonstrate through plans, evaluations and supporting documentation that the proposed project does not represent a random, unnecessary, and/or undesirable alteration of any freshwater wetland as defined herein.

B. Application Processing - Practice and Procedures

1) Application Review for Completeness

Prior to the public notice of any Application to Alter, the Department shall review the application to determine whether or not it is a completed application for public notice purposes only. A completed application must include at least the following:

- (a) The original completed application form, all supporting documentation and appropriate application fee (See Rule 8.03 and 8.04);
- (b) Where required, written notarized authorization from property owners who own property containing freshwater wetlands that will be altered as a result of the proposed project (See Rule 8.02);
- (c) Proof of ownership in the form of a current certified copy of the deed of the subject property;
- (d) A current list of the property owners whose property lies within two hundred feet (200') of the proposed project. This list must contain the current mailing address of each property owner and must be accompanied by a radius 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 two hundred feet (200') of the proposed wetland alteration;
- (e) Site plans which accurately and clearly depict the project and provide, in the opinion of the Director, the correct location and extent of all wetlands within and near the proposed project area;
- (f) 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, abutters, and other interested parties;

- (g) All supporting documents, studies, reports and information upon which the applicant, in his/her opinion, has based the proposed project in order to obtain a permit from the Director; and
 - (h) Sufficient field reference markers and/or points on the property and the site plans which outline the limits of the proposed project area and sufficiently identifies the edge of all wetlands within the proposed project area in order for the Department to properly complete its evaluation.
- 2) Complete Application
Once an application is determined complete for public notice purposes, no further information may be submitted by the applicant in support of the application unless such information is requested by the Department.
 - 3) Public Notice of Application
An Application to Alter a Freshwater Wetland shall be publicly noticed in accordance with Section 2-1-22(a) of the Act.
 - 4) Public Comment - Period of Time
Within fourteen (14) days after the receipt of a completed application, as determined by the Department, the Director shall send a notice of the application to the appropriate parties, as defined in Section 2-1-22 of the Act. The public notice period shall commence upon the day of mailing of the notice and end forty-five (45) days thereafter.
 - 5) Notice for Public Comment - Delivery
Notice of the application shall be made by first class mail. The Director will rely upon those names and addresses provided by the applicant to notify any abutting property owner. Prior to the notice, the applicant must ensure that the list of abutters is current and accurate.
 - 6) Notice for Public Comment - Content
 - (a) The notice shall include the name of the applicant seeking permission to alter, his/her address, the purpose of the proposed 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 proposed project lies. 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.
 - 7) Public Notice - Disclaimer
Notice of the application is not a notice of approval or any intent by the Director to approve or permit the proposed project.
 - 8) Review During Public Notice
The Director will not make a decision on an application as to whether any proposed project is random, unnecessary, and/or undesirable during the public notice period.
- C. Public Comments - City or Town Disapproval - Processing
- 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 commentor must identify the application number noted in the public notice or must otherwise identify or reference the proposed 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 Director 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.
- 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/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. (See Rules 8.03 and 8.04). 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/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 Director will proceed with a decision on the application.
- 6) An applicant may withdraw, in writing, his/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.
- 7) City or Town Disapproval
 - (a) 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.
 - (b) In accordance with Section 2-1-21(a) of the Act, the Director shall consider the application disapproved by the city or town when the Department receives a letter during the forty-five (45) day comment period which informs the Director that the city or town council has voted to disapprove the application. The Department will not

consider any conditional or otherwise unclear responses by the city or town to be a disapproval. Any comment received from a city or town council which does not represent a disapproval shall be reviewed to determine whether or not the comment is a substantive objection.

- (c) When in receipt of a city or town disapproval, the Department shall render a decision which either:
 - (i) Denies the application based solely on the disapproval issued by the city or town;
or
 - (ii) Denies the application based upon the Department's own evaluation and findings in conjunction with the disapproval issued by the city or town.
- (d) Any request made by the applicant to the Department to modify an application and/or site plans in accordance with negotiations held between the city or town and the applicant shall require a new application to the Department.
- (e) In accordance with Section 2-1-21 of the Act, the Director is not precluded from granting an approval of alterations of wetlands relating to a state highway project, despite city or town disapproval, when the state highway project passes through or crosses two (2) 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 relating to a state highway project which is proposed to take place within only one (1) municipality, the Department may not approve such application and will treat such application in accordance with Rules 9.05(C)(7) above regardless of whether or not additional applications have been or will be filed which extend the project into more than one (1) municipality.

D. Water Quality Certificates

The Department will require a "water quality certificate" for those Applications to Alter Freshwater Wetlands where the Freshwater Wetlands Program identifies a water quality concern.

E. Decisions Resulting from an Application to Alter - Denial of Permit - Permit Issuance

1) General

- (a) Decisions shall be issued by the Department in accordance with Section 2-1-22(c) of the Act following the end of the forty-five (45) day comment period or following any public hearing required and held in accordance with Section 2-1-22(b) of the Act.
- (b) Applicants shall be notified in writing of the Department's decision by registered mail. The Department shall notify the applicant's attorney and any other agent or representative by first class mail if the applicant provides the Department with the name and mailing address of the applicant's attorney and/or other agent or representative at the time of the application submission. If a public hearing was held, any person who objected in writing during the forty-five (45) day public comment period shall be notified of the decision by first class mail.

2) Decision to Deny

- (a) In accordance with Section 2-1-21 of the Act, approval of a proposed alteration to any wetland will be denied by the Director if the project as proposed would result in a random, unnecessary, and/or undesirable alteration of a freshwater wetland, as those terms are defined herein, as 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 Director will deny such applications in accordance with Section 2-1-21 of the Act.

- (b) In determining whether a proposed alteration of a freshwater wetland is random, unnecessary and/or undesirable, the Director shall consider the following:
 - (i) Whether the applicant has demonstrated that impacts to freshwater wetlands have been avoided to the maximum extent possible, and that those impacts which are unavoidable have been reduced to the maximum extent possible while complying with the review criteria as set forth in Rule 11.02;
 - (ii) Whether the applicant has demonstrated that the proposed project eliminates or minimizes probable impacts to freshwater wetland functions and values, and the environment, health, welfare and general well-being of the populace; and
 - (iii) Whether the proposed project will contribute to adverse cumulative impacts on wetlands.
 - (c) The decision to deny approval shall be in the form of a letter which will state the reasons for denial.
- 3) Decision to Permit - Practice and Limitations
- (a) The Department shall issue a permit for an application which, in the opinion of the Director, does not represent a random, unnecessary, and/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.
 - (b) 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 for completion, as the Director may require to ensure the protection of freshwater wetlands and the functions and values they provide. Conditions and terms of the permit may require modification of portions of the project, as described by plans provided by the applicant.
 - (c) 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 the Director's authorized agent.
 - (d) 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.
 - (e) 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.

- (f) Unless otherwise ordered by the Director or unless renewal of a permit is obtained, all permits are limited to a period of one (1) year from the date of issue and shall expire thereafter.
 - (g) 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 which would total four (4) consecutive years from the original date the permit was issued.
 - (h) Permitted 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.
 - (i) 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 is required to notify the Department in writing of the completion of the permitted activities.
 - (j) After receipt of notification of the completion of work described or referenced in the permit, the Director 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 Director may first require the permittee or subsequent transferee to provide written certification from a registered professional engineer attesting to the completion of all engineered portions of the project that are described or referenced in the permit and/or approved site plans.
 - (k) The original permittee or subsequent transferee shall record, at his/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.
- 4) Appeal of Decisions
- (a) Within ten (10) days of the receipt of a decision from the Department regarding an Application to Alter a Freshwater Wetland, 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. Any request for an adjudicatory hearing on an application must be accompanied by a fee as specified in these Rules. (See Rule 8.04). A request for an adjudicatory hearing will not be considered timely filed unless accompanied by the full required fee.
 - (b) A request for an adjudicatory hearing automatically stays any permit issued.
- 5) Burden of Proof at Adjudicatory Hearings for Applications
- 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.

F. Hearings - Public and Adjudicatory

1) Public Hearings

(a) When necessary, in accordance with Section 2-1-22 of the Act, the Director will hold public hearings on proposed alterations to wetlands when a request for such hearing is made in accordance with Rule 9.05(C)(4). The purpose of such hearings shall be to elicit comments from the public regarding the effect of the proposed alteration on the functions and values provided by the subject wetland. Such hearings are not adjudicatory, evidentiary hearings, but are held to obtain comments to assist the Department in its review of the application.

(b) Public hearings will be held at a place designated by the Director. When a public hearing is required, such place shall be as convenient as reasonably possible to the site of the proposed project.

(c) The time of hearing shall be designated by the Director.

(d) The presiding officer of a public hearing shall be the Director or his/her designee.

2) Adjudicatory Hearings

Following an appeal of a decision regarding an Application to Alter a Freshwater Wetland, 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.

3) 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.

G. Closing of an Application

An Application to Alter a Freshwater Wetland shall be considered closed under the following circumstances:

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 the deficiency letter is issued;

2) A permit or a letter of denial is issued and the applicant fails to appeal the decision within ten (10) days of receipt of the decision;

3) The Director is notified in writing of a change in ownership during the processing of the application and the new owner does not comply with Rule 8.06; and/or

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.

9.06 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 Director, a substantial modification of the original proposed project.
- B. A proposed resolution will be considered a substantial modification of the original proposed 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; and/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. (See Rule 8.04).
- E. 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 Director and is enforceable by resort to Superior Court.

9.07 Application for 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 Director 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 must 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 Director, work has taken place in non-compliance with the original permit, any renewal thereof, and/or in non-compliance with the Act, or any Rules herein, or if the applicant revises his/her project such that there is a change in proposed wetland alterations.
- G. No Application for Renewal of an Application to Alter will be granted after the expiration of the three (3), one-year renewal periods which follow the original one (1) year permit period, unless 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 these Rules and that the alteration can be completed in a period of one (1) additional year or less.

9.08 Application for Permit Transfer

- A. Any permit issued by the Department to an applicant is not transferable to another person unless the new owner completes and submits an Application for Permit Transfer and includes the following:
 - 1) A certified copy of the deed of transfer of the property subject to the permit; and
 - 2) A notarized statement signed by the new owner or authorized individual as required by Rule 8.02 stating that she or he has reviewed the plan approved by the Department; has reviewed the permit letter; and agrees to abide by all conditions of the permit, including any time limitations imposed either by condition or these Rules.
- B. The subsequent transferee becomes the permittee of record for the permit only after filing a completed Application for Permit Transfer and fee, and after receiving written confirmation of the transfer from the Department;
- C. The filing of this application shall not stay or modify any time limitation or condition of the permit.

9.09 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 permitted project. Such modification(s) in all cases may not change the primary intent of the original permitted project and may not increase, in any way, the limits of wetland disturbance previously permitted or increase the anticipated impacts from that previously permitted by the Department, and must be minor in nature in relation to the originally permitted project.
- B. The application shall be made on a form prescribed by the Director 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 Appendix 5 for site plan requirements).
- 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 and/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 Director, the modification(s): are not minor in nature in relation to the originally permitted project; change the intent of the original project; increase in any way the limits of disturbance previously permitted; or increase the anticipated impacts from that previously permitted by the Department.
- E. Following receipt of an Application for Permit Modification, the Department may:
 - 1) Issue a revised permit for the modified project; or
 - 2) Inform the applicant that the modifications requested require a new application.

RULE 10.00 - PROTECTION OF WETLAND FUNCTIONS AND VALUES

10.01 Impact Avoidance and Minimization Requirement

A. Impact Avoidance

All applicants submitting an Application to Alter, or seeking a permit through a Request for Preliminary Determination must demonstrate to the Department in writing that all probable impacts to freshwater wetlands have been avoided to the maximum extent possible. If impacts cannot be avoided, the applicant must satisfactorily demonstrate in writing that there are no alternatives to the proposed alterations which would not alter the natural character of any freshwater wetlands. The written evaluation must describe what steps were taken to avoid impacts to freshwater wetlands. At a minimum, applicants must consider and address those issues set forth in Appendix 3(A).

B. Impact Minimization

If all impacts to freshwater wetlands cannot be avoided, an applicant submitting an Application to Alter, or seeking a permit through a Request for Preliminary Determination must demonstrate to the Department in writing that any probable impacts to wetland functions and values have been reduced to the maximum extent possible. The applicant must, at a minimum, consider and address those issues set forth in Appendix 3(B); and, where required by Rule 10.03, describe and assess the probable impacts of the proposed project on wetland functions and values, and demonstrate to the Department that the proposed project meets and/or exceeds the review criteria as set forth in Rule 11.02.

10.02 Freshwater Wetland Functions and Values

A. General Information

The Department will evaluate all proposed projects which may alter the natural character of freshwater wetlands and their functions and/or values to determine the extent to which the proposed project will impact wetland functions and/or values as described in this Rule.

B. Functions and Values

Freshwater wetlands provide the following functions and values:

1) Wildlife and Wildlife Habitat

Freshwater wetlands are important areas for the production and 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, seasonal or transient in nature. Wetlands serve as travel corridors, nesting sites, feeding sites, resting sites, nursery and/or brood rearing sites, escape cover, and seasonal breeding, migration, and overwintering 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 provide and potentially provide a variety of important active and passive recreational and aesthetic values to the general populace. Such active and passive recreational values include, but are not limited to activities such as; hunting, fishing, trapping, cross-country skiing, ice skating, boating, waterskiing, canoeing, camping, swimming, bicycling, hiking/walking, horseback riding, harvesting of natural foods or plant materials, bird watching, education and nature studies or other animal observations and photography. Aesthetic values include, but are not limited to, the wetland's visual, aural and cultural qualities such as its prominence as a distinct feature in the local area,

including its prominence as open space; whether the wetland is a rare wetland type; whether the wetland actually maintains or provides suitable habitat for any rare animal or rare plant species; whether the wetland has any outstanding or uncommon geomorphological features; and whether the wetland contains archaeological evidence or historic significance.

3) Flood Protection

Freshwater wetlands protect life and/or property from flooding and flood flows by storing, retaining, metering out, and otherwise controlling flood waters from storm events. Further, wetlands control the damaging effects of flood flows by dissipating erosive forces, providing frictional resistance to flood flows, and providing shoreline anchoring values.

4) Surface Water and Groundwater

Freshwater wetlands provide and/or maintain surface and/or groundwater supplies by acting as a recharge or discharge area, or in the case of some ponds, acting as surface water reservoirs. While groundwater recharge and discharge functions and values may vary seasonally, a freshwater wetland may, either individually or cumulatively, be an important factor in replenishing ground and surface water supplies, maintaining stream flows, transporting surface waters, and storing or metering out surface waters and/or groundwater during seasons or periods of droughts.

5) Water Quality

Freshwater wetlands protect and/or maintain important water quality functions and values by nutrient retention or removal; pollution filtration; sediment removal; oxygen production; turbidity reduction; maintenance or modification of stream flow; temperature and oxygen regimes in both flowing and surface water bodies, and providing and maintaining safe drinking water supplies.

10.03 Evaluation of Wetland Functions, Values and Impacts

A. General Requirements

1) Requests for Preliminary Determination

Applicants submitting a Request for Preliminary Determination are not required to submit a written evaluation as described below in Rule 10.03(B). However, such applicants must, at a minimum, comply with the impact avoidance and minimization requirements set forth in Rule 10.01, and will be subject to review by the Director to determine if the proposed project complies with the review criteria as set forth in Rule 11.02.

2) Applications to Alter

All applicants submitting an Application to Alter must submit a written evaluation which, in accordance with those requirements set forth herein, describes those functions and values provided and/or maintained by the subject freshwater wetland; describes and assesses any anticipated impacts to the wetland's functions and values; and describes all structural and/or non-structural best management practices, best available technologies, schedules and management plans which will be employed to eliminate, avoid, and/or reduce impacts to freshwater wetlands to the maximum extent possible. The written evaluation must consider and fully address the review criteria as set forth in Rule 11.02.

B. Written Evaluation - Required Elements

The written evaluation must include the following elements: table of contents, introduction, evaluation methodology, qualifications of professional(s) performing the evaluation, identification of regulated freshwater wetland(s), identification of the proposed measures to reduce impact, conclusion, and any literature citations. (See Appendix 6 for content requirements for each of the above listed elements). In addition to the above listed evaluation elements, the written evaluation must also include and fully address the separately identified elements as required below in paragraphs (C), (D), (E), (F), (G), and (H).

C. Wildlife and Wildlife Habitat

In addition to those evaluation elements required above in Rule 10.03(B), the written evaluation must include and address the following:

1) Wetland Characteristics

Provide the size of the wetland(s), and describe 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;

2) 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 and/or non-game species;

3) Wetland Values

Identify and describe the existing and potential ability of the wetlands to provide and/or maintain the functions and values as defined herein relating to wildlife and wildlife habitat; and

4) 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 proposed project which include, but are not limited to: impacts to travel, nesting, feeding, spawning, resting, nursery and/or brood rearing, escape cover, seasonal breeding, migration, and overwintering 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 and/or animal communities, intrusion of exotic and/or invasive species; whether the proposed project may result in displacement, reduction or extirpation of any wildlife species; and whether the proposed project will result in any cumulative loss of wildlife habitat, wildlife species or wildlife populations.

D. Recreation and Aesthetics

In addition to those evaluation elements required above in Rule 10.03(B), the written evaluation must include and address the following:

1) 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;

2) Wetland Values

Identify and describe the existing and potential ability of the wetland to provide and/or maintain the functions and values as defined herein relating to recreation and aesthetics; and

3) Proposed Impacts

Describe the probable individual and cumulative impacts of the proposed project on the wetland's recreational and aesthetic values and any potential reduction in the wetland's existing 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 proposed project; and the wetland's functions and values as a rare wetland type.

E. Flood Protection

In addition to those evaluation elements required above in Rule 10.03(B), the written evaluation must, where applicable, include and address the following:

1) Drainage Characteristics

Identify and describe the drainage characteristics of the proposed project site, including any areas contributing stormwater runoff to freshwater wetlands; describe the drainage characteristics of any surface water flows within the project site, and/or within any freshwater wetlands on or off-site that may be impacted by the proposed 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 proposed project site; any wetlands receiving water from the proposed project site; and any off-site wetlands which may be impacted by the proposed project.

2) Wetland Values

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

3) Analysis of Proposed Impacts

(a) 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., U.S. Soil 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 effect 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.

- (b) Projects proposing changes in drainage characteristics of freshwater wetlands and/or affecting the wetland's ability to store, meter out, or reduce the damaging effects 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, and/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 effects the proposed 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 and/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.

4) Compensation for Loss of Flood Storage

Projects which propose filling and/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 11.02 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:

- (a) The volume of compensatory flood storage must be equal to or greater than the volume of flood waters displaced by the proposed project;
- (b) 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;
- (c) 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 proposed project involving flood water displacement, and must be located as close to the proposed displacement area as possible;
- (d) Compensatory storage must precede the construction of any portion of the proposed project which displaces flood waters;

- (e) 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 proposed project; and
- (f) The design must include all features and best management practices to ensure that impacts to other freshwater wetland functions and values have been mitigated.

F. Groundwater and Surface Water Supplies

In addition to the evaluation elements required above in Rule 10.03(B), the written evaluation must, where applicable, include and address the following:

1) Drainage Characteristics

Identify and describe the existing drainage characteristics, including both surface and groundwater flows, within and to any wetland(s) that may be affected by the proposed project. Identify the pre-project elevation range of the surface and/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 and/or groundwater levels deviate from long-term ranges and averages. Include a map delineating the watershed of: the proposed project site; any wetlands receiving water from the proposed project site; and any off-site wetlands which may be impacted by the proposed project.

2) Wetland Functions and Values

Identify and describe the wetland's functions and values as defined herein relating to surface water and/or groundwater supplies.

3) Proposed Impacts

Identify and describe all proposed project components and activities that may directly or indirectly divert, reduce or contain surface and/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 effects the proposed 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.

G. Water Quality

In addition to the evaluation elements required above in Rule 10.03(B), the written evaluation must, where applicable, include and address the following:

1) Drainage Characteristics

Identify and describe the existing drainage characteristics of the proposed project area, including any on- or off-site wetlands that may be impacted by the proposed project.

2) 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 proposed project.

3) Water Quality Analysis

Submit a water quality analysis which:

- (a) 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
- (b) 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.

4) Proposed Impacts

Identify and describe all proposed project components and activities 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 effects 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.

H. Soil Erosion and Sediment Control

The written evaluation must identify and describe all proposed land disturbance activities; existing site conditions, including soil conditions and topography; drainage characteristics of the proposed project site; 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 11.02. The written evaluation must include supporting calculations, data, figures, diagrams, graphs and observations. (See Appendix 6 for proposed measures to reduce impact).

RULE 11.00 - REVIEW CRITERIA

11.01 General Requirements

- A. All proposed projects which may alter the natural character of freshwater wetlands and their functions and values are subject to the review criteria contained herein. If the Department determines that a project submitted as a Request for Preliminary Determination does not comply with the impact avoidance and minimization requirements set forth in Rule 10.01 and/or does not comply with the review criteria contained herein, the Department may determine that the project represents a significant alteration to freshwater wetlands. If the Department determines that a project submitted as an Application to Alter does not

comply with the impact avoidance and minimization requirements set forth in Rule 10.01 and/or does not comply with the review criteria contained herein, the Department may deny approval for the project.

- B. All projects proposing activities which may alter the natural character of freshwater wetlands shall not adversely affect the ability of any wetland to provide and/or maintain those freshwater wetland functions and values as identified in Rule 10.02. All applicants proposing such projects must incorporate those best management practices, best available technologies and any maintenance and/or inspection schedules necessary to comply with the review criteria contained herein.

11.02 Review Criteria

Before issuing a permit, the Director must be satisfied that a proposed project will not result in:

- 1) Significant reduction in the overall wildlife production and/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 and/or spawning area;
- 7) Any more than a minimal intrusion of, or increase in, less valuable, invasive and/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 existing 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 and/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 and/or property from flooding and/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 and/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 and/or property from flooding and/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 discharge rates of surface and/or groundwater to or from isolated wetlands (e.g., those wetlands without inlets or outlets);
- 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 and/or groundwater elevations within any wetland;
- 25) Non-compliance with the Rhode Island Department of Environmental Management Water Quality Regulations for Water Pollution Control; and/or
- 26) Any detrimental modification of the wetland's ability to retain and/or remove nutrients or act as natural pollution filter.

RULE 12.00 - REQUIREMENTS REGARDING PROFESSIONALS

12.01 General

- A. It is the responsibility of the applicant, or the respondent in matters concerning enforcement actions, to engage or employ any and all qualified professionals necessary to comply with these Rules.
- B. Where required by state law, all plans, specifications and documents must be prepared by the appropriate licensed professional(s). Such licensed professionals shall affix their stamp, signature and date of signing upon those plans, specifications and/or documents, or portions thereof, for which they are responsible.
- C. Professionals utilized to identify and delineate freshwater wetland edges which are predominantly characterized by the presence of wetland vegetation in conjunction with hydrologic characteristics should have the educational background and experience necessary to accurately delineate such wetlands. The Freshwater Wetlands Program

maintains guidelines describing minimum qualifications for professionals that delineate such wetlands. These guidelines are available upon request.

- D. Professionals utilized to evaluate freshwater wetland functions, values, and impacts thereto should have the educational background and experience necessary to competently comply with the requirements of these Rules. The Freshwater Wetlands Program maintains guidelines describing minimum qualifications for professionals involved in evaluations related to wildlife and wildlife habitat. These guidelines are available upon request.
- E. Professionals who have completed assessments, evaluations, recommendations, or reports on behalf of an applicant or respondent in matters concerning enforcement must document their participation in such matters.

RULE 13.00 - IDENTIFICATION AND DELINEATION OF FRESHWATER WETLANDS

13.01 General

- A. For purposes of review by the Department, the edge of freshwater wetlands shall be identified by a qualified professional as specified in Rule 12.00, and shall be delineated in accordance with the specifications set forth in Appendix 4. All wetland edge delineations submitted to the Department for its review must be fully supported by written documentation.
- B. In accordance with Section 2-1-20.2 of the Act, the Director has the sole authority to determine which areas are freshwater wetlands under the Act. Any delineation or identification of freshwater wetlands completed by a person other than the Director or his/her duly authorized agent shall be valid only after review and written approval by the Department in accordance with the procedures outlined in Appendix 4.
- C. The delineation or identification of a wetland is not an assessment of function or value. The functions and values of a wetland shall be assessed in a manner consistent with Rule 10.00 et seq.

RULE 14.00 - SITE PLAN REQUIREMENTS

- 14.01** Site plans must be designed in accordance with the specifications set forth in Appendix 5, and/or any specifications incorporated within the applicable application package requirements. The Department may reject any site plan which does not comply with all applicable requirements.

RULE 15.00 - ENFORCEMENT ACTIONS

15.01 General

As set forth in Sections 2-1-23 and 2-1-24 of the Act, and R.I.G.L. Sections 42-17.1-1 et seq., and 42-17.6-1 et seq., the Director shall have the power to issue enforcement notices, orders and/or requirements to ensure compliance with the Act and these Rules. The Director may also

provide written or verbal warning of his/her intent to undertake enforcement action, but is not required to do so.

15.02 Warning

- A. The purpose of a warning is to inform the responsible person or agent of the presence of regulated freshwater wetlands and the possibility that past or on-going site activities have resulted, or may result in a violation of the Act, Rules, or any condition of a permit, order, or determination issued by the Department.
- B. Warnings may be issued verbally or in writing at the discretion of and by the Director during or following the investigation of a complaint or review of an application.

15.03 Immediate Compliance Order

- A. Pursuant to R.I.G.L. Section 42-17.1-1 et seq., the Department may issue an Immediate Compliance Order.
- B. Such an order will state at least the following:
 - 1) The existence of the violation or problem;
 - 2) The action deemed necessary to correct the problem; and
 - 3) A time-frame within which the alleged violation shall be remedied.
- C. No request for an adjudicatory hearing on an Immediate Compliance Order may be made.

15.04 Cease and Desist Order

- A. When a site inspection by an authorized agent of the Department reveals that there is a violation of the Act, Rules, or any condition of a permit, order, or determination issued by the Department, the Director or authorized agent may, pursuant to Section 2-1-24 of the Act, issue a written order to the responsible person or agent to cease and desist the activity resulting in the violation.
- B. The order to cease and desist is an Immediate Compliance Order effective immediately upon service or within such time as is specified in such order. No request for an adjudicatory hearing on an Immediate Compliance Order may be made. (See Rule 15.03).
- C. The purpose of a Cease and Desist Order is to halt the activity resulting in the violation and to prevent further damage to the wetland environment.

15.05 Notice of Intent to Enforce (NOI)

- A. The purpose of a Notice of Intent to Enforce (NOI) is to:
 - 1) Notify the responsible person or agent of an alleged violation of the Act, these Rules, or any condition of a permit, order or determination issued by the Department;
 - 2) Indicate the type of wetland(s) altered, the activity undertaken and the general extent of the activity;
 - 3) Advise the responsible person or agent of the Department's intent to undertake additional adverse enforcement action should the responsible person or agent fail to satisfy the requirements of the notice;

- 4) Inform the responsible person or agent of which activities must cease to avoid additional adverse enforcement action; and
 - 5) Inform the responsible person or agent of any corrective action or restoration which is necessary to comply with the Act and these Rules or any permit condition, including any deadlines for such corrective action.
- B. A NOI shall be a document in the form of a letter issued by the Director.
 - C. The issuance of a NOI shall not preclude the Department from taking any additional enforcement action to ensure compliance with the Act and these Rules.
 - D. The Department is under no requirement to issue a NOI prior to undertaking any other type of enforcement action.
 - E. Upon full satisfactory resolution, in the opinion of the Director, of all outstanding issues raised in the NOI, the Department may issue a written confirmation to the responsible person or agent or subsequent transferee, that all issues are resolved.

15.06 Notice of Violation and Order (NOVAO)

- A. The purpose of a Notice of Violation and Order (NOVAO) is to:
 - 1) Notify the responsible person or agent of an alleged violation of the Act, these Rules, or any condition of a permit, order, or determination issued by the Department;
 - 2) Inform the responsible person or agent of the Department's intent to initiate further enforcement proceedings if the activity in violation continues or the requirements of the NOVAO are not complied with as directed;
 - 3) Issue specific orders, as determined necessary by the Director, which may include but are not limited to:
 - (a) An order to cease and desist any further activity resulting in an alteration to any freshwater wetland(s). An order to cease and desist contained within a NOVAO is an Immediate Compliance Order effective immediately upon service or within such time specified in the NOVAO;
 - (b) An order to restore the freshwater wetland(s) including details for restoration and a deadline by which such restoration must be completed;
 - (c) An order to pay an administrative penalty;
 - (d) An order to contact the Department prior to the commencement of restoration to ensure proper supervision of restoration activities and to obtain any further required restoration details;
 - (e) An order to immediately install protective measures to prevent further alteration of freshwater wetlands. Such an order contained within a NOVAO is an Immediate Compliance Order effective immediately upon service or within such time specified in the NOVAO; and
 - (f) An order to provide engineering plans and details regarding how restoration will be undertaken.
- B. The issuance of a NOVAO shall not preclude the Department from taking any additional enforcement action necessary to ensure compliance with the Act and these Rules.
- C. A NOVAO shall be in the form of a letter issued by the Director.
- D. Pursuant to Section 2-1-24 of the Act, any order or notice to restore wetlands shall be recorded in the land evidence records of the city or town wherein the subject violation is

located. The purpose of such recording is to advise a potential subsequent transferee of the pendency of the enforcement action; that the subject property contains a wetland; that the subject property contains or is subject to an alleged violation of the Act, Rules, or any condition of approval, permit, order or determination by the Department; and to inform any transferee of his/her responsibility to comply with any and all requirements of the order or notice.

- E. The responsible person or agent who receives a NOVAO may request an adjudicatory hearing to contest the action taken. (See Rule 15.10).
- F. If no written request for an adjudicatory hearing is properly filed within the ten (10) day period following service of an NOVAO, the NOVAO issued by the Department shall automatically become an Immediate Compliance Order.
- G. Following full satisfactory resolution, in the opinion of the Director, of all orders contained in the NOVAO, the Department will dismiss the NOVAO. For purposes of dismissing a NOVAO, full satisfactory resolution shall include either actual restoration of the affected area and/or complete resolution of all contested issues; or by consent of the Department, recordation of a Consent Agreement executed by the parties which sets forth the resolution of all contested issues. The Department will not issue any partial dismissals of any NOVAO.
- H. When the original NOVAO was recorded in land evidence records, and the Department dismisses such NOVAO, the Department will issue a release and discharge of such NOVAO for recordation. The Department will not issue any partial releases of any NOVAO.

15.07 Notice to Owner (NTO)

- A. The purpose of a Notice to Owner (NTO) is to notify a current property owner that an alleged violation of the Act, these Rules, or any condition of a permit, order or determination issued by the Department has occurred on his or her property; and that the Department believes that others are responsible for the violation.
- B. An NTO further advises the property owner that freshwater wetlands exist on the subject property.

15.08 Notice of Intent to Revoke/Suspend a Determination or Permit

- A. The purpose of a Notice of Intent to Revoke/Suspend a determination or permit (Notice of Intent to Revoke/Suspend) is to:
 - 1) Notify the permittee or subsequent transferee that the Department intends to revoke or suspend a determination or permit in accordance with Rule 15.09; and
 - 2) Afford the permittee or subsequent transferee an opportunity to show cause why the Department should not revoke or suspend the determination or permit.
- B. The Notice of Intent to Revoke/Suspend will be in the form of a letter notifying the permittee or subsequent transferee of the Department's intention to revoke or suspend the determination or permit, and the reasons why the Department intends to take such action.

- C. A party receiving a Notice of Intent to Revoke/Suspend may request a preliminary hearing before the Director or his or her designee to show cause why the Department should not revoke or suspend the determination or permit. (See Rule 15.10(B)).
- D. If the party receiving a Notice of Intent to Revoke/Suspend fails to submit a timely request for a preliminary hearing, or fails to show cause to the Director or his or her designee why the Department should not revoke or suspend the determination or permit, the Department may revoke or suspend the determination or permit in accordance with Rule 15.09.

15.09 Notice of Revocation/Suspension of a Determination or Permit

- A. The Director may revoke or suspend any determination or permit under one or more of the following conditions:
 - 1) The information or data submitted by the applicant or permittee either on the form(s) required or in any other material in support of the application is found to be false, misleading or erroneous;
 - 2) The project is not undertaken in strict compliance with the conditions or provisions of any determination or permit issued by the Department; and/or
 - 3) The Department is in receipt of reliable information that the project, without immediate action to suspend or revoke the determination or permit, may result in probable harm to the environment or pose a threat to the health, safety and/or welfare of the public. In such cases, the Department may issue a summary suspension. (See Rule 15.10).
- B. A Notice of Revocation/Suspension of a determination or permit will be in the form of a letter notifying the permittee or subsequent transferee of the revocation or suspension and the reasons why the determination or permit is being revoked or suspended.
- C. The party served with a Notice of Revocation/Suspension of a determination or permit may request an adjudicatory hearing to contest the revocation. (See Rule 15.10).
- D. A Notice of Revocation/Suspension of a determination or permit automatically becomes a final order of the Director enforceable in Superior Court upon failure to request an adjudicatory hearing as set forth in Rule 15.10.

15.10 Appeal of Enforcement Actions; Request for Preliminary Hearing; Summary Suspensions

- A. Appeal of NOVAOs and Notices of Revocation/Suspension of a Determination or Permit
 - 1) Within ten (10) days of the receipt of a NOVAO or a Notice of Revocation/Suspension of a determination or permit, the person served with such action may request an adjudicatory hearing to appeal the action taken. The request for an adjudicatory hearing must be in writing, must comply in form and content for such requests as required by the AAD Rules of Practice, and must be filed directly with the Department's AAD. A copy of such request must also be forwarded to the Department.
 - 2) A timely request of an adjudicatory hearing on a NOVAO automatically stays a restoration order and penalty assessment only until issuance of a final agency decision, or withdrawal of the hearing request.

- 3) A timely request for an adjudicatory hearing on a Notice of Revocation/Suspension automatically stays the revocation or suspension of a determination or permit until issuance of a final agency decision, unless the hearing request is withdrawn, or unless the Department finds that protection of the public health, safety, welfare or environment requires emergency action. In such a case, summary suspension may be ordered pending proceedings for revocation and may be ordered without prior issuance of any other enforcement action.
- B. Request for Preliminary Hearing on Notices of Intent to Revoke/Suspend
- 1) Within ten (10) days of the receipt of a Notice of Intent to Revoke/Suspend a determination or permit, the person served with such action may request a preliminary hearing to show cause why the Department should not revoke or suspend the determination or permit in accordance with Rule 15.09. The request for a preliminary hearing must be in writing, and must be sent directly to the Director or his or her designee.
 - 2) Prior to a preliminary hearing, the permittee or subsequent transferee may submit documentary evidence to the Department in support of his or her position, and may be represented by counsel at the preliminary hearing.
- C. Burden of Proof at Adjudicatory Hearings and Preliminary Hearings for Enforcement Actions
- 1) The burden of proof at an adjudicatory hearing on an alleged violation and order to restore shall rest with the Department, and the burden shall be met and the enforcement action, including the order to restore, shall be upheld when the Department shows by a preponderance of evidence that:
 - (a) A freshwater wetland regulated by the Department is present;
 - (b) The alleged alteration is one as described in Section 2-1-21 of the Act or is another activity which requires approval of the Director;
 - (c) The alleged alteration is not approved by the Director; and
 - (d) The alleged violator, or his/her agent(s) or servant(s) altered, permitted or is maintaining alterations of freshwater wetlands in violation of Section 2-1-21 of the Act.
 - 2) The burden of proof at an adjudicatory hearing regarding a Notice of Revocation/Suspension of a determination or permit shall rest with the Department to show that:
 - (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 false, misleading or erroneous; or
 - (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 project, without immediate action to suspend or revoke the determination or permit, may result in probable harm to the environment or pose a threat to the health, safety and/or welfare of the public.
 - 3) The burden of proof at a preliminary hearing on a Notice of Intent to Revoke/Suspend any determination or permit shall rest with the permittee to show that:
 - (a) The permittee did not provide any false, misleading, or erroneous information or data in order to obtain a determination or permit;

- (b) Any activities are being undertaken in strict compliance with the conditions and provisions of any determination or permit issued by the Department; and
- (c) Continuing with the activities conducted pursuant to any determination or permit will not pose a threat to the health, safety and/or welfare of the public or result in harm to the environment.

15.11 Negotiated Settlements - Consent Agreements

- A. In resolution of a contested enforcement action, the Department and alleged violator may enter into negotiated settlement discussions. The purpose of such discussions will be to formulate an acceptable resolution of the enforcement action by a Consent Agreement executed by all parties.
- B. As a result of negotiated settlement discussions, a Consent Agreement may be executed by the parties addressing the disposition of any orders raised in the enforcement action; provided however that no agreement shall be reached to allow for an after-the-fact application seeking a permit to resolve an enforcement action.
- C. A Consent Agreement executed by the parties involved is deemed a final order of the Director and is enforceable by resort to Superior Court.

RULE 16.00 - PUBLIC ACCESS TO RECORDS

- 16.01** 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.
- 16.02** 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 17.00 - SEVERABILITY

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

RULE 18.00 - SUPERSEDED RULES AND REGULATIONS

- 18.01** On the effective date of these Rules and Regulations, all previous Rules and Regulations, 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 and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken, or application filed.

RULE 19.00 - EFFECTIVE DATE

19.01 The foregoing Rules and Regulations, after due notice, are hereby adopted and filed with the Secretary of State this _____ day of _____, 1998 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 2-1-20.1, 42-17.1, 42-17.6 and 42-35 of the General Laws of Rhode Island, 1956, as amended.

Andrew H. McLeod, Director
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Notice given on February 13, 1998

Effective April 23, 1998

APPENDIX

APPENDIX 1: INSIGNIFICANT ALTERATIONS

- A. In accordance with Rule 9.03, the Director may issue a permit for proposed projects submitted under a Request for Preliminary Determination Application provided the proposed project represents, in the opinion of the Director, 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, the applicant should be aware that certain circumstances peculiar to specific wetlands, the surrounding area, site conditions, and the proposed project, may result in a determination by the Director that a particular proposal represents a significant alteration and therefore requires filing of an Application to Alter a wetland and a permit from the Director. Therefore, even if a proposed project appears to fit within the examples of insignificant alterations in this Appendix, a permit by the Department is not implied or guaranteed. In addition, the proponent of a proposed project that fits or appears to fit within the examples of insignificant alterations still must seek a permit from the Department through a Request for Preliminary Determination Application before proceeding with the proposed project. Further, the proposed 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) Piling and/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 further 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 11.02), 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 negative effects 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 proposed 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 existing in the maintained (cut/cleared) existing utility easement are only temporarily altered to install the line or pipe;
 - (c) 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;
 - (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.
- 6) 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.
- 7) 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.
- 8) 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.

- 9) Well and water supply line installation for individual residential lots other than those exempt pursuant to Rule 6.03(S) 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: SIGNIFICANT ALTERATIONS

- A. Significant alterations, as defined herein are those alterations which, in the opinion of the Director, may result in a detrimental modification to the functions, values and/or basic natural capabilities associated with any freshwater wetland. Functions and values of wetlands are specified in Rules 3.00 and 10.02. A determination of whether a proposed project represents a significant alteration is made through the submission of a Preliminary Determination Application. (See Rule 9.03). In accordance with Section 2-1-22 of the Act and these Rules, significant alterations require the Director to elicit public comment, determine the substance of objections received, comply with the disapproval of any city or town council, and hold public hearings as required. The purpose of this section in the Appendix is to allow applicants and the public to determine with some likelihood what, under normal circumstances, represents a significant alteration.
- B. The following are general types of projects which represent significant alterations. However, other types of alterations not indicated here may also be considered significant in keeping with the definition of this term. It is also important for applicants and the public to understand that project designation as a significant alteration only triggers the need for the applicant to submit an Application to Alter. A determination that a proposed project represents a significant alteration does not represent a denial of a proposed project. However, the submission of an Application to Alter does not guarantee that a permit will be issued.
- C. The general categories of significant alterations include, but are not limited to, the following:
 - 1) Alterations to wetlands other than those allowed in Rule 6.00 which have taken place without approval or permit by this Department;
 - 2) Projects submitted for review which do not satisfactorily avoid, minimize or mitigate impacts to freshwater wetlands;
 - 3) Projects which appear to propose random, unnecessary and/or undesirable alterations to wetlands;
 - 4) Projects which alter the natural character, functions and values of any freshwater wetland so that the alteration:
 - (a) Could result in permanent 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 wetlands to upland;

- (b) Could result in the detrimental modification of the biological, chemical, and/or hydrologic characteristics of any wetland areas which could reduce the natural values associated with the wetland;
 - (c) Could reduce the natural value of any fifty-foot (50') perimeter wetland, and/or one hundred foot (100') and two hundred foot (200') riverbank wetland through permanent loss or change in natural characteristics;
 - (d) Could displace any flood waters;
 - (e) Could increase flooding by change in runoff;
 - (f) Could reduce the recharge and/or discharge value of any wetland;
 - (g) Could reduce river, stream, or intermittent stream flows as a result of diversion or withdrawal of water;
 - (h) Could result in the permanent change or conversion from one habitat type in a wetland to another; or
 - (i) Could result in the disturbance or destruction of any rare species or rare wetland type, or could result in the degradation of habitat for rare species;
- 5) Projects which appear to propose temporary alterations, but may lead to extensive effects on the wetlands and the functions and values associated with the wetlands; and
- 6) Alterations which may, when evaluated cumulatively with other alterations, result in significant impacts to the wetlands and the functions and values associated with the wetlands.

APPENDIX 3: IMPACT AVOIDANCE AND MINIMIZATION

A. Impact Avoidance

As required in Rule 10.01, the applicant must consider and address, at a minimum, the following issues in order to satisfactorily demonstrate to the Department that all impacts to the wetlands functions and values have been avoided to the maximum extent possible, and that all alternatives to the proposed alterations which would not alter the natural character of any freshwater wetlands were considered and cannot be accomplished:

- 1) Description of the primary purpose of the proposed project;
- 2) Whether the primary proposed activity is water-dependent, or if it requires access to freshwater wetlands as a central element of its primary purpose (e.g., a pier);
- 3) Whether there are any areas within the same property or other property owned or controlled by the applicant that could be used to achieve the same project purpose without altering the natural character of any freshwater wetlands;
- 4) Whether there are any other properties not currently owned or controlled by the applicant but which are reasonably available to the applicant that would not involve wetland alterations and could be used to achieve the same project purpose;
- 5) Whether there are alternative designs, layouts, or technologies that could be used to avoid freshwater wetlands or impacts on wetland functions and values on the subject property or reasonably available properties which would achieve the same project purpose, and whether these design alternatives are feasible;
- 6) Description of all attempts applicant has made to overcome or remove such constraints as zoning, infrastructure, parcel size, or other similar constraints in order to avoid wetland alterations; and
- 7) Whether the available alternatives which would not alter the natural character of any freshwater wetlands on the subject property or reasonably available properties, if

incorporated in the proposed project, would result in significant adverse consequences to the public health and safety, and/or the environment.

B. Impact Minimization

As required in Rule 10.01, the applicant must consider and address, at a minimum, the following issues in order to satisfactorily demonstrate to the Department that all impacts to the wetland functions and values cannot be avoided, and therefore have been reduced to the maximum extent possible;

- 1) Whether the proposed project is necessary at the proposed scale and whether the scale of the alteration could be reduced and still achieve the same primary project purpose;
- 2) Whether the proposed project is necessary at the proposed location or whether another location within the site could achieve the same primary project purpose while resulting in less impact to the wetland;
- 3) Whether there are alternative designs, layouts, densities, or technologies that are feasible, and which would result in less impact to the wetland while still achieving the same project purpose; and
- 4) Whether reduction in the scale of the proposed project or relocation to minimize impact to the wetland would result in significant adverse consequences to public health and safety and/or the environment.

APPENDIX 4: 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(a) "bog", (f) "marsh" and (h) "swamp"; and/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; and/or
 - (c) Those plant species listed as having a wetland indicator status of Facultative Wetland (FACW), Facultative (FAC) and/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 and/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;
 - Visual observation of soil saturation within twelve inches (12") of the soil surface;
 - Distinct water marks on vegetation and/or other fixed objects;*
 - Sulfidic 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 and/or periodic flooding (e.g., buried soil surface horizons and/or 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 rhizospheres) 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(d) 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 Departmental review and acceptance under the procedures set forth in Rule 9.02 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, 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, and other areas dominated by open or flowing water shall be the ordinary high water mark of standing or flowing water. This edge may be determined and documented using recorded hydrologic data (*i.e.*, data obtained from site specific planning and design documents; in-stream flow studies; stream gauge data; Rhode Island Department of Environmental Management file data; flood data), or, in the absence of these, by observations such as evidence of clear demarcation lines between terrestrial and aquatic conditions as a result of standing or flowing water; permanent watermarks and stains on woody vegetation or other fixed objects, such as bridges, stones, walls, docks, or piers; or evidence of surface scouring.
- 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 proposed 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:

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

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 is 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-2). 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.

APPENDIX 5: SITE PLAN REQUIREMENTS

- A. 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 the required sets of plans.
- B. 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 of one inch = forty feet (1"=40'), for example, is preferred. Where additional detail is required to complete his/her evaluation, the Director may require larger scaled details.
- C. All site plans indicating physical features, distances, contour elevations, property lines, or other information provided as base-line data must clearly note whether such information was obtained by on-site survey, by aerial photogrammetry sources, or by reproduction from other maps and/or plans. Site plan information obtained from aerial photogrammetry sources or by

reproduction from other plans and/or maps must provide an estimate of the maximum possible horizontal and/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.

- 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 depicting projects submitted for review and/or approval must have all markings permanently fixed. Site plans which are pieced together with tape or contain markings of pen, pencil, crayon, markers or other items which can be changed or altered at a later date are not acceptable. Blue-line or black-line prints or photocopies of originals are acceptable.
- F. All site plans must contain a title block, original date of the plan and 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/road abutting the site, the tax assessor's plat and lot number(s), the city or town, the name of the preparer and the scale of the plan.
- G. All site plans must depict at least the following:
 - 1) Street 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 dimension;
 - 5) Insert 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.
- H. Site plans prepared by a licensed or registered professional must contain the stamp of the professional affixed to each sheet prepared along with the date and the signature of the professional.
- I. All site plans containing more than one (1) sheet must be numbered consecutively.
- J. All site plans must contain a legend which explains all markings and/or symbols.
- K. When verification of wetland edges are requested, or approval or review of a proposed project is being requested, all site plans must accurately reflect the following:
 - 1) The edge of any swamp; marsh; bog; pond; emergent, submergent, shrub, or forested wetland; or any special aquatic site;
 - 2) The edge of any river, stream, intermittent stream, area subject to flooding and/or 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 pre-determined 100-year flood elevations are not available from published sources including previous engineering studies, and 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.
- L. All site plans for proposed projects shall include and depict the following where applicable:
 - 1) Where changes to existing grades are proposed, the plan shall show both existing and proposed contour line elevations at maximum intervals of two (2') feet. Where no changes to grades are proposed, include a notation which so indicates;
 - 2) Profiles and/or cross sections drawn to scale;

- 3) Proposed limits of all vegetative clearing and surface or subsurface disturbance;
 - 4) All temporary and permanent erosion and sediment controls;
 - 5) All temporary and permanent stormwater, flood protection and/or 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; and
 - 8) Any additional specific requirements contained in the application package checklist for proposed projects must be provided as needed.
- M. Site plans submitted for an Application to Alter must, pursuant to R.I.G.L. Section 2-1-22, bear the stamp and signature of a registered professional engineer.

APPENDIX 6: WRITTEN EVALUATION - REQUIRED ELEMENTS

As required in Rule 10.03, and in addition to the evaluation requirements set forth in Rule 10.03 (C),(D),(E),(F),(G), and (H), the written evaluation of wetland functions, values and impacts must, at a minimum, include and address the following elements:

- A. Table of Contents
List any section titles and their page numbers.
- B. Introduction
Provide an overall project description which includes project size, purpose, location and type; site history, and overall areas evaluated including nearby roadways and adjacent land uses.
- C. 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, if any, specific evaluation methodology which was used, and identify and describe any deviation from the methodology with reasons behind the deviation, 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.
- D. Qualifications
List the names and qualifications of each person involved in the evaluation. (See Rule 12.00). 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 and/or values of the wetland. (See Rule 10.00). The name, address and background of any individuals consulted for the evaluation must be submitted as well as a description of the extent of their participation.
- E. Proposed Measures to Reduce Impact
Identify and describe the proposed measures, structural and/or non-structural methods, or best management practices that will be implemented to reduce or eliminate harm to wetland functions and values and detail why and how such measures will protect wetland functions and values. Such measures, methods, or best management practices include, but are not limited to:
 - 1) Designing dense plantings of shrubs and trees between development and remaining natural areas to "buffer" impacts from loss of wildlife habitat and natural areas and to

reduce the effects of noise, lighting and other disturbances upon wildlife and remaining natural areas;

- 2) Preserving natural areas in and around wetlands;
- 3) Minimizing the extent of disturbed areas and encouraging the preservation of land in its natural state;
- 4) Ensuring the maintenance of fish and other wildlife passage;
- 5) Designing structures and alterations outside of flood plain, floodway, areas subject to flooding, flowing bodies of water or other freshwater wetlands;
- 6) Using best management practices for the stabilization of disturbed areas and the selection, use, and maintenance of temporary and/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.
- 7) Using best management practice selection and design criteria in accordance with or equivalent to the Rhode Island Stormwater Design and Installation Manual to maximize the control, treatment and maintenance of stormwater flows;
- 8) Minimizing impervious surface areas such as roads, parking, paving or other surfaces;
- 9) Incorporating compensatory flood storage area(s) where necessary, and in compliance with these Rules;
- 10) Encouraging infiltration of non-contaminated run-off;
- 11) Preventing channelization or piping of run-off and encouraging sheet flow;
- 12) Landscaping with low slopes to maximize sheet flow and infiltration while minimizing channelization;
- 13) Incorporating structural methods such as detention basins, wet basins, infiltration basins and trenches, dry wells, galleys, vegetated swales and vegetated filter strips;
- 14) Minimizing or eliminating the use of, or any increase of, any pollutant, fertilizers, pesticides, herbicides, or any other chemical or organic application which increases pollutant and nutrient loadings;
- 15) Maximizing setbacks of septic systems and other land disturbances from wetlands; and
- 16) Minimizing the withdrawal of water from wetlands and minimizing any reduction in river or stream flow.

F. Freshwater Wetlands

Describe all freshwater wetlands on-site as well as any off-site which are hydrologically connected to the on-site wetland(s); and identify all wetlands evaluated, including any areas of potential impact associated with the proposed project within freshwater wetlands.

G. Conclusion

Identify and detail how the proposed project meets the review criteria as set forth in Rule 11.02. Describe any measures to reduce impacts which were considered and rejected and indicate why they cannot or should not be employed.

H. Literature Citations

Provide citations for all literature used to support the evaluation.