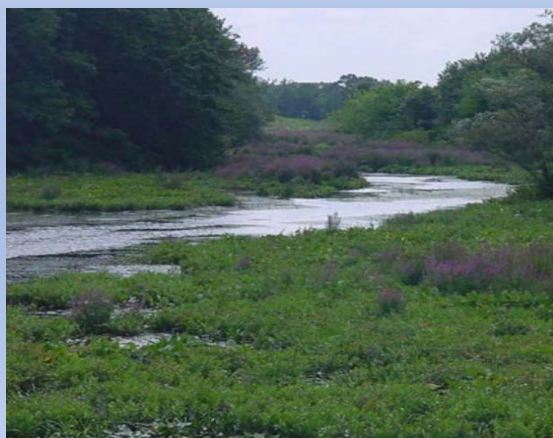




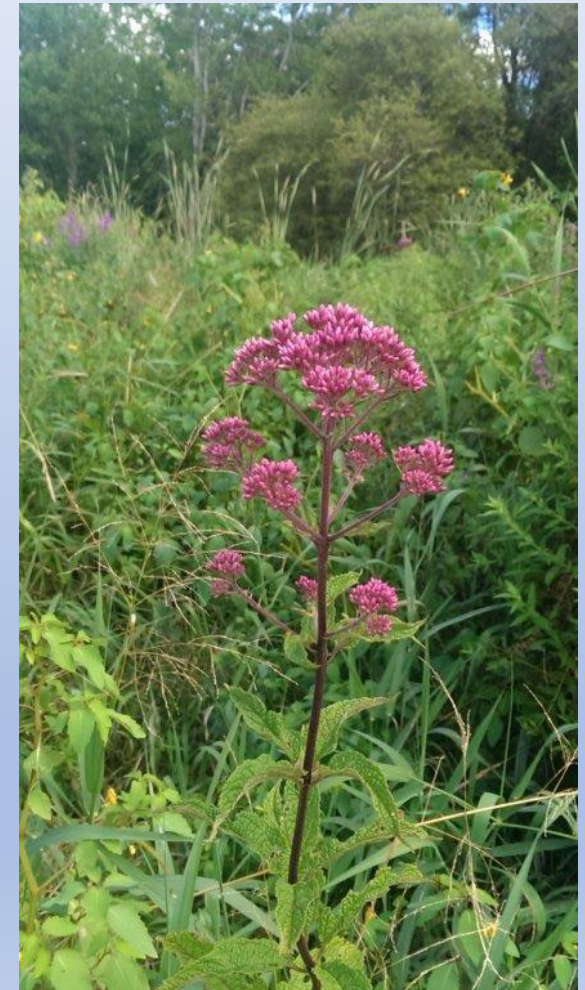
# Overview of Revisions to Rhode Island Freshwater Wetland Rules

Chuck Horbert, Deputy Administrator  
RIDEM Office of Water Resources



# Presentation Outline

- Key provisions of Single Standards Bill
- Overview of Revised Regulations
  - Applicability
  - Definitions
  - Buffers vs Buffer Zones
  - Standards and Variances
  - Permit Streamlining
- Municipal Coordination
- Resource Materials



# 2015 Freshwater Wetlands Single Standard Bill

An Act to Streamline and Strengthen  
Freshwater Wetlands Protection Statewide



Purpose – Implement Recommendations from 2014 Legislative Task Force

Key provisions:

➤ **Strengthens wetland protection administered at the State Level**

- Expands jurisdictional area for state agencies
- Requires statewide buffer standards – promoting flexibility to tailor protection taking into account existing land use and resource value
- Redefines and clarifies terminology

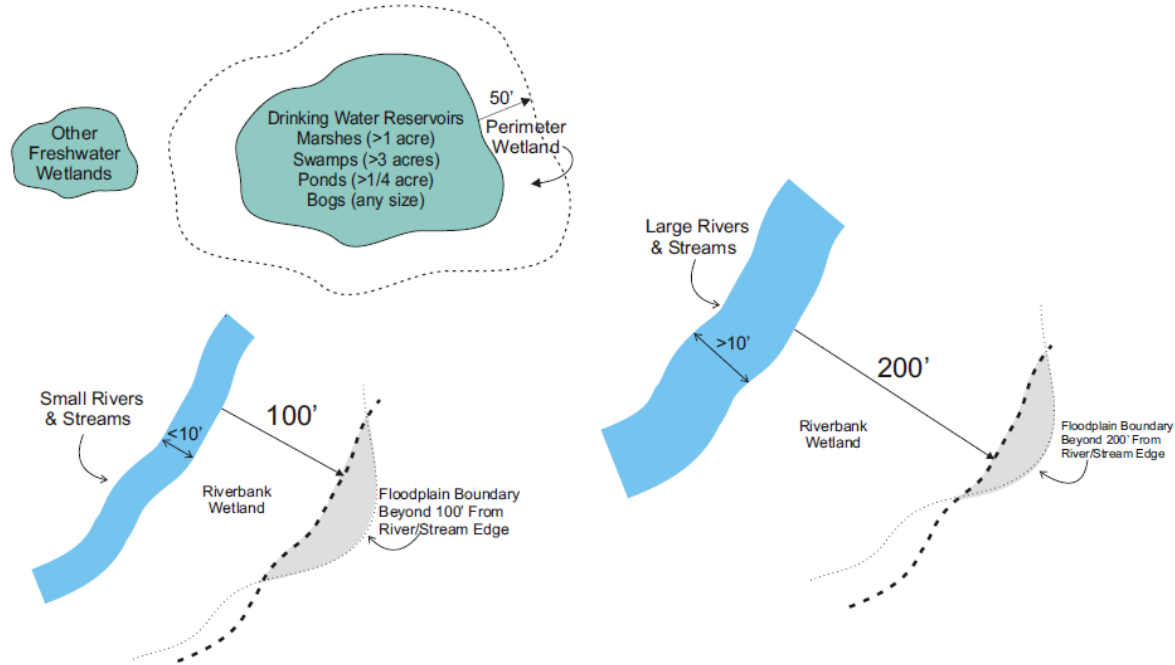
➤ **Streamlines regulatory process by eliminating duplication of effort at the local level**

- Establishes new requirements for state agencies to share information with municipalities
- Allows for municipal petition to increase a buffer standard (within limit of JA)
- Eliminates municipal veto provision

# Key New & Revised Definitions (Section 3.4)

- **Jurisdictional Area (JA)**– area to be regulated includes - freshwater wetlands, buffers, floodplains, areas subject to storm flowage, areas subject to flooding, and contiguous areas that extend outward:
  - 1) Two hundred feet (200') from the edge of a river or stream;
  - 2) Two hundred feet (200') from the edge of a drinking water supply reservoir; and
  - 3) One hundred feet (100') from the edge of all other freshwater wetlands (including ponds).
- **Freshwater Wetlands** – Now defined as the resource area only (i.e. bog, marsh, swamp, vernal pool, pond, river, etc.). Upland areas previously called perimeter and riverbank wetlands are now regulated as buffer zones.
- **Buffer** - An area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or land that is to be created to resemble a naturally occurring vegetated area.
- **Buffer Zone** - An area of land within a jurisdictional area that is contiguous to a freshwater wetland and whose distance from the freshwater wetland is designated.

**Current Regulated Area: All Freshwater Wetlands(As Defined Below)  
Certain Upland Areas  
All Floodplain Areas**



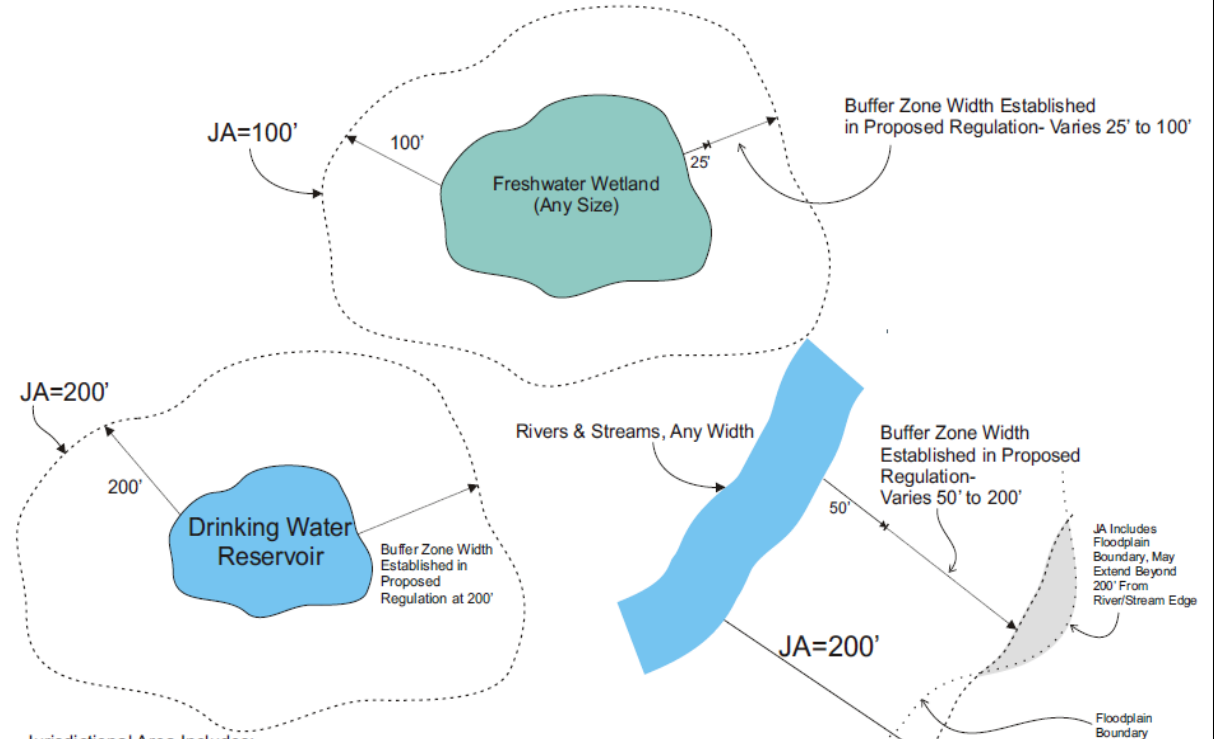
Law defines "Freshwater Wetlands" inclusively as marshes >1acre, swamps >3 acres, ponds >1/4 acre or bogs of any size and 50' landward from the resource edge; rivers <10' wide and 100' landward from river edge; rivers >10' wide and 200' landward from the river edge; all other wetland resources regardless of size, Floodplains, and Areas Subject to Flooding or Storm Flowage.

**Note: All resource areas above are targeted for protection**

11/4/16

**Change in Regulated Areas: Current vs. Expanded**

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



Jurisdictional Area Includes:

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

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

11/4/16

# What is **NOT** Wetland

- Bermed spill containment areas
- Commercial-Industrial Cooling ponds, concrete/poly lined ponds
- Ditches that do not flow into, out of, or connect wetlands
- Ornamental/reflecting pools not created in wetlands
- Puddles with no wetland characteristics formed by rainfall
- Stormwater treatment BMP's
- Waste treatment lagoons, gravel processing ponds

# Buffer

“An area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a naturally occurring vegetated area.”



# Buffer

“An area of undeveloped vegetated land adjacent to a freshwater wetland that is 1) to be retained in its natural undisturbed condition, or 2) is to be created to resemble a naturally occurring vegetated area.”



# Buffer

“An area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a naturally occurring vegetated area.”



# Undeveloped Vegetated Land

- It was determined that it is far easier to define this based on what it is **not** rather than what it is
- In the “definitions” portion of the Rules, “undeveloped vegetated land” means “an area of land that does **not** consist of buildings, impervious areas, bare gravel, lawn or landscaped areas”



# Buffer

“An area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a naturally occurring vegetated area.”

For the purpose of defining buffer in the revised Rules, “adjacent to” means land area within the “buffer zone”. This is true even if the “buffer zone” extends across a developed feature such as a roadway.

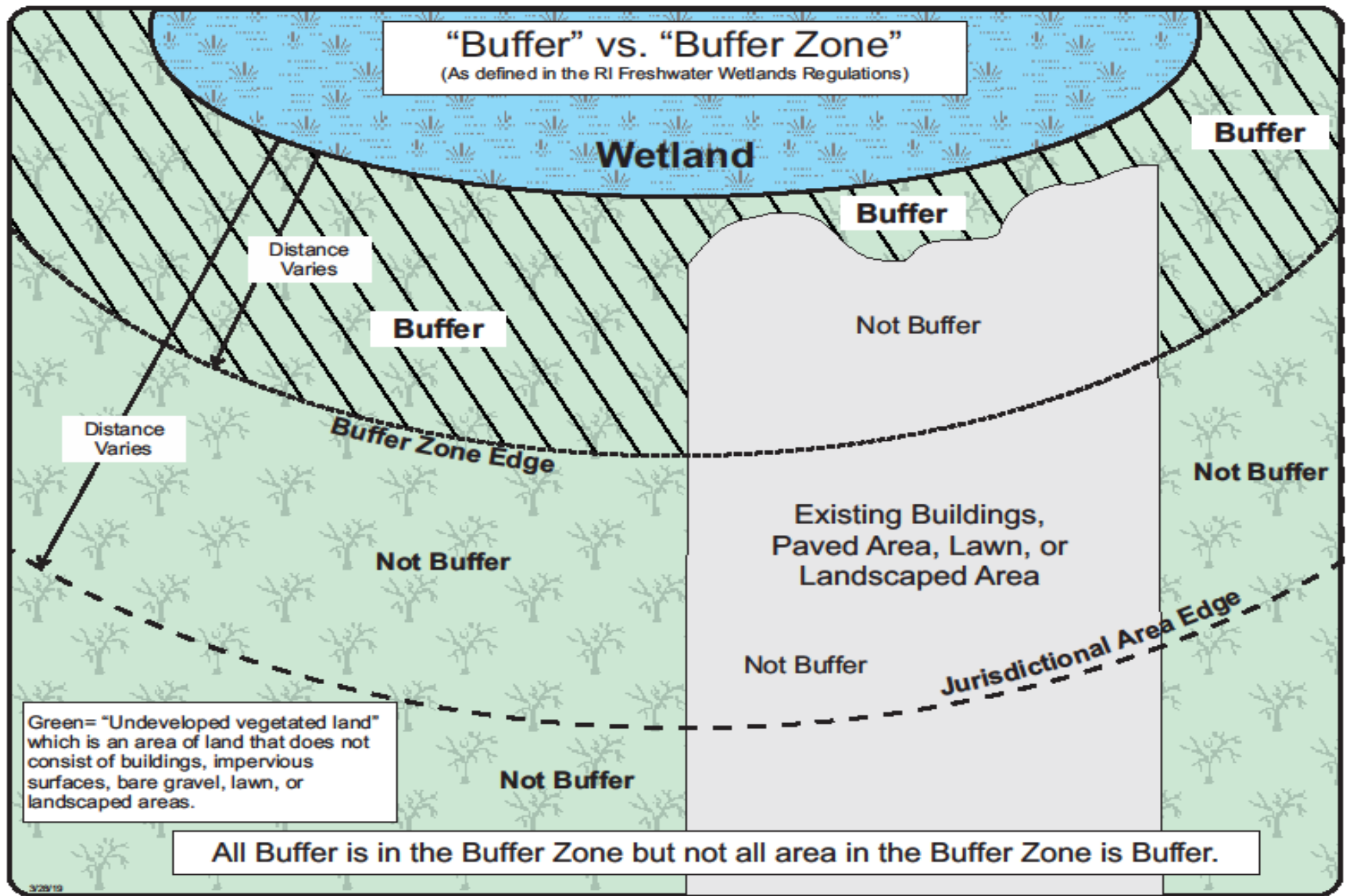


# Buffer Zone

- “means an area of land within a jurisdictional area that is contiguous to a freshwater wetland and the width of which is designated in § 3.23 of this Part.”
- Variable width that may include all of, but cannot extend further than, the “**Jurisdictional Area**” limit
- Does not always consist entirely of “**buffer**”

# “Buffer” vs. “Buffer Zone”

(As defined in the RI Freshwater Wetlands Regulations)



Green= “Undeveloped vegetated land” which is an area of land that does not consist of buildings, impervious surfaces, bare gravel, lawn, or landscaped areas.

All Buffer is in the Buffer Zone but not all area in the Buffer Zone is Buffer.

# Establishing Buffer Zones

- **Tiered protection approach** – taking into consideration:
  - Watershed protection needs
  - Wetland resource characteristic
  - Existing land use
- Buffer zones range from 25' to 200' and are assigned by resource type including the use of lists with named waterbodies
- Buffer zones are established within the limit of the jurisdictional area and may be equivalent to –but cannot exceed - the JA.
- Buffer protection strengthened in water supply watersheds and for other prioritized resources: larger lakes, certain vegetated wetlands, vernal pools and rivers providing high value for fish and wildlife habitat.
- All wetlands are designated with a buffer. ( Smaller sized wetlands previously lacked this protection.)

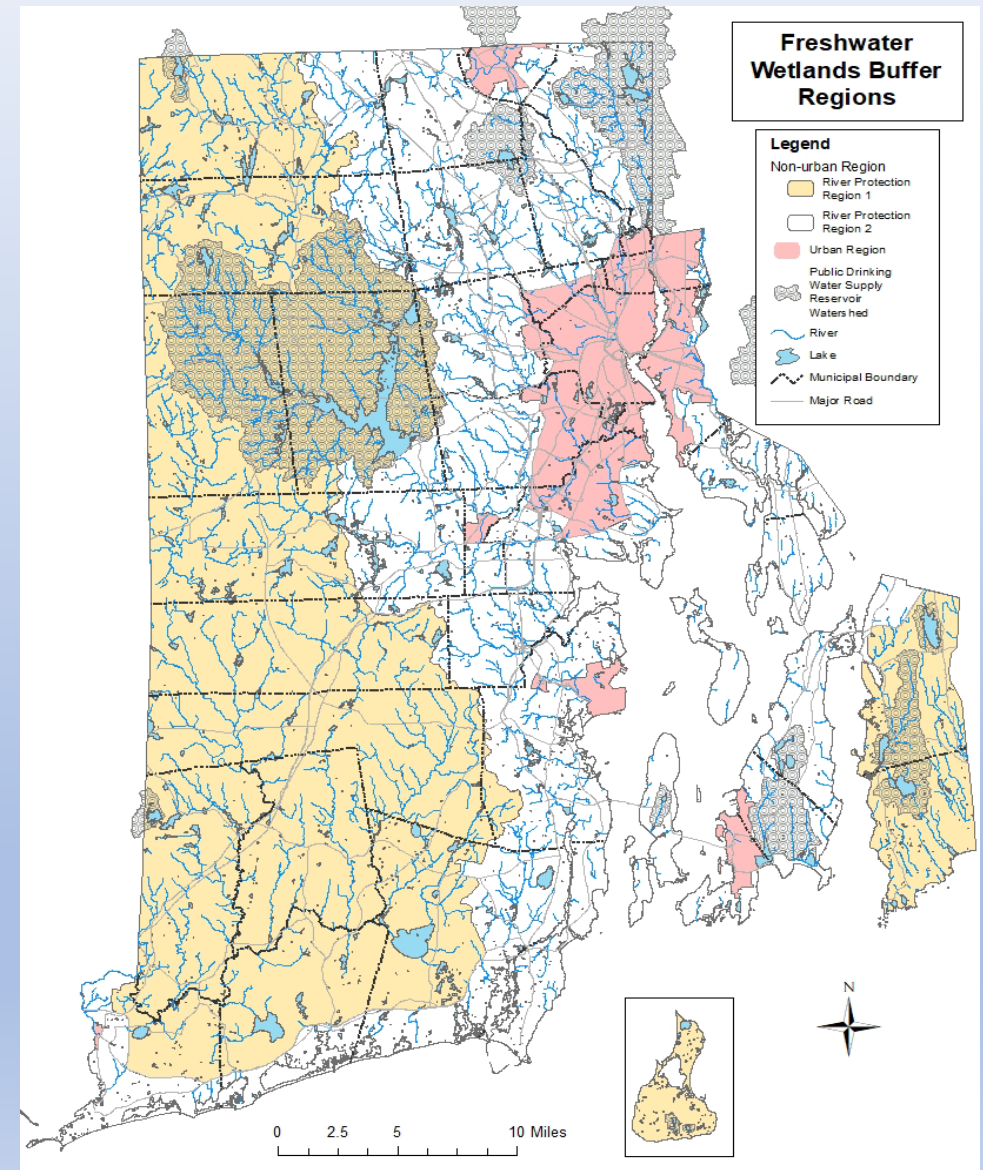
# Buffer Zone Regions- Rule 3.23

- **Urban Region** - includes densely developed areas of state; portions of watersheds with high percent of impervious cover and areas already developed or altered.

## Non-Urban Regions

- **River Protection Region 1**- includes watershed areas that are high priorities for conservation of fish and wildlife habitat.
- **River Protection Region 2**- includes areas of the state that exhibit a mix of land uses and watershed characteristics including urban, suburban and rural settings.
- **Water Supply Watershed Overlay**

*Mapping tool is available online*





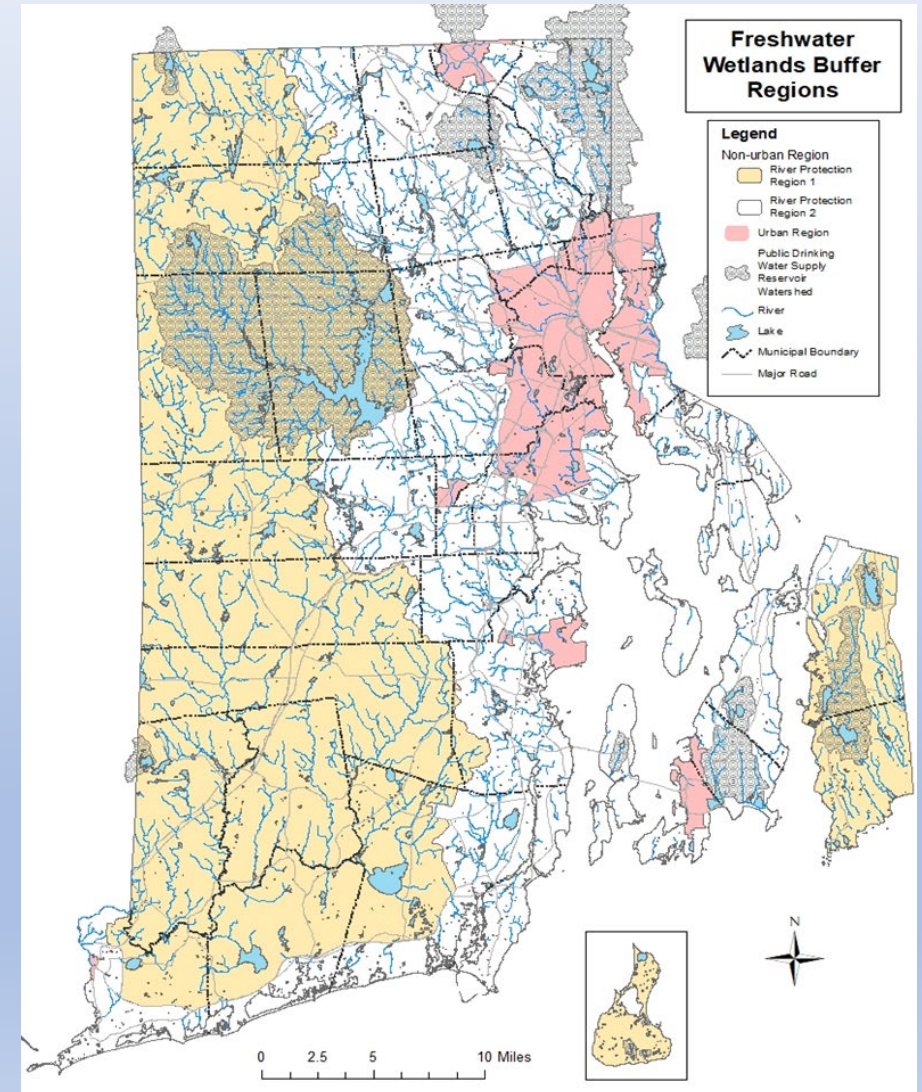
# Statewide Buffer Zone Designations

## Rule 3.23



### Lakes and Ponds

- Water supply overlay areas have specific buffer zones standards – 200' for named reservoirs; 100' for ponds contiguous to a river flowing to a reservoir
- Non-urban Regions – Lakes ten acres and larger – buffer zone of 100 feet with listed exceptions for urbanized lakefronts
- Urban Region - Buffer Zones generally smaller due to alteration from existing land use: all get 25' buffer zone unless listed



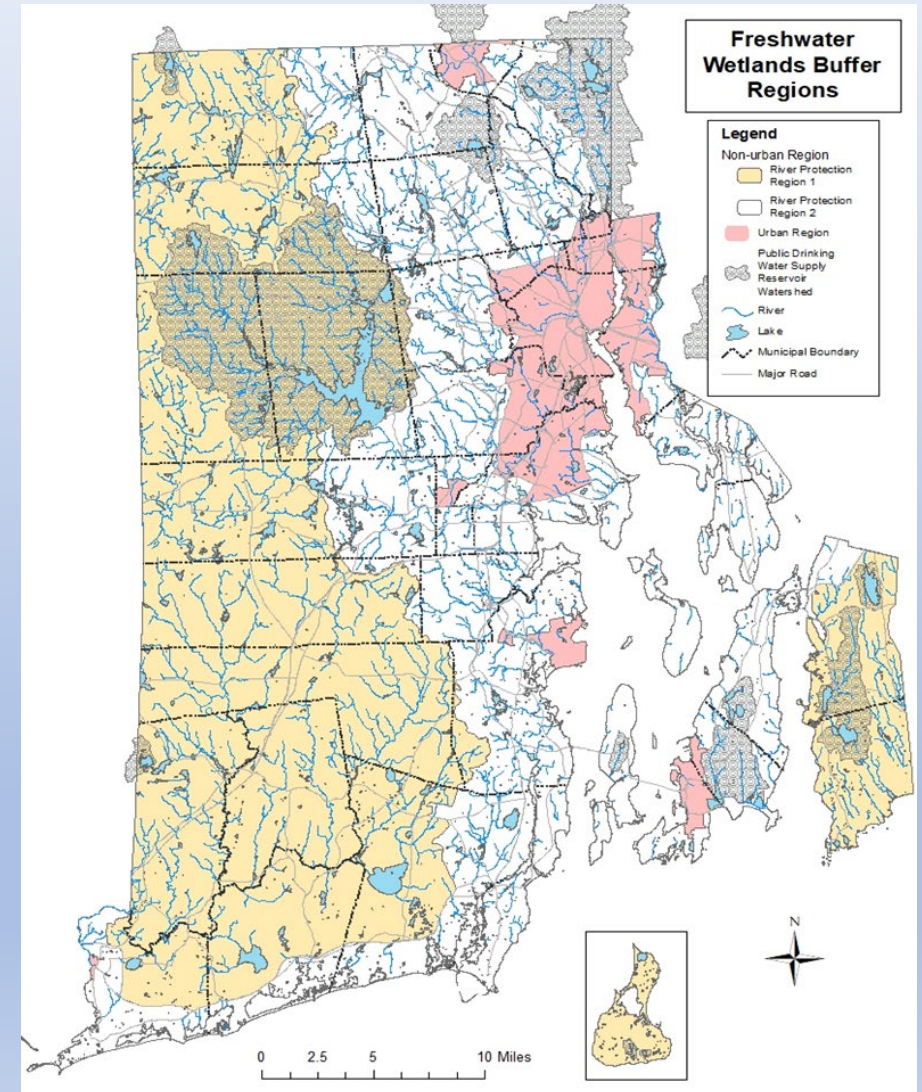
# Statewide Buffer Zone Designations

## Rule 3.23



### Vegetated Wetlands & Vernal Pools

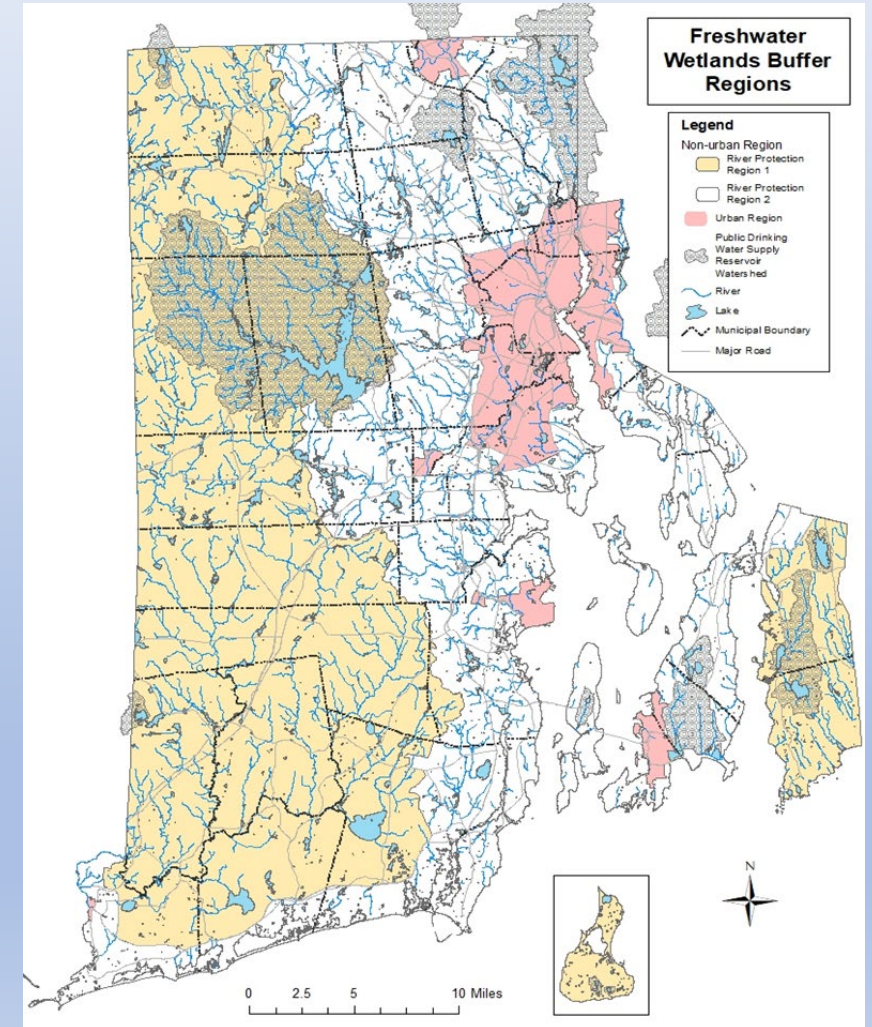
- Statewide (Urban and Non-urban Regions)
  - Bogs, marshes and certain other wetland resources assigned a maximum 100' buffer
  - Vernal Pools – Buffer zones of 50' to 100' dependent on % of undeveloped land within 100' of the pool
- Non-urban Regions – Vegetated wetland buffer zones are the same (range from 25' to 75' depending on size)
- Urban Region - Buffer Zones generally smaller due to alteration from existing land use (range from 25' to 50')



# River Protection Regions 1 & 2 ( Non-Urban)

## Rivers and Streams

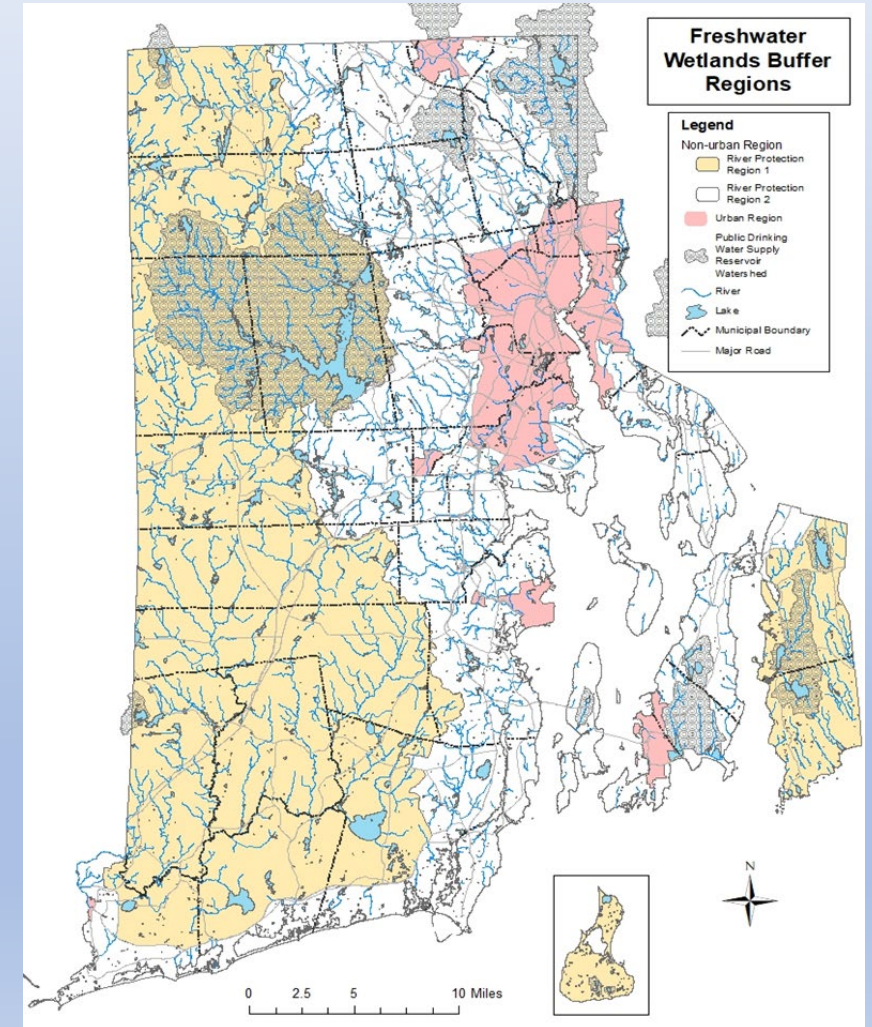
- Differences in river buffer zones reflect resource protection goals for rivers corridors with high wildlife habitat value and existing intact buffers.
- Rivers designated with buffer zones of 150' or 200' are **listed by name** and described.
- Rivers classified as cold-water fisheries assigned 150' buffer zones in River Protection Region 2.
- River Protection Regions are used to distinguish the buffer zones *for other rivers* (150'- Region 1 and 100' – Region 2)
- Streams (not mapped) –assigned 100' buffer zone



# Rivers in Urban Region

## Rivers and Streams

- Certain larger rivers designated with buffer zones of 150' are listed by name and described.
- Other Rivers designated with buffer zones of 100' are also listed by name and described.
- All other rivers not otherwise listed (named or not) and all streams (not mapped) are designated with 50-foot buffer zones



# Special Considerations

- Wet meadows and Phragmites marshes
- Needed to define subclasses (e.g. what is an “Evergreen swamp”?)
- Needed to define rare wetland types (e.g. fens, floodplain forests)
- Needed to accommodate subclass complexity
- Needed to address wetlands that straddle regional boundaries
- Needed to accommodate rare species or rare wetland types

## Section 3.23: “Statewide Buffer Zone Designations”

3. Vegetated freshwater wetlands and vernal pools within River Protection Region 1 or River Protection Region 2 are designated the following buffer zones:

Resource Type	Criteria	Buffer Zone Width (Feet)
a. Bogs	Any size	100
b. Marshes	Any size	100
	Except, a wet meadow or Phragmites marsh greater than or equal to one (1) acre; or	50
	Except, a wet meadow or Phragmites marsh less than one (1) acre	25
c. Swamps – Evergreen forested	Greater than or equal to one (1) acre	100
d. Swamps – with great-laurel ( <i>Rhododendron maximum</i> )	Greater than or equal to one (1) acre	100
e. Swamps – Deciduous forested	Greater than or equal to ten (10) acres	75
f. Swamps – Shrub swamp	Greater than or equal to one (1) acre	75
g. Swamps – Deciduous forested	Greater than or equal to one (1) acre and less than ten (10) acres	50
h. Swamps – Any	Less than one (1) acre	25
i. Vernal pools	Greater than or equal to fifty percent (50%) undeveloped vegetated land within one hundred feet (100') of its edge	100
	Less than fifty percent (50%) undeveloped vegetated land within one hundred feet (100') of its edge	50
j. Highway wetlands	Any size located within a highway center median or a highway entrance or exit ramp that are not designed as stormwater treatment systems	25

# Exceptions to Designations

- Drinking Water Supply Watersheds
- Additional 25' if 1 or more differing wetland types are present within 50 feet inward of the wetland edge (although not beyond the Jurisdictional Area)
- DEM has discretion to increase Buffer Zone if presence rare plant, animal or rare wetland type is documented

# Exceptions to Designations

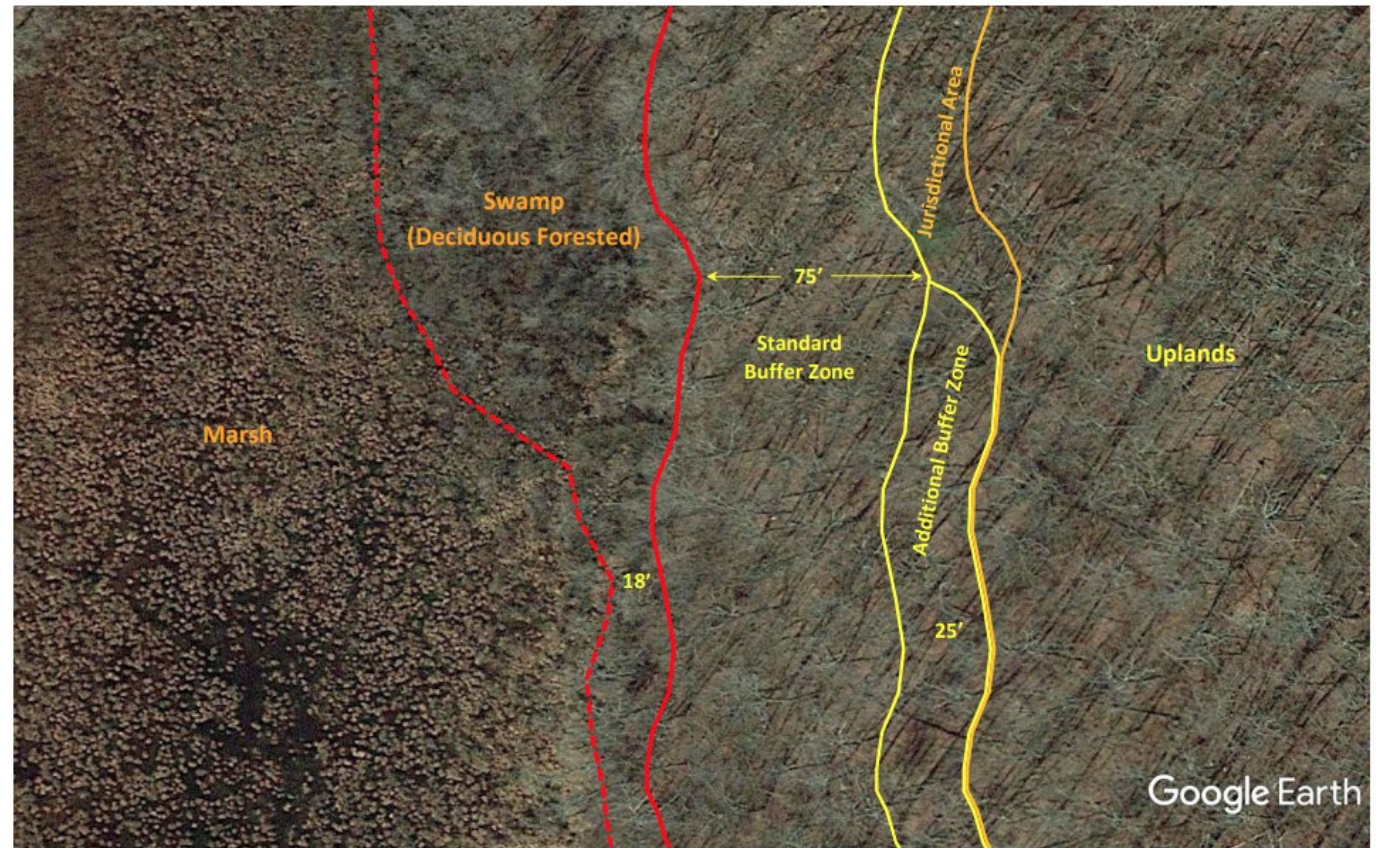
- Drinking Water Supply Watersheds
- Additional 25' if 1 or more differing wetland types are present within 50 feet inward of the wetland edge (although not beyond the Jurisdictional Area)
- DEM has discretion to increase Buffer Zone if presence rare plant, animal or rare wetland type is documented



# Additional 25' added to Buffer Zone

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

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



# After Determination of the Buffer Zone Width...



- The **Buffer Zone** is known for each wetland;
- All “**undeveloped vegetated land**” within the Buffer Zone will be considered to be “**buffer**”
- Applicant **still needs to know** how to get a permit for a project.

# Standards and Variance Procedures

- Consolidated all standards and review criteria into one section of regulations and included variance requirements when standards cannot be met.
- Updated and new standards:

## **Rule 3.7.1 Freshwater Wetland and Buffer Protection Standards**

(A) Wetland Protection Standard – avoid alteration to wetlands

(B) Buffer Protection Standard

- includes standards for creation of new buffer
- includes standard for infill lots

(C) Setback Standards

- 20' from the buffer width (primary structures)
- 5' from the buffer width (accessory structures)
- Meet all OWTS Setbacks

# Other Existing Standards

Intended to be the same as former regulations - moved to a consolidated standards section § 3.7.1

D. Rare or Endangered Species Standard

E. Flood Protection Standard

F. Surface and Groundwater Diversion Standard

G. Stormwater Management Standard

H. Erosion and Sediment Control Standard

I. Water Quality Standard

§ 3.7.2 Review Criteria – same as former regulations

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§ 3.7.2 Review Criteria – same as current regulations

# Six Variance Requirements (§ 3.7.3)

(A)(2) Impact Avoidance & Minimization

(A)(3) All review criteria must be satisfied

(A)(4) Standards cannot be met due to site conditions

(A)(5) Relief requested is the minimum needed for reasonable use of the property

(A)(6) Variance request is not due to prior action of the applicant

(A)(7) Meeting the standard would cause undue hardship



# Streamlining the State Permit Application Process

- Expanded Exempt Activities with limited impacts. (Section 3.6)
  - In several cases, text was clarified/modified in response to public input
- Developed simpler application categories.
  - General Permit
  - Freshwater Wetland Application (with no variance).
- Simplified Fee Schedule (Section 3.8)
  - \* Fees for municipal projects eliminated.



# New Permit Application Types

- **General Permit** – Designed to reduce submittal requirements, limit department review, and provide quick decision (Section 3.10)
  - General Permit Categories: Single Family Homes, Stormwater retrofits, Limited redevelopment projects, New development outside of buffer zones
- **Freshwater Wetland Permit** – Simple application when all standards are met (Section 3.11)
- **Freshwater Wetland Permit with Variance** – When all standards cannot be met and a significant alteration is not proposed – similar to “Request for Preliminary Determination” (Section 3.11)
- **Significant Alteration Permit** – Same as previous process (Section 3.12)



# Phase Out of Municipal Ordinances

- ***After*** state promulgation of rules designating wetlands buffers and setbacks, municipalities are no longer authorized **to adopt or apply** zoning requirements for wetland buffers and onsite wastewater system setbacks to development proposals submitted after the effective date of the state rules.
- Local approvals issued and applications filed prior to state rule promulgation not affected.
- Municipalities must amend their ordinances (rescind requirements) within 12 months of the effective date of the state rules.
- Provisions for Municipal Veto have been removed



# Municipal Coordination

- Applications for Freshwater Wetlands Permit will require notification to designated municipal officials – 15 days to provide input
- Process for public notice of Applications for Significant Alterations has not changed (involves public comment, etc.)
- Major development projects (defined by Statute) must go through local planning review prior to application to State
- Municipality may petition the Agencies to increase the size of a buffer zone for a particular type of wetland resource (the requested buffer zone cannot exceed the jurisdictional area).
  - Petition process does not apply to individual permit applications.

# New Tools and Guidance

<http://www.dem.ri.gov/programs/water/permits/pn-wetland-guidance.php>

- Interactive digital map of Buffer Zone Regions
- Interactive GIS coverage to determine Buffer Zones for surface waters
- Updated wetland Jurisdictional Area descriptions
- Updated application type descriptions
- Step-by Step instructions for determining Buffer Zones and meeting Buffer Standards
- Wetland Connectivity Guidance
- Rule 3.5.6 Guidance (for projects outside the new Jurisdictional Areas)
- Detailed examples of “Insignificant Alterations”
- Updated guidance for single-family lot owners





# Questions?



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