

# Legislative Task Force

Meeting #15

Tuesday November 18, 2014

8:00 – 10:00 AM

**Room 300, 3rd Floor**

Department of Environmental Management  
235 Promenade Street Providence, RI

## Agenda

**8:00** Welcome and Overview of Agenda – *Kevin Flynn, DOP*

**8:05** Review/feedback on meeting notes for October 31, 2014 – *(All)*

**8:15** A. Presentations: None

B. Discussion of Task Force Comments / Discussion Points *(All)*

- DISCUSSION POINT #1: Do we also need to mention setback since it's mentioned in report but not included here?
- DISCUSSION POINT #2: How long should the time period to the sunset date be?
- DISCUSSION POINT #3: Should municipal notification requirement be in the Law or Regulations?

**9:55** Next Steps– *Nancy Hess, DOP*

A. Request for final comments by Friday, December 5<sup>th</sup>.

**10:00** Adjourn



# Legislative Task Force Meeting #14

Friday, October 31, 2014

8:00 AM – 10:00 AM

Rhode Island Department of Environmental Management  
Room 280, 235 Promenade Street, Providence, RI



**Task Force members in attendance:** James Boyd (Coastal Resources Management Council), Joseph Casali (Civil Engineer Representative), Russell Chateaufeuf (Civil Engineer Representative), Janet Coit (DEM), Thomas D'Angelo (Builder's Trade Association), Gary Ezovski (Business Community Representative), Kevin Flynn (DOP-Associate Director), Lorraine Joubert (Environmental Entity Representative), Thomas Kravitz (Municipal Representative–Burrillville), Tom Kutcher (Wetlands Biologist), Scott Moorehead (Business Community Representative), Doug McLean for Vincent Murray (Municipal Representative-S Kingstown) Eric Prive (Civil and Environmental Engineering Representative), Scott Rabideau (Business Community Representative), and Nancy Scarduzio (DOA-Office of Regulatory Reform).

**Agency staff members present:** from DOP; Nancy Hess, from DEM; Sue Kiernan, Carol Murphy, Ernie Panciera, and Marty Wencek.

**Comments on Meeting Notes:** K. Flynn called for any changes, addition or notations to the September meeting notes. For September 16, 2014 – Page 2, 1<sup>st</sup> paragraph delete the sentence "Buffers that are larger than 50 feet are likely necessary" and page 2, 2<sup>nd</sup> to last paragraph change the word verses to vs. For September 26, 2014 there were no comments.

Mr. Flynn opened the meeting with review by N.Hess of the additions to the working draft resulting from the last meeting. Ms. Hess outlined 2 new factual pages for Part 2 consisting of a new chart condensing the table of municipal ordinances previously sent to the Task force. The factual additions to Part 3: Today's Science, were 3 pages of the key scientific findings for wetland and OWTS buffers. Also added was a new Appendix F: Other Topics, for those ideas related to wetlands or OWTS that were not specifically setbacks. The Working / Writing Group decided to separate these items from the recommendations so there wouldn't be confusion as to what the actual recommendations were.

Next Ms. Hess gave an overview of the new text for Part 4: Conclusions /Recommendations. This new section was produced by the Working / Writing Group after the Sept. 26<sup>th</sup> meeting and is intended to summarize the proposal and concepts discussed at that meeting. The Section starts by explaining the charge to the Task Force and the items Task Force specifically examined; that buffers are protective, eliminating duplication of permits, clarifying terminology, and ensuring adequate funding for implementation of the recommendation. Page 1 is the introduction and summary of the legislative charge. Page 2 is the findings of the Task Force including the assessment of gaps and what those gaps are. The findings indicate that;

- there are gaps in the 1971 Wetlands act as amended
- science shows water quality could be significantly improved if a 100 foot buffer could be maintained
- existing regulations may be inadequate to protect small wetlands (vernal pools)
- the OWTS setback standards are sufficiently protective of the State's water resources
- there needs to be consistency between the state agencies and the municipalities to promote better protection for wetlands and a clear, and predictable regulatory system
- science indicates there is justification for larger buffers and rational for the local ordinances
- municipalities generally lack expertise that is available within the state of the State wetlands regulatory programs
- to eliminate duplicate reviews the State authority should be expanded in law and agency rules to increase state jurisdictional area
- the value of local input and a role in the state permitting process needs to be examined.

Page 3 presents the recommendations based on the assessment and identification of gaps and the findings. The recommendations fall under the headings of statutory changes and regulatory changes and funding. Ms. Hess pointed out 2 highlighted items for discussion points today as there did not seem to be consensus on those items at the last meeting. These were; 1) should the jurisdiction area be 200 or 300 feet and 2) should DEM in certain circumstances (such as critical resource areas) be allowed to declare the entire jurisdictional area a vegetated buffer?

Discussion that was free-wheeling took place on the findings and recommendations. The first item discussed was clarifying terminology. G. Ezovski said that confusion over use of the words "buffer" and "setbacks" interchangeably continues to occur. The report should establish what they should be to avoid confusion. A buffer zone is a naturally protected area. A setback is the distance between the wetland and land disturbance/construction. A glossary of terms is intended to be included in the report. It was also suggested by N. Scarduzio that the terms also be put right up front for clarity.

The next item discussed was revising the wetland regulations and the adequacy of OWTS setbacks. Discussion ensued about current procedures and the order of reviews with agencies, between towns and the state, and the finding that OWTS regulations are felt to be sufficiently protective. A question was raised that if wetland buffers are increased to 100 feet do the OWTS setbacks need to change too? OWTS regulations are generally sufficient in terms of horizontal setbacks but if the wetland buffers are increased then should the OTWS setbacks be increased to be consistent with them? Currently wetland approvals are required first before one can get an OWTS permit. If buffers are to remain undisturbed then the OTWS will have to observe that requirement otherwise an OWTS variance would be needed. An OTWS in a CRMC application must be outside of the setback and the buffer. Much debate took place on the question but generally members agreed that the more inclusive language in complying with a wetlands permit first rather than changing numbers in the OWTS regulations would provide adequate protection and help with permit streamlining. The current system works very well in ensuring that the wetland and OWTS applications are coordinated. To implement the recommendations a good amount of time will be necessary to revise the regulations accordingly.

Much debate took place next on whether the recommended jurisdictional area should be 200 or 300 feet. Members discussed that merits and drawbacks of the differences between the numbers, how critical resources areas should be protected and if there should be provisions for existing lots of record. Various points of views were presented and discussed concerning the suggested numbers. Increasing the jurisdictional area will standardize protection and allow a clear predictable system. The myriad of town setbacks will go away and the towns would be able to petition DEM for increased protection based upon critical resources. The size of the proposed jurisdictional areas was discussed and debated. The consensus was as follows:

- 200 feet from all streams regardless of size and drinking water supply areas and possible 300 for critical resources, and
- 100 feet from all other vegetative wetlands and standing water bodies including vernal pools.

Next discussion on adequate funding and staff resources for handling the increased permits under the new areas, along with ensuring the Towns the opportunity for review took place. It seems very clear that the number of applications and workload for DEM will increase with the recommendation. As discussed at the last meeting, most (90% +/-) wetland applications are insignificant alterations which the towns do not see, how will Towns comment or give input on more permits? How will things be clear and predictable as it is not likely that additional money or staff will be granted to DEM? Members debated on a provision to allow the towns to comment within a defined time period that does not slow down the review process does not seem unreasonable. The decision would still be by DEM and the tradeoff is the elimination of the need for redundant permits from the Towns. For some communities the removal of an authority which they have held for a long time will be problematic if no other option is offered. This could be very problematic at the Legislature for approval of a new system. Municipalities may be comfortable if it was shown more protection is provided by DEM and they have input. Various methodologies were discussed for notice. But the "how to do it" was beyond the ability of the Task Force to decide at this meeting and should be defined in new rules.

Other discussion was that amendments to the wetlands statute on notice and allowing such and consideration of the time needed to do the necessary rule making should be included. Everyone was in agreement of continuing public notice for significant applications. There was agreement that the legislation to be proposed should include that municipalities are required to be consulted in the rule making process and a role for their input on permit reviews should be defined in new rules. Much debate took place on what type of application would be a threshold to trigger notice to the Town for review? Is there another category for notice besides insignificant or significant alterations? Another idea was making provisions for existing lots of record under the new jurisdictional areas. Much of the remaining discussion touched on items for rulemaking to implement a clear, new system rather than recommendations for the report.

Finally discussion concluded with the end point of the recommendations (report) which will be the General Assembly. S. Rabideau mentioned that most legislation does not get approval. The Task Force should put forth a report and subsequently DEM's legislation that meets current science and reflects a consensus between the environmental, local and building communities. Again it was repeated that time will be needed to develop new regulations.

The meeting concluded with a request for comments by N.Hess. She will send members the Word version of Part 4 and asked that comments be returned in the Track changes format. Also there will be an informational session that DOP will hold on Nov 19<sup>th</sup> for all municipal planners to inform them of the progress to date of the Task Force and solicit feedback on the recommendations. Members will be invited to the session. The next meeting will be November 18<sup>th</sup>.

## **Adjourn**

10:00 AM



## Part 4: Conclusions / Recommendations

This Section presents the conclusions and recommendations that the Task Force came to a consensus upon to answer the Legislative charge to:

1. Assess the adequacy of protection afforded to wetlands and/or waters of the State under RI General Laws § 2-1-18-25, Agricultural Functions of Department of Environmental Management, § 42-17.1, Department of Environmental Management, and § 42-64.13-10, The Rhode Island Regulatory Reform Act.
2. Identify gaps in protection for septic disposal and various wetlands.
3. Recommend statutory and/or regulatory changes that are required to protect wetlands statewide.

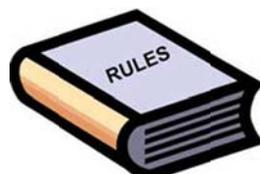
**During the process the Task Force focused only on wetland buffers and OWTS setbacks.** The Task Force discussions raised other issues related to wetlands and OWTS regulatory programs that were not included as part of the scope of work of the LTF. While identified, the ~~LTF-LTF~~ did not have sufficient time to research and discuss these additional issues. A listing of recommendations by individual members about additional topics is included in Appendix F, Other Topics.

The LTF heard from many experts offering views on the latest science which was used to assess adequacy of protection and identify gaps. ~~In addition, the~~The group acknowledged issues concerning conflicting standards between State and local permits. Local zoning boards of review nearly always approve wetlands and or OWTS applications that have obtained State permit(s) sometimes causing and the need for applicants to seek and obtain, in addition to a state permit, a local variance caused by inconsistencies between State regulations and municipal ordinances in regards to adequate protection of wetlands, lakes and ponds, and/or drinking water resources. Through the LTF discussions/deliberations, four primary themes emerged:

1. ensure that requirements for buffers are protective
2. strive to eliminate application of different wetland buffer and setback standards in state and local permitting processes and consider whether a single permitting authority should exist
3. clarify terminology, and
4. ensure adequate funding and capacity for implementation ~~i.e. new funding and full time employees based on permit authority and responsibilities.~~

There was a ~~strong~~ consensus to clarify terminology used in various RI State and local regulations. The term "buffer" in particular is used interchangeably to mean an area of naturally vegetated land adjacent to a wetland resource that must remain undisturbed, or an area where an OWTS or a building may not be located, or an area where a lawn is allowed but no structures. A recommended list of terms is enclosed as Appendix E, Glossary.

Finally, the fourth theme is funding. Providing adequate funding for the implementation of this report was flagged as a need early in the meetings. The series of recommendations in this report represents an evolution in how wetlands should be protected in RI. To truly implement this proposed system for the benefit of the State, more staff and resources will be required by the DEM. Without acknowledging this and without acting on it will doom the implementation of the new system to inefficiency which ~~could~~will likely be worse than the status quo for wetland protection.





## The Legislative Charge

1. Assessing the Adequacy of Protection.
2. Identification of Gaps in Protection.

### The Task Force finds:

**The 1971 Wetlands Act as amended contains significant gaps and is not adequate to protect wetlands.** The areas adjacent to wetlands that are needed to fully protect the functions and values of all wetlands vary widely and, based on the scientific literature review and presentations, are generally greater than currently provided by either State or local current regulations. **The science indicates that water quality can be significantly improved in many cases if at least a 100-foot buffer is maintained.** Larger buffers are generally required for protection of habitat for wetland-dependent wildlife. Currently, State wetland regulations have only a 50-foot perimeter from most wetlands other than rivers and streams.

Some wetlands may be deserving of added protection because of their unique characteristics or importance to the public. However, there is no clear process by which to facilitate providing greater protection to these wetlands. Most small size wetlands such as vernal pools often have no perimeter wetland under State law and rules, and are essentially unprotected. Some small wetlands perform important functions, and some have limited value such that a buffer requirement may be waived with proper justification and consultation/approval. **Existing regulations are inadequate to protect small wetlands that are important for biodiversity and may help filter, infiltrate and store floodwaters.** These areas may not be mapped since they are small, and FEMA and other maps focus on larger systems, not small wetlands.

**In general, setbacks for OWTS established in the State OWTS regulations are felt to be sufficiently protective of the State's water resources.** These setbacks are greater for critical resource areas (drinking water supplies and coastal salt ponds) and for systems with large design flows.

There needs to be consistency between State agencies and municipalities to promote a clear, predictable and reliable regulatory system within the state of RI ~~that is easy to follow~~. Currently, 25 municipalities have adopted ordinances that set forth requirements related to wetland buffers and OWTS setbacks that are considered more protective of water and wetland resources. Reflecting their lead role in regulating land use, local wetland buffer ordinances are established as authorized under State Law consistent with [R.I. Gen. Law](#) § 45-24- 30, General Purposes of Zoning Ordinances, which includes:

*(3) Providing for orderly growth and development which recognizes:*

*ii) the natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution; and*

*iii) the values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands.*

**As noted above, science concerning the function of natural vegetated buffers with respect to water quality and wildlife habitat provides justification for larger buffers and a sound rationale for the local ordinances.** Local ordinances also allow the municipality to apply local knowledge to the review of applications. The existence of varying State and local requirements for buffers and setbacks is considered problematic by the development community and property owners in that it leads to duplicative reviews of the same aspect of a proposed application for development or other alteration. This situation can results in additional costs being expended during the application review



process as well as additional uncertainty due to the varying manner in which variances to buffer requirements are authorized at the local level.

Finally, the Task Force discussed that municipalities may generally lack scientific expertise that is available within the staff of the State wetlands regulatory programs. High turnover and different levels of expertise among volunteer boards and or committees (generally Zoning boards or Conservation Commissions) may result in weak findings of fact and poor decisions on applications for variances or special use permits involving wetland buffers at the municipal level.

**To eliminate duplicative reviews, the State authority for regulating land development and other alterations in proximity to wetlands (and surface waters) should be enhanced by modifying RI General Law and agency rules to increase State jurisdiction and responsibility.**

This would expand protection through the designation of larger buffer areas where warranted to achieve appropriate resource protection. However, municipalities must have assurance that state regulations for freshwater wetlands and OWTS are-will be protective of local municipal interests while eliminating to eliminate dual (state and local) permitting processes.

**Currently, State approvals of freshwater wetland “insignificant alterations” exclude a process for local participation and thereby may limit the use-application of local knowledge of-to existing problems and potential impacts.** Examples include drainage problems affecting municipal roads and neighboring properties, water quality impairments, and important wetland values. This is a serious concern since most State freshwater wetlands approvals are issued as “insignificant alterations” without benefit of local review. With respect to wetland buffers, proposed changes to State law to eliminate conflicting standards and duplicative review needs to recognize the value of local input and should clarify the role of local governments in the State permitting processes in order to assuage community concerns. As part of the transition to a system that eliminates duplicative reviews, municipalities should-must be afforded the opportunity to seek to have the State apply additional protection to designated resources in their community through State regulations. Furthermore, where larger buffers or setbacks are established to provide additional protection, as-feasible they should be applied equally to all qualifying resources; e.g. larger buffer around tributary streams to drinking water supply reservoirs.

Based on the above assessment and identification of gaps, the Task Force recommends the following legislative and regulatory changes:

#### Statutory Changes

- S** Revise state law to define or redefine the terms “jurisdictional area”, “buffer”, and “setback” as they apply to wetlands regulation. The jurisdictional area should designate the resource to be protected (vegetated wetland, type of waters, etc.) and lands adjacent to the resource where activities are directly regulated. The jurisdictional area is a regulated area containing buffers and setbacks. Strict avoidance and minimization policy would apply to buffer areas within the jurisdictional area. Certain activities within the jurisdictional area may be allowed by permit or exemption as provided for in regulation. Buffer areas would designate lands intended to be maintained in an undisturbed, natural vegetated condition.

**DISCUSSION POINT #1: Do we also need to mention setback since it’s mentioned in report but not included here?**

- S** Revise state law to provide state agencies with additional authority and jurisdiction in order to allow for the adoption of strengthened protective requirements for freshwater wetlands as well as the lands adjacent to these resources. (Note: As used herein the term freshwater



wetlands is inclusive of flowing rivers and streams, and standing water bodies, including ponds.) The statutes affected include the Freshwater Wetlands Act, state laws establishing DEM and CRMC, as well as potentially other statutes as may be identified during legal review and bill preparation.

- Establish a jurisdictional area of 200 feet from all rivers and streams regardless of size and from drinking water supply reservoirs, and-
- Establish a jurisdictional area of 100 feet from all vegetative wetlands and standing bodies of water. This action would afford proper protection to lakes and ponds and other wetlands, and critical protection to vernal pools and areas subject to storm flowage.
- S** Revise state law to eliminate the terms “perimeter wetlands” and “riverbank wetlands” within the definition of “freshwater wetland” and instead establish the “jurisdictional areas” with respect to vegetated wetlands and rivers and streams. The purpose of the law would be revised to reflect protection of wetlands and adjacent areas. Other definitions should be clarified as needed to support this change.
- S** Revise state law to clarify that vernal pools are to be included in the definition of freshwater wetland.
- S** Revise state law to reflect a sunset provision that would phase out local authority for ordinances related to wetland buffers and OWTS setbacks and specify a definitive time deadline by which appropriate changes to both state regulations and municipal ordinances would be made in order to end the application of varying duplicate standards.

#### **DISCUSSION POINT #2: How long should the time period to the sunset date be?**

- S** Create a local notification process for the benefit of abutting residents and community.

#### **DISCUSSION POINT #3: Should municipal notification requirement be in the Law or Regulations?**

### Regulatory Changes

- R** Revise state (DEM, CRMC) regulations to improve consistency on the use of the terms “buffer” and “setback”. Clarify and simplify the definitions used in wetland regulations where feasible.
- R** Revise state regulations to establish and specify requirements for buffers (undisturbed areas) and setbacks within the limits of authorized jurisdictional areas. Opportunities for municipal input shall be provided during the normal rule-making process. The designation of buffers would reflect the resource characteristics and watershed protection needs and take into account existing land use.
- R** Revise regulations to include-allow for a provision in the wetland and OWTS regulations to enable petition by local communities for the identification of “Critical Resource Areas” that may need added protection.

### Funding



In order to implement the recommendations of this report, additional resources will be needed. Legislation must be drafted, and regulations will have to be developed, and some policies will have to be ~~changed~~amended.

- F** Increase funding for DEM to budget for program needs and to hire additional staff in order to carry out changes of an anticipated increased workload and ensure communication between the State and cities and towns during application reviews.
- F** Ensure there is adequate state staff to ensure compliance with wetland buffers and conditions of approval during and after construction.

**Who:**  
Municipal Planners

**Date:**  
Wednesday  
November 19, 2014

**Time:**  
12:30—2:30 PM

**Location:**  
RI DOA  
Conference Room A  
2nd Floor  
One Capitol Hill  
Providence, RI

**Parking:**  
DOA, DOH or DOT lots  
or on the street

**Cost:**  
None (Bring a lunch or  
get one downstairs in  
the cafeteria)

**Please RSVP to:**  
Nancy Hess  
Phone: 401.222-6480  
Or Email:

[nancy.hess@doa.ri.gov](mailto:nancy.hess@doa.ri.gov)

# RHODE ISLAND DIVISION OF PLANNING



Join us for an informational  
presentation & discussion on:

## The 2014 Legislative Task Force on Wetland and OWTS Setbacks

Lead by  
**Kevin Flynn & Nancy Hess**

This will be an overview of the 2013 legislative mandate. The session is for municipal planners. Topics covered will be an overview of the Task Force's scope of work, the subjects reviewed by the Task Force, the timeline, and a summary of the draft recommendations to be submitted in the final report of the DOP.

Detailed information on the Task Force can be found at:

<http://www.planning.ri.gov/statewideplanning/land/ltf.php>



Analysis of the implications of the currently-discussed scenario of municipal petition and 300-200-100 foot jurisdiction on the Wetlands Act

Tom Kutcher, Wetlands Scientist Representative  
11/18/2014

The following would allow the changes we have discussed, while retaining process within DEM and minimizing changes to the law.

- No alterations are allowed within identified jurisdictional areas without consent of the Director, i.e. remains the same with formal applications rather than variances.
- **"Freshwater Wetlands"** are defined to include marshes, swamps, bogs, ponds, rivers, perennial and intermittent streams, special aquatic sites, and emergent and submergent plant communities, but **NOT** (upland) buffers, floodplains, and riverbanks.
- **Wetland Buffers** are defined to buffer Freshwater Wetlands only (as defined above); something to this effect:

Exception to draft report (X)

"Wetland Buffer" is an area of undeveloped vegetated land adjacent to a Freshwater Wetland and retained in its natural undisturbed condition, or created to resemble a naturally occurring vegetated area, that mitigates the negative impact of human activities on, and/or directly contributes to wetland functions and values. The Wetland Buffer extends 100 feet from any Freshwater Wetland unless the Director, through rule, regulation, or individual project review, determines that a greater buffer zone is required to protect fresh water wetland functions and values. Under no circumstances shall the wetland buffer extend beyond 300 feet.

- **Floodplains** and **Riverbanks** defined as previous, except all rivers get 200' jurisdiction.
- **"Freshwater Wetland Resources"** are defined to include Freshwater Wetlands, Flood Plains, River Banks, Areas Subject to Flooding\*, Areas Subject to Storm Flow\*, and Wetland Buffer Zones as defined in this section. So, these all get jurisdictional protection as they do now (i.e. need permission of director to alter), although they are not defined as Freshwater Wetlands per se.

\*these are currently protected in regulations

- Language added to define the municipal petition process might look like this:

§ 2-1-20.1 Rules and regulations. –

(a) The director is authorized to adopt, modify, or repeal rules and regulations that are in accord with the purposes of §§ 2-1-18 – 2-1-24 and are subject to the administrative procedures act, chapter 35 of title 42, except for those wetlands located in the vicinity of the coast as set out in chapter 23 of title 46 of the general laws which shall be regulated consistent with the provisions of chapter 23 of title 46.

**(b) The Town Council of a municipality may petition the Director requesting an amendment to the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (Regulations) requesting additional protection for particular Freshwater Wetland Resources located partially or fully within its borders.**

Bold text = additions to the law

**(i) The petition shall set forth the specific need for the additional protection requested and contain a detailed description of the functions and values provided by the identified Freshwater Wetland Resources.**

**(c) The Director shall determine whether additional protection is required to preserve the functions and values of the Freshwater Wetland Resources based on the information submitted by the municipality and his/her review of the Freshwater Wetland Resource and surrounding area; provided however that the Freshwater Wetland Resource extends no more than 300 feet from any associated Freshwater Wetland(s).**

**(i) If the Regulations are amended pursuant to a municipal petition, the municipality shall receive notice of any application for a project that will alter the Freshwater Wetland Resources associated with the petition.**

**(d) The procedure for all Petitions for Amendment to the Regulations shall be in accordance with R.I. Gen. Laws § 42-35-3.**

11.18.14

#15

November 17, 2014

Dear Kevin,

Through Representative Legislative action, it was acknowledged that the mechanism by which Rhode Islanders receive permit approvals was flawed. This sentiment was bolstered by a report authored by Bryant University economist Edinaldo Tebaldi. In it he expressed the importance of expanding construction activities to turn the State's economy around. The report recommends policy changes to bring back the construction industry that is so vital to our economy. Those policy changes were noted to be:

- \*Review and implement reforms in the construction permitting process.
- \*Identify issues that delay development and increase construction costs.
- \*Assess opportunities to build/ remodel public and private properties across cities and towns.

The LTF and its recommendations will be a vital part of these needed reforms and as the Association representing the construction industry, its consumers, and indirectly landowners, we want workable rules that provide balance and make economic sense.

RI DEM has long had the resources and scientific basis by which existing setbacks and buffers have been regulated. Over time, the process has become burdensome, in terms of time and financial impact, not only to the regulated but the State of Rhode Island as a whole. Once individual communities became involved, the ability to have reliable and predictable outcomes to the regulated community was lost.

The Rhode Island Builders Association (RIBA)'s internal committees on Land Use and Environmental issues have discussed the standards issue and currently support the existing setbacks and buffers - as do some professionals who have presented to the LTF that increases to some setbacks may reach a point of diminishing return. Further, it has been noted in the LTF conclusions and recommendations draft document that, in general, the setbacks for OWTS established in the State OWTS regulations are felt to be sufficiently protective of the State's water resources; and that these setbacks are greater for critical resource areas (drinking water supplies and coastal salt ponds) and for systems with large design flows. That said, it is RIBA's position that the recommended increased jurisdiction to 200 ft - without defined setbacks - adds another layer of uncertainty to the process. Going forward, without legislative specificity, the regulated professional community would be unable to determine the viability of a development project with any certainty. This would be contrary to the task of the LTF. Even if the proposed activity is outside the regulated buffer, we make application or are requested to in most cases. RIDEM's applications ask if the OWTS is within 200 feet of a wetland.

Therefore, the committees at RIBA believe that most of the current setbacks/buffers are sufficiently protective of the State's water resources as stated in the LTF findings. Nevertheless,

below are the recommendations that we would like to offer be part of the final proposal / recommendation:

1. Changes that would be further protective than the current setbacks

- A. Certain wetlands under 3 acres and vernal pools that are greater than 1000 sq. /ft. should have a 25 foot buffer applied – currently no buffer is needed. (Existing OWTS's setbacks from these are 50 feet currently).
- B. Credit/reduction of buffers for projects employing the use of storm water BMP's
- C. Increase OWTS setbacks by 25' to 75 feet in category 1 soils unless alternative technology treatment is utilized.

2. Changes to the existing setbacks as follows:

- A. Reduction of setbacks should be considered in all cases where alternative technology treatment is utilized.
- B. No need to meet drinking water quality standards by increased setbacks to many wetlands.
- C. Existing identified critical resource areas, setbacks as existing are sufficient. DEM may include additional critical wetlands designations once scientifically substantiated and may promulgate in future regulations. This would be similar to drinking water reservoirs being included in prior regulatory changes.

3. Institute a mechanism in the regulations to further reduce setbacks/buffers or credit future advances in advanced treatment systems of wastewater. Moving forward, we expect treatment technology to progress as future environmental considerations grow nationally.

4. Define regulations using advanced treatment OWTS's and/or storm water BMP's to avoid/ minimize variances. (1B)

5. Existing lots of record and parcels with existing homes/buildings should be exempt from any increased setbacks considered to enhance the streamlined permitting process, avoiding the need to seek variances. These variances are typically approved but contribute to property owners' financial burden and loss of time, both of which are in turn a burden on the state's overall economy. This exemption would be in concert with the state of Washington which, when

increasing some wetland setbacks, exempts existing lots/uses as presented at the last LTF meeting.

Submitted to you on behalf of RIBA's Land Use and Environmental Committees

John Marcantonio  
Executive Director  
RI Builders Association