



FACT SHEET

Office of Water Resources

Fall 2007

WETLANDS # 14

ANSWERS TO COMMON QUESTIONS FROM REAL ESTATE AGENTS

HOW DO I FIND OUT IF A PROPERTY CONTAINS WETLANDS?

A prior landowner may have previously submitted an application to DEM. If a file is found it may provide information on wetland types and locations, as well as whether a permit has been issued, and what, if any, permit conditions may apply. If no previous files exist, it does not necessarily mean there are no wetlands on the property. The assessor's plat and lot numbers, street name, and previous owner's name are generally required for a file search. Files are available for review by the public by contacting the Office of Customer and Technical Assistance at 401-222-4700.

You may submit a *Request to Determine the Presence of Wetlands* application. If wetlands are present, DEM will determine the types of wetlands present, but will not flag the edge, so you will not know the exact location of the wetlands. A letter indicating whether or not wetlands are present will be sent to the applicant. A private wetland consultant can flag wetland edges on site to determine the full extent of wetlands on the property. The flagged wetland edges are not considered verified until confirmed by DEM through a *Request to Verify Delineated Edges* application.

Keep in mind that the aforementioned applications only determine if wetlands are present on a property or verify flagged wetland edges. They do not grant permission to start work of any kind.

Please note, Rhode Island Real Estate Law requires disclosure to homebuyers about any known wetlands and the new owners must comply with any original permits and plans.

HOW DO I FIND OUT IF A PROPERTY IS BUILDABLE?

DEM does not determine if a piece of property is "buildable" or "unbuildable". If a person wishes to develop a piece of property that contains freshwater wetlands, they must submit an application package. DEM will either approve or deny the permit application based on review of the specific proposal. If the application is denied, the applicant may reapply with a different proposal.

If a person wishes to find out if they will be able to build a specific project before they purchase a piece of property, they may coordinate with the current property owner to apply for a wetlands permit. If the permit is approved, the new owner may then transfer the permit into their name after the property sale is complete.

Realtors should be wary of recommending a piece of land unofficially referred to as a 'remnant lot.' A remnant lot is a piece of land that has been subdivided from a larger tract of land and may be almost entirely wetland. It is often very difficult to design a project for this type of lot because of flooding and the problems

associated with flooding. In addition, this type of project may likely require the formal permitting process, which does not guarantee a favorable outcome for the applicant. OWTS design and permitting, as well as Town or City ordinances, must also be considered.

WHAT KINDS OF ACTIVITIES REQUIRE WETLAND PERMITS?

All activities that will take place in a wetland (including a Perimeter or Riverbank Wetland), which could potentially alter the wetland or change its ability to perform functions and provide values as defined in the Rules, will require a wetland permit, unless it is specifically exempt under Rule 6.00 (see factsheets 2 & 3).

Some examples of projects and activities requiring a wetland permit include:

- Placement of a building within a perimeter wetland and all associated work, including clearing of vegetation, site grading, landscaping, construction of a septic system, driveway, well, or property accessories.
- Building a bridge or installing a culvert to cross a stream or wetland.
- Any placement of fill or excavation of soils that take place in wetland for any purpose.
- Draining a wetland or redirecting surface water or groundwater flow toward or away from any wetland for any purpose.
- Clearing or cutting of vegetation for trails, view corridors, or "cleaning up the wetland".
- Larger projects, such as subdivisions, may be entirely outside of wetland, but often involve redirection of storm water runoff toward a wetland, and therefore require wetland permits. When in doubt, it is safer to assume that any project or activity near or within a wetland requires a wetland permit. DEM can help you determine this.

WHAT DO I TELL A BUYER IF THERE ARE WETLANDS ON AN ADJACENT PROPERTY?

If there are wetlands on an abutting property, there may also be Perimeter or Riverbank Wetlands that extend onto the property for sale. A permit may be required for work within these areas and a buyer should be made aware of this possibility in the event that he/she wishes to add onto an existing house, clear to expand a yard, or add a property accessory, such as a pool or a shed. The existence of wetlands on adjacent properties does not prohibit future building on that property. The purchase of your property should be evaluated with this in mind.

WHAT IF A WETLAND PERMIT ALREADY EXISTS FOR A PROPERTY?

If a wetland permit exists for a piece of property for sale, the buyer must adhere to the conditions of the permit. It is recommended that a copy of the DEM approved site plans and the permit letter be made available to the buyer so he/she can see exactly where wetlands are located and the extent of the approved project. The plans and permit can be reviewed or copied at the DEM office.

If the project has not been built, the buyer will have to transfer the permit into his or her name after the sale is complete and before beginning any work on the property.

If the project has been completed at the time of the purchase, the permit will not have to be transferred, but the new owner must adhere to the approved Limit of Disturbance and any other restrictions.

CAN THE BUYER EXPAND THE YARD?

A homeowner may submit a wetlands application to expand a previously approved Limit of Disturbance (LOD) to allow for a larger yard. The Limit of Disturbance or LOD is the line beyond which no disturbance is allowed without a wetland permit. The LOD is a required part of any wetland application.

In some cases, an additional minimal encroachment into the Perimeter or Riverbank Wetland can be approved. In other cases, extensive wetlands with minimal room for clearing may not allow for any expansion.

A property owner may find it helpful to request a pre-application meeting to discuss their proposal and any DEM concerns about the project, especially if a permit has recently been approved.

CAN THE BUYER ADD A GARAGE, DECK, SWIMMING POOL, OR OTHER PROPERTY ACCESSORY?

There are some exemptions for additions and property accessories added to existing single-family homes. These exemptions are described in DEM Wetland Fact Sheet #2 and are found in Rule 6.00. If the desired property addition is not exempt under Rule 6.00, it is still possible that a permit can be issued for the project. The buyer should coordinate with the seller to submit an application for the addition or accessory prior to the sale to ensure it would be approved. The permit then must be transferred to the buyer's name once the sale is complete.

WHAT ARE THE "SETBACKS" OR "BUFFERS" FOR WETLANDS?

Although the terms "setback" and "buffers" are commonly used, they are not DEM regulatory terms. The regulatory terms are 50-foot Perimeter Wetland or the 100-foot or 200-foot Riverbank Wetland (see the Rules for definitions). Perimeter and Riverbank Wetlands may actually be upland areas, but they are still regulated by DEM through the Rhode Island Freshwater Wetland Act. If the proposed project does not create indirect impacts such as a change in drainage to or from the wetland, it may be possible to obtain a wetland permit to work in these areas. If the Perimeter and Riverbank Wetland can be completely avoided, a permit may not be necessary.

Please note, the term "existing," as used throughout this fact sheet, is defined as a condition that occurred naturally and is still present or was present at the enactment of the Freshwater Wetlands Act and has continually remained the same.

Disclaimer: This Fact Sheet is meant to be used as a guideline and is not meant to be used as a substitute for the Freshwater Wetlands Act or the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.

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