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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO AGRICULTURE AND FORESTRY - AGRICULTURE FUNCTIONS OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Senators Lynch, Sosnowski, Walaska, and Miller

Date Introduced: March 19, 2015

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 2-1-18, 2-1-19, 2-1-20, 2-1-20.1, 2-1-20.2, 2-1-20.3, 2-1-21, 2-1-
2 23, 2-1-24 and 2-1-25 of the General Laws in Chapter 2-1 entitled "Agricultural Functions of
3 Department of Environmental Management" are hereby amended to read as follows:

4 **2-1-18. Declaration of intent.** -- Whereas it is recognized that ~~swamps, marshes and~~
5 ~~other~~ fresh-water wetlands, buffers, floodplains and other areas that may be subject to storm
6 flows and flooding as defined in this chapter ~~act as buffers zones and~~ provide storage and
7 absorption areas for flood waters which reduce flood hazards; and

8 Whereas all flood plains for all rivers, streams, and other water courses are certain to be
9 overflowed with water periodically in spite of all reasonable efforts to prevent those occurrences;
10 and

11 Whereas flood waters overflowing into ~~marshes, swamps, and other~~ fresh-water
12 wetlands, buffers, floodplains, and other areas that may be subject to storm flows and flooding are
13 not only released more slowly downstream, thus reducing the damage they may cause, but flood
14 waters may tend to be absorbed into the ground water supply ~~through swamps, marshes, and other~~
15 ~~fresh water wetlands, thus~~ further reducing the flood hazard and recharging the vital ground water
16 resource; and

17 Whereas precipitation patterns are known to be changing and Rhode Island has
18 experienced a higher frequency of intense storm events resulting in flooding; and

1 Whereas ~~swamps, marshes, and other~~ fresh-water wetlands and buffers are among the
2 most valuable of all wildlife habitats and are high value recreational areas as well, and wildlife
3 and recreation are widely recognized as essential to the health, welfare, and general well being of
4 the general populace; and

5 Whereas it has been established through scientific study that activities conducted in lands
6 adjacent to freshwater wetlands can exert influence on their condition, functions, and values; and
7 subsequently these lands should be protected; and

8 Whereas it has been established through scientific study that maintaining lands adjacent
9 to freshwater wetlands as naturally vegetated buffers protects the functions and values of
10 wetlands and that such buffers in and of themselves perform vital ecological functions; and

11 Whereas it has been established through scientific study that freshwater wetlands and
12 buffers maintained in a natural condition can provide benefits to water quality through the
13 filtering and uptake of water pollutants, retention of sediment, stabilizing shorelines, and other
14 natural processes; and

15 Whereas ~~swamps, marshes, and other~~ fresh-water wetlands, buffers, and floodplains, are
16 increasingly threatened by random and frequently undesirable projects for drainage, excavation,
17 filling, encroachment, or other ~~form~~ forms of disturbance or destruction, and that a review of
18 scientific literature indicates that aspects of existing state standards to protect these areas need to
19 be strengthened; ~~are currently inadequately protected from random and undesirable projects;~~ and

20 Whereas the protection of ~~swamps, marshes, and other~~ fresh water wetlands, buffers,
21 floodplains, and other areas that may be subject to storm flows and flooding from random,
22 unnecessary, and/or undesirable drainage, excavation, filling, encroachment, or any other form of
23 disturbance or destruction is recognized as being in the best public interest and essential to the
24 health, welfare, and general well being of the general populace and essential to the protection of
25 property and life during times of flood or other disaster affecting water levels or water supply;

26 Whereas the lack of uniform standards results in duplication of reviews administered by
27 state and local governments and burdens businesses and property owners who require a
28 predictable regulatory environment to be successful; and

29 Whereas it is recognized that statewide regulatory standards to protect freshwater
30 wetlands, buffers, and floodplains are in the public interest, important to supporting economic
31 vitality, and necessary to ensure protection is achieved in a consistent manner; and

32 Therefore, the provisions of the following sections are intended to preserve freshwater
33 wetlands, buffers, and floodplains and regulate the use ~~of thereof~~ ~~swamps, marshlands and other~~
34 ~~fresh-water wetlands~~ through the establishment of jurisdictional areas and the regulation of

1 [activities consistent with this chapter.](#)

2 ~~2-1-19. Public policy on swamps, marshes, and fresh water wetlands.~~ **Public policy**
3 **on freshwater wetlands.** -- It is the public policy of the state to preserve the purity and integrity
4 of the ~~swamps, marshes, and other~~ fresh water wetlands [buffers and floodplains](#) of this state. The
5 health, welfare, and general well being of the populace and the protection of life and property
6 require that the state restrict the uses of [freshwater wetlands, buffers, and floodplains](#) and, in the
7 exercise of the police power, ~~those wetlands are to be regulated~~ [regulate activities in jurisdictional](#)
8 [areas and as otherwise provided for](#) hereunder [consistent with this chapter.](#)

9 **2-1-20. Definitions.** -- As used in this chapter;

10 [\(1\) "Area subject to flooding" shall include, but not be limited to, low-lying areas that](#)
11 [collect, hold, or meter out storm and flood waters from any of the following: rivers, streams,](#)
12 [intermittent streams, or areas subject to storm flowage.](#)

13 [\(2\) "Area subject to storm flowage" includes drainage swales and channels that lead into,](#)
14 [out of, pass through, or connect other freshwater wetlands or coastal wetlands, and that carry](#)
15 [flows resulting from storm events, but may remain relatively dry at other times.](#)

16 ~~(+)~~[\(3\)](#) "Bog" means a place where standing or slowly running water is near or at the
17 surface during normal growing season and/or where a vegetational community has over fifty
18 percent (50%) of the ground or water surface covered with sphagnum moss (Sphagnum) and/or
19 where the vegetational community is made up of one or more of, but not limited to nor
20 necessarily including all of, the following: blueberries, and cranberry (Vaccinium), leatherleaf
21 (Chamaedaphne calyculata), pitcher plant (Sarracenia purpurea), sundews (Droseraceae), orchids
22 (Orchidaceae), white cedar (Chamaecyparis thyoides), red maple (Acer rubrum), black spruce
23 (Picae mariana), bog aster (Aster nemoralis), larch (Laris laricina), bogrosemary (Andromeda
24 glaucophylla), azaleas (Rhododendron), laurels (Kalmia), sedges (Caryx), [and](#) bog ~~and~~ cotton
25 (Eriophorum).

26 [\(4\) "Buffer" means an area of undeveloped vegetated land adjacent to a freshwater](#)
27 [wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a](#)
28 [naturally occurring vegetated area.](#)

29 [\(5\) "Department" means the department of environmental management \(DEM\).](#)

30 ~~(2)~~[\(6\)](#) "Director" means the director of the department of environmental management or
31 his or her duly authorized agent or agents.

32 ~~(3)~~[\(7\)](#) "Flood Plain" means that land area adjacent to a river or stream or other body of
33 flowing water which is, on the average, likely to be covered with flood waters resulting from a
34 one hundred (100) year frequency storm. A "one hundred (100) year frequency storm" is one that

1 is to be expected to be equaled or exceeded once in one hundred (100) years; or may be said to
2 have a one percent (1%) probability of being equaled or exceeded in any given year. ~~Rainfall~~
3 ~~intensity data for a one hundred (100) year frequency storm are those established for New~~
4 ~~England locations by the national weather service (formerly the U. S. weather bureau).~~

5 ~~(4)~~(8) "Fresh water wetlands" includes but is not limited to, those areas that are
6 inundated or saturated by surface or groundwater at a frequency and duration to support, and that
7 under normal circumstances do support a prevalence of vegetation adapted for life in saturated
8 soil conditions. Freshwater wetlands includes, but is not limited to: marshes, swamps, bogs,
9 ~~ponds, rivers, river and stream flood plains and banks, areas subject to flooding or storm flowage,~~
10 emergent and submergent plant communities, and for the purposes of this chapter rivers, streams,
11 ponds, and vernal pools ~~in any body of fresh water including rivers and streams and that area of~~
12 ~~land within fifty feet (50') of the edge of any bog, marsh, swamp or pond.~~

13 (9) "Jurisdictional area" means the following lands and waters, as defined herein, which
14 shall be subject to regulation under this chapter:

15 (i) Freshwater wetlands;

16 (ii) Buffers;

17 (iii) Floodplains;

18 (iv) Areas subject to storm flowage;

19 (v) Areas subject to flooding; and

20 (vi) Contiguous areas that extend outward:

21 (A) Two hundred feet (200') from the edge of a river or stream;

22 (B) Two hundred feet (200') from the edge of a drinking water supply reservoir; and

23 (C) One hundred feet (100') from the edge of all other freshwater wetlands.

24 ~~(5)~~(10) "Marsh" means a place ~~not less than one acre in extent~~ wholly or partly within the
25 state where a vegetational community exists in standing or running water during the growing
26 season and/or is made up of one or more of, but not limited to nor necessarily including all of, the
27 following plants or groups of plants: hydrophytic reeds (Phragmites), grasses (Cramineae),
28 mannagrasses (Glyceria), cutgrasses (Leersia), pickerelwoods (Pontederiaceae), sedges
29 (Cyperaceae), rushes (Juncaceae), cattails (Typha), water plantains (Alismataceae), bur-reeds
30 (Sparganiaceae), pondweeds (Zosteraceae), frog's bits (Hydrocharitaceae), arums (Araceae),
31 duckweeds (Lemnaceae), water lilies (Nymphaeaceae), water-milfoils (Haloragaceae), water-
32 starworts (Callitrichaceae), bladder-worts (Utricularia), pipeworts (Eriocaulon), sweet gale
33 (Myrica gale), and buttonbush (Cephalanthus occidentalis).

34 ~~(6)~~(11) "Near or at the surface" mean within ~~thirty six (36)~~ eighteen (18) inches of the

1 surface.

2 ~~(7)~~(12) "Pond" means a place ~~not less than one quarter (1/4) acre in extent,~~ natural or
3 man-made, wholly or partly within the state, where open standing or slowly moving water is
4 present for at least six (6) months a year.

5 ~~(8)~~(13) "River" means a body of water designated as a perennial stream by the United
6 States department of interior geologic survey on 7.5 minute series topographic maps and which is
7 not a pond as defined in this section.

8 (14) "Setback" means the minimum distance from the edge of a freshwater wetland at
9 which an approved activity or alteration may take place.

10 (15) "Stream" means any flowing body of water or watercourse that flows long enough
11 each year to develop and maintain a channel and that may carry groundwater discharge or surface
12 runoff.

13 ~~(9) "River bank" means that area of land within two hundred feet (200') of the edge of~~
14 ~~any flowing body of water having a width of ten feet (10') or more and that area of land within~~
15 ~~one hundred feet (100') of the edge of any flowing body of water having a width of less than ten~~
16 ~~feet (10') during normal flow.~~

17 ~~(10)~~(16) "Swamp" means a place ~~not less than three (3) acres in extent~~ wholly or partly
18 within the state where ground water is near or at the surface of the ground for a significant part of
19 the growing season or runoff water from surface drainage collects frequently and/or where a
20 vegetational community is made up of a significant portion of one or more of, but not limited to
21 nor necessarily including all of, the following: red maple (Acer rubum), elm (Ulmus americana),
22 black spruce (Picea mariana), white cedar (Chamaecyparis thyoides), ashes (Fraxinus), poison
23 sumac (Rhus vernix), larch (Larix laricina), spice bush (Lindera benzoin), alders (Alnus), skunk
24 cabbage (Symplocarpus foetidus), hellebore (Veratrum viride), hemlock (Thuja canadensis),
25 sphagnums (Sphagnum), azaleas (Rhododendron), black ~~adler~~ alder (Ilex verticillata), coast
26 pepperbush (Clethra alnifolia), marsh marigold (Caltha palustris), blueberries (Vaccinium),
27 buttonbush (Cephalanthus occidentalis), willow (Salicaceae), water willow (Decodon
28 verticillatus), tupelo (Nyssa sylvatica), laurels (Kalmia), swamp white oak (Quercus bicolor), or
29 species indicative of marsh.

30 (17) "Vernal pool" means a depressional wetland basin that typically goes dry in most
31 years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both
32 size and depth depending upon landscape position and parent materials. Vernal pools usually
33 support one or more of the following obligate indicator species: wood frog (Lithobates
34 sylvaticus), spotted salamander (Ambystoma maculatum), marbled salamander (Ambystoma

1 [opacum](#)), and fairy shrimp (*Eubbranchipus* spp.) and typically preclude sustainable populations of
2 [predatory fish](#).

3 **2-1-20.1. Rules and regulations.** -- (a) The director is authorized to adopt, modify, or
4 repeal rules and regulations that are in accord with the purposes of §§ 2-1-18 -- 2-1-~~24~~26 and are
5 subject to the administrative procedures act, chapter 35 of title 42, except for those [freshwater](#)
6 wetlands located in the vicinity of the coast as set out in chapter 23 of title 46 of the general laws
7 which shall be regulated [by the coastal resources management council](#) consistent with the
8 provisions of chapter 23 of title 46 [and §§ 2-1-18 through 2-1-20.1 and 2-1-23](#).

9 [\(b\) The director is authorized to establish jurisdictional areas through regulation. The](#)
10 [rules and regulations promulgated pursuant to § 2-1-20.1 shall apply within the jurisdictional](#)
11 [areas defined in § 2-1-20 and to activities as provided for in § 2-1-21.](#)

12 [\(c\) Within twelve \(12\) months from enactment of this section, the department and the](#)
13 [coastal resources management council shall promulgate standards for freshwater wetland buffers](#)
14 [and setbacks into state rules and regulations pursuant to their respective authorities. The](#)
15 [department and the coastal resources management council shall collaborate to develop the state](#)
16 [standards for freshwater buffers and setbacks that will be incorporated into the programs of both](#)
17 [agencies. State regulations designating buffers shall include a procedure that allows a](#)
18 [municipality to petition the agency director with jurisdiction to increase the size of the buffer](#)
19 [within the designated jurisdictional area protecting one or more freshwater wetland resources.](#)

20 **2-1-20.2. ~~Designation of wetlands.~~ --- Designation of wetlands, buffers, and**
21 **floodplains.** -- The director is authorized to determine which areas are to be known as [freshwater](#)
22 wetlands ~~and to maintain map surveys of the state that indicates the wetland areas. Those map~~
23 ~~surveys shall be provided to each of the individual cities and towns, and copies of these map~~
24 ~~surveys shall be maintained as public records by the building inspector of each city and town~~
25 [buffers and floodplains, areas subject to flooding, and areas subject to storm flowage.](#)

26 **2-1-20.3. Inspection -- Penalty.** -- (a) The director is authorized to enter, examine or
27 survey at any reasonable time any places that he or she considers necessary to carry out his or her
28 responsibilities under §§ 2-1-18 -- 2-1-~~24~~ 26 without a warrant.

29 (b) Any person who willfully impedes or obstructs an inspection, examination or survey
30 by the director or the director's agents shall upon conviction be punished by a fine not exceeding
31 one hundred dollars (\$100) or by imprisonment not exceeding thirty (30) days or both.

32 **2-1-21. Approval of director.** -- (a) (1) No person, firm, industry, company, corporation,
33 city, town, municipal or state agency, fire district, club, nonprofit agency, or other individual or
34 group may:

1 (i) ~~excavate~~ Excavate; drain; fill; place trash, garbage, sewage, highway runoff, drainage
2 ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon;
3 divert water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter
4 the character of any fresh water wetland buffer or floodplain as defined in section 2-1-20 without
5 first obtaining the approval of the director of the department of environmental management; or

6 (ii) Undertake any activity within a jurisdictional area, as defined in § 2-1-20, that may
7 alter the character of the freshwater wetland, buffer or floodplain without first obtaining the
8 approval of the director of the department of environmental management.

9 (2) Approval will be denied if in the opinion of the director granting of approval would
10 not be in the best public interest. ~~Approval shall not be granted if the city council or town council~~
11 ~~of the municipality within whose borders the project lies disapproves within the forty five (45)~~
12 ~~days provided for objections set forth in § 2-1-22. Disapproval does not preclude the director of~~
13 ~~the department of environmental management from granting an approval of alterations of~~
14 ~~wetlands relating to a state highway project proposed by the department of transportation that~~
15 ~~passes through or crosses two (2) or more municipalities.~~

16 (3) Appeal from a denial may be made to the superior court following the exhaustion of
17 administrative appeals provided through the administrative adjudication division established by
18 chapter 17.7 of title 42.

19 (4) In the event of any alteration by a city or town of surface water impoundments used
20 for drinking water supply, limited to maintenance within existing boundary perimeters of the
21 impoundment, no approval shall be required. The city or town advises the director at least twenty
22 (20) days prior to commencing the maintenance work. The city or town shall advise the director
23 in writing, describing the location and nature of the work, anticipated times of commencement
24 and completion, and methods to be used to reduce adverse impacts on the freshwater wetland,
25 buffer, or floodplain. The director shall advise the city or town of any concerns with the impact of
26 the proposed maintenance on the freshwater wetland, buffer, or floodplain or ~~and~~ water quality.

27 (b) Whenever a landowner is denied approval to alter a freshwater wetland by the
28 director, ~~or by the city or town within whose borders the wetland lies~~ under subsection (a), the
29 landowner may elect to have the state, ~~or the city or town,~~ acquire the land involved by
30 petitioning to the superior court. If the court determines that the proposed alteration would not
31 essentially change the natural character of the land, would not be unsuited to the land in the
32 natural state, and would not injure the rights of others, the court shall, upon determining the fair
33 market value of the freshwater wetland, based upon its value as a freshwater wetland, direct the
34 state, if approval was denied by the director, ~~or the city or town, if approval was denied by the~~

1 ~~city or town, or both, if they concur in the disapproval,~~ to pay to the landowner the fair market
2 value of the [freshwater](#) wetland. If the state, ~~or the city or town, or both, where both are ordered~~
3 ~~to pay,~~ declines the acquisition, the landowner may proceed to alter the [freshwater](#) wetland as
4 initially requested. Any amount paid by the state shall be paid from any funds in the treasury not
5 otherwise appropriated. ~~If the director of environmental management alone denied approval under~~
6 ~~subsection (a), then the state shall make payment. If the city or town alone denied approval under~~
7 ~~subsection (a), then the city or town shall make payment. If both the state and the city or town~~
8 ~~denied approval, then payment shall be shared equally by the state and the city or town.~~

9 **2-1-23. Violations. --** In the event of a violation of § 2-1-21, the director of
10 environmental management has the power to order complete restoration of the fresh water
11 wetland, [buffer, floodplain or other jurisdictional](#) area involved by the person or agent responsible
12 for the violation. If the responsible person or agent does not complete the restoration within a
13 reasonable time following the order of the director of the department of environmental
14 management, the director has the authority to order the work done by an agent of the director's
15 choosing and the person or agent responsible for the original violation is liable for the cost of the
16 restoration. The violator is liable for a fine not exceeding five thousand dollars (\$5,000) for each
17 violation, except that if the violator knowingly or recklessly alters a fresh water wetland, [buffer,](#)
18 [floodplain or other jurisdictional](#) area without a permit or approval from the director, knowingly
19 or recklessly alters a fresh water wetland, [buffer, floodplain or other jurisdictional](#) area in
20 violation of the rules or regulations promulgated by the director, or alters a fresh water wetland,
21 [buffer, floodplain or other jurisdictional](#) area in violation of a permit issued by the director, then
22 the violator is liable for a fine not exceeding ten thousand dollars (\$10,000) for each violation.

23 **2-1-24. Notice to cease operation and relief in equity -- Penalty. --** (a) Whenever any
24 person, firm, industry, company, corporation, city, town, municipal or state agency, fire, district,
25 club or other individual or group commences any activity set forth in § 2-1-21 without first
26 having obtained the approval of the director, or violates any rule or regulation of the director, the
27 director has the power by written notice to order the violator to cease and desist immediately
28 and/or restore the [freshwater](#) wetlands, [buffers, floodplains or other jurisdictional areas](#) to their
29 original state insofar as possible. Any order or notice to restore wetlands is eligible for
30 recordation under chapter 13 of title 34 and shall be recorded in the land evidence records in the
31 city or town where the subject wetland is located, and any subsequent transferee of the wetland is
32 responsible for complying with the requirements of the order or notice. If the violator and/or
33 subsequent transferee is ordered to restore the wetlands to the original state, and the violator
34 and/or subsequent transferee does not complete the restoration within a reasonable time following

1 the order of the director, the director has the authority to order the work done by an agent of the
2 director's choosing, and the person, agent or subsequent transferee is liable for the cost of the
3 restoration. If the violator and/or subsequent transferee does not conform to the director's order,
4 the director may bring prosecution by complaint and warrant and the prosecution shall be made in
5 the district court of the state. The director, without being required to enter into any recognizance
6 or to give surety for cost, may institute the proceedings in the name of the state. It is the duty of
7 the attorney general to conduct the prosecution of all proceedings brought by the director.

8 (b) The director may obtain relief in equity or by prerogative writ whenever relief is
9 necessary for the proper performance of duties under §§ 2-1-18 -- 2-1-24.

10 (c) Any person who violates an order of the director shall be punished by a fine not
11 exceeding five hundred dollars (\$500) or by imprisonment not exceeding thirty (30) days or by
12 both, and every person is deemed guilty of a separate and distinct offense for each day during
13 which the violation is repeated or continued.

14 ~~(d) For the purposes of this section, the building inspector of the city of Warwick or~~
15 ~~town of Warren is deemed the authorized agent of the director and is vested with all the duties,~~
16 ~~powers and authority granted by this section to the director of environmental management to be~~
17 ~~exercised solely with respect to projects or property within his or her respective city or town. It~~
18 ~~shall be the duty of the attorney general of the state to conduct the prosecution of all proceedings~~
19 ~~brought by the building inspector in accordance with this section. Nothing contained in this~~
20 ~~section is deemed to divest the director of environmental management of any duty, power or~~
21 ~~authority granted by this chapter.~~

22 **2-1-25. Severability.** -- If any provision of §§ 2-1-20 -- ~~2-1-25~~ [2-1-27](#) or of any rule,
23 regulation, or determination made under these sections, or the application of these sections to any
24 person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the
25 remainder of §§ 2-1-20 -- ~~2-1-25~~ [2-1-27](#), or the rule, regulation, or determination, and the
26 application of those provisions to other persons, agencies, or circumstances shall not be affected.
27 The invalidity of any section or sections or parts of any section or sections of §§ 2-1-20 -- ~~2-1-25~~
28 [2-1-27](#) shall not affect the validity of the remainder of §§ 2-1-20 -- ~~2-1-25~~ [2-1-27](#).

29 SECTION 2. Chapter 2-1 of the General Laws entitled "Agricultural Functions of
30 Department of Environmental Management" is hereby amended by adding thereto the following
31 sections:

32 **2-1-27. Access to information on freshwater wetland applications.** -- [The directors of](#)
33 [the department and the coastal resources management council shall establish procedures that will](#)
34 [provide municipalities and the public with access to information concerning freshwater wetland](#)

1 [permit applications filed with the state. Procedures shall be designed to facilitate municipal input](#)
2 [during the permit application review process and shall, to the extent feasible, utilize information](#)
3 [technology to automate making information available in a timely manner. Procedures to facilitate](#)
4 [local input shall be established and implemented in a manner that avoids introducing delay in](#)
5 [issuance of permit decisions.](#)

6 **2-1-28. Effect on zoning ordinances.** -- [Local zoning ordinances and regulations that are](#)
7 [inconsistent with this chapter shall be amended to conform to the requirements of § 45-24-30.](#)

8 SECTION 3. Sections 45-24-29, 45-24-30 and 45-24-33 of the General Laws in Chapter
9 45-24 entitled "Zoning Ordinances" are hereby amended to read as follows:

10 **45-24-29. Legislative findings and intent.** -- (a) (1) The general assembly recognizes
11 and affirms in §§ 45-24-27 through 45-24-72 that the findings and goals stated in § 45-22.2-3
12 present findings and goals with which zoning must be consistent.

13 (2) The general assembly further finds that:

14 (i) The zoning enabling statutes contained in §§ 45-24-1 through 45-24-26, repealed as
15 of December 31, 1994, were largely enacted in 1921;

16 (ii) The character of land development and related public and private services have
17 changed substantially in the intervening years;

18 (iii) It is necessary to provide for innovative land development practices to enable cities
19 and towns to adequately regulate the use of land and employ modern land development practices;

20 (iv) It is necessary to take full account of the requirement that each city and town amend
21 its zoning ordinance to conform to and be consistent with its comprehensive plan adopted
22 pursuant to chapter 22.2 of this title, and to all the elements contained therein; and

23 (v) A substantial updating and revision of the original statutory zoning enabling
24 authority is required to meet these changed conditions.

25 (3) It is therefore found that the preparation and implementation of zoning ordinances is
26 necessary to address the findings and needs identified in this section; to protect the public health,
27 safety, and general welfare; to allow the general assembly to carry out its duty to provide for the
28 conservation of the natural resources of the state and to adopt all means necessary and proper by
29 law for the preservation, regeneration, and restoration of the natural environment of the state in
30 accordance with R.I. Const., art. 1, §§ 16 and 17; to promote good planning practice; and to
31 provide for sustainable economic growth in the state.

32 (b) Therefore, it is the intent of the general assembly:

33 (1) That the zoning enabling authority contained in this chapter provide all cities and
34 towns with adequate opportunity to address current and future community and statewide needs;

1 (2) That the zoning enabling authority contained in this chapter require each city and
2 town to conform its zoning ordinance and zoning map to be consistent with its comprehensive
3 plan developed pursuant to chapter 22.2 of this title;

4 (3) ~~That~~ [Except as prohibited pursuant to §§ 45-24-30\(b\), 45-24-30\(c\), or 45-24-30\(d\)](#)
5 [that](#) the zoning enabling authority contained in this chapter empower each city and town with the
6 capability to establish and enforce standards and procedures for the proper management and
7 protection of land, air, and water as natural resources, and to employ contemporary concepts,
8 methods, and criteria in regulating the type, intensity, and arrangement of land uses, and provides
9 authority to employ new concepts as they may become available and feasible;

10 (4) That the zoning enabling authority contained in this chapter permit each city and
11 town to establish an economic impact commission whose duties would be to advise
12 municipalities on the economic impact new zoning changes would have on cities and towns and
13 private property owners, and to assist municipalities in determining financial impacts when new
14 or changed zoning adversely affects business climate, land use, property value, natural and
15 historic resources, industrial use, or development of private property; and may permit the use of
16 land and buildings within the groundwater protection zones for agricultural purposes and shall
17 encourage the use of farmland in a manner which is consistent with the protection of groundwater
18 resources; and

19 (5) That each city and town amend its zoning ordinance to comply with the terms of this
20 chapter.

21 **45-24-30. General purposes of zoning ordinances.** – (a) Zoning regulations shall be
22 developed and maintained in accordance with a comprehensive plan prepared, adopted, and as
23 may be amended, in accordance with chapter 22.2 of this title and shall be designed to address the
24 following purposes. The general assembly recognizes these purposes, each with equal priority and
25 numbered for reference purposes only.

26 (1) Promoting the public health, safety, and general welfare.

27 (2) Providing for a range of uses and intensities of use appropriate to the character of the
28 city or town and reflecting current and expected future needs.

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

30 (i) The goals and patterns of land use contained in the comprehensive plan of the city or
31 town adopted pursuant to chapter 22.2 of this title;

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

34 (iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and

- 1 freshwater and coastal wetlands;
- 2 (iv) The values of unique or valuable natural resources and features;
- 3 (v) The availability and capacity of existing and planned public and/or private services
4 and facilities;
- 5 (vi) The need to shape and balance urban and rural development; and
- 6 (vii) The use of innovative development regulations and techniques.
- 7 (4) Providing for the control, protection, and/or abatement of air, water, groundwater,
8 and noise pollution, and soil erosion and sedimentation.
- 9 (5) Providing for the protection of the natural, historic, cultural, and scenic character of
10 the city or town or areas in the municipality.
- 11 (6) Providing for the preservation and promotion of agricultural production, forest,
12 silviculture, aquaculture, timber resources, and open space.
- 13 (7) Providing for the protection of public investment in transportation, water, stormwater
14 management systems, sewage treatment and disposal, solid waste treatment and disposal, schools,
15 recreation, public facilities, open space, and other public requirements.
- 16 (8) Promoting a balance of housing choices, for all income levels and groups, to assure
17 the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and
18 sanitary housing.
- 19 (9) Providing opportunities for the establishment of low and moderate income housing.
- 20 (10) Promoting safety from fire, flood, and other natural or unnatural disasters.
- 21 (11) Promoting a high level of quality in design in the development of private and public
22 facilities.
- 23 (12) Promoting implementation of the comprehensive plan of the city or town adopted
24 pursuant to chapter 22.2 of this title.
- 25 (13) Providing for coordination of land uses with contiguous municipalities, other
26 municipalities, the state, and other agencies, as appropriate, especially with regard to resources
27 and facilities that extend beyond municipal boundaries or have a direct impact on that
28 municipality.
- 29 (14) Providing for efficient review of development proposals, to clarify and expedite the
30 zoning approval process.
- 31 (15) Providing for procedures for the administration of the zoning ordinance, including,
32 but not limited to, variances, special-use permits, and, where adopted, procedures for
33 modifications.
- 34 (16) Providing opportunities for reasonable accommodations in order to comply with the

1 Rhode Island Fair Housing Practices Act, chapter 37 of title 34, the United States Fair Housing
2 Amendments Act of 1988 (FHAA), the Rhode Island Civil Rights of Persons with Disabilities
3 Act, chapter 87 of title 42, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §
4 12101 et seq.

5 Provided, however, that any zoning ordinance in which a community sets forth standards
6 or requirements for the location, design, construction, or maintenance of on-site ~~sewage disposal~~
7 wastewater treatment systems shall first be submitted to the director of the department of
8 environmental management ~~and the department of health~~ for approval as to the technical merits of
9 the ordinance. In addition, any zoning ordinance in which a municipality sets forth standards
10 regarding wetland ~~setbacks~~ or requirements, shall first be submitted to the director of the
11 department of environmental management for approval as to the technical merits of the
12 ordinance.

13 **(b) Upon the effective date of this section, a city or town shall no longer be authorized to**
14 **adopt as a provision of its zoning ordinance new requirements that specify buffers or setbacks in**
15 **relation to freshwater wetland, freshwater wetland in the vicinity of the coast, or coastal wetland**
16 **or that specify setback distances between an onsite wastewater treatment system and a freshwater**
17 **wetlands, freshwater wetland in the vicinity of the coast or coastal wetland.**

18 **(c) Upon promulgation of state regulations to designate wetland buffers and setbacks**
19 **pursuant to §§ 2-1-18 through 2-1-27, cities and towns shall be prohibited from applying the**
20 **requirements in existing zoning ordinances pertaining to both wetland buffers and onsite**
21 **wastewater treatment system setbacks to development applications submitted to a municipality**
22 **after the effective date of said state regulations. All applications for development that were**
23 **submitted to a municipality prior to the effective date of state regulations designating wetland**
24 **buffers and setbacks, will remain subject to, as applicable, the zoning provisions pertaining to**
25 **wetland buffers or setbacks for onsite wastewater treatment systems that were in effect at the time**
26 **the application was originally filed or granted approval, subject to the discretion of the**
27 **municipality to waive such requirements. Nothing herein shall rescind the authority of a city or**
28 **town to enforce local zoning requirements.**

29 **(d) Cities and towns shall act to amend their ordinances and regulations to conform to**
30 **this section within twelve (12) months of the effective date of state regulations referenced herein.**

31 **45-24-33. Standard provisions.** -- (a) A zoning ordinance addresses each of the purposes
32 stated in § 45-24-30 and addresses, through reasonable objective standards and criteria, the
33 following general provisions which are numbered for reference purposes only except as
34 prohibited by §§ 45-24-30(b), 45-24-30(c), or 45-24-30(d):

- 1 (1) Permitting, prohibiting, limiting, and restricting the development of land and
2 structures in zoning districts, and regulating those land and structures according to their type, and
3 the nature and extent of their use;
- 4 (2) Regulating the nature and extent of the use of land for residential, commercial,
5 industrial, institutional, recreational, agricultural, open space, or other use or combination of uses,
6 as the need for land for those purposes is determined by the city or town's comprehensive plan;
- 7 (3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and
8 other development by performance standards, or other requirements, related to air and water and
9 groundwater quality, noise and glare, energy consumption, soil erosion and sedimentation, and/or
10 the availability and capacity of existing and planned public or private services;
- 11 (4) Regulating within each district and designating requirements for:
- 12 (i) The height, number of stories, and size of buildings;
- 13 (ii) The dimensions, size, lot coverage, floor area ratios, and layout of lots or
14 development areas;
- 15 (iii) The density and intensity of use;
- 16 (iv) Access to air and light, views, and solar access;
- 17 (v) Open space, yards, courts, and buffers;
- 18 (vi) Parking areas, road design, and, where appropriate, pedestrian, bicycle, and other
19 circulator systems;
- 20 (vii) Landscaping, fencing, and lighting;
- 21 (viii) Appropriate drainage requirements and methods to manage stormwater runoff;
- 22 (ix) Public access to waterbodies, rivers, and streams; and
- 23 (x) Other requirements in connection with any use of land or structure;
- 24 (5) Permitting, prohibiting, limiting, and restricting development in flood plains or flood
25 hazard areas and designated significant natural areas;
- 26 (6) Promoting the conservation of energy and promoting energy-efficient patterns of
27 development;
- 28 (7) Providing for the protection of existing and planned public drinking water supplies,
29 their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and
30 watershed;
- 31 (8) Providing for adequate, safe, and efficient transportation systems; and avoiding
32 congestion by relating types and levels of development to the capacity of the circulation system,
33 and maintaining a safe level of service of the system;
- 34 (9) Providing for the preservation and enhancement of the recreational resources of the

1 city or town;

2 (10) Promoting an economic climate which increases quality job opportunities and the
3 overall economic well-being of the city or town and the state;

4 (11) Providing for pedestrian access to and between public and private facilities,
5 including, but not limited to schools, employment centers, shopping areas, recreation areas, and
6 residences;

7 (12) Providing standards for and requiring the provision of adequate and properly
8 designed physical improvements, including plantings, and the proper maintenance of property;

9 (13) Permitting, prohibiting, limiting, and restricting land use in areas where
10 development is deemed to create a hazard to the public health or safety;

11 (14) Permitting, prohibiting, limiting, and restricting extractive industries and earth
12 removal and requiring restoration of land after these activities;

13 (15) Regulating sanitary landfill, except as otherwise provided by state statute;

14 (16) Permitting, prohibiting, limiting, and restricting signs and billboards, and other
15 outdoor advertising devices;

16 (17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and
17 enforcement of airport hazard area zoning regulations under the provisions established in that
18 chapter;

19 (18) Designating areas of historic, cultural, and/or archaeological value and regulating
20 development in those areas under the provisions of chapter 24.1 of this title;

21 (19) Providing standards and requirements for the regulation, review, and approval of
22 any proposed development in connection with those uses of land, buildings, or structures
23 specifically designated as subject to development plan review in a zoning ordinance;

24 (20) Designating special protection areas for water supply and limiting or prohibiting
25 development in these areas, except as otherwise provided by state statute;

26 (21) Specifying requirements for safe road access to developments from existing streets,
27 including limiting the number, design, and location of curb cuts, and provisions for internal
28 circulation systems for new developments, and provisions for pedestrian and bicycle ways; and

29 (22) Reducing unnecessary delay in approving or disapproving development
30 applications, through provisions for preapplication conferences and other means.

31 (23) Providing for the application of the Rhode Island Fair Housing Practices Act,
32 chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA), the
33 Rhode Island Civil Rights People with Disabilities Act, chapter 37 of title 42, and the Americans
34 with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

1 (24) Regulating drive-through windows of varied intensity of use when associated with
2 land use activities and providing standards and requirements for the regulation, review and
3 approval of the drive-through windows, including, but not limited to:

4 (i) Identifying within which zoning districts drive-through windows may be permitted,
5 prohibited, or permitted by special use permit;

6 (ii) Specifying requirements for adequate traffic circulation; and

7 (iii) Providing for adequate pedestrian safety and access, including issues concerning
8 safety and access for those with disabilities.

9 (b) A zoning ordinance may include special provisions for any or all of the following:

10 (1) Authorizing development incentives, including, but not limited to, additional
11 permitted uses, increased development and density or additional design or dimensional flexibility
12 in exchange for:

13 (i) Increased open space;

14 (ii) Increased housing choices;

15 (iii) Traffic and pedestrian improvements;

16 (iv) Public and/or private facilities; and/or

17 (v) Other amenities as desired by the city or town and consistent with its comprehensive
18 plan. The provisions in the ordinance shall include maximum allowable densities of population
19 and/or intensities of use and shall indicate the type of improvements, amenities, and/or
20 conditions. Conditions may be made for donation in lieu of direct provisions for improvements or
21 amenities;

22 (2) Establishing a system for transfer of development rights within or between zoning
23 districts designated in the zoning ordinance; and

24 (3) Regulating the development adjacent to designated scenic highways, scenic
25 waterways, major thoroughfares, public greenspaces, or other areas of special public investment
26 or valuable natural resources.

27 (c) Slope of land shall not be excluded from the calculation of the buildable lot area or
28 the minimum lot size, or in the calculation of the number of buildable lots or units.

29 (d) Nothing in this section shall be construed to restrict a municipality's right, within
30 state and local regulations, to establish its own minimum lot size per zoning district in its town or
31 city.

32 SECTION 4. This act shall take effect upon passage.

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LC002156
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO AGRICULTURE AND FORESTRY - AGRICULTURE FUNCTIONS OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

1 This act would amend certain provisions of the general laws relative to the regulation of
2 freshwater wetlands, by establishing state standards for freshwater buffers and setbacks to be
3 promulgated by the coastal resources management council.

4 This act would take effect upon passage.

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LC002156
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