

EXECUTIVE CHAMBER

CITY OF WARWICK



RHODE ISLAND

SCOTT AVEDISIAN  
MAYOR

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CITY OF WARWICK  
PLANNING DEPARTMENT

February 21, 2007

Ms. Carolyn Murphy  
Office of Water Resources  
Department of Environmental Management  
Office of Water Resources  
235 Promenade Street  
Providence, Rhode Island 02908

**RE: City of Warwick Comments**

**PRENOTICE - DRAFT WETLAND RULES AND REGULATIONS  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
RULES AND REGULATIONS GOVERNING THE ADMINISTRATION AND  
ENFORCEMENT OF THE FRESH WATER WETLANDS ACT**

**DECEMBER 2006**

Dear Ms. Murphy:

I have reviewed the proposed *Draft Wetland Rules and Regulations* dated December 2006 and offer an objection to the amendments proposed for Rule 6.0 entitled "EXEMPT ACTIVITIES" as well as a suggestion that will provide public safety improvements in a more responsible manner than those offered by the draft amendments.

The City of Warwick objects to all amendments to section Rule 6.0 entitled EXEMPT ACTIVITIES including, but not limited to, RULE 6.02 entitled LIMITED CUTTING OR CLEARING OF VEGETATION.

The proposed language refers to rules and guidance documents that are complex and interpretive in nature.

*E. The cutting or clearing is required by the Federal Aviation Administration (FAA) to take place at an existing airport facility for the purposes of removing trees and shrubs penetrating airspace surfaces and critical areas required by FAA Regulations and Orders to be free of obstructions, provided they are accomplished under the following restrictions:*

*1) The cutting or clearing is done in strict accordance with a Vegetation Management Plan (VMP) approved by the DEM Freshwater Wetlands Program developed in accordance with guidelines provided by DEM.*

*2) The cutting or clearing is limited to that which is necessary to maintain or restore the FAA required geometry and use pattern of the airport, and not to permit new or expanded use."*

To recognize only the Federal Aviation Administration (FAA) within the EXEMPTION rule will codify many future activities as exempt, assuring greater wetland alteration while setting the stage for future amendments from comparable agencies seeking similar exemptions.

As proven within the current Draft Environmental Impact Statement (DEIS) process, the FAA often employs regulations and guidelines to support their goals, which are not always parallel with that of the host community and State of Rhode Island.

After years of firsthand interaction with the FAA, I find its regulations to be quite complex, often purposefully used interchangeably with guidelines and, in some instances, selectively applied. Simple reference to broad FAA guidelines assures future problems by complicating interpretation of what is or is not authorized as an exempt activity. Additionally, should FAA regulations change, activities authorized under the proposed exemption section would automatically change, thereby bypassing state/local control. Further, identifying specific agencies by way of a citation of federal law will create a subjective, interpretive regulation subject to future controversy that could result in litigation and potential loss of critical environmental resources. Considering that federal guidelines and regulations are constantly changing, how will future variations be interpreted?

In an attempt to further program goals, the FAA and the Rhode Island Airport Corporation (RIAC) could potentially exploit such an interpretive statute of exempt activities with disregard to the wetland impact.

It has been my experience in working with RIAC and the FAA that regulation and guideline language is often employed as a strategy to marginalize local concerns and is often accompanied with references to ambiguous and obscure federal guidelines. In this case, the City of Warwick is concerned that the new exemptions could potentially be abused to alter wetlands beyond the scale contemplated by the proposed rule change by circumventing the permitting process.

Increasing the exemption provision will also change the protocol of regulatory oversight because the exemption essentially becomes an allowed activity providing for the completion of the alteration prior to regulatory review. The problem with this scenario is that in the event an activity exceeds the exemption activity, destruction has already occurred. This could be particularly devastating considering the amount of wetland area, which has already endured years of water quality degradation, surrounding T.F. Green Airport.

The FAA's own Draft Environmental Impact Statement (DEIS) considers the adjacent Buckeye Brook ecosystem as a significant and critical habitat that supports mammals, birds and river herring. To allow the expansion of exempt activities within this stressed wetland system is inconsistent with the findings contained within the ongoing FAA DEIS. The question becomes, what is the logic in spending hundreds of thousands of dollars in federal funding for the DEIS to study wetland impact within only exempt activities? Considering the data contained within the DEIS, the consequence of this rule could be catastrophic.

Regulations that are subject to interpretation or argument can be dangerous as they have the potential to allow destruction of resources beyond that which is necessary. We need only to observe the ongoing debate regarding de-icing operations currently in operation at T. F. Green and its impact on area water bodies. In spite of specific rules and regulatory processes, the discharge permit granted by RIDEM is being litigated by RIAC. One should ask, why would DEM think that amending its regulations on behalf of RIAC to exempt activities would assist in the growing divergence between environmental concerns of the City of Warwick and the State of Rhode Island and operation of T.F Green Airport?

The fact is that this airport has operated within the contemporary wetland regulatory framework of maintenance cutting since the late 1970s without incident. Why, then, the sudden need for wholesale rule changes regarding exemptions that would result in circumventing years of hard work and diligence in environmental protection?

The City offers the following alternative to the proposed amendment:

Address the core issues of permit processing and length of permit within the application section **5.02 entitled APPLICATION TYPES AND DECISIONS AVAILABLE.**

Create a new section 5.02(k) entitled "**GOVERNMENTAL PERMITTING FOR PUBLIC SAFETY PROJECTS**"

**This section would establish an expedited review process and longer permit authorization for federal, state, local and quasi-governmental agencies that demonstrate the need for wetland alterations for the purpose of public safety.**

The concept entails a streamlined approach to permitting for the sole purpose of achieving and maintaining public safety. The permit would require that management plans be reviewed and approved by RIDEM and retained on file for review by the public. The comprehensive vegetative management plan permit would contain an authorization for 7-10 years, or a period that is consistent with the growth rate of the area vegetation as determined by RIDEM. The

vegetative management plans could be updated as required. The applicant would be allowed to work within the parameters of the approved plans with field inspection made by RIDEM to check for compliance. The section should include fines in an amount that encourages compliance.

I believe this approach accomplishes the same goals as the proposed rule amendment but in a manner that allows continued stewardship of the environmental resources that we all enjoy.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Avedisian". The signature is written in a cursive style with a prominent initial "S".

Scott Avedisian  
Mayor