

How to Receive Notice of Proposed Actions in your Watershed

For Rhode Island Rivers Council Designated Watershed Councils
under authority granted by RIGL 46-28-8(b)

Jenny Paquet, MCP
Senior Environmental Planner
RIDEM Office of Water Resources

Hi Everyone, I'm Jenny Paquet, an Environmental Planner here at DEM

Talk today on How to go about receiving notifications for proposed actions before certain State Agencies and local boards on things taking place in your watershed.

Before I came to DEM I was Town Planner in West Greenwich for 15 years. I was the person sending out these types of notices for the town. So I know a little bit about what is involved in sending notices from the municipal side.

From what I understand, this notification process hasn't been implemented very well.

Origin of Right to Receive Notice

RI General Law § 46-28-8 Local watershed councils. –

(a) The rivers council shall establish and recognize local watershed councils

(b) Local watershed councils shall have standing to present testimony in all state and local administrative proceedings which impact on rivers and water quality and shall receive notice, pursuant to rules adopted by the council, from state or city and town agencies regarding proposed actions pertaining to projects, developments and activities located wholly or partially within the watershed represented by the local watershed council.

First I want to talk a bit about where this right to be notified comes from.

As you know, being a watershed council designated by the Rivers Council gives you standing to appear before State Agencies and cities and towns to give comments and testimony and make appeals on matters that have to do with or can affect water resources in your watershed, and with that comes the right to be notified of such activities going on in your watershed.

This authority is specified in RIGL 46-28-8.

RIGL State Statute 46 is for Waters and Navigation. Chapter 28 is the enabling legislation for the Rivers Council, which includes the provisions for the Local Watershed Councils.

This is important to note because it has not been cross-referenced or otherwise included in the actual notice or hearing requirements for the specific actions, which often includes a detailed list of exactly who is to be notified and how they are to be notified. Watershed Councils are not included in any of those regulations. They are not listed in the OWTS regulations, they are not listed in the enabling legislation for zoning or land development regulations.

This means most people who send out the notices do not know this exists. And if they do, it is easy to forget.

RI Rivers Council Rule Title 660 Part 1.10

- establishes procedure and proposed actions subject to rule
- For a copy of these Rules, see RI Rivers Council Website
 - RIRC website: <http://www.ririvers.org/pdf/FINAL%20notification%20rule.pdf>
- or the RI Secretary of State's website
 - <https://rules.sos.ri.gov/regulations/part/660-00-00-1>

This notification is not automatic. You have to opt in. It is pursuant to the 'Rules adopted by the Council.'

These rules can be found on the RI Rivers Council's website, and on the Secretary of State's website.

You need to request that you be notified. And there are only certain types of actions that are eligible to be sent to you. It is not an all inclusive list, and some items are no longer applicable.

There is some leeway for other types of actions... I will go over what these types of actions are.

But in general, these are all actions that already have some sort of notification requirement for a public hearing or a public comment period, so the entity doing the notice should be able to add you to their list.

For actions where there is no individual notification requirement this would be more difficult to do.

What you need to do:

- Determine if and why you want to receive notices.
 - To stay informed?
 - To be active in providing comments at a public hearing on development projects? What threshold?
 - To be active in participating in policy and/or program decisions?
 - All notices, or only for certain kinds of actions?
 - Other reasons?

The very first thing before you request to receive notifications is to determine if and why you want to get them.

Remember, One of the benefits of being a designated watershed council is that you have standing to appear before boards on behalf of your watershed's interest. You may wish to exercise this right and so it makes sense that you should be informed of activities that can affect the watershed.

If it is just to stay informed, you can do this by other means. Reading the local newspaper, reading meeting minutes, or even just reading meeting agendas. This way you would be able to know about a lot more than just the things that have notification requirements.

You don't need to receive all the notices listed in the Rules- you can pick and choose what is important to you.- I'll go over the different types so you can get a better understand of what they are about.

What you need to do:

- 'File an official notice' with the applicable office
- Include a map of your watershed organization's jurisdiction
 - Scale and detail sufficient to determine whether proposed action is within watershed council's area of jurisdiction
- Template provided for you to tailor to your organization and to the specific office you are requesting notice from
- Send a separate tailored letter to each entity requesting the specific types of actions or projects you want notice from them on

The details of what you need to do are contained in the Rules, including the content of what you are to include in the required 'Official Notice,'

We made a template that you can use that has these requirements in it, such as your organization's name and date of Rivers Council designation, etc.

Take the time to understand what you are asking for- tailor your request to the specific agency and types of actions you want to receive notice on. This helps the person know what to send to you.

[Pass out copy of Request to be Notified template or send it out electronically]

It is required that you include a readable map of your watershed council's jurisdiction. This is important because the person sending the notice has to look up whether the proposed project is in your watershed to see if they need to send a notice to you (or a different council).

We are currently creating a GIS Map that is going to be on DEM's map webpage that people can use to look up the watershed councils simply by typing in the address of the proposed project. It will also have the watershed council's email address so they can use the map to send the notification. This will help make it easier for the various state and municipal entities to send you these notifications.

Good idea to resend every year or two.

What you need to do, continued:

- 1.10.4 A.3.

“Watershed Councils are encouraged to establish cooperative working relationships with the agencies that give notice. This will improve both the quality and consistency of notices and the effectiveness of the Watershed Council’s response. In selecting actions to be noticed councils must use their limited resources effectively and avoid paperwork overloads.”

It is a really good idea to personally introduce yourself to the contact people in the agency and to develop a relationship. This can help with other types of applications with public notice requirements that are not specified on the list in the Rules, if you feel the need to be made aware of those (I’ll give some examples).

This can help you when it comes time to go to Town Hall to view the set of plans or to find out more about what is being proposed, etc.

This can also help get you involved, such as with participation in Comprehensive Plan updates or the MS4 Stormwater program, and potentially partnering on grant proposals. Many of you, if not all of you are already involved in such relationships.

Proposed Actions Subject to Rule 660 Part 1.10

Includes certain proposed actions to be heard before:

- **City and Town governments**
- **RI Department of Environmental Management**
- RI Coastal Resources Management Council
- RI Water Resources Board
- RI Statewide Planning Program
- RI State Comprehensive Plan Appeals Board (Repealed)

You can pick and choose from the list.

The Rivers Council Rules specify the types of activities from these various state and local entities that you can request notice on.

Most of the items for notification already have established notification process.

I will go over in more depth the types of projects that are heard by the first two entities- local municipalities and RI DEM.

Again, you can pick and choose from the different actions listed in the rules.

Further Define Proposed Actions you wish to be notified of

1.10.6 Thresholds

“A recognized watershed council may further define the actions to be noticed by setting thresholds limiting their scope. For example, a council may determine that only subdivisions creating more than a stated number of lots are of interest to that council. However, watershed councils may not add items not listed in this rule unless the municipality or state agency concerned agrees.”

And, you can further define what you want to receive notice on within those types of items.

For example:

You may only be interested in commercial projects and not residential projects, or just projects in size of 10 acres or more, or of residential developments of 10 units or more, etc.

If you elect to receive all notices, you may be overwhelmed and/or be receiving notices for projects that are not worth your time to comment on. This is a judgment call. It doesn't hurt to receive the notice, and then have an internal process for determining which types or thresholds or proximities to water resources you want to spend time reviewing or commenting on.

But, I would say, this threshold provision makes it more difficult for the person to remember what they must and must not send to you. It is just easier to send all notices of a certain type.

(Just be mindful of people's time and of extra paper and expenses. E-mail notices are less burdensome.)

City and Town Government Actions

- Documents- Notice of Adoption or Amendments (public hearing)
- Development Applications – Notice of public informational meetings and public hearings
- Local Infrastructure Project Proposals
- Local Stormwater Program- plan and annual report

I'll go over local government actions first.

These are the different types of things you may be interested in from a municipality.

The different types of actions and applications go to different local Boards. I'll talk more about each of these in the next few slides.

- Documents- Items such as comprehensive plans or local land use regulations. These are very important because these are the rules that physical projects are to play by and the vision that the municipality wants to set- establishes policies and requirements to accomplish things pertaining to what it values for the future of the community.
- Development Applications- such as residential subdivisions or commercial development projects, etc.
- Infrastructure Project Proposals
- Local Stormwater Program

City and Town Government Actions

- Documents- Notice of Adoption or Amendments (notice of public hearing):
 - Town Council jurisdiction
 - Comprehensive Community Plan (long-range policy guiding document) (adoption)
 - Zoning Ordinance and Zoning Ordinance Map (use Public Notice Registry)
 - Comprehensive Permit Ordinance/Regulations (Low and Moderate Income Housing Development regulations, may be contained within the Zoning Ordinance, or be stand alone ordinance. See RIGL 45-53 for details)
 - Planning Board jurisdiction
 - Comprehensive Community Plan (plan preparation, public workshops, and hearing)
 - Land Development and/or Subdivision Regulations (use Public Notice Registry)

Local Documents- You can receive notice for adoption or amendments to these local documents.

It helps to understand who has jurisdiction over what types of actions, so I've broken them down for you. This helps you know who to send the request letter to.

(I would encourage you to become familiar with these documents for each of the communities within your watershed in order to better understand how development is shaped in those communities and how the different processes occur with the different boards in each community.)

Comprehensive Plan – this is listed under both the Town Council and the Planning Board. The Town Council adopts the plan, but you would want to know about this long before this notice ever goes out. It takes a very long time to produce a Comprehensive Plan, and the whole project is spearheaded by the Planning Board. The Planning Board may hold public workshops and meetings, and they are also required to hold a public hearing but this is all to provide input on the plan. The ultimate adoption is by the Town Council. So notice of the public hearings would be at the end of a long process. There is a requirement to have a public hearing by both the Planning Board and the Town Council, which could be two separate hearings or a combined hearing. Watershed Councils would be interested in getting involved much earlier in the process-working on your relationship with the municipality, perhaps either attending public input sessions, or being on the steering committee for the plan update. Comprehensive Plans are a long-range policy guiding document, in Rhode Island with a

20-year planning horizon, containing goals and action items for shaping land use, conservation, and investment in public infrastructure and/or services.

Elements/chapters include: transportation and circulation, water supply, natural resources, open space and recreation, housing, economic development, public services and facilities, future land use, and natural hazards.

Zoning Ordinance and Map- this governs the location and intensity of different uses throughout town. It also includes the dimensional requirements, such as road frontage and building setback requirements, and other dimensional requirements that shape the form of development and those uses in town. Zoning Ordinances also contain performance standards such as pertaining to things like stormwater or noise, and parking and circulation, parking lot dimensional requirements and parking space ratios (this is important when we talk about low impact development and trying to minimize impervious surfaces--). Other requirements and standards included in local zoning ordinances are special flood hazard area zones, groundwater/drinking water protection overlay districts, conservation design development requirements, and Comprehensive Permits.

Comprehensive Permit Requirements- not to be confused with Comprehensive Plan. This is a process set up by state law to expedite or streamline approvals for low and moderate income housing developments. Not only does it compress the review process (usually one-stop shopping in front of the Planning Board, but it could be the Zoning Board- depends on how the town sets up the review process), but it also provides for zoning relief to a different standard than typical dimensional relief criteria- usually results in applications requesting substantial density increases which could have an impact on water resources. The local rules governing the review process and application requirements most likely would be part of the Zoning Ordinance, but might be a stand alone ordinance. So this activity has to do with what is contained in those local rules.

Land Development and Subdivision Regulations- include the review process, application submission requirements, and the design standards for development projects and subdivisions of land within town. Such items generally include: commercial and residential projects, Minor and Major Land Development Projects, Minor and Major Subdivisions, road design and construction requirements, stormwater, drainage and soil erosion control requirements, etc.

Other Notification Options:

- Documents- Public Notice Registry
 - E-mail notification already established for amendments to local regulations:
 - Adoption or Amendments to local **Zoning Ordinances and Zoning Ordinance Maps** (RIGL § 45-24-53 Adoption Notice and hearing requirements), and
 - Adoption or Amendments to local **Land Development and Subdivision Regulations** (RIGL §45-23-53 Local regulations- public hearing and notice requirements)
 - Does not apply to development applications
 - Different method/ contact person in every town- find it on their website or call the Town Clerk's office to find out how to sign up for this notification.

Anyone can sign up for this...

City and Town Government Actions, cont.

- Development Applications for:
 - Planning Board jurisdiction
 - Master Plan Public Informational Meeting notice- applies only to Major Land Development Projects and Major Subdivisions
 - Preliminary Plan Public Hearing notice- applies to all Major Land Development Projects and Major Subdivisions, and also Minor subdivisions with road creation.
 - Comprehensive Permit Public Hearing notice (low to moderate income housing development) (PB, but could be ZB)
 - Notice of receipt of a Comprehensive Permit application, after Certificate of Completeness has been issued
 - Zoning Board jurisdiction
 - Special Use Permit Public Hearing notice-
 - Use Variance Public Hearing notice-
 - (Dimensional Variance? Omitted from RIRC Rules, but could request)
 - (Appeals of decision of the Planning Board? Omitted from RIRC Rules, but could request)
 - Unified Development Review- Special review process you should be aware of. For applications involving both Planning Board and Zoning Board review, the municipality may elect to designate the Planning Board to conduct both reviews. (Likely one public hearing to conduct such review and approval, still needs to meet all applicable criteria.)

Development Projects- here is where physical impacts come in to play

Planning Board applications for developments- Major and Minor subdivisions, and Land Development projects, like for a shopping plaza or a hotel that don't involve a subdivision of the property into smaller lots. [NOTE: This is an example of a threshold you can choose- you are entitled to receive notices for Preliminary Plan Public Hearings, and you can choose to receive notices for just hearings on Major Projects vs. Minor projects.]

Comprehensive Permit application – Public Hearing and receipt of application.

unique to this law RIGL 45-53-4(a) 4) i.

“(i) Notification. Upon issuance of a certificate of completeness for a comprehensive permit, the local review board shall immediately notify each local board, as applicable, of the filing of the application, by sending a copy to the local boards and to other parties entitled to notice of hearings on applications under the zoning ordinance and/or land development and subdivision regulations as applicable. “ This is a nice provision because it gives you a lot more time to review the proposal and prepare any comments you might have.

Zoning Board applications: (every matter before a Zoning Board has a public hearing)

- **Special Use Permit** is for a use that is allowed, but that has to meet additional

performance or design standards in order to be approved.

- **Use Variance** is a rare type of application where an applicant can apply for a different type of use than is allowed on the property if they can find that there is no beneficial use on the property if required to conform to the zoning requirements.

For some reason **Dimensional Variance** applications and **Appeals of decisions by the Planning Board** have been omitted from this list. Watershed organizations could still request notification for these types of applications. There is a provision in the RIRC Rules that states, "However, watershed councils may not add items not listed in the rule unless the municipality or state agency agrees." - if you feel strongly, it doesn't hurt to ask about these two actions before the Zoning Board.

Dimensional Variances are very common and many of them are small and do not affect water resources, which is probably why they have been excluded from the list. You could be bombarded with these types of applications. (An example of a Dimensional variance case you might be interested in would be where a front or side yard dimensional variance is requested in order to obtain a proper setback from a wetland or a waterbody.)

For Appeals of decisions by the Planning Board- these are usually of interest due to controversy of the proposed use, the proposed density, or the proposed layout, all of which can have impacts to water resources. The abutters will be notified, so if you have an interest, especially if you had provided comments on the proposal to the Planning Board, you may want to continue being informed of such an action.

Unified Development Review- This is just a special review process you should know about. It is a special provision that municipalities may choose to do- or not to do. Basically, it allows for projects that would be going to both the Zoning Board and to the Planning Board, to just go to one board for all the approvals. The application type you request notice on would be the same as listed for Planning Board jurisdiction above.

When trying to figure out what types of applications you might want to receive notice of, you could do some research by reading minutes of the meetings to get a feel for what is involved.

City and Town Government Actions, cont.

- Locally Proposed Infrastructure Projects:
 - Transportation Improvement Program (the 'TIP') (Town Council- public hearing on the TIP application list of projects to State)
 - Sewer main extension or new sewer mains (municipal department/ Town Council or independent/regional Sewer Authority- call to find out)
- Local Stormwater Program (currently applies to 34 cities and towns):
 - RIPDES Phase II MS4 'Stormwater Management Program Plan' (Notice of amendments or adoption- Town Council)
 - MS4 Annual Reports- due March 10th (for Notice of draft Annual Report, ask local Stormwater Coordinator)

Here are some other types of local actions:

Transportation Improvement Program-

State solicits request for transportation improvement proposals from the municipalities under this program, generally every 4 years, but could be sooner.

The municipality comes up with a list of projects to submit to the State Transportation Improvement Program, and holds a Public Hearing on the list of projects they submit. Improvement projects such as bridge replacement, road reconstruction, road resurfacing, bicycle, pedestrian, ADA, lighting, landscaping, or streetscaping improvements/amenities, drainage improvements, ferry terminals, traffic control devices, etc.

A consideration of the local priority ranking of these projects is included.

The project proposals may come from either the planning or the engineering department, but the hearing is conducted by the Town Council.

Projects are often supported by statements in the Comprehensive Community Plan- so there is a lot of planning ahead involved where these ideas come from.

These are project ideas that are not guaranteed funding, but must be on this State list in order to be considered. (Request notice from local City or Town Council)

Sewer main construction- again, most likely supported by a wastewater facility plan or the comprehensive plan- sewer may be operated by municipality or independent / regional authority- so send request for notification to the entity that actually sends out the typical notice. (If it is the town, the sewer authority of the town may have its own

building- call the office to find out who sends the public notices out so you know who to send your request letter to.)

Stormwater Program- not every town has this- 34 do. (Foster, Little Compton, New Shoreham, Richmond, Hopkinton do not)

Federal requirement for this general permit, to discharge stormwater, which, when in a pipe system, is a point source discharge. This is a program for water quality, not drainage problems.

No guidance on adoption/amendment procedures for the local Stormwater Management Program Plan. It is usually adopted by the Town Council at a Public Hearing under their normal procedures. No individual entity would normally be notified.

There are certain requirements for this program that the Plan needs to address. - 6 minimum measures and TMDL's—

There is also an Annual Reporting requirement- with a public notice of the availability of the draft annual report before it is sent to RIDEM, due March 10 every year.

This program is an opportunity for watershed councils to be involved in . You may wish to receive notice of this comment period and any amendments or updates to this plan.

State Notifications- 5 State Entities

- RI Department of Environmental Management
- RI Coastal Resources Management Council
- RI Water Resources Board
- RI Statewide Planning Program
- RI State Comprehensive Plan Appeals Board (repealed)

Just to review again: the 5 entities.

I'll discuss RIDEM in more depth than the others.

Comprehensive Plan appeals board- just one thing- appeals of Comprehensive Plan decisions by the State to deny approval of a plan. Incredibly rare. This entity no longer exists and has been replaced by a 'hearing officer designated by the Director of Administration' under the 'Administrative Procedures Act.'

Water Resources Board- 2 things:

- New water supply systems for surface or groundwater supplies
- Extensions of water transmission lines subject to approval by the WRB

We have Paul here from Statewide Planning who can discuss the types of actions you might want to be notified of from them.

Just see the Rivers Council Rules for the list of items. (refer to list)

RI DEM

- Applications- Office of Water Resources
 - Freshwater Wetlands Program: Significant Alteration
 - On-site Wastewater Treatment Systems: ≥ 5,000 gallons and variances
 - Water Quality Certifications (see Wetlands)
 - Draft RIPDES permit actions -individual and general permits
- Notice of Violations – Office of Compliance and Inspection
- Proposed Regulations/amendments to regulations – Office of Water Resources
- Notice of Settlement Agreements on Brownfields (Office of Waste Management, replaced with “Program Letter”)

Applications: These are three different programs within the Office of Water Resources and each one sends out notices differently.

- Wetlands- already onboard with sending you notice of these.
- OWTS- they make the applicant send the notice- they would have to figure out how to fit this into their program.
- WQ Certs- usually either a wetlands permit or a CRMC assent along with it- so notice goes out by those avenues.
- Draft RIPDES permit actions- these are all public notices for draft permits through RIPDES for both individual permits and all the general permits.- already have process established to send you notice, see also RIPDES website for notification listserve. Under the general permits, only the general permit gets noticed, not each individual applicant under the general permit.

NOV's- having to do with water resources

Regulations- pertaining to water resources, so like the new wetlands rules, or the stormwater rules, etc.

Brownfield Settlements- these are contaminated sites – Office of Waste Management – I found out that these are no longer a thing. You may wish to receive notice of a ‘comment period’ for issuance of a ‘Program Letter’ that has to do with how the site will be remediated.

What do you do with the Notice?

- Determine what type of action it is: is it regulations or a development?
- Who is reviewing it? Is it a local or state agency? Will there be a public hearing? Are full size plans available to review?
- Review what the proposal is:
 - Policy/Regulations- does it have to do with density, impervious cover, stormwater, open space, anything that may affect the review of or requirements for standards pertaining to water quality or otherwise impact the water resources in your watershed? Or access to those resources?
 - Development Project- where is it located? Where does it drain/shed water to? Is there a stormwater management plan that will be submitted and who will review it? Are there special water resources nearby or on the property that should be protected? Does the community allow conservation development? Do you know of any special circumstances with the property that the reviewers should know about (such as an area that floods, or rare or endangered species, etc.)
 - Special Relief?

What do you do when you Receive a Notice of a Hearing or Project? This is mostly for Municipal Actions- but you can ask the same of state projects- what will the effects be?

Use your expertise to determine if you want to provide comments or if you want more information. Will you submit written comments? Or appear at the meeting?

How can you obtain a copy or view what the proposal is? Do you need to call to make an appointment? Was enough information included in the Notice? Is the full proposal available on the agency's website?

Special Relief- there is a difference between projects that are following all the existing rules, and projects that are seeking relief from the rules. This is things like a zone change for the property, or dimensional variances on the local level, or wetlands crossings, for example, with RIDEM. These need to be examined more closely to see what the impacts are.

How Much Time do You Really Have?

Action	Public Body Jurisdiction	Newspaper Lead Time prior to Public Hearing	Mailed Notice Lead Time	Advisory Opinion First?
Zoning Ordinance-Text or Map Change	Town Council	2-3 weeks (post 3 times, at least once a week for 3 weeks, can include same week as hearing)	At least 2 weeks	Planning Board review
Zoning Special Use Permit	Zoning Board	14 days	Not specified (see local regs)	Usually (may also be heard under Unified Review by Planning Board)
Major Development or Subdivision Project	Planning Board	Master Plan- 7 days Preliminary Plan- 14 days	Same 10 days	

How much time do you really have?

This affects how much time you have to prepare. This is just an example on this slide. See full Table (separate document).

Right now I only have municipal actions on here. I can add DEM actions to this later.

This is why it is important to have a procedure in place on your end.

- Who in your organization is going to receive these notices? Mail box/PO Box lag time? E-mail preference?
- How will you let your board members know? How fast will you let them know?
- How will you decide if you are going to comment? Will this be a group decision or will an individual be given discretion?
- Are you going to submit concerns in writing? Or appear at the hearing to listen and speak?

Also, this is a good reason why you might want to scan agendas- to get an idea of what is coming up before you receive a notice with limited time to act.

Email Notifications Secretary of State's Open Meetings Website

- Subscribe to receive notices of local agendas.
- <http://sos.ri.gov/>
- Click on 'Open Government,' 'Find Public Meetings'
- Search Open Meetings
- Type in the public body you are looking for and hit 'search'
- Click on orange 'eMail' button
- Input your e-mail address and follow the instructions

- Be sure to check options on municipal websites

This is another option of a way to stay informed- agendas for state and local boards and commissions.

[Get on Secretary of State's website and show them.]

All municipal and State board meetings must be posted on the Secretary of State's website. When they are posted, you can automatically receive e-mail notification. Notice is required to be posted usually within 48 hours of the meeting, which isn't much time to prepare, but you can also access the schedule of meetings here, so you know when the meetings are going to be held.

Some municipalities may also offer this, such as e-alerts. Just look around on the Town's website. You might be able to get more information right off the town's website, like copies of the application and the plans, or the proposed text of any amendments which can save you a trip to the town hall.