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Position Paper regarding Rhode Island “Right of Entry” Statute.

Introduction: Rhode Island is one of the few states in union that does not have a “Surveyor Trespassing Law” or “Right of Entry” statute. A “Right of Entry” statute protects the surveyor from arrest for trespass in the commission of his or her duties. These duties may entail but not be limited to “retracing the steps of the original surveyor”, finding and locating: bounds, iron pipes, iron pins, or other such monumentation used to determine boundary line.

Additionally, a Right of Entry statute will ensure that the surveyor and other design professional has the authority to accumulate all mandatory offsite improvements and natural resources listed below. Rule 18.2.10-18.2.16 of RI, DEM, Rule 19.2.1 of CRMC, and Rule 20.2, 20.2.4, and 20.2.6 respectfully. Such data would be: wells, structures, drainage features, catchbasins, drainage headwalls, septic systems, freshwater and saltwater wetlands (natural resources). Beyond the state agencies, Planning Boards, Zoning Boards, Zoning Board of Review, Conservation Commissions are but a few boards and commission that also require by regulation location of site improvements, and natural resources features.

Rhode Island Criminal Trespass Statute: Title 11–Criminal Offenses, Chapter 11-44: § 11-44-30, § 11-44-26, and § 11-44-11.

Universal Citation: § 11-44-30 Posting of signs – Types. – “Whenever any signs are required to be posted to indicate no trespassing, shooting, trapping, fishing, or the like, it shall be sufficient to post the land conspicuously with clear and legible signs which signs can be affixed with cloth, metal, or paperboard, or by conspicuously stencil-painting the word "Posted.”” History of Section. (P.L. 1982, ch. 195, § 1.)

Universal Citation: RI Gen § 11-44-26 Willful trespass – Remaining on land after warning – Exemption for tenants holding over. – (a) “Every person who willfully trespasses or, having no legitimate purpose for his or her presence, remains upon the land of another or upon the premises or curtilage of the domicile of any person legally entitled to the possession of that domicile, after having been forbidden to do so by the owner of the land or the owner's duly authorized agent or a person legally entitled to the possession of the premises, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or imprisonment for a term not exceeding one year, or both.”

Universal Citation: § 11-44-11 Injury to boundary or line markers. – “Every person who shall willfully break down, remove, injure, obscure, or destroy any monument erected for the purpose of designating the boundaries of any town or city or any tract or lot of land, or any tree marked for that purpose, or any stake set up to mark the line or grade of any railroad, or any marker erected for the purpose of designating a public right-of-way to water areas of the state, shall be imprisoned not exceeding one year or be fined not exceeding five hundred dollars (\$500).”

History of Section. (G.L. 1896, ch. 279, § 34; G.L. 1909, ch. 345, § 38; G.L. 1923, ch. 397, § 38; G.L. 1938, ch. 608, § 38; G.L. 1956, § 11-44-11; P.L. 1971, ch. 27, § 1.)

Title 11 of the RI General Statutes defines what a “Trespass” is and what is exempted. It is clear from the statute that surveyors do not fall under the “exempted clause”. This makes the surveyor vulnerable to arrest for trespass if a complaint is filed with the local police. It is not beyond the pale to see the

potential conflict between the professional and neighboring property owners. A boundary dispute is a perfect breeding ground for conflict between not only the property owners but the conflict can extend to the land surveyor.

Land surveyors cannot be advocates for the client, attorneys are advocates. Our responsibility is to perform our professional tasks as independent practitioners, rendering an opinion as to the location of property boundaries and other related tasks. However, property owners often do not understand what the role of the surveyor is, so expectations are often unrealistic. The perception that we are advocates cannot be further from the truth. That being said, our role in society is defined by our Code of Ethics, and it is our role promote the appropriate image to the public at large. A Right of Entry Statute at the very least provides the surveyor the right to enter private property strictly in the performance of his or her *role* to find and locate everything necessary to complete our tasks without fear of hostilities or arrest.

Regulatory Considerations: On another track, the State of Rhode Island in its wisdom, decided in the 1930's to license land surveyors and engineers in order to protect the public. The state also has the authority to promulgate regulations to protect the public safety, health, and common good and to that end, the legislation created Rhode Island Department of Environmental Management (RI, DEM) and Coastal Resources Management Council (CRMC). Each agency created their own regulations that have the same force as a statute requiring that land surveyors adhere to Rule 18, 19, and 20 respectfully as part of any permit application. Listed below are regulations that mandate location of certain natural resources and site improvements often off-site and on the lands of not belonging to the client.

#### REQUIRED CONTENT OF OWTS SUBMISSIONS, and Rule 18.2 Plan

18.2.10: "The location of existing and proposed private drinking water wells within the setback distance from the leachfield specified in Table 22.5 plus one hundred (100) feet;

18.2.11: "The location of all existing and proposed wells serving non-potable uses within one hundred (100) feet;"

18.2.12: "The location of existing and proposed public drinking water supply wells within five hundred (500) feet of the proposed OWTS and a determination as to whether the public well is a bedrock well or a gravel packed, gravel developed or driven well;"

18.2.13: "The location of all watercourses, wetlands, and drains within two hundred (200) feet of the proposed OWTS;"

18.2.14: "The location of all storm and subsurface drains within two hundred (200) feet of the proposed OWTS and a determination and whether said drain discharges, directly or indirectly, into a critical resource area as identified in Rule 38;"

18.2.15 "Plans must indicate if the proposed OWTS is within the watershed of a public water supply or other Critical Resource Area as identified in Rule 38, and must specify the distance to the nearest critical resource of concern."

18.2.16: "The location and design flow of all existing OWTSs within two hundred (200) feet of any well to be installed on the subject property. Plans must also show the location and design flow of any existing OWTS with a design flow of greater than one thousand (1000) gallons per day within four hundred (400) feet of any well to be installed on the subject property. Records and data on file with the

Department may be used to obtain information on proposed OWTSs and wells;”

**RULE 19. APPLICATIONS INVOLVING THE DEM FRESHWATER WETLANDS PROGRAM AND THE COASTAL RESOURCES MANAGEMENT COUNCIL** 19.2 Applications Involving the Rhode Island Coastal Resources Management Council 19.2.1 The Rhode Island Coastal Resources Management Council has authority over construction proposed in certain coastal regions of the state. The coastal region includes:

“All coastal features and all land within two hundred (200) feet of tidal waters, salt water ponds, salt water marshes, salt water wetlands or other land subject to Coastal Resources Management Council jurisdiction. Review of impacts to “freshwater wetlands in the vicinity of the coast” are under the sole jurisdiction of the Coastal Resources Management Council in accordance with the “Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast”.

20.2 Subdivision Site Suitability Certification- 20.2.4 “For lands immediately adjacent to the subdivision, the items below shall be shown, designated or reported. Distances below shall be determined from the subdivision property boundary. (A) Watercourses within two hundred (200) feet; (B) Private drinking water wells (existing and those proposed on an approved OWTS permit) within two hundred (200) feet; (C) Public wells (existing and proposed) approved by the Rhode Island Department of Health within five hundred (500) feet; (D) Location of any existing OWTS or drain within one hundred (100) feet of the property;

20.2.6 Certification- The Subdivision Site Suitability Certification shall be accompanied by a certification, on a form approved by the Director, that the work was conducted in a manner consistent with these Rules and that it is an accurate portrayal of site conditions.

The absence of a “Right of Entry” statute places the surveyor in potential professional and legal jeopardy every time the surveyor goes into the field.

There are other compelling adverse impacts beyond licensed practitioner’s vulnerability to arrest or expulsion from a property. In essence to provide the public and state agencies with the minimum information required as part of any survey, subdivision, site plan, or permit application. The public has a reasonable expectation that we can provide them with the work product necessary to achieve their goals while complying with all regulatory mandates within our power to so. Whether it is a placement of a property line, or the location of wells, septic systems, or drainage off site, we and all other design professionals must be given authority and protection by state statute. Right of Entry serves not only us, is serves the public at large, because the public is who we serve, be it one homeowner, or more.

Ultimately, a Right of Entry Statute serves the public interest. Compliance with all regulations is our responsibility, therefore we must be able to legally acquire that information as deemed necessary by the State of Rhode Island.

What is the compelling public interest? Public interest is served when a surveyor or design professional is afforded the right to access, locate, and plot all information deemed by the State of Rhode Island as necessary in the process of permitting.

**RULE 18. REQUIRED CONTENT OF OWTS SUBMISSIONS** The plans shall include the items below. The Director reserves the right to require any additional information that is deemed necessary.

18.2.9 The location of any drinking water line within fifty (50) feet of the proposed OWTS;

18.2.10 Wells: (A) The location of existing and proposed private drinking water wells within the setback distance from the leachfield specified in Table 22.4 plus one hundred (100) feet;

(B) The location of all existing and proposed wells serving non-potable uses within one hundred (100) feet of the leachfield;

(D) The location of any existing or proposed drinking water well, public or private, serving the structure that the proposed OWTS will serve;

18.2.11 The location of all watercourses, wetlands, and drains within two hundred (200) feet of the proposed OWTS;

18.2.14 The location and design flow of all existing OWTSs within two hundred (200) feet of any private well and four hundred (400) feet of any public well shown in accordance with Rule 18.2.10 on the subject property. Plans must also show the location and design flow of any existing OWTS with a design flow of greater than one thousand (1000) gallons per day within four hundred (400) feet of any well to be installed on the subject property. Records and data on file with the Department may be used to obtain information on proposed OWTSs and wells;

18.2.20 Signature and stamp where applicable of the Licensed Designer;

18.2.22 The location of all structures, existing OWTS, and water supplies within one hundred (100) feet of all adjacent property lines.

Certification: "I, \_\_\_\_\_, the undersigned licensed OWTS designer, certify that I prepared this application and accompanying forms, submittals, plans and sketches in accordance with the RULES of the RIDEM pertaining to OWTS and that all the information provided on this application and accompanying forms, submittals, plans and sketches is true and accurate."

#### DEM, WETLANDS SITE WORK AVIDAVIT CERTIFICATION OF PROFESSIONAL(S)

I certify that I have inspected the subject property and its surroundings and do hereby attest that to the best of my knowledge, all site work specified above has been accurately completed and certified at the time of application submission and prior to RIDEM inspection, in accordance with the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act

State of Connecticut: 2011 Connecticut Code, Title 52 Civil Actions, Chapter 925 Statutory Rights of Action and Defenses

Sec. 52-557o. Liability of land surveyors. Liability of land surveyors. No action for trespass shall lie against any surveyor licensed under chapter 391 or person acting at the direction of any such licensed surveyor who enters upon land other than the land being surveyed without causing any damage to such other land in order to perform a survey, provided no such surveyor or person acting at the direction of such surveyor shall enter upon any land owned by a railroad company, as defined in section 16-1, which is within fifty feet of a railroad track without first obtaining written permission from the railroad company, which written permission shall not be unreasonably withheld. Nothing herein shall relieve

such licensed surveyor or person from liability for actual damages caused by such entry upon such other property.

History: P.A. 92-74 amended section to require surveyor or person acting at the direction of surveyor to obtain railroad company's written permission before entering upon any land owned by it which is within 50 feet of a railroad track. Recreational land use act, Sec. 52 557f et seq. cited. 238 C. 653; Id., 687.

Massachusetts: Section 120C Whenever a land surveyor registered under chapter one hundred and twelve deems it reasonably necessary to enter upon adjoining lands to make surveys of any description included under "Practice of land surveying", as defined in section eighty-one D of said chapter one hundred and twelve, for any private person, excluding any public authority, public utility or railroad, the land surveyor or his authorized agents or employees may, after reasonable notice, enter upon lands, waters and premises, not including buildings, in the commonwealth, within a reasonable distance from the property line of the land being surveyed, and such entry shall not be deemed a trespass. Nothing in this act shall relieve a land surveyor of liability for damage caused by entry to adjoining property, by himself or his agents or employees.

Maine: Title 32: PROFESSIONS AND OCCUPATIONS Chapter 141: PROFESSIONAL LAND SURVEYORS Subchapter 4: RIGHT OF ENTRY

§18231. Right of entry for professional land surveyor performing land surveying services When performing land surveying services at the request of a landowner or person with an interest in real estate, a professional land surveyor and the surveyor's assistant may, without the consent of the owner or person in possession, enter upon or cross any lands necessary to perform land surveying services. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

1. No authority to intentionally damage or move object. Nothing in this section may be construed as giving authority or license to a professional land surveyor or the surveyor's assistant to intentionally destroy, injure, damage or move any object, chattel or item on the lands of another without the permission of the owner. 2. Civil liability for actual damage. This section may not be construed to remove civil liability for actual damage to land, chattel, crops or personal property. 3. No authority to enter building used as residence or for storage. This section may not be construed to give a professional land surveyor or the surveyor's assistant the authority to enter any building or structure used as a residence or for storage. 4. Reasonable effort to notify landowners. A professional land surveyor shall make reasonable effort to notify a landowner upon whose land it is necessary for the professional land surveyor to enter or cross. Notice provided as follows meets the requirement of this subsection: A. Written notice delivered by hand to the landowner or to the residence of the landowner upon whose land the surveyor may enter or cross, delivered at least 24 hours prior to the surveyor's entering the land; or B. Written notice mailed by first class mail to the landowner upon whose land the surveyor may enter or cross, postmarked at least 5 days prior to the surveyor's entering the land. The surveyor may rely on the address of the landowner as contained in the municipal property tax records or their equivalent. 5. Owner or occupant of land; duty of care; liability. The duty of care an owner or occupant of land owes to the professional land surveyor and the surveyor's assistant is the same as that owed a trespasser. 6. Professional land surveyor and assistant identification. A professional land surveyor and the surveyor's assistant shall carry means of proper identification as to their licensure or employment and shall display this identification to anyone requesting identification.

Consider the Rhode Island definition of “fences”, “hedges”, and “stone wall”(s) as a boundary, each having a minimum height but does not state a width. If a post-and-rail fence that marks the property line part of the fence is on your client’s land and part on the abutter. What if the abutter refuses you access? 2005 Rhode Island Code - § 34-10-1 — Lawful fences defined.

The following fences shall be adjudged to be lawful fences: (1) A hedge with a ditch shall be three feet (3') high upon the bank of the ditch, well staked, at the distance of two feet and a half (2 1/2'), bound together at the top and sufficiently filled to prevent small stock from creeping through; and the bank of the ditch shall not be less than one foot (1') above the surface of the ground.

(2) A hedge without a ditch shall be four feet (4') high, staked, bound and filled, as a hedge with a ditch.

(3) A post-and-rail fence on the bank of a ditch shall be four (4) rails high, each well set in posts, and not less than four feet and a half (4 1/2') high.

(4) A stone wall fence shall be four feet (4') high, with a flat stone hanging over the top thereof or a good rail or pole thereon, well staked or secured with crotches or posts.

(5) A stone wall without flat stones, rails or posts on the top, shall be four feet and a half (4 1/2') high.

(6) A woven wire fence of wire not less than number nine, firmly fastened to posts not more than sixteen feet (16') apart, constructed of not less than eleven (11) horizontal wires, the top wire not less than fiftyfour inches (54") from the ground, the bottom wire not more than two inches (2") from the ground and with stays or uprights not more than six inches (6") apart.

(7) All other kinds of fences not herein particularly described shall be four feet and a half (4 1/2') high.

RI, DEM, WETLANDS M. Each site plan sheet prepared by a registered professional must bear the stamp of that professional, along with the date and his or her signature. Site plans submitted for an Application to Alter a Freshwater Wetland must, pursuant to R.I.G.L. Section 2-1-22, bear the stamp and signature of a Registered Professional Engineer.

7.06 Requirements Regarding Use of Professionals A. State or other law, including these Rules, may require professionals to prepare site plans, specifications, reports or other documents related to activities subject to these Rules. The applicant, or the respondent in matters concerning enforcement actions, is responsible for engaging or employing any and all such professionals. Such licensed professionals shall affix their stamp, signature and date of signing upon those plans, specifications, documents, or portions thereof, for which they are responsible. B. When a Registered Professional Engineer is engaged, all engineering work that applies to the project application (e.g., drainage calculations and drainage narrative) must be stamped by the engineer; and the engineer shall be registered in the State of Rhode Island.

Area of Land Within Fifty Feet (50'): (used interchangeably with Perimeter Wetland) A freshwater wetland consisting of the area of land within fifty feet (50') of the edge of any freshwater wetland consisting in part, or in whole, of a bog, marsh, swamp or pond, as defined by these Rules. For

purposes of identification, this area shall be measured horizontally, without regard for topography, from the edge of such a wetland.

Edge: The line of intersection or division between: A. Any swamp, marsh, pond, bog, or wetland complex containing these wetland types and that area of land within fifty feet (50') (i.e., perimeter wetland) of these wetland types; B. Any flowing body of water and its associated riverbank wetland; or C. Any wetland other than those listed above and any adjacent non-wetland area.

RI, DEM, WETLANDS SITE WORK AFFIDAVIT CERTIFICATION OF PROFESSIONAL(S) I certify that I have inspected the subject property and its surroundings and do hereby attest that to the best of my knowledge, all site work specified above has been accurately completed and certified at the time of application submission and prior to RIDEM inspection, in accordance with the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act

RI, DEM, WETLANDS GENERAL APPLICATION FORM Certification of Professional(s) (if applicable): Note: Any professional (e.g. engineer, biologist, landscape architect, etc.) who participated in the submission and/or preparation of this Application and supporting documentation must sign below. I hereby certify that I have been authorized by the applicant to prepare documentation to be submitted in support of this Application; that such documentation is in accordance with the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act; and that such documentation is true, accurate and complete to the best of my knowledge.

Summary: Rhode Island Licensed Professional Land Surveyors are faced daily with potential legal liability and possibility of arrest if we do our work according to good practice. We are charged by Section 8. PROFESSIONAL STANDARDS AND CONDUCT 8.1 Preamble 8.1(a) To comply with the purpose of the R.I. Gen. Laws § 5-8-1 et seq. as amended, which is to safeguard life, health and property, to promote the public welfare and to establish and maintain a high standard of integrity and practice, the State Board of

Registration for Professional Land Surveyors has developed the following “Rules of Professional Conduct” as a Code of Ethics.

8.3.1 Registrants shall approve, seal and certify only those plats, documents, and reports that conform to current land surveying standards adopted by this Board, which safeguard the life, health, and property, and to promote the public welfare.

B. Field Investigation. The PLS shall: 1. Search for and locate physical evidence and monuments and weigh their reliability. 2. Investigate parole and written evidence which impacts the positions of control monuments.

4. Make observations and measurements to correlate existing evidence.

5. Take sufficient check measurements to verify the observations. 6. Locate substantial physical features, observed evidence of easements, observed means of ingress and egress, lines of physical occupation, and observed encroachments.

Conclusion: As licensed professional land surveyors, we are charged with the responsibility to “safeguard life, health, and property, to promote the public welfare and to establish and maintain a high standard of integrity and practice,....” (Section 8.1(a) Rules and regulations for professional land

surveying in the state of Rhode Island Effective Date: November 25, 2015)

Rhode Island through *it's* Department of Environmental Management and Coastal Resources and other agencies, by their regulations defined what information is required to protect and safeguard the public as enumerated and prescribed in Rules 18, 19, and 20.

If the surveyor or design professional is denied access, then the client and the public at large is adversely impacted. To that end, it is our task to provide the agencies, boards, and commissions we practice before with whatever data they deem necessary to assure the public safety and interest.

With respect to certifications, we seal and sign our maps, site plans, and designs that meet the minimum standards as prescribed by regulation and law. Certification signifies to the public that we have fulfilled our mandate as set forth in the “Fundamental Canons” of the “Rules and regulations for professional land surveying in the state of Rhode Island, State of Rhode Island and Providence Plantations Department of Business Regulation, Division of Design Professionals” and “Professional Standards and Conduct” of Section 8, “Procedural and Technical Standards”, Section 9, Rules and Regulations for Professional Land Surveying in the State of Rhode Island, Effective Date: November 25, 2015.

Our certification is in essence an Affidavit, as with all Affidavits, there are attached expectations as we certify that the information on our maps and plans are substantially correct to the best of our knowledge and belief. With all certifications are attached liabilities to the same.

Rhode Island has a (bi-yearly) renewal of land surveying licenses, at which time all licensed land surveyors have to answer the question, have you been arrested, or have had disciplinary actions taken against you in another state or jurisdiction? This is not restricted to actions or arrests in Rhode Island but also extends to other jurisdictions we may be licensed to practice.

“8.2.5 A registrant shall comply with the registration laws and regulations governing his or her professional practice in any jurisdiction. A registrant may be subject to disciplinary action if, based on grounds substantially similar to those which may form the basis for disciplinary action in this jurisdiction, the Professional Land Surveyor was disciplined in any other jurisdiction.” (Section 8.2.5 of the Rules and Regulations for the Profession of Land Surveying in Rhode Island.)

Respectfully Submitted,

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Rhode Island, Connecticut, and New York