



September 6, 2016

James Boyd
Rhode Island Coastal Resources Management Council
Stedman Government Center - Suite 3
4808 Tower Hill Road
Wakefield, RI 02879

Re: Proposed Amendments to the Coastal Resources Management Program
Title 650 Coastal Resources Management Council

Dear Mr. Boyd,

Save The Bay submits the attached comments on the proposed amendments to the Coastal Resources Management Program – Red Book (650-RICR-20-00-1). Save The Bay met with representatives of the Coastal Resources Management Council (CRMC) to discuss our comments and we submit that many of the attached comments are technical in nature and non-substantive. If, after review of the comments, the Council determines that Save The Bay's proposed amendments are substantive and would require additional public notice, Save The Bay agrees to defer consideration of those comments or withdraw if necessary so that no responsive comment is required. We will work with CRMC in the future to discuss and address substantive comments.

Respectfully submitted,

Topher Hamblett

650-RICR-20-00-1

TITLE 650 – COASTAL RESOURCES MANAGEMENT COUNCIL

CHAPTER 20 – COASTAL MANAGEMENT PROGRAM

SUBCHAPTER 00 – N/A

PART 1 – Red Book

Table of contents. Add additional sections to the table and additional numbers within the documents to make it more user friendly. We have also suggested deleting definitions that define words as set forth in the dictionary.

1.1.2 Definitions

5. "Alterations to coastal wetlands" means any alterations to the functions and values of wetlands including, but ~~shall~~ not be limited to: filling, removing or grading; dredging and dredged materials disposal; and any ~~significant~~ cutting or removal of vegetation; and excavation, draining, damming and/or diverting of hydrological flows in a coastal wetland. Any activity, including the aforementioned, taking place in an area adjacent to a coastal wetland which impacts the coastal wetland, shall be considered an alteration to coastal wetlands..
7. "Alterations to the flows of tributaries" means the installation of dams or other devices or fill material that alter flows of tributaries to tidal waters and that ~~significantly~~ change the timing and/or volumes of fresh water to coastal waters. ~~Such alterations have a reasonable probability to conflict with a Council plan or program for resources management or may significantly affect the environment of the coastal region.~~
18. "Boat and float lift systems" means accessory structures to residential boating facilities that raise either a boat or float out of the water. ~~to facilitate safety and/or maintenance. Boat lifts are designed to lift a vessel out of the water.~~ Generally, a cradle or strap supports the vessel while it is being lifted by a pulley-type lift system. Overhead arms or crane-like systems may also be used to lift vessels out of the water. ~~Float lifts are designed to lift a float out of the water.~~ Generally, a cradle or cables support the float while it is being lifted by a pulley-type lift system.
24. "Certified verification agent" or "CVA" ~~means an independent third-party agent that shall use good engineering judgment and practices in conducting an independent assessment of the design, fabrication and installation of an energy-related activity as defined in this Part.~~

Comment [KLB1]: Per 30 CFR §285, Certified Verification Agent (CVA) means an individual or organization, experienced in the design, fabrication, and installation of an energy related facility or structure, who will conduct specified third-party reviews, inspections, and verifications in accordance with this part.

25. "Climate" means the long-term weather ...; increasing storm intensity, extremes within the hydrologic cycle resulting in more frequent floods and droughts; and rising sea level.
33. "Coastal wetland mitigation" means ~~efforts mitigation avoidance and minimization of impacts and compensation for unavoidable losses by creating or restoring coastal wetlands. Mitigation projects are these projects undertaken~~ to compensate for unavoidable losses after impacts associated with a proposed activity have been avoided and minimized to the maximum extent practicable. The Council recognizes the restoration of historic wetlands and the creation of new wetlands as the only acceptable means of compensating for unavoidable losses of coastal wetlands.
34. "Commercial and industrial structures and operations" includes means all buildings and ~~structures alterations to such features~~ related to the manufacturing and interchange of goods or commodities, or any other business activity located on a shoreline feature, its contiguous area, or within tidal waters.
35. "Commercial marine facility" or "CMF" means, but is not limited to, commercial structures located partially or wholly within CRMC Type 4, 5 or 6 waters such as bridges, commercial moorings, ship building or repair facilities, public ferry facilities, piers, wharfs, bulkheads, bulk and liquid cargo transfer facilities or other commercial type structures within CRMC jurisdiction, ~~that may warrant certification for protection of public trust resources.~~
36. "Compelling public purpose" means of such concern and/or benefit to the general public welfare that it outweighs private of individual interests.

Insert definition of construction setback

44. "Depositing shore" means a shore which is accumulating sand or other sediments, as opposed to a shore which is eroding.
46. "Development" means any material change in the use of any structure or land or water body, including but not limited to any building mining, dredging, fillings, excavation, or drilling operation: alteration of the shore, rivers, streams, lakes or ponds: devegetation, demolition, deposition of fill, solid or liquid waste: construction, installation, alteration, reconstruction of a structure: a change in the type of class or use of land: or an-material increase in the intensity of use.

Comment [KLB2]: Is this term used within the CRMP?

48. "Discharge" means ~~the addition of any pollutant to waters of the state, directly or indirectly and includes: any~~spilling, leaking, pumping, pouring, emitting, emptying, ~~and~~ or dumping ~~either directly or indirectly to the waters of the state of Rhode Island.~~

~~"Disposal" means the abandonment, discard of final disposition of material.~~

50. "Dredged materials disposal" means the ~~disposal of process of discharging, depositing, dumping, or utilizing~~ the sediments produced by a dredging operation.

52. ~~"Ecosystem" means a system formed by the interaction of a community of organisms with their environment.~~

Comment [KLB3]: Crossed out definitions can be found in the dictionary

57. "Environmental site conditions" ~~includes means~~ all ~~environmental factors elements, environmental, engineering and geologic~~ that affects a particular location. These items shall primarily include, fetch, wave conditions, wind conditions, bathymetry, currents, soil bearing capacity, ice impacts, tide range, flood elevation, velocity zone, littoral conditions, erosion/accretion characteristics, presence of wetlands, sub-aquatic vegetation, marine resources and associated habitats. Other site specific ~~environmental~~ conditions ~~that~~ may be ~~relevant required~~ for review.

59. ~~"Estuary" means a semi-closed body of water that has free connection with the open sea within which seawater is measurably diluted with fresh water derived from land drainage.~~

Comment [KLB4]: Definition not needed but if kept delete "has free connection with"

60. ~~"Eutrophication" means nutrient enrichment to the aquatic environment, leading to excessive growth to aquatic plants, which can detrimentally alter water quality parameters, particularly oxygen concentration.~~

61. ~~"Existing hospitality industry business" means for CRMP purposes an existing hospitality industry business that is a continuously operating commercial business that has lost a view of the shoreline over time through the growth of trees within a coastal buffer zone or forested wetland, as of March 3, 2015. Qualifying hospitality industry business are one of the following: a resort, restaurant, or hotel that provides services to the general public including tourists where such services are dependent upon a view of the shoreline to support their business.~~

Comment [KLB5]: This does not make any sense as written. Date to request has passed so delete it.

62. ~~"Fauna" means animal life.~~

65. "Filling in tidal waters" means the placing of materials ~~from upland sources~~ below the mean high water and includes the utilization of dredged

materials to create land in tidal waters for purposes other than ~~those covered by~~ the creation of wetlands ~~or and by~~ beach replenishment ~~or nourishment pursuant to § 1-3.1(l) of this Part.~~

66. "Filling, removing, or grading of shoreline features" means:

- b. "Removing" means the process of taking away any portion of a shoreline or its contiguous area by any method including; including excavation, blasting, or mining; ~~any portion of a shoreline or its contiguous area.~~

69. ~~"Flora" means plant life.~~

72. "Freshwater wetland" means those wetlands defined by R.I. Gen. Laws § 2-1-20(8), and further defined in CRMC Rules for Freshwater Wetlands in the Vicinity of the Coast and

any or all wetlands located in the vicinity of the coast, created as part of, or the result of, any activity permitted or directed by the CRMC or DEM ~~after July 16, 1971~~ including, but not limited to: restored wetlands; value replacement wetlands created to compensate for wetland loss such as flood plain excavations; and any wetlands created, altered or modified after July 16, 1971. (Note: Definition modified for consistency with 2015 amendments to state freshwater wetland act.)

74. ~~"Glacial till" means unconsolidated and unsorted material left by the movement of glaciers, consisting of clay, sand, gravel, and boulders.~~

75. ~~"Global Positioning System" or "GPS" means a navigational system using satellite signals to fix the location of a receiver on or above the earth's surface.~~

76. ~~"Groin" means a structure built of rock, steel, timber, or concrete that extends across a beach into tidal waters and is used to entrap sand in the longshore transport system; groins are generally perpendicular to the shoreline's coastal trend.~~

82. ~~"Hydrologic" means related to water.~~

84. ~~"Larva" means the early form of an animal that at birth or hatching is fundamentally unlike its parent and must metamorphose before assuming the adult form.~~

89. ~~"Longshore current" means a current that flows parallel and adjacent to the shoreline.~~
91. "Maintenance of structures" means ~~repairing a structure to the rebuilding, reconstructing, repairing or re-establishing to~~ previously approved conditions and dimensions ~~a damaged or deteriorated structure or facility.~~ Maintenance includes only those activities that do not ~~significantly~~ alter the assented design, purpose and size of the structure. Maintenance does not include demolishing a structure to repair it or restore it to a previously approved condition. Maintenance provisions for marina in-water facilities and residential boating facilities are found at § 1.3.1(D) of this Part.
92. "Manmade shoreline" means those shorelines that are characterized by concentrations of shoreline protection structures and ~~the existence of~~ other permitted alterations, to the extent that natural shoreline features are no longer dominant. They most commonly abut Type 3, 5, and 6 waters.
95. "Marine aquaculture" means the culture of aquatic species under natural or artificial conditions in the state's waters including but not limited to: fish farming utilizing pens, tanks, or impoundments ~~(which may be land-based);~~ the culture of shellfish on the sea floor in permitted and leased areas, in cages, or suspended from structures in the water; and the culturing of aquatic plants. Note: land-based aquaculture operations (i.e., above mean high water) are also regulated under § 1.3.1(C) of this Part.
105. "Ocean dumping" means the disposal of ~~pollutants without a permit into waters of the state. non-dredged waste materials from vessels or by other means into marine waters.~~ Ocean dumping does not include discharges of effluent incidental to the operation of vessels, the dumping of fish wastes, or the placement or deposit of materials on the sea floor for the purpose of enhancing fisheries.
106. "Oil" ~~is defined in 46-12.5.1-1(5) means oil of any kind and in any form including, but not limited to petroleum, fuel, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydro-carbons regardless of specific gravity.~~
109. "Open marsh water management" or "OMWM" means the maintenance and construction of reservoirs and connectors in order to enhance the tidal food web and thereby reduce and control mosquito breeding sites.

Comment [KLB6]: OMWM not used within

"Pollutant" means any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water, including, but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment,

cellar dirt or industrial, municipal, agricultural, or other waste petroleum or petroleum products, including but not limited to oil.

Comment [KLB7]: 46-12-1 (15)

118. "Point source discharge" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which a pollutant sewage is or may be discharged.
119. "Priority of use" means ~~a reflection of~~ the Council's assessment of those uses deemed most likely to be consistent with adopted Council policies and regulations.
120. "Program" means the State of Rhode Island Coastal Resources Management Program (CRMP).
125. "Public trust resources" ~~or "PTR"~~ means the resources held in trust for the benefit of the public and includes tangible physical, biological matter substance or systems, habitat or ecosystem contained on, in or beneath the tidal waters of the state, and also include intangible rights to use, access, or traverse tidal waters for traditional and evolving uses including but not limited to recreation, commerce, navigation and fishing.
126. ~~"Recreation" means any voluntary experience engaged primarily during leisure time from which the individual derives satisfaction.~~
127. "Recreational structures" means swim floats, beach pavilions that are located in the water or constructed for recreational purposes on a shoreline feature, its contiguous area, or in tidal waters.
128. "Recreational boating facilities" means marinas, launching ramps, outhauls, residential and limited recreational boating facilities, recreational wharves, piers and slips, floats or floating docks, and mooring areas.
130. "Residential boating facility" means a dock, pier, wharf, or float, or combination of such facilities, that shares a common boundary or is located directly across the width of a public road with a private residence, developed condominium, developed cooperative or other home owners' association properties that may accommodate up to four (4) boats.
131. "Residential building" means houses, and other structures as defined in the Rhode Island State Building Code (SBC-2) which are used primarily for human habitation and are built on a shoreline feature or its contiguous area. (Note: definition modified to reference pertinent RI State building codes rather than national code.)

Comment [KLB8]: Add new language contiguous to or directly across the street from

132. "Restoration" means a return to a ~~a former, natural condition closely resembling a former, original, normal,~~ or unimpaired condition.
135. "Riparian rights" means the rights ~~and privileges~~ of a person owning land containing or bordering on a watercourse. ~~related to access to the water, certain privileges regarding its uses, and the benefits of accretion and reliction.~~
138. "Runoff" means that portion of precipitation which is not absorbed into the ground and which ~~directly or indirectly drains naturally or~~ through ~~natural or~~ manmade channels to surface water bodies.
139. "Salt marsh" means areas regularly or irregularly inundated by salt water through either natural or artificial water courses and where one or more of the following species predominate: smooth cordgrass (*Spartina alterniflora*), salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black rush (*Juncus gerardi*), saltwort (*Salicornia* spp.), sea lavender (*Limonium carolinianum*), saltmarsh bulrush (*Scirpus* spp.), high tide bush (*Iva frutescens*). Saltmarsh includes both high saltmarsh and low saltmarsh defined as follows:
- a. High salt marsh is defined as that portion of the saltmarsh that ~~comprises the marsh platform and is~~ typically is flooded by spring, moon, or other flooding tides (remove) ~~but otherwise is not flooded on a daily basis.~~ The vegetative composition of high salt marsh typically consists of one or more of the following: salt meadow grass (*Spartina patens*); ~~short-form~~ *Spartina alterniflora*; spike grass (*Distichlis spicata*); black rush (*Juncus gerardi*); tall reed (*Phragmites australis* (remove *communis*)); Sea Lavender (*Limonium carolinianum*); tall cordgrass (*Spartina pectinata*); saltmarsh bulrushes (*Scirpus* spp.); and high tide bush (*Iva frutescens*).
 - b. Low salt marsh is defined as that portion of the saltmarsh that is flooded daily and the vegetative composition typically consists predominantly of smooth cordgrass (*Spartina alterniflora*).
141. "Sea level" means the height of the sea with respect to a horizontal control point or benchmark such as the North American Vertical Datum of 1988 (NAVD 88). Sea level rise refers to the net increase in mean sea level over time in response to global climate, local tectonic changes, glacial isostatic adjustment, and ocean dynamics. Sea level rise indicates a positive trend, thus an increase in sea level as compared to historic measurements. ~~Global sea level rise is the worldwide variations in sea level due to eustatic contributions such as thermal expansion of seawater~~

Comment [KLB9]: Global sea level rise-used anywhere?in dictionary

~~and melting glacial ice sheets. Relative sea level rise is a regional change in sea level relative to land surface elevations.~~

143. "Seawall" means a ~~massive~~, standalone structure built of placed or dumped stone, concrete, or steel sheet pile. Concrete seawalls often have curved, or stepped face designed to withstand the direct onslaught of ocean waves.

Comment [KLB10]: May abut other structures

146. "Setback" means the minimum distance from the inland boundary of a coastal feature at which an approved activity or alteration may be permitted.

Comment [KLB11]: Same as "Construction setback"?

147. "Sewage" means fecal material and human waste pursuant to R.I. Gen. Laws § 46-12-1(21). ~~For purposes of the Coastal Resources Management Program sewage is further defined to include freshwater discharges, including stormwater runoff that may significantly alter the salinity of tidal waters or salt ponds, and wastewater and septage, as defined by the DEM OWTS Rules, and discharges of heated waters to tidal waters of the state.~~

Comment [KLB12]: The rest of this is a pollutant or falls into stormwater...why call it sewage?

151. "Significant damage to the environment" means detriment, harm, or destruction of the environment, as opposed to damage of trivial consequence. It includes incremental and cumulative adverse impacts to the environment.

Comment [KLB13]: Check where this and next phrase is used. Delete other uses of "significantly".

153. ~~"Siltation curtains" means devices placed in the water during a dredging operation or other activity which prevent the spreading of dredged sediments.~~

154. ~~"Spat" means a molluscan bivalve larva that is in the water column or recently settled.~~

155. ~~"Spat collection" means the use and placement of submerged apparatus to attract or capture larval shellfish by a CRMC Assent holder.~~

156. ~~"Storm surge" means an elevation in the sea surface from the effects of a storm.~~

169. "Tributary" means any flowing body of water or watercourse which provides intermittent or perennial flow to tidal waters, coastal ponds, coastal wetlands or other down-gradient watercourses which eventually ~~or immediately discharges~~ to tidal waters, coastal ponds or coastal wetlands.

171. "Undue hardship" means an inappropriate, unsuitable, unlawful, or excessive standard or requirement levied upon an applicant. This does not include economic diminution in value.

172. ~~"Upweller" means a mechanical device to increase water flow for shellfish seed intended to accelerate their growth.~~

174. "Vessel" means every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water and shall include barges and tugs. Specifically excluded by this definition are floating homes or houseboats.

Comment [KLB14]: Same as coast guard definition?

175. "Water-dependent ~~activity use~~" means activities and/or uses which can only be conducted on, in, over, or adjacent to tidal waters or coastal ponds because the use requires access to the water from transportation, recreation, energy production, or source of water and also includes non-water-dependent activities that provide access to the shore to broad segments of the public.

"Water enhanced" means a restaurant on the water or other use if the primary purpose is for the general public to enjoy a view. This does not include hotels, condominiums, or other uses that may include a restaurant.

179. "Wetland walkover structure" means a ~~structure raised pile-supported facility~~ which provides passage over a wetland for purposes of providing pedestrian access between areas of upland isolated by the presence of wetland.

180. ~~"Widgeon grass" or "Ruppia maritima" means a rooted, submerged aquatic plant which is capable of both vegetative and sexual growth. Widgeon grass exists primarily in saline and brackish waters, salt ponds and pools within salt marshes, and inland saline waters.~~

1.1.3 Requirements for Applicants

(Note: this introductory section was part of the existing federally approved Red Book and is now inserted for codification as part of the RICR process.)

A. Step one - Is a Council assent required? An assent is required for the following:

2. ~~Any~~Persons proposing the following activities any portion of which extends onto the most inland shoreline feature or its 200 foot contiguous area ~~are required to apply for a Council Assent including:~~ subdivisions, cooperatives, or other multi-ownership facilities [of six (6) units or more], or facilities requiring or creating 40,000 sq. ft. or more of parking.
3. ~~Persons proposing the following~~ Aactivities within critical coastal areas, which include the watersheds of poorly flushed areas delineated on maps accompanying this program, ~~including; are required to apply for a Council Assent;~~ subdivisions, cooperatives, and other multi-ownership facilities [of six (6) units or more]; any structure serviced by an on-site sewage

disposal system servicing 2,000 gallons or more per day; any activity which results in the creation of 40,000 sq. ft. or more of impervious surface; construction or extension of municipal or industrial sewage facilities or systems (not connections to individual homes); construction or extension of water distribution systems or supply lines (not connections to individual homes).

4. ~~I~~Persons proposing ~~S~~selected inland activities anywhere in the state that may require a Council Assent shall request a review of the project to determine whether impacts on the environment of the coastal region are likely and, therefore, whether a Council Assent will be required. These selected inland activities are:

5. ~~A~~Persons proposing any project ...

1.1.3 B. Step two - Where Is the activity or alteration being proposed?

Comment [KLB15]: Example of additional sections that would be helpful in using the regs

3. If the proposed alteration is within a critical coastal area, consult the appropriate CRMC Special Area Management Plan (~~SAMP~~) for supplemental policies, standards, and requirements. Table 3 in § 1.1.5 of this Part lists the review categories for inland activities subject to the requirements of § 1.3.3 or § 1.3.4 of this Part.

Comment [KLB16]: Use SAMP or delete abbreviation

4. If the proposed project or activity is located within ~~or may impact~~ any freshwater wetland in the vicinity of the coast, the area of land within fifty feet (50') or on a riverbank, then the CRMC Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast shall apply.

5. NOTE: The applicant is required to obtain all other necessary municipal, state and federal permits.

D. Category A applications

2. Turn to the appropriate section in § 1.3 of this Part and; (a) note any prerequisites that you must meet before filing for a Council Assent; and (b) review all standards. When filing a Category A application you must commit yourself to upholding all applicable standards. If you cannot ~~or do not wish to~~ meet one or more standards, you must apply for a variance (§ 1.1.7), if applicable.

E. Category B applications

3. All Category B applications are put out to public notice. A public hearing will be scheduled if one or more substantive objections are filed within the thirty (30) day notice period. The Council, designated hearing officer or a ~~a~~ Council subcommittee will review your proposal, the comments

prepared by its staff, and all other pertinent materials, and will recommend action to the full Council. If your proposal is uncontested, you may expect Council action within thirty (30) working days of verification by the Council's staff that all informational requirements have been met. The Council shall issue a written decision and base its decision on findings of fact and consideration of how your proposal conforms to goals for the shoreline features and water use categories affected, other relevant policies, and the significance of the likely impacts of your proposal on the environment of the coastal region.

1.1.4 Alterations and Activities That Require an Assent from the Coastal Resources Management Council (formerly § 100)

C. Critical coastal areas (formerly § 100.3)

1. Watersheds of poorly flushed estuaries: The Council reserves the right to review any activity proposed within the watersheds of poorly flushed estuaries and critical coastal areas. Therefore the Council has developed and adopted Special Area Management Plans (SAMPs) ...in order to address the specific environmental concerns of those priority management areas. In addition to those activities captured under the Council's management program, activities within the Salt Pond Region and Narrow River Special Area Management Plans (SAMP) (as delineated on the maps accompanying each SAMP) that have a reasonable probability of conflicting with the goals of this plan must submit an application for an assent. These activities includeare:
2. Applicants proposing one or more of these activities listed in paragraph 1, above, shall apply to the Council. For more detailed mapping of the poorly flushed estuaries and their adjacent land use areas, as well as policies and recommendations pertaining to these areas, please see the appropriate SAMPspecial Area Management Plan.

D. Freshwater wetlands in the vicinity of the coast (formerly § 100.4)

4. Prohibitions

- a. Filling, removing, or grading (§ 1.3.1(B) of this Part) is prohibited on any tributary or tributary wetland. Any activity not prohibited herein shall be evaluated against the Council's Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast. However, the following exceptions may be permitted by the Council:

(2) ...

Buildable land shall be defined as a land area which satisfies all federal, state, and municipal requirements for the intended development. To be defined as buildable land, the intended development must also satisfy the requirements in applicable ~~SAMP~~ ~~Special Area Management Plans~~ and meet all of the Department of Environmental Management's regulations and requirements for OWTS in "Critical Resource Areas."

Comment [KLB17]: Definition?

1.1.6 Applications for Category A and Category B Council Assents (formerly § 110)

A. The regulations contained herein ~~are regulations that~~ must be met by all persons who undertake alterations and activities under the Council's jurisdiction.

B. ...

Category B applications which do not meet the thresholds below or have received an objection(s) will be reviewed by the full Council, and are not subject to the 20 day wait period that the applications reviewable under §1.1.6(C) of this Part (below) are. All public notice requirements, prerequisites, policies, prohibitions and standards shall remain in full force and effect and any reference to review and/or action by the full council cited herein shall be superseded by this rule.

Comment [KLB18]: Put on page 26?

C. If the executive director or deputy director in ~~his/her~~ ~~their~~ discretion determines the application does not meet the goals and policies contained in the coastal resources management program and its applicable special area management plans, or fails to meet the variance criteria for any required variances, they may require that the application be reviewed and acted upon by the full council. The applicant will be notified of that determination in writing.

E. Category A applications. (formerly § 110.1)

2. If the Council's executive director ~~verifies that the~~ ~~se~~ ~~criteria~~ ~~set forth~~ ~~above~~, have been met, an Assent for the proposed activity or alteration will be issued. This Assent may include stipulations or conditions to ensure compliance with the goals, policies, and standards of this Program.

Comment [KLB19]: Want to verify or determine?

3. If the ~~executive Director determines that the~~ criteria listed in § 1.1.6(E)(1) of this Part ~~have not been~~ ~~are not verified as~~ met or a substantive objection is filed, the application shall be considered a Category B application and will be reviewed by the full Council.

Comment [KLB20]: Don't think ED wants to verify

4. Applicants desiring relief from one or more standards may apply for a variance (see § 1.1.7 of this Part).

F. Category B applications (formerly § 110.2)

2. Formal notice will be provided to all interested parties once completed forms for a Category B application have been filed with the Council. The notice shall set forth the nature of the application, any variances requested and the applicable sections of the CRMP under consideration. A public hearing will be scheduled if there are one or more substantive objections to the project, or at the consensus of four or more members of the Council.

G. Substantive objections (formerly § 110.3)

1.
 - b. ~~direct~~ evidence that the proposed alteration or activity does not meet all of the policies, prerequisites, and standards contained in applicable sections of this document;
 - c. evidence ~~is presented which demonstrates~~ that the proposed activity or alteration has a potential for ~~significant~~ adverse impacts on one or more of the following descriptors of the coastal environment:
2. The following modifications to existing projects subject to the jurisdiction of the CRMC must file a coastal hazard analysis with their CRMC application using the "CRMC Coastal Hazard Application Guidance" provided in Chapter 5 of the CRMC Shoreline Change Special Area Management Plan (Beach SAMP):
 - a. Any filling of tidal waters
4.
 - a. Sea level rise analysis showing the corresponding proposed project design life SLR scenario (maximum of 9.61 feet for NOAA high curve by 2100). Applicants ~~must should consider~~ evaluating the coastal hazards risk associated with frequent storm events (1, 3 or 5-year storms) combined with minimal sea level rise of 1-2 feet to account for extreme high tide events which can occur any year during the expected project design life;

Comment [KL821]: Significant adverse not defined, delete significant

1.1.7 Variances (formerly § 120)

- A. Applicants desiring a variance from a standard shall make such request in writing and address the six criteria listed below in writing. ~~Except as otherwise provided herein, t~~The application shall ~~only be then be~~ granted a variance ~~only~~ if the Council finds that the following six criteria are met.

Comment [KL822]: Variances comments submitted below.

4. The modification requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable ~~alteration or~~ use of the site.
5. The requested variance to the applicable standard(s) is not due to any prior action of the applicant or the applicant's predecessors in title. In determining prior action of the applicant or predecessors in title the Council shall consider the fair market value of the property at the time it was acquired by the applicant and the applicable standards in effect. With respect to subdivisions, the Council will consider the factors as set forth in § 1.1.7(B) of this Part below in determining the prior action of the applicant.
6. Due to the conditions of the site in question, the standard(s) will cause the applicant an undue hardship. In order to receive relief from an undue hardship an applicant must demonstrate inter alia the nature of the hardship and that the hardship is shown to be unique or particular to the site. Mere economic diminution, economic ~~cost or~~ advantage, or inconvenience does not constitute a showing of undue hardship that will support the granting of a variance.

1.1.8 Special Exceptions (formerly § 130)

- B. Special exceptions may be granted only The Council shall issue a written decision including ~~make public the~~ findings of fact and conclusions of law upon which the a decision to issue a Special Exception isare based in accordance with the Administrative Procedures Act.
- C. In granting a special exception, the Council shall apply-impose conditions as necessary to promote the objectives of the Program. Such conditions may include, but are not limited to, provisions for:
 - 1.

1.1.9 Setbacks (formerly § 140)

Comment [KLB23]: Same as Construction setback?

- A.
- B. Setbacks shall be maintained in all areas subject to the Council's jurisdiction including areas contiguous to coastal beaches, coastal wetlands, coastal cliffs and banks, rocky shores, and existing manmade shorelines, and apply to all the following categories of activities and alterations, including the following:
 1. Filling, removal, or grading, except when part of an approved alteration involving a water dependent use or activity or structure (see §1.3.1(B) of this Part);

Comment [KLB24]: Why here? Can request variance for anything

1.1.10 Climate Change and Sea Level Rise (formerly § 145)

(Findings moved to new CRMP guidance document.)

A. Policies

1. ~~Climate change and sea level rise scenarios~~ must be considered by the council and integrated into its programs to prepare Rhode Island for these new, evolving conditions and make our coastal areas more resilient.
2. ~~The Council's sea level rise policies are based upon the CRMC's legislative mandate to preserve, protect, and where possible, restore the coastal resources of the state through comprehensive and coordinated long-range planning.~~
3. ~~The Council recognizes that~~ ~~Se~~ sea level rise is ongoing and its foremost concern is the accelerated rate of rise and the associated risks to Rhode Island coastal areas today and in the future. The Council recognizes that the lower the sea level rise estimate used, the greater the risk that policies and efforts to adapt sea level rise and climate change will prove to be inadequate. Therefore, the ~~policies of the~~ Council ~~shall~~ may take into account different risk tolerances for differing types of public and private coastal activities. In addition, the Council will regularly review new scientific evidence regarding sea level change and interpret its program accordingly.
- 4.

Comment [KLB25]: Applies to all of crmp

Comment [KLB26]: If you don't do it, who will?

1.1.11 Coastal Buffer Zones (formerly § 150)

(Findings moved to new CRMP guidance document.)

A. Prerequisites

1. All applications for which § 1.1.11 of this Part applies shall be initially reviewed by the Executive Director or his designee. The Executive Director may grant a variance for such applications in accordance with this section, or refer any application to the Council for a hearing if based upon the application a determination is made that the proposed activity warrants a Council hearing.

B. Policies

2. The establishment of a coastal buffer zone is based upon the CRMC's legislative mandate to preserve, protect and, where possible, restore ecological systems. ~~The determination of the inland boundary of the coastal buffer zone must balance this mandate with the property owner's rights to develop and use the property.~~

Comment [KLB27]: Determine the zone, if variance needed they should apply

5. Coastal buffer zones shall remain covered with native flora and in an undisturbed state in order to promote the Council's goal of pre-serving, protecting, and restoring ecological systems. ~~However, the Council may permit minor alterations to coastal buffer zones that facilitate the continued enjoyment of Rhode Island's coastal resources. All alterations to coastal buffer zones or alterations to the natural vegetation (i.e., areas not presently maintained in a landscaped condition) within the Council's jurisdiction shall be conducted in accordance with the standards contained in this section as well as all other applicable policies and standards of the Council.~~ In order to ensure compliance with these requirements, the Council may require applicants to submit a buffer zone management plan.

C. Standards

1. All coastal buffer zones shall be measured from the inland edge of the most inland shoreline (coastal) feature. ~~In instances when the coastal feature accounts for 50 percent or more of the lot, the Council may grant a variance to the required buffer width.~~
2. Coastal buffer zone requirements for new residential development: The minimum coastal buffer zone requirements ... The coastal buffer zone requirements are based upon the size of the lot and the CRMC's designated water types (Type 1 - Type 6). Where the buffer zone requirements noted above cannot be met, the applicant may request a variance in accordance with § 1.1.7 of this Part. A variance to 50% of the required buffer width may be granted administratively by the Executive Director if the applicant has satisfied the burdens of proof for the granting of a variance. Where it is determined that the applicant has not satisfied the burdens of proof, or the requested variance is in excess of 50% of the required width, the application shall be reviewed by the full Council. ~~Instances where a lot is equal to or less than 20,000 square feet and not located within the watershed of a poorly flushed estuary, a variance to the required buffer width may be granted by the Executive Director.~~
3. Coastal buffer zone requirements for alterations to existing structures on residential lots. All calculations for the requirements of a coastal buffer zone shall be made on the basis of structural lot coverage.

Comment [KLB28]: The Council can always grant variances but applicant must meet standards. Buy a cheap lot because of buffer don't get 50% rule.

Comment [KLB29]: Variances- 30% granted administratively only if Class I survey and determination of FMV

Definition? Structural lot coverage shall mean the total square foot area of the structure(s) on a lot or parcel (ref. § 1.3.1(C) of this Part).

- a. ~~Where alterations to an existing structure or structures result in the expansion of the structural lot coverage such that the square footage of the foundation increases by less than 50 percent, no new coastal buffer zone shall be required.~~
 - b. Where alterations to an existing structure or structures result in the expansion of the structural lot coverage such that the square footage of the foundation increases ~~by 50 percent or more~~, the Coastal Buffer Zone requirement shall be established with a width equal to the percentage increase in the structural lot coverage as of August 8, 1995, multiplied by the value contained in § 1.1.11(C)(6)(a) of this Part (Table 4).
 - c. ~~Coastal buffer zones shall not be required when a structure is demolished and rebuilt on the existing footprint.~~ Where a structure is demolished and rebuilt and the applicant shall meet all current program requirements, will result in an expansion of the structural lot coverage such that the square footage of the foundation increases by 50% or more, a coastal buffer zone shall be established with a width equal to the percentage increase in a structure's footprint, multiplied by the value contained in § 1.1.11(C)(7)(a) of this Part (Table 4).
 - d. ~~Where the applicant demolishes a structure, any contemporary or subsequent application to rebuild shall meet applicable setback requirements.~~
 - f. ~~In addition,~~ The Executive Director shall have the authority to grant a variance to this requirement for category "A" assents in accordance with the burdens of proof contained in § 1.1.7 of this Part.
7. All property located within the boundaries of a ~~Special Area Management~~ (SAM) Plan approved by the Council shall meet additional buffer zone requirements contained within the applicable se-SAM plans. When a SAM plan's buffer zone requirements apply, the buffer width values contained in this section will be compared to those required by the SAM plan, and the larger of the buffer widths applied.

D. Buffer management and maintenance requirements

1. All applicants requesting alterations within established coastal buffer zones or alterations to natural vegetation (i.e., areas not presently maintained in a landscaped condition) within the Council's jurisdiction may be required to submit a buffer zone management plan for the Council's approval that is consistent with the requirements of this section and the Council's most recent edition of buffer zone management guidance. Buffer

zone management plans shall include a description of all proposed alterations and methods of avoiding problem areas such as the proper placement and maintenance of pathways. Applicants should consult the Council's most recent edition of buffer zone management guidance when preparing a buffer management plan.

Comment [KM30]: This does not sound like a management plan, it sounds like an impact avoidance statement.

2. ~~In order to promote the Council's goal to preserve, protect and, where possible, restore ecological systems,~~ Coastal buffer zones shall be vegetated with native flora and retained in a natural, undisturbed condition, or shall be properly managed in accordance with Council's most recent edition of buffer zone management guidance. Such management activities compatible with this goal include, but are not limited to:

b. View corridors: Selective tree removal and pruning and thinning of natural vegetation may be allowed within a defined corridor in order to promote a view of the shoreline, but shall not ~~exceed more than exceed 20 feet along more than 25% of the length as measured along the shoreline and no more than 25% of the length of the buffer as measured along the shoreline, but shall not exceed 20 feet of the total buffer zone area.~~ Only the minimal alteration of vegetation necessary to obtain a view shall be acceptable to the Council. Shoreline access paths shall be located within view corridors to the maximum extent practicable in order to minimize disturbance of coastal buffer zones. View corridors shall be prohibited in sensitive or critical habitat areas.

- e. Shoreline recreation: ~~The CRMC recognizes that shoreline recreation is one of the predominant attractions for living on, or visiting the Rhode Island coast. In order to allow for such uses,~~ Minor alterations of buffer zones may be permitted ~~for~~ recreational purposes along the shoreline if they are determined to be consistent with Council's requirements. These alterations may include maintaining a small clearing along the shore for picnic tables, benches, and recreational craft (e.g., dinghies, canoes, day sailboats, etc.). Additionally, the CRMC may allow small, non-habitable structures including storage sheds, boat houses and gazebos within coastal buffer zones, where appropriate. However, these structures may be prohibited in sensitive or critical habitat areas. Due to the potential for these structures to impact values provided by coastal buffer zones, the Council shall exercise significant discretion in this area.

Comment [KLB31]: Why is discretion different?

E. Prohibitions

1. ~~No persons shall establish~~ment or maintain~~enance of~~ shoreline access pathways ~~is prohibited on coastal wetlands without permission of the and where inappropriate on coastal features as determined by the~~ CRMC.

1.1.12 Fees (formerly § 160)

- A. ~~R. I. Gen. Laws § 46-23-6(4)(iii) authorizes the Council to "grant licenses, permits, and easements for the use of Coastal Resources, which are held in trust by the state for all its citizens, and impose fees for private use of such resources."~~
- B. The Council ~~shall establish~~ requires fees for land created by the filling of tidal waters and the long term (dead) storage of vessels. Factors to be considered in establishing the fee include:
 1. The degree of preemption ~~of other public trust uses~~ associated with the activity or alteration involved;
- C. ~~Payments required by~~ the fee shall be determined by the Council ~~after review of upon the completion of~~ a professional appraisal based on the criteria listed above. The Assent recipient shall bear the cost of the appraisal.
- E.
 1. The annual lease fee is seventy-five (\$75.00) for half an acre or less, one hundred and fifty dollars (\$150.00) for a half to one acre, and one hundred dollars (\$100.00) for each additional acre. Annual lease fees are payable in full, in advance, on the first business day in the month of January of each year during the Assent period. Any ~~unauthorized~~ assignment or sublease of the whole or any portion of a leased area shall constitute a breach of the lease and be cause for termination of the lease, ~~unless such assignment or subletting has received the prior approval of the Council.~~
- F. Whenever the Council receives an application for assent or modification of an assent for an activity or alteration which has already occurred, or has been constructed or partially constructed, the Council ~~shall may~~ charge an administrative fee, in addition to any other fees required by the Council which shall be assessed at the time the Council grants an assent. The Council shall assess the administrative fee taking into account the additional demand on Council resources, and/or any adverse impacts to the coastal environment and/or the adjacent waterway. This shall not be construed to, and in no way shall, prohibit the Council from seeking any other remedies it deems appropriate.

Comment [KLB32]: Unpermitted alteration, at least recover a nominal fee for staff time

1.1.13 Violations and Enforcement Actions (formerly § 170)

- A. R.I. Gen. Laws Chapter 46-23 sets out the Council's authorities for enforcement.

C. In determining the amount of each administrative penalty, assessed in accordance with authorities established in § 1.1.13(A) of this Part, the Hearing Officer or his designee shall ~~consider any scheduled amounts adopted by the Council and all other factors, which he deems relevant, including but not limited to the following:~~

1. The actual and potential impact on public health, safety and welfare and the environment of the failure to comply;
2. The actual ~~and~~ potential damages suffered, and actual or potential costs incurred, by the Council, or by any other person;
4. Whether the person being assessed the administrative penalty has previously failed to comply with any rule, regulation, order, permit, license or approval issued or adopted by ~~CRMC the commission~~, or any law which the ~~CRMC commission~~ has the authority or the responsibility to enforce;

1.1.14 Emergency Assents (formerly § 180)

B. Imminent Peril Assent

1. The ~~Chairman, Vice Chairman, or in their absence the~~ Executive Director, may grant an Emergency Assent in circumstances where they determine that there is imminent peril and where, if immediate action is not taken, the existing conditions may cause one or more of the following:
2. The reasons for these findings shall be ~~documented and available as a public stated on the~~ record.

Comment [KLB33]: It may be helpful to broaden the definition of CVA so they can be used to assist CRMC in emergency assents and determining % of structure demolished after storm events

Comment [KLB34]: Person with knowledge and staff

Comment [KLB35]: Stated on what record?

C. Post Hurricane and Storm Permitting Procedures

3. The Council shall impose a temporary moratorium to remain in effect for a maximum of ~~90~~30 days from the disaster declaration. The purpose of the moratorium shall be to provide the Council and affected coastal communities with adequate time to assess damages, determine changes in natural features that may change vulnerability to damage, and identify mitigation opportunities. The temporary moratorium shall apply to the following:
 - b. Reconstruction of all residential and associated residential structures, commercial and recreational structures in both A zone and V zone that were destroyed ~~50~~% or more by storm induced flood, wave and wind damage.
4. During the moratorium, priority consideration will be given to necessary and/or emergency alterations, reconstruction, or replacement of essential public facilities, such as roads, bridges, and public utilities. The Council

Comment [KLB36]: Need time to get things done or 30 days with extension

Comment [KLB37]: Who determines 50%? Need a CVA. Applies to entire section

recognizes that a major hurricane or other storm events may severely damage or destroy infrastructure and utilities such as roads, bridges, water and sewer lines located in high hazard areas. When such damage occurs, ~~it the Council shall~~ ~~shall be the policy of the Council to require the review of alteration~~ reconstruction options which may lessen or mitigate the probability of future recurrent damage.

6. Procedures and priorities for addressing post storm reconstruction applications after the moratorium are as follows:
 - a. Priority will be given to consideration of applications for reconstruction of structures which were physically damaged or destroyed 50 percent or more by storm induced flooding, wave or wind damage;
 - c. Final priority will be given to any application for new alterations and activities unrelated to the disaster. ~~;~~ ~~and~~
 - d. ~~If the Executive Director determines that a large number of post storm applications will be received, and that the normal processing will result in an undue burden or hardship to storm victims, and the Executive Director determines there is no overriding programmatic policy or goal to be served by holding a group of applications, then the Executive Director may, in specific instances, waive the requirements of a new Assent for structures physically destroyed 50 percent or more by storm induced flood, wave and wind damage, and allow for Emergency Permits to be issued.~~

Comment [KLB38]: Why not give priority to all with physical destruction?

Comment [KLB39]: Follow emergency regulation process

1.2 Areas Under Council Jurisdiction

1.2.1 Tidal and Coastal Pond Waters (formerly § 200)

(Findings moved to new CRMP guidance document)

- A. The six categories of waters defined... The last two water use categories are assigned to areas adjacent to ports and industrial waterfronts. In these waters, maintenance of adequate water depths is essential, high water quality is seldom achievable, ~~and some filling may be desirable~~. Within Type 5 ports,...

(Findings moved to new CRMP guidance document)

2. Policies
 - a.
 - e. Since runoff can be a major source of pollutants... that no ~~significant~~ adverse impact to the receiving waters will result. The

cumulative impacts of runoff are of particular concern in Type 1 waters.

- g. Activities and alterations subject to Council jurisdiction contiguous to public parks, public beaches, public rights of way to the shore, and conservation areas abutting Type 1 waters shall not ~~significantly~~ interfere with public use and enjoyment of such facilities. Where ~~significant~~ interference is found, the Council shall suitably modify or prohibit that alteration or activity.

C. Type 2 Low Intensity Use (formerly § 200.2)

2. Policies

a.

c. The Council's intent for preexisting marina operations ...

- c. Residential boating facilities... that there will be no ~~significant~~ adverse impact to coastal resources, water dependent uses or public's use and enjoyment of the shoreline and tidal waters of the State. It is the Council's policy that one or more of the following conditions describe a situation, condition, or proposal that is deemed to have an ~~significant~~ adverse effect on Rhode Island's coastal resources and therefore is grounds for denial or modification of an application for an Assent:

- (1) The construction of the proposed facility may cause ~~adversesignificant~~ impacts on coastal wetlands and other public trust resources (e.g. shellfish, finfish, submerged aquatic vegetation, etc.);
- (2) Access to the construction site is not available without causing ~~adversesignificant~~ impacts to Rhode Island's coastal resources (e.g. coastal wetlands);
- (3) The proposed facility would ~~significantly~~ interfere with and/or impact other public trust uses of the tidal or inter-tidal areas of the shoreline (e.g. interfere with navigation); or

(4)

D. Type 3 High Intensity Boating (formerly § 200.3)

- 1. This category includes intensely utilized water areas where recreational boating activities dominate and where the adjacent shorelines are

developed as marinas, boatyards, and associated water enhanced and water dependent businesses.

Comment [KLB40]: definition

(Findings moved to new CRMP guidance document)

2. Areas suitable for ... at great environmental as well as ...

F. Type 5 commercial and recreational harbors (formerly § 200.5)

2. Policies

b.

(2) water dependent and water enhanced commerce, including businesses catering to tourists;

Comment [KLB41]: definition

1.2.2 Shoreline Features (formerly § 210)

C. Coastal Wetlands (formerly § 210.3)

1. Policies

a.

b. To offset past losses in coastal wetlands and unavoidable alterations to surviving coastal wetlands:

(1) disturbed wetlands should be restored as directed by the Council or enhanced when possible; and

(2) in areas selected on the basis of competent ecological study, the Council may will encourage-permit the building of new wetlands.

d. It is the Council's policy that alterations to salt marshes and contiguous freshwater or brackish wetlands abutting Type 2 waters are prohibited except for r-minor disturbances associated with:

e. Coastal wetlands designated for preservation adjacent to Type 3, 4, 5, and 6 waters are identified on maps available for inspection at the Council's offices and on the CRMC website at: <http://www.crmc.ri.gov/maps.html>. In these designated wetlands only the following alterations may be permitted: minor disturbances associated with:

(1) residential docks and wetland walkover structures approved pursuant to the standards set forth in §§ 1.3.1(D) and 1.3.1(Q) of this Part, respectively;

(2) approved repair of structural shoreline protection facilities pursuant to § 1.3.1(N) of this Part;

(3) Council-approved restoration activities; ~~or~~

~~(4) Council-approved limited view restoration projects for existing hospitality industry businesses.~~

~~(AA) Approval of limited view restoration projects requires a public access plan consistent with § 1.3.6 of this Part subject to GRMC approval and requires that wetlands and other shoreline natural resource areas be placed in a conservation easement at a ratio of 5:1 (e.g., 5 times the area to be restored for a view must be preserved). The area to be restored for a view shall also be included in the conservation easement along with a long term management plan for the view restoration area. All view restoration projects must demonstrate through aerial photographic evidence that a view which supported an existing hospitality industry business has been lost over time by the growth of forested wetland vegetation. Limited view restoration projects are prohibited bordering Type 1 and 2 waters and for all existing and proposed residential projects bordering all water types. Dredging and filling in these designated coastal wetlands are prohibited. The maps of designated coastal wetlands serve to identify individual wetlands; in all cases precise boundaries shall be determined through a field inspection when proposals that could impact these features are being considered. In support of this goal, the Council supports a policy of "no net loss" of coastal wetland acreage and functions as a result of coastal development.~~

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f. Salt marshes adjacent to Type 3, 4, 5, and 6 waters that are not designated for preservation may be altered if:

(2) the applicant has examined all reasonable alternatives and the Council has determined that the selected alternative is the minimizes the alteration~~most reasonable~~; and

(3) the applicant has avoided alterations to the salt marsh and only the minimum alteration necessary to support the priority use is made.

2. Prohibitions

- d. ~~Limited view restoration projects are prohibited bordering Type 1 and 2 waters and for all existing and proposed residential projects bordering all water types~~
- e. Any limited view restoration project which does not strictly adhere to the ~~term of the assent, or Council's policies and standards as stated in §§ 1.2.2(D)(3) and (5) of this Part~~ are prohibited. ~~Should a limited view permit issued to a the hospitality industry prior to 2016 use~~ be discontinued the subject property will no longer qualify for this provision and the limited view restoration Assent will become null and void.

3. ~~Standards~~

a. ~~Limited View Restoration:~~

- (1) ~~A public access plan shall be provided consistent with § 1.3.6 of this Part.~~
- (2) ~~Wetlands and other shoreline natural resources areas shall be placed in a conservation easement at a ratio of 5:1 (e.g., 5 times the area to be restored for a view must be preserved within the conservation easement). The area to be preserved for a view shall also be included in the conservation easement along with a long-term management plan for the view restoration area. The management plan shall be designed to manage the view restoration area as a shrub swamp.~~
- (3) ~~All view restoration projects must demonstrate through aerial photographic evidence that a view which supported an existing hospitality industry business has been lost over time by the growth of forested wetland vegetation, as of the effective date of this Part.~~

Comment [KLB42]: This section is no longer relevant and prior permit addressed above

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D. Coastal Headlands, Bluffs, and Cliffs (formerly § 210.4)

1. Policies

- b. The Council's goals are to:
- c. Due to their well-recognized scenic value and their use as tourist attractions and low intensity recreation areas, the Council designates the following coastal cliffs and bluffs as Coastal Natural Areas: Bonnet Point, Hazard Rocks, Fort Wetherill, Ocean Drive,

the Brenton Cove Cliffs, Cliff Walk, Purgatory Chasm, Sakonnet Point, Barrington, and Mohegan Bluffs. A Council priority when considering proposed alterations on or adjacent to these features is the preservation and, where possible, the restoration of their scenic qualities.

Comment [KM43]: Add additional bluffs on mainland for protection

F. Manmade Shorelines (formerly § 210.6)

(Findings moved to new CRMP guidance document)

1. Policies

- a. Manmade shorelines usually have a major impact on the appearance of the shore, interfere with public access to and along the coast, prevent migration of coastal habitats and may alter erosion accretion processes on neighboring beaches. (Note: this text is from findings above, but represents important policy consideration.)

1.3 Activities Under Council Jurisdiction

1.3.1 In Tidal and Coastal Pond Waters, on Shoreline Features and Their Contiguous Areas (formerly § 300)

C. Residential, commercial, industrial, and recreational structures (formerly § 300.3)

1. Policies

- b. It is the Council's policy to require a public access plan, in accordance with § 1.3.6 of this Part, as part of any application for a commercial or industrial development or redevelopment project in or impacting coastal resources. In accordance with § 1.1.7 of this Part, a variance from this policy may be granted if an applicant can meet all requirements for a variance set forth in § 1.1.7 and demonstrate that no significant public access impacts will occur as result of the proposed project.

2. Prerequisites

- f. Applicants shall demonstrate that connections to public water supplies and sewer systems shall be authorized by the appropriate authorities when:

- (1) such connections are proposed by the applicant; or
- (2) where on-site water withdrawal and/or sewage disposal will have an ~~un-significant~~ adverse environmental or public health impact or contribute to cumulative impacts.

H. Energy-related activities and structures (formerly § 300.8)

3.

- a. ~~The CVA is an independent third-party agent that shall use good engineering judgment and practices in conducting an independent assessment of the design and construction of the proposed energy-related activities.~~ The CVA shall have licensed and qualified professional engineers on staff. The CVA is paid for by the applicant, but is approved by and reports to the Council.
- (4) Certify in a report that the facility is constructed in accordance with accepted engineering practices.
- (AA) The certification report shall aalso identify the location of all records pertaining to design and construction.
- c. The above requirements for energy facilities do not ... Such small scale facilities shall be considered commercial ~~or residential~~ structures (see § 1.3.1(C) of this Part).

Comment [KLB44]: defined

J. Filling in tidal waters (formerly § 300.10)

1. Policies

- e. It is the Council's policy ..., a variance from this policy may be granted if an applicant can meet the variance requirements set forth in Section and demonstrate that no ~~significant~~ public access impacts will occur as a result of the proposed project.

f

- g. ~~Filling which is determined by the Council to be incidental to activities conducted in accordance with § Section 1.3.1(G) of this Part is not "filling in tidal waters" and is addressed by the policies, prerequisites, prohibitions, requirements, and standards contained in § Section 1.3.1(G) of this Part. (Note: this text is from definition of "filling in tidal waters" (now in § 1.1.2), but is policy, so placed here)~~

Comment [KLB45]: repeat

3. Prohibitions

- c. Filling in Type 3, 4, 5, and 6 waters is prohibited unless:

- (3) the filling is the minimum necessary to support the water dependent priority use.

4. Fees

- a. A fee for filling in tidal waters shall be based on the criteria specified in § 1.1.12 of this Part.

K. Aquaculture (formerly § 300.11)

1. Policies

- f. In the event that a CRMC approved aquaculture operation is determined by the Council to not be actively "farmed" for a period of one year, the assent and lease shall be deemed null and void and the site shall revert to the State's public use upon order by the CRMC. Actively farmed may be defined by the yearly monetary investment in the farm (e.g., the purchase of seed and supplies and/or proof of sales). Three (3) consecutive years of no proof of sales shall be grounds for revocation of the Assent and lease. The Council may allow the Assent and lease to remain in effect for inactive aquaculture upon a showing by the Assent holder for good cause.

Comment [KLB46]: 1 year no use, why 3 years no sales? 1 year no sales? Confusing

- (2) Aquaculture projects other than shellfish aquaculture proposed for conditionally approved waters that are not closed seasonally and prohibited waters that do not contain significant shellfish stocks potentially available for relay into approved areas for free and common fishery may be granted by the Council provided the applicant provides sufficient evidence that there is no interference with public use and...

4. Prohibitions

- d. Introduction of non-indigenous species is prohibited unless protocols are in place to ensure that no accidental releases into the state's waters may occur. ~~These protocols must be submitted by the applicant for advice and consent by the CRMC Bio-Security Board and approval by the RIDEM Director before any permit is issued. Any proposed modifications to the permitted operation will be reviewed by the Bio-Security Board and the RIDEM Director before an assent modification can be issued.~~ The issuance of a permit under these stipulations can be revoked if a release of non-indigenous species takes place during the term of the assent.

Comment [KLB47]: Repeat?

- e. ~~The harvest of wild bivalve molluscan shellfish, other than spat collection, naturally occurring in a CRMC permitted lease is prohibited. All wild shellfish within a lease area will remain the property of the State of Rhode Island and remain in place for the benefit of the public resource.~~ This resource is not to be harvested by any person for commercial or recreational purposes. Any incidental catch by the lease holder within an aquaculture lease shall be returned immediately to the same waters.

Comment [KLB48]: repeat

5. Standards

a. Marine aquaculture within tidal waters

- (1) In the event of revocation or termination Failure to comply with the Council's order to restore the site may result in the removal of the gear and forfeiture of the assent bond posted by the lessee.
- (10) The Executive Director may approve the transfer of a lease from the lessee to another party provided the aquaculture operation remains the same, including size, species, gear, and methods of culturing and bond?. The full Council must approve any transfers that involve a deviation from the existing assented aquaculture operation.
- (13) Experimental permits.
- (AA) The Executive Director may issue an experimental aquaculture permit for A lease shall may be required and the sale of any aquaculture product is not allowed. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council.
- (14) Commercial viability permit.
- (AA)
- (i) Issuance of a one-time administrative permit for the period of eighteen (18) months; followed by a one-time council-approved permit for an additional eighteen (18) months. A lease shall may be required. Report of such action by the Executive Director shall be made in writing to the full Council at the next regularly scheduled meeting of the Council.

- (iv) The permittee must show that, in the case of a successful trial, there is sufficient potential area to expand to a commercial aquaculture lease in the same area that the commercial viability permit was granted. The Executive Director ~~shall~~ may require the permittee to post a performance bond in order to ensure the cleanup and removal of said facility. Detailed economic reports shall be required for all commercial viability Permittees and included with the annual report that must be filed with the CRMC

- (15) Education/research permit. The Executive Director may issue A lease ~~shall~~ may be required. Applicants may be approved for three separate sites, ... not to exceed three (3) years. A lease ~~shall~~ may be required and ... The Executive Director may grant extensions to these permits. Each extension shall not exceed three (3) years.

~~Educational/research aquaculture operations wholly contained within the confines of a council-approved marina perimeter are excluded from the 500-foot separation standard, as contained above, and may maintain a total of 3,000 square feet in any configuration for such operations.~~

Comment [KLB49]: repeat

- (16) Aquaculture operations shall be located at sites and operated in such a manner as to not ~~to interfere with~~ obstruct public ~~use or~~ access to and from tidal waters..

L. Coastal wetland mitigation (formerly § 300.12)

3. Prohibitions

b.

- (2) ~~approved construction or~~ repair of shoreline protection facilities; and

- (3) approved mosquito population control programs.

- c. Alterations to coastal wetlands which are adjacent to Types 3, 4, 5 and 6 waters and which are not designated for preservation are prohibited unless:

- (1) the alteration is made to accommodate a water dependent designated priority use for that water area;
- (2) the applicant has examined all reasonable alternatives and the Council has determined that the selected alternative is the most reasonable; and the applicant meets the criteria for a variance set forth in 1.1.7
- ~~(3) only the minimum alteration necessary to support the water dependent priority use is made.~~

4. Additional Category B requirements

a. Applicants shall demonstrate to the Council's satisfaction that:

- (1) the proposed alteration will accommodate a water dependent priority use, as determined by the adjacent water type;

5. Standards

a. For alterations to coastal wetlands:

- (1) Altered coastal wetlands shall be replaced by wetlands of a similar type hydrologic regime (as defined in § 1.1.2 of this Part) which provide an ecological value equal to or greater than that of the altered wetland.

N. Maintenance of structures (formerly § 300.14)

1. Policies

- b. Maintenance of structures and facilities is permitted upon application for a Certification of Maintenance if the existing facility or structure is in compliance with a previously issued for which a Council Assent_ has been issued is permitted upon obtaining a the Certification of Maintenance may be issued by from the Executive Director, or Deputy Director, of the CRMC. This Certification shall establish that all applicable standards for the construction and operation of the permitted structure or facility, and any stipulations that were conditioned by the Council's Assent have been met, and are continued. Further, the Certification of Maintenance may contain additional measures to minimize the environmental impact of the activity, to promote the restoration of coastal resources, or to otherwise further the objectives and goals of this program, as may be required by staff recommendations to the Executive Director, consistent with the standards of the RICRMP.

Comment [KLB50]: I'm not sure what this means..is it that prior assent was complied with "has been met"?

Q. Wetland walkover structures (formerly § 300.17)

3. Prohibitions

- b. Wetland walkover structures are prohibited unless it is demonstrated that the structure provides the only access available to an applicant for access on his/her property for passive recreational pedestrian purposes, and that the wetland will not incur environmental damage from foot traffic. In cases where the Council finds that wetlands will incur environmental damage from foot-traffic, dependent on individual site assessments, the Council shall deny wetland walkover structures.

R. Submerged aquatic vegetation and aquatic habitats of particular concern (formerly § 300.18)

1. Policies

- a. The Council's goal is to preserve, protect and where possible, restore SAV habitat. Permanently lost or significantly altered SAV shall be replaced through the restoration of an historical SAV habitat or the creation of a new SAV habitat at a site approved by the Council. The ratio of restoration to loss shall be 2:1.
- b. ~~All~~ Activities under CRMC jurisdiction, including residential, commercial, industrial, and public recreational structures (~~§ 1.3.1(A) of this Part~~), ~~recreational boating facilities (§ 1.3.1(D) of this Part)~~, ~~sewage treatment and stormwater (§ 1.3.1(F) of this Part)~~, ~~dredging and dredged materials disposal (§ 1.3.1(I) of this Part)~~, ~~filling in tidal waters (§ 1.3.1(J) of this Part)~~, ~~aquaculture (§ 1.3.1(K) of this Part)~~, ~~and activities undertaken in accordance with municipal harbor regulations (§ 1.3.1(O) of this Part)~~, shall avoid and minimize impacts to SAV habitat.
- g. All impacts to SAV and SAV habitat shall be avoided where possible and minimized to the extent practicable. Where the impacts ~~are substantial or~~ cannot be avoided or minimized, the Council may deny the application. The Council may exercise greater discretion if the proposed site is adjacent to or includes a restoration site and/or the site includes the sole source of SAV habitat.
- k. Aquaculture operations, which SAV subsequently colonizes within the permitted facility area, the leaseholder shall be considered grandfathered ~~and not subject to the~~

Comment [KLB51]: Greater than what?

~~standards/requirements of this section.~~ Future proposed expansions shall be subject to review under this section. (Note: this text is from finding above, but is a policy.)

1.3.6 Protection and enhancement of public access to the shore (formerly § 335)

5. In accordance with § 1.1.7 of this Part, a variance from this policy may be granted if an applicant can demonstrate that no ~~significant~~ public access impacts will occur as a result of the proposed project.