



Memorandum

To: Jennifer Cervenka, CRMC Chair and Council members

From: James Boyd, CRMC Coastal Policy Analyst

Date: March 31, 2020

Re: **Red Book - 650-RICR-20-00-1** – Proposed amendments for Council consideration

The CRMC issued public notice for rule-making on **February 11, 2020** for proposed amendments to the Red Book. The Council held a public hearing in this matter on **February 25, 2020** in conformance with R.I. Gen. Laws § 42-35-2.8. No public testimony was offered at the public hearing. The public comment period closed on **March 13, 2020** and two sets of written comments were received; one from the Department of Environmental Management (DEM) dated March 6, 2020 and the other from Save The Bay (STB) dated March 12, 2020. The STB comments were electronically distributed to Council members on March 13, 2020. Both DEM and STB comments are attached hereto.

The following list of the Red Book amendments have been reviewed and approved for rule-making by the CRMC Planning & Procedures Subcommittee with the date of meeting and specific sections. Each of the following sections were incorporated into the February 11, 2020 public notice for rule-making.

January 14, 2020

- Amend § 1.1.2(A) Definitions
- Amend § 1.1.3 Requirements for Applicants
- Amend § 1.1.6 Applications for Category A and Category B Council Assents
- Amend § 1.1.7 Variances
- Amend § 1.1.8 Special Exceptions
- Amend § 1.1.9 Setbacks
- Amend § 1.1.13 Violations and Enforcement Actions
- Amend § 1.1.14 Emergency Assents
- Amend § 1.2.1 Tidal and Coastal Pond Waters
- Amend § 1.2.2 Shoreline Features
- Amend §§ 1.3.1(F) Treatment of sewage and stormwater, (G) Construction of shoreline protection facilities, (H) Energy-related activities and structures, (J) Filling in tidal waters and (K) Aquaculture

November 12, 2019

- Amend § 1.3.1(G) Construction of shoreline protection facilities

May 28, 2019

- Amend § 1.2.1(A) Coastal beaches
- Amend § 1.3.1(P) Boat lift and float lift systems

Prior to STB filing their comments with the Council, CRMC staff (G. Fugate, J. Willis and J. Boyd) met with STB staff on February 24, 2020 to review and discuss their initial comments on the Red Book amendments. Subsequently, STB filed written comments with the CRMC on March 12, 2020. The DEM filed written comments via email with the CRMC on March 6, 2020. After careful review of both sets of comments CRMC staff have proposed recommended revisions that are shown below in “track changes” and in **yellow-highlighted text**. These CRMC staff proposed revisions appear to be consistent with, and a logical outgrowth of, the rules as proposed in the CRMC February 11, 2020 public notice for rule-making without changing the intent or application of the rules in any substantive way. Accordingly, the revisions shown below are recommended by CRMC staff for Council approval.

Any STB proposed changes, however, that were deemed by CRMC staff to be substantially different from the rule proposed in the public notice of proposed rulemaking will have to be considered by the Planning & Procedures Subcommittee at a later date for further consideration and rule-making action by the Council in accordance with R.I. Gen. Laws § 42-35-6.1.

All other Red Book amendments as proposed for rule-making in the February 11, 2020 public notice are recommended for approval and adoption by the Council.

§ 1.1.2(A) Definitions

74. “Hybrid shoreline protection” means practices that combine vegetation, biodegradable materials and stone, the purpose or effect of which is to **control reduce** the erosion of coastal features. For a practice to be considered hybrid shoreline protection, only stone may be used for toe-of-slope protection or to create an intertidal sill for salt marsh creation.

97. “Nonstructural shoreline protection” means practices that use only native ~~or sustainable~~ vegetation and biodegradable materials, except for any anchoring or connective components, the purpose or effect of which is to **control reduce** the erosion of coastal features.

155. “Structural shoreline protection ~~facilities~~” means revetments, bulkheads, seawalls, groins, breakwaters, jetties, toe protection and other structures, the purpose or effect of which is to **control reduce** the erosion of coastal features, and includes any sheet pile walls, concrete or stone walls, or other structures that are located within the fifty (50)- foot minimum setback or the erosion setback pursuant to § 1.1.9 of this Part and which would extend to a depth below grade to protect land or structures from active or future shoreline erosion.

§ 1.1.3 Requirements for Applicants

A. Step one - Is a Council assent required?

5. Persons proposing any project or activity which may alter the character of any freshwater wetland in the vicinity of the coast, and which is not specifically exempt under the Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast ([Part 2 of this Subchapter](#)) or as provided in R.I. Gen. Laws § 46-23-6(2)(iv), are required to apply for a Council Assent. When it is not clear as to whether or not freshwater wetlands exist in the area of any proposed activity, or whether the proposed activity requires a Council Assent, persons should consult with the Council prior to undertaking any activity.

§ 1.1.7 Variances

- A. Applicants desiring-requiring 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~~he application shall then-only be granted a variance ~~only~~ if the Council finds that the following six criteria are met.

§ 1.3.1(F) Treatment of sewage and stormwater

4. Standards

- I. Applicants may be required to submit a pollutant loading analysis to demonstrate that a proposed project will not unduly contribute to, or cause, water resource degradation when such projects are located in sensitive coastal resource areas. When a pollutant loading analysis is required, the applicant shall use the method detailed in ~~Appendix H of the most recent version of the RIDEM-Rhode Island Stormwater Design and Installation Standards Manual~~ Stormwater Management, Design and Installation Rules (250-RICR-150-10-8). If the Council determines that any proposed stormwater discharge will result in an unacceptable discharge of pollutants to the tidal waters of Rhode Island, the Council shall require the applicant to mitigate the pollutant loads to acceptable levels using the practices detailed in the stormwater manual rules. Frequently, this can be accomplished using these practices in series to achieve higher pollutant removal efficiencies.
- m. The use of proprietary hydrodynamic (swirl) separator or filter devices shall be limited to pre- treatment applications only, unless the device has met the requirements of the Technology Assessment Protocol (TAP) as detailed in the ~~most recent version of the RIDEM-Rhode Island Stormwater Design and Installation Standards Manual~~ Stormwater Management, Design and Installation Rules (250-RICR-150-10-8). The CRMC may, however, approve such devices in situations where end-of-pipe retrofit solutions are the only alternative available when site constraints limit the use of standard low impact development methods for the treatment and management of stormwater runoff. In such circumstances, however, the use of such proprietary devices shall conform to the standards and performance criteria set forth in the most

recent version of the RIDEM ~~Rhode Island Stormwater Design and Installation Standards Manual~~ Stormwater Management, Design and Installation Rules (250-RICR-150-10-8) to the maximum extent practicable.

§ 1.3.1(G) ~~Construction of S~~ **shoreline protection facilities**

5. Standards

- c. For a practice to be considered hybrid shoreline protection, stone may only be used for toe-of-slope protection or intertidal sill creation. For the purposes of this section, toe-of-slope protection shall not extend more than two (2) feet vertically from the bottom of the bank or scarp along low energy shorelines (i.e., fetch less than 1.5 miles) and four (4) feet vertically from the bottom of the bank or scarp along high energy shorelines (i.e., fetch greater than 1.5 miles). Stone may be gathered from the coastal beach directly in front of and no more than twenty-five (25) feet seaward of the proposed hybrid shoreline protection to be used for toe-of-slope protection or intertidal sill construction. However, no materials may be gathered seaward of the mean high water elevation.