

CONCISE EXPLANATORY STATEMENT

AGENCY: Coastal Resources Management Council

RULE IDENTIFIER: 650-RICR-20-00-1

RULE TITLE: RI Coastal Resources Management Program – Red Book

REASON FOR RULEMAKING: The CRMC amended the Red Book shoreline protection section, § 1.3.1(G), in its entirety to provide coastal property owners with alternative non-structural and hybrid shoreline protection options, and to supplement existing structural shoreline protection provisions within the section. The amendments include new and modified definitions in § 1.1.2(A) associated with shoreline protection. There are additional amendments throughout other sections of the Red Book to simplify existing language, delete superfluous text, and to provide better clarity and specificity regarding existing policies and standards.

TESTIMONY AND COMMENTS: There was no public testimony offered at the CRMC's public hearing on the proposed rules held on February 25, 2020. The Department of Environmental Management (DEM) filed comments on March 6, 2020 and Save The Bay (STB) filed comments on March 12, 2020. A number of proposed revisions submitted by STB were deemed by CRMC staff to be substantially different from the rule proposed in the February 11, 2020 public notice of proposed rulemaking. Additionally, substantive new text was proposed by STB within some of the rules, and these will have to be considered by the CRMC Planning & Procedures Subcommittee at a later date for further consideration, reviewed by the Office of Regulatory Reform (ORR), and subsequent rule-making action by the Council in accordance with R.I. Gen. Laws § 42-35-6.1. The following is an itemization of CRMC reasons for not accepting some of the proposed revisions submitted by DEM and STB:

DEM

§ 1.3.1(G) Shoreline Protection

§ 1.3.1(G)(1)(c) Replace "to vertical steel" with "over vertical steel"

Response: We did not modify, as it is preferable to use “to” rather than “over” when the preposition precedes a noun, and using “to” in this context is more common.

§ 1.3.1(G)(4)(a) Consider adding additional subsection (7) that would be identical to Section 1.3.1(G)(4)(b)(8)

Response: We intentionally did not add a similar section for hybrid structures because they are designed to erode in storm events and provide sand to the beach, where as fully hardened structures (e.g., revetments, bulkheads, etc.) do not erode, are more permanent and will result in frontal beach erosion and loss. Furthermore, we have intentionally designed the rules to make the hybrid structure permitting procedures less onerous to promote their use rather than structural shoreline protection methods (e.g., revetments, bulkheads, etc.), which are more damaging to beaches.

§ 1.3.1(G)(6)(g) In the last sentence, is it the intent to specify “RI-registered professional engineer”? I note that “RI-registered” does not appear elsewhere. If it is the intent to specify “RI-registered” here, then it might be appropriate to specify the same elsewhere.

Response: The Red Book does specify “RI-registered” in many other sections. It is common practice and well known by consultants. Thus, it is not necessary to specify throughout § 1.3.1(G).

Save The Bay

§ 1.1.2(A) Definitions

§ 1.1.2(A)(74) “Hybrid shoreline protection” means practices that combine vegetation, ~~biodegradable natural~~ materials and stone, the purpose or effect of which is to ~~reduce~~ ~~control~~ 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.

Response: The term “biodegradable” is preferred because the term “natural” would also include concrete, which consists of water, aggregate (rock, sand, or gravel) and cement (materials commonly used to manufacture cement include limestone, shells, and chalk combined with shale, clay, slate, silica sand, and iron ore.). All of these materials are “natural.” Hybrid structures by design are intended to create a vegetated slope with biodegradable materials (e.g., coir logs) above limited stone toe-protection along the toe of the bluff or slope. We accept the replacement of the term “control” with “reduce”, as suggested by STB.

§ 1.1.2(A)(83) “Maintenance of structures” means ~~the reconstructing or~~ repairing 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. If a structure is demolished new standards should be met to the extent practicable.

Maintenance provisions for marina in-water facilities and residential boating facilities are found at § 1.3.1(D) of this Part.

Response: STB’s proposed revision to the CRMC proposed amendment to the definition of “maintenance of structures” is not acceptable because it would fundamentally alter how the CRMC has historically permitted maintenance activities for decades, and would be excessively restrictive to coastal shoreline property owners.

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

Response: We have accepted the proposed STB revisions to delete “or sustainable” and replace the term “control” with “reduce.” As explained above, we did not replace the term “biodegradable” with “natural.”

§ 1.1.2(A)() “Water enhanced” means a use or activity that does not require a location adjacent to or over coastal waters, but where the primary purpose is to increase the general public’s enjoyment of the waterfront. The use or activity may be recreational, cultural or may provide entertainment. Water enhanced uses may include restaurants but do not include hotels, condominiums, other uses where the restaurant is part of the larger private development. Water enhanced uses should be encouraged to locate along the shore, though not at the expense of water dependent uses.

Response: The proposed definition is entirely new and would significantly alter current CRMC practice. The new definition needs to be reviewed and considered by the CRMC Planning & Procedures Subcommittee and the Office of Regulatory Reform, and publicly noticed. Accordingly, we defer this amendment to a later date when subsequent Red Book amendments would be publicly noticed.

§ 1.1.6 Applications for Category A and Category B Council Assents

D. In order to inform decision-makers and the public of the environmental consequences of implementing a proposed project, the applicant must disclose all likely future phases of a project, however permitting in phases may be permitted.

E.4. Applicants ~~desiring~~ requiring relief from one or more standards may apply for a variance. If an applicant requests a variance greater than 30% from more than one standard the application shall be processed as a Category B application.

Response: The proposed revisions add new language and would significantly alter the Council application processing procedures specified in § 1.1.6. This text is entirely new and needs to be reviewed and considered by the CRMC Planning & Procedures Subcommittee and the Office of Regulatory Reform, and publicly noticed. Accordingly, we defer this amendment to a later date when subsequent Red Book amendments can be publicly noticed.

§ 1.1.14 Emergency Assents

Save The Bay submitted extensive revisions to § 1.1.14, which are the Council's Post Hurricane and Storm Permitting Procedures.

Response: The proposed revisions would significantly alter the Council's currently existing application and permit processing procedures specified within existing § 1.1.14. Essentially, STB proposes that the Council abandon its existing post-hurricane application and permitting procedures established within the regulations, and instead file emergency rule-making in accordance with the Administrative Procedures Act (APA) to implement emergency rules. The Council has previously established its post-hurricane emergency permitting procedures, as specified in § 1.1.14, through the rule-making process in accordance with the APA. It is unnecessary for the Council to file emergency rule-making for emergency permitting, rather it merely needs to follow its existing emergency permitting procedures as established within the rules. Moreover, on March 20, 2020 the Office of Management and Budget issued a directive to state agency directors to first use their existing emergency powers when considering necessary emergency regulations, before pursuing emergency regulations under the APA. See: Chapter 42-35 of the R.I General Laws. Therefore, the CRMC rejects STB's proposed revisions to § 1.1.14.

§ 1.3.1(G) Shoreline Protection

Save The Bay submitted significant revisions for §§ 1.3.1(G)(1)(b), 1.3.1(G)(3)(d), 1.3.1(G)(3)(e), new 1.3.1(G)(4)(a)(7) and (8), and 1.3.1(G)(6)(g).

Response: CRMC staff worked for several months on multiple iterations in the reorganization and revision to the shoreline protection section of the Red Book. The proposed amendments as advertised in the February 11, 2020 public notice were carefully crafted by CRMC staff in consideration of offering alternative non-structural and hybrid shoreline protection options for property owners, rather than hardened structures, to protect property from unchecked coastal erosion. We have rejected these proposed STB revisions that would add extensive new language and significantly alter the Council's review and processing of shoreline protection applications. STB's proposed text would need to be reviewed and considered by the

CRMC Planning & Procedures Subcommittee and the Office of Regulatory Reform, and publicly noticed to provide the public an opportunity to review and submit comments on these significant revisions. Accordingly, we defer this amendment to a later date when subsequent Red Book amendments can be publicly noticed.

§ 1.3.1(R) Submerged aquatic vegetation and aquatic habitats of particular concern

Response: The CRMC did not propose amendments to existing § 1.3.1(R) as part of the February 11, 2020 public notice. Nevertheless, Save The Bay submitted extensive proposed amendments, and the proposed revisions add new restrictions and would significantly alter the Council's procedures for the review and processing of application that involve submerged aquatic vegetation as specified in § § 1.3.1(R). STB's proposed text is entirely new and would need to be reviewed and considered by the CRMC Planning & Procedures Subcommittee and the Office of Regulatory Reform, and publicly noticed. Accordingly, we defer this amendment to a later date when subsequent Red Book amendments can be publicly noticed.

CHANGE TO TEXT OF THE RULE: The following revisions were adopted by the CRMC following the review and consideration of public comments. These revisions are highlighted in yellow to distinguish between the text of the rules as proposed in the public notice and the text of the final rules adopted by the Council. These revisions were suggested as part of written comments filed with the CRMC, and they are consistent with, and a logical outgrowth of, the rule proposed in the notice.

§ 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” 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

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. The application shall only be granted a variance 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 the RIDEM 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 RIDEM 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) Shoreline protection

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.

REGULATORY ANALYSIS: The proposed amendments will provide more options within § 1.3.1(G) – Structural Shoreline Protection for coastal property owners seeking less burdensome alternative shoreline protection methods. Additional amendments throughout multiple sections of the Red Book will clarify and simplify existing text, remove anachronistic text and provisions, and provide correct citations. The proposed regulations do not impose any new requirements on regulated entities including any small businesses or any city or town; therefore, there is no adverse economic impact. In consideration of the alternatives the CRMC has determined that there is no alternative approach among the alternatives considered that would be as effective and less burdensome to affected private persons as another regulation. In addition, there

are no other state regulations which are overlapped or duplicated by the proposed regulation.

The CRMC has determined that the benefits of the proposed rule justify the costs of the proposed rule, and that the proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner and with greater net benefits than other regulatory alternatives.