

From: [James Boyd](#)
To: ["Ballou, Robert \(DEM\)"](#)
Cc: ["Gagnon, Ron \(DEM\)"](#); ["Liberti, Angelo \(DEM\)"](#); ["Jeff Willis"](#); ["James Boyd"](#)
Subject: RE: Proposed Amendments to Red Book - Shoreline Protection
Date: Monday, March 09, 2020 10:13:07 AM

Hi Bob,

Thanks for your comments. I've reviewed them thoroughly and integrated your suggested changes in the draft with the exception of the following:

§ 1.3.1(G)(1)(c) Replace "to vertical steel" with "over vertical steel"
[We did not modify, as it is preferable to use "to" rather than "over" when the preposition precedes a noun and 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)
[We intentionally did not add a similar section for hybrid structures because they will erode in storm events and provide sand to the beach, where as fully hardened structures \(e.g., revetments, bulkheads, etc.\) do not, and are more permanent and will result in frontal beach erosion and loss. We also have tried to make the hybrid structure permitting procedures less onerous to promote their use over structural shoreline protection.](#)

§ 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.
[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\(G\).](#)

Thanks again for your review and comments.

Jim

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From: Ballou, Robert (DEM) [<mailto:robert.ballou@dem.ri.gov>]
Sent: Friday, March 06, 2020 1:59 PM
To: James Boyd (jboyd@crmc.ri.gov)
Cc: Gagnon, Ron (DEM); Liberti, Angelo (DEM)
Subject: Proposed Amendments to Red Book - Shoreline Protection

Hi Jim –

As I noted at the last Council meeting, I reviewed the proposed amendments to the Red Book. They look great, and reflect a lot of hard work. Congrats.

I picked up on just a few, minor tweaks that might help improve the final filing. I offer them on

behalf of DEM, but they do not emanate from any sort of coordinated intra-Department review. They are just my suggested edits. Consider them for what they may be worth.

I will list them in order of the page numbers in the Council packet from the 22/25 meeting.

P.6 – Section 1.1.3(A)(5) In first sentence, insert “of” after “character”

P.8 – Section 1.1.7 Replace “desiring” with “requiring” (not sure about this; offered only for the purpose of consistency with change made on P7 Section 1.1.6(E)(4), if such consistency is the intent)

P.14 – Section 1.3.1(F)(4)(l) Last word in second to last sentence, replace “manual” with “rules”

P.15 – Section 1.3.1(F)(4)(m) In last sentence “the most recent version of the RIDEM Rhode Island Stormwater Design and Installation Standards Manual” with “Stormwater Management, Design and Installation Rules (250-RICR-150-10-8)”

P.15 – Section 1.3.1(G)(1)(c) Replace “to vertical steel” with “over vertical steel”

P. 17 – Section 1.3.1(G)(4)(a) Consider adding additional subsection (7) that would be identical to Section 1.3.1(G)(4)(b)(8) on P.18

P.19 – Section 1.3.1(G)(5)(c) In second sentence, add “than” after “(i.e., fetch less”

P.22 – Section 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.

Hope these suggestions are helpful.

Thanks,
Bob

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March 12, 2019

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PROPOSED AMENDMENT

Title of Rule: Red Book (650-RICR-20-001-1)

Rule Identifier: 650-RICR-20-00-1

Save The Bay submits the following comments for your consideration. The comments set forth below, through suggested revisions, are intended to clarify provisions and terms used within the Coastal Resources Management Program.

Comments:

§ 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.

§ 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.

§ 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.

Because the term “water enhanced” is used within the regulations, the meaning should be clarified by including a definition.

§ 1.1.1(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.

§ 1.1.2(A)(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 ~~reduce control~~ 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.

1.1.6 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.

§ 1.1.14(C)(3) Post Hurricane and Storm Permitting Procedures

1. It shall be the policy of the Council to establish emergency regulations in accordance with the Administrative Procedures Act ~~procedures~~ for the issuance of assents in the event of the following:
 3. b. Reconstruction of all ~~residential and associated residential structures, commercial and recreational structures in both A zone and V zone that incurred “substantial damage” were destroyed 50% or more by~~ from storm induced flood, wave and wind damage as determined by CRMC staff.
4. During a ~~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 recognizes that a major hurricane or

Commented [KB1]: § 42-35-2.10. Emergency rule.

If an agency finds that an imminent peril to the public health, safety, or welfare or the loss of federal funding for an agency program requires the immediate promulgation of an emergency rule and publishes in a record with the secretary of state and on its agency website reasons for that finding, the agency, without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable, may promulgate an emergency rule without complying with §§ 42-35-2.7 through 42-35-2.9. The agency head and the governor, or the governor’s designee, must sign the emergency rule to become effective. The emergency rule may be effective for not longer than one hundred twenty (120) days, renewable once for a period not exceeding sixty (60) days. The promulgation of an emergency rule does not preclude the promulgation of a rule under §§ 42-35-2.6 through 42-35-2.9. The agency shall file with the secretary of state a rule created under this section as soon as practicable given the nature of the emergency and publish the rule on its agency website. The secretary of state shall notify persons that have requested notice of rules related to that subject matter.

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, the Council shall review 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 (as set forth in Section C.3 above) by storm induced flooding, wave or wind damage;

3. The Council may impose a temporary moratorium through an emergency rule in accordance with the procedures set forth in § 42-35-2.10. ~~to remain in effect for a maximum of thirty (30) days from the disaster declaration, but may be extended for good cause shown.~~ 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:

~~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.~~

Commented [KB2]: Why not follow the APA and get 120 days?

Commented [3]: Follow the emergency regulation process

§ 1.3.1(G)(1)(a) The Council prefers nonstructural shoreline protection methods over all other shoreline protection methods for reducing ~~controlling~~ erosion such as stabilization with vegetation and beach nourishment due to their effectiveness in preserving beaches, natural shoreline habitats and sediment dynamics.

b. If nonstructural shoreline protection methods have failed or the applicant can demonstrate that the nonstructural shoreline protection methods are not appropriate for the site, ~~In most cases~~ the Council prefers hybrid shoreline protection methods over structural shoreline protection methods due to their effectiveness in preserving beaches, natural shoreline habitats and sediment dynamics as compared to structural shoreline protection.

§ 1.3.1(G)(3)(d) Shoreline protection facilities ~~are~~ is prohibited when proposed to be used to regain property lost through historical erosion or storm events. Limited amounts of fill associated with intertidal sills are permitted, as part of a marsh creation, enhancement or restoration project provided the project does not create new upland.

§ 1.3.1(G)(3)(e) The construction of new seawalls and bulkheads is prohibited, except for shorelines bordering Types 3, 5 and 6 waters where the proposed seawall or bulkhead directly serves a water-dependent use, ~~or where an applicant demonstrates to the satisfaction of the CRMC that there is no technically feasible alternative.~~

The language proposed for removal leaves a loophole for bulkheads and seawalls where the intent is to limit their application. In addition, it is unnecessary given that revetments are not included in this prohibition and there is the ability to request a special exception for projects with a compelling public purpose.

§ 1.3.1(G)(4)(a) Add two additional paragraphs as set forth below.

“(7) Describe all likely impacts that the new hybrid shoreline protection may have on the continued public lateral beach access. If lateral public access will be impacted, a lateral public access plan shall be provided, except where preempted by federal law (e.g., U.S. Coast Guard Maritime Security (MARSEC)).

(8) Assent conditions ~~provisions~~ / stipulations or bonding requirements shall require ~~to the removal of structural elements or intertidal sills in the event of failure.~~

§ 1.3.1(G)(4)(b)(1) An erosion hazard exists due to natural erosion processes and the proposed structural shoreline protection has a reasonable probability of ~~reducing~~controlling this erosion problem;

§ 1.3.1(G)(6)(g) In low energy environments, all maintenance and repair plans for shoreline protection shall be to scale, show property boundaries at the shoreline, provide a reasonable depiction of the mean high water mark and all coastal features, including the shoreline protection structure to be repaired. The plans must also provide an accurate depiction of the work proposed to include a plan view with cross-sections. ~~In certain cases the CRMC Executive Director may require~~ All plans the submitted ~~ssion of plans shall be~~ certified by a RI-registered professional engineer.

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. In cases where the Council determines that SAV may be altered or grants a special exception to a prohibition listed in § 1.3.1(R)(2) of this Part, the Council shall require the mitigation of all impacts to SAV. Such activities requiring mitigation include, but are not limited to, marina

expansions, dredging, filling in tidal waters, construction of commercial docks and/or structures and any other activity determined by CRMC that has not avoided impacts to SAV.

R. Submerged aquatic vegetation and aquatic habitats of particular concern

1. Policies

a. The Council's goal is to preserve, protect and where possible, restore SAV habitat. In cases where the Council determines that SAV may be altered or grants a special exception to a prohibition listed in § 1.3.1(R)(2) of this Part, the Council shall require the mitigation of all impacts to SAV. Such activities requiring mitigation include, but are not limited to, marina expansions, dredging, filling in tidal waters, construction of commercial docks and/or structures and any other activity determined by CRMC that has not ~~significantly or appropriately~~ avoided impacts to SAV. Permanently lost or ~~significantly~~ altered SAV shall be mitigated ~~replaced~~ through the ~~restoration of an historical SAV habitat or the creation of a new SAV habitat at a site approved by the Council.~~ mitigation approved by the Executive Director that improves water quality and/or habitat in the vicinity of the site. Mitigation may include experimental efforts such as installation and monitoring of conservation moorings, balls and monitoring in accordance with the guidelines established by experts in SAV and habitat restoration appointed by the Director. ~~The ratio of restoration to loss shall be 2:1.~~ E

b. 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 impose a heightened burden on the applicant to avoid impacts ~~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 utilize floating racks and bottom culture techniques, can shade SAV. However, shellfish aquaculture is acknowledged to improve water quality. Therefore, in cases where an aquaculture permit has been issued where SAV was not present and then due to improved water quality as a result of aquaculture operations, SAV subsequently colonizes within the permitted facility area, the leaseholder shall be considered ~~grandfathered and~~

Commented [KB4]: This needs to be changed to clarify all impacts must be avoided. Mitigation must not require planting of SAV since eelgrass transplants have not been successful in Narragansett Bay or the salt ponds over the last 2 decades by multiple partners including Save The Bay, URI and EPA. CRMC needs to come up with a mitigation options in the regulations now with conservation moorings or water quality improvements via stormwater infiltration. The new mitigation language can be revised later but it is important to ensure transplants are not recognized as a mitigation technique now and that mitigation provides some benefit for water quality and habitat.

Commented [KB5]: Recommend to change this section and have specific guidelines developed before the regs are finalized.

| ~~not subject to the standards/requirements of this section.~~ Future proposed expansions shall be subject to review under this section.