

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

COASTAL RESOURCES MANAGEMENT COUNCIL

Title of Rule: Red Book (650-RICR-20-00-1)

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

Rulemaking Action: Proposed Amendment

Important Dates:

Date of Public Notice: 02/11/2020

Hearing Date: 02/25/2020

End of Public Comment: 03/13/2020

Authority for this Rulemaking:

R.I. Gen. Laws Chapter 46-23 et seq.

Coastal Zone Management Act 16 U.S.C. §§ 1451 through 1464

Summary of Rulemaking Action:

The CRMC proposes to amend 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, provide better clarity and specificity regarding policies and standards, and other proposed changes to correct text and citations as summarized below.

Brief summary of proposed amendments to 650-RICR-20-00-1

1. Amend § 1.1.2(A)(3) to simplify the definition of "agriculture" consistent with state law;
2. Delete § 1.1.2(A)(8) as definition of "anadromous" is not needed;
3. Amend § 1.1.2(A)(62) to clarify the definition of "filling" to include any source of materials;
4. Add new § 1.1.2(A)(74) for definition of hybrid shoreline protection;
5. Add new § 1.1.2(A)(81) for definition of longshore current;
6. Amend renumbered § 1.1.2(A)(83) to modify definition of maintenance of structures;
7. Amend renumbered § 1.1.2(A)(84) to simplify the definition of "manmade shoreline" to include permitted or unauthorized alterations;
8. Add new § 1.1.2(A)(96) for "native plants" or "native vegetation";
9. Add new § 1.1.2(A)(97) for "nonstructural shoreline protection";

10. Amend renumbered § 1.1.2(A)(131) to further define "riprap" to exclude concrete debris and include a maximum slope when used to create a revetment.
11. Amend renumbered § 1.1.2(A)(138) to further define what constitutes a "seawall" and to include gabions as an acceptable construction element.
12. Amend renumbered § 1.1.2(A)(155) to redefine structural shoreline protection and include toe protection.
13. Amend § 1.1.3(A)(5) to further specify exemption consistent with state law;
14. Add new § 1.1.3(C)(5) to specify that applicants need to obtain all other permits unless preempted by federal law or the Council waives the requirement (this is an existing requirement within this Part);
15. Amend § 1.1.3(D)(2) to delete unnecessary text;
16. Amend § 1.1.5(A) water type matrix for Type 2 waters changing from "B" to "P" for "structural shoreline protection" consistent with existing prohibition for alterations to beaches adjacent to Type 1 and 2 waters in § 1.2.2(A)(2)(c);
17. Amend § 1.1.5(D) to specify that existing Figure 1 depicts the 2011 geographic location description (GLD);
18. Amend §§ 1.1.6(E)(2), (3) and (4) to specify that the Executive Director determines, rather than verifies, whether variance criteria have been met and variances are required, not desired by applicants;
19. Amend § 1.1.6(F)(2) to add more specificity for public notice requirements;
20. Amend § 1.1.6(I)(2)(d) to further specify the coastal hazard analysis threshold for expansions within a minimum setback;
21. Amend § 1.1.7(A) to simplify variance requirement language;
22. Amend § 1.1.8(A)(1)(b) to specify that a water-dependent activity or use, which serves a compelling public purpose may qualify for a special exception;
23. Amend § 1.1.8(B) to specify that the Council issue a written decision for special exceptions;
24. Amend § 1.1.9(B)(1) to specify that water dependent uses as well as activities may be exempted from setback requirements;
25. Add new § 1.1.9(B)(6) to require setbacks consistent with § 1.3.1(G)(1)(e);
26. Amend § 1.1.13(C) to limit criteria for hearing officer consideration in determining administrative penalties;
27. Amend § 1.1.14 (B)(1) to specify that only the Executive Director may grant an emergency assent in certain circumstances;
28. Amend § 1.1.14 (B)(2) to specify that finds shall be documented and made available as a public record;
29. Amend § 1.1.14 (C)(3) to specify that temporary moratoriums be changed from 30 to 90 days, and extension as warranted, to allow sufficient time for damage assessments;
30. Amend § 1.1.14 (C)(4) for technical correction to language;
31. Amend § 1.2.2(A)(1)(d)(13) to specify that every vehicle operated on a beach be four-wheel drive;
32. Amend §§ 1.2.2(C)(2)(b), (c) and (e) to correct for citation errors;
33. Amend § 1.2.2(F)(1)(a) to include the fact that manmade shorelines prevent the migration of coastal habitats;

34. Amend §§ 1.3.1(D)(11) and (12) to relocate existing Table 8 (minimum design standards) for residential docks into the proper subsection;
35. Amend §§ 1.3.1(F)(4)(b), (f), (h), (j), (l) and (m) to correct for proper references to state stormwater management rules and guidance;
36. Amend § 1.3.1(G) in its entirety to add new policies, prerequisites, prohibitions and standards for new options for alternative hybrid and non-structural shoreline protection measures;
37. Amend § 1.3.1(H)(3)(a) to delete superfluous text and reference certified verification agent definition within the Part;
38. Amend § 1.3.1(J)(1)(e) to add specificity to variance requirement;
39. Amend § 1.3.1(K)(5)(a)(1) to include removal of gear in cases of aquaculture permit revocation or termination;
40. Amend § 1.3.1(P)(4)(a) to specify that boat/float lifts can only be authorized as an accessory structure to a fixed pier or bulkhead and to increase the minimum elevation standard from 3 to 5 feet above the high tide level;
41. Amend § 1.3.2(A)(2) to delete the term "anadromous" so that fish runs apply to all diadromous species; and
42. Other minor technical corrections as shown within the track changes.

Additional Information and Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until March 13, 2020 by contacting the appropriate party at the address listed below:

James Boyd
Coastal Resources Management Council
Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
jboyd@crmc.ri.gov

Public Hearing:

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on February 25, 2020 at 6:00 pm at Administration Building, Conference Room A, One Capital Hill, Providence, RI 02908 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-783-3370 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Regulatory Analysis Summary and Supporting Documentation:

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.

For full regulatory analysis or supporting documentation see agency contact person above.