

**COASTAL RESOURCES
MANAGEMENT COUNCIL**

**SEMI-MONTHLY
MEETING**

TUESDAY, SEPTEMBER 25, 2018

6:00 P.M.

AGENDA



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767

AGENDA

Semi-Monthly Meeting – Full Council
Tuesday, September 25, 2018; 6:00 p.m.
Administration Building; Conference Room A
One Capitol Hill, Providence, RI 02908

Approval of the minutes of the previous meeting – August 28, 2018 and September 11, 2018
Subcommittee Reports
Staff Reports

ENFORCEMENT CASE BEFORE THE COUNCIL FOR ORDER TO RESTORE:

2017-047 BUZ & CYNTHIA GARDINER – Restoration of unauthorized alteration of the buffer zone and wetland on your property located at Plat N-R, Lots 1229,1230, 120 Allagash Trail, Narragansett without benefit of a CRMC assent.

PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE COASTAL RESOURCES MANAGEMENT PROGRAM:

Summary of Rulemaking Action:

The purpose of this proposed rule is to amend and consolidate the current Red Book [650-RICR-20-00-1] with existing requirements and standards of the CRMC “Guidelines for the Development of Municipal Harbor Management Plans” [ERLID #5719] and incorporate desirable elements of the CRMC’s “Energy Amendments” [ERLID #1060]. The CRMC will concurrently repeal those rules [ERLIDs #1060 and 5719]. Additionally, a number of amendments are proposed as listed below.

- 1 Correct definition at §1.1.2(A)(1) to more accurately define CRMC jurisdiction for certain activities in accordance with R.I. Gen. Laws §46-23-6. No change in status quo of regulations.
2. Add new definitions in §1.1.2(A) for (10) “approved waters”; (144) “seed”; (148) “shellfish stock”; (153) “spat”; (154) “spat collection”; (171) “upweller”; and (180) “wild stock” for consistency with amended aquaculture rules in §1.3.1(K). The amendments clarify previously agreed upon responsibilities and duties between the DEM and CRMC via codification of long-standing, existing practices; no new requirements. No change in status quo of regulations.
3. Add new definitions in § 1.1.2(A) for (9) “approved harbor management plan”; (17) “boat”; (38) “corner buoys”; (74) “global positioning system”; (76) “harbor commission”; (77) “harbormaster”; (97) “moor”; (98) “mooring”; (99) “mooring area”; (133) “RI state plane coordinate system of 1983”; and (173) “vessel” for consistency with amended municipal harbor regulations in §1.3.1(O). No change in status quo of regulations; §1.3.1(O) amendments are consistent with existing CRMC guidance and long-standing practice.

4. Modify definition at §1.1.2(A)(12) to accurately define the term "Areas of historic and archaeological significance" in accordance with R.I. Gen. Laws §45-22.2-4(12). No change in status quo of regulations.
5. Add new definition at §1.1.2(A)(24) for "certified verification agent" as referenced in amended §1.3.1(H).
6. Add new definition at §1.1.2(A)(35) for "commercial marine facility" for consistency with existing fitness of purpose requirements in amended §1.3.1(C). No change in status quo of regulations.
7. Modify definition §1.1.2(A)(54) for "energy-related activities" to include construction of such facilities and to apply to the entirety of the CRMC's jurisdiction as authorized in accordance with R.I. Gen. Laws §46-23-6.
8. Modify definition §1.1.2(A)(54) for "freshwater wetland" as defined by R.I. Gen. Laws §2-1-20(8) and modified in 2015. No change in status quo of regulations.
9. Modify definition §1.1.2(A)(80) for "house boat" as defined by R.I. Gen. Laws §46-22-9.1. No change in status quo of regulations.
10. Modify definition §1.1.2(A)(106) for "one-hundred-year flood level" for consistency with modern terminology and change in federal agency assignment. No change in status quo of regulations.
11. Modify definition §1.1.2(A)(111) for "outhaul" to clarify that outhauls are indeed a recreational boating facility as defined in § 1.1.2(A)(127) and long-standing CRMC practice. No change in status quo of regulations.
12. Modify definition §1.1.2(A)(127) for "recreational boating facility" to specifically include outhauls, which are recreational boating facilities. No change in status quo of regulations.
13. Modify definition §1.1.2(A)(129) for "residential boating facility" to better clarify eligible facilities. No change in status quo of regulations.
14. Modify definition §1.1.2(A)(130) to more accurately define "residential building." No change in status quo of regulations.
15. Modify definition §1.1.2(A)(146) to accurately define "sewage" pursuant to R.I. Gen. Laws §46-12-1(21). No change in status quo of regulations.
16. Modify definition §1.1.2(A)(161) to define "subdivision" in accordance with R.I. Gen. Laws §45-23-32(52). No change in status quo of regulations.
17. Add requirements for applicants in §1.1.3 (originally in Red Book introduction section). No change in status quo of regulations.
18. Add "dunes" to §1.1.4(A)(4) to correctly list all CRMC shoreline features. No change in status quo of regulations.

19. Amend §1.1.4(B) to correct the CRMC categories and activities in accordance with R.I. Gen. Laws §46-23-6. No change in status quo of regulations.
20. Amend §1.1.4(C)(1) to accurately specify which CRMC SAMPs are critical coastal areas and the activities subject to CRMC jurisdiction within those SAMPs. No change in status quo of regulations.
21. Modify §1.1.4(D) for consistency with CRMC freshwater wetlands in the vicinity of the coast. No change in status quo of regulations.
22. Amend matrices for water types 1-6 to modify the definition of “recreational mooring areas” in §1.1.5 to cover all mooring areas, not just recreational mooring areas. No change in status quo of regulations.
23. Add new §1.1.6(I) for coastal hazard analysis application requirements. Amendment driven by new Council adopted Shoreline Change (beach) SAMP guidance document. While applicants will be required to use the CRMC online tools, it will not add additional cost to the application. The resulting analysis will be informative for the applicant and will not be used to approve or deny a project.
24. Add new §1.1.9(D) for setback requirements involving demolition to be consistent with existing requirement in §1.1.11 of this Part. No change in status quo of regulations.
25. Amend §1.1.10(A)(4) to incorporate 2017 NOAA sea level rise scenario and replace outdated 2012 data. No change in status quo of regulations.
26. Amend §1.1.11(B) to incorporated buffer policies from findings. No change in status quo of regulations.
27. Amend §1.1.11(D) to incorporate long-standing buffer management standards from the CRMC buffer zone management guidance document. No change in status quo of regulations.
28. Add new §1.1.11(E) to incorporate long-standing buffer pathway prohibition consistent with CRMC buffer zone management guidance document. No change in status quo of regulations.
29. Amend §1.1.12(E)(1) to eliminate transient aquaculture gear lease fees (no longer acceptable method). No change in status quo of regulations.
30. Amend §1.2.2(C)(1)(a) to add contiguous freshwater wetlands protected under the program consistent with existing definition. No change in status quo of regulations.
31. Amend §1.2.2(D)(1)(a) to add coastal bluff policy from findings. No change in status quo of regulations.
32. Amend §1.2.2(F)(1)(a) and (e) to add manmade shoreline policy from findings. No change in status quo of regulations.
33. Amend §1.2.2(G)(1)(a), (b) and (d) to add dune policy from definition and findings. No change in status quo of regulations.

34. Amend §1.3.1(A)(1) to make Category B application requirements of the Red Book necessary data and information (NDI) as part of federal consistency reviews. The amendment clarifies existing requirements for federal consistency applicants (federal consistency applicants do not pay an application fee); no change in status quo of regulations.
35. Amend §1.3.1(B)(1)(a) to exempt agricultural practices under this subpart consistent with the definition moved to § 1.1.2. No change in status quo of regulations.
36. Add new §1.3.1(C)(4)(b) to codify existing practice of fitness of purpose analysis for commercial marine facilities consistent with CRMC guidance document and in accordance with R.I. Gen. Laws §46-23-6(4)(vi). No change in status quo of regulations, as amendment is consistent with CRMC guidance document and in accordance with R.I. Gen. Laws §46-23-6(4)(vi).
37. Amend §1.3.1(D)(3)(h) to address previously authorized docks. Further clarification of existing rules from Pre-existing Residential Boating Facilities Program (now repealed as part of Red Book consolidation). No change in status quo of regulations.
38. Amend §1.3.1(D)(7)(b) to address docks in Type 1 waters. Further clarification of existing rules from Pre-existing Residential Boating Facilities Program (now repealed as part of Red Book consolidation). No change in status quo of regulations.
39. Add new §1.3.1(F)(1)(h) to address maximum extent practicable standards found in the definition “maximum extent practicable” (now in §1.1.2). This portion of definition is policy. No change in status quo of regulations.
40. Amend §1.3.1(F)(4)(b) to delete anachronistic text. No change in status quo of regulations.
41. Amend §1.3.1(H) to incorporate desirable elements of the CRMP’s Energy Amendments (adopted in 1978, formerly §600 of the CRMP) and requirement for certified verification agent (as already required by 650-RICR-20-05-11) for energy-related facilities. See cost/benefit analysis.
42. Amend §1.3.1(I) to address upland and in-water dredge material disposal. Add new standards in 1.3.1(I)(5)(d) for disposal within CAD cells. No change in status quo of regulations, as dredge operators already follow long-standing CRMC guidance and permit conditions.
43. Amend §1.3.1(J) to add filling in tidal water policies previously in definition. No change in status quo of regulations.
44. Amend §1.3.1(K) for consistency of current practices and policies for aquaculture by CRMC and DEM. Clarification of responsibilities and duties between the state regulatory agencies; no new requirements. No change in status quo of regulations.
45. Amend §1.3.1(N) to add requirement for inspection and analysis consistent with CRMC “Guidelines for Fitness of Purpose Investigations and Certifications” if maintenance history indicates is necessary. No change in status quo of regulations, as amendments are consistent with CRMC guidance document and in accordance with R.I. Gen. Laws §46-23-6(4)(vi).

46. Amend §1.3.1(O) to integrate regulatory elements of the CRMC “Guidelines for the Development of Municipal Harbor Management Plans.” No change in status quo of regulations as amendments codify long standing CRMC practice and are consistent with existing CRMC guidance.
47. Amend §1.3.1(Q) to add wetland walkover policy from findings. No change in status quo of regulations.
48. Amend §1.3.1(R) to add submerged aquatic vegetation policy from findings. No change in status quo of regulations.
49. Amend §1.3.3 for consistency with R.I. Gen. Laws §46-23-6. No change in status quo of regulations.
50. Amend §1.3.4 to add critical coastal areas policy from findings. No change in status quo of regulations.
51. Amend §1.3.5 to change guidelines to polices. No change in status quo of regulations.
52. Amend §1.3.6 to add important public access policy from findings. No change in status quo of regulations.
53. Add new §1.5 Public and Government Participation, which is an existing section of the CRMP and formerly known as CRMP §700 to be consolidated with the Red Book. No change in status quo of regulations.
54. Amend §1.6(R) for Bristol water type map change. No change in status quo of regulations as water type change is more permissible and affects only RWU property, as requested by the University.
55. Amend §1.7 to add nine (9) new Block Island shoreline change maps. No change in status quo of regulations, as changes only add more precise erosion rates for more predictable application process and permitting efficiency.

EXECUTIVE SESSION § 42-46-5(2) – Potential Litigation, Ocean SAMP

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

ENFORCEMENT REPORT

RE: CRMC Enforcement File 17-0147

LOCATION: Plat N-R, Lots 1229 and 1230, Allagash Trail, Narragansett

OWNERS: Buz Gardiner, Lot 1229
Cynthia Gardiner, Lot 1230

FILE SUMMARY

- On June 24, 1992, CRMC assent 92-6-18 was issued to Buz and Cynthia Gardiner to construct and maintain a 20' x 42' single family dwelling at plat N-R, lot 1229. The assent required a 15' buffer zone off of the freshwater wetland.
- On December 5, 2017, CRMC Cease and Desist Order was issued to Buz and Cynthia Gardiner for alteration of the buffer zone and wetland on lots 1229 and 1230. In response to the Cease and Desist Order Mr. Gardiner contacted enforcement staff on December 12, 2017 and was advised that the site required restoration.
- After several deadline extensions for restoration plan submittal, enforcement staff was notified on July 31st, 2018 by the Gardiners' consultant, NRS, Inc., that the Gardiners had decided not to submit a restoration plan or an application to maintain the site in its current, unauthorized condition.

RECOMMENDATIONS

- Enforcement staff recommends that the Council issue an Order to Restore that requires the Gardiners to submit an acceptable restoration plan by October 12, 2018 and to restore the buffer zone and wetland in their entirety by October 31, 2018. Any request for an extension of the restoration deadline must be received in writing no later than October 24, 2018. An extension of the restoration deadline until May 15, 2019 may be granted at the discretion of the executive director for cause.
- Enforcement staff recommends that the Gardiners be required to submit an application by October 12, 2018 to address the deck and driveway which are currently inconsistent with CRMC assent 92-6-18.
- Enforcement staff recommends that a \$500 per diem fine be assessed for lots 1229 and 1230, individually, for each day of noncompliance with the Order to Restore.

ATTACHMENTS

- A. CRMC Assent 92-6-18 dated June 24, 1992
- B. CRMC Preliminary Determination 2017-10-095
- C. CRMC Cease and Desist Order 17-0147 dated December 5, 2017

- D. CRMC Notice of Administrative Fine issued to Cynthia Gardiner dated August 3, 2018
- E. CRMC Notice of Administrative Fine issued to Buz Gardiner dated August 3, 2018
- F. Plan submitted in association with Preliminary Determination application 2017-10-095
- G. Draft Site Restoration Graphic, prepared by Natural Resource Services, Inc. and submitted by email on June 25, 2018
- H. Email received by Laura Miguel from Scott Rabideau, Natural Resources Services, Inc. on July 31, 2018

PHOTOS

- 1. Photo of site taken December 4, 2017 by Laura Miguel
- 2. Photo of site taken August 22, 2018 by Laura Miguel
- 3. Photo of site taken August 22, 2018 by Laura Miguel

BACKGROUND

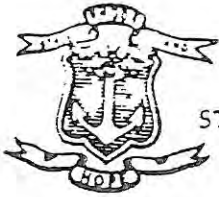
Permit History:

- 1990-12-049 Sewer line extension issued February 18, 1991
- 92-0493D DEM FWW permit for new residence
- 1992-06-18 Single family dwelling
- 2017-10-095 Preliminary Determination for dwelling addition

Enforcement Chronology:

- 12/4/17 Site visit to plat N-R, lots 1229 and 1230 following staff referral.
- 12/5/17 Cease and Desist Order 17-0147 issued to Buz and Cynthia Gardiner
- 12/12/17 Phone call from Buz Gardiner to Laura Miguel. Mr. Gardiner explains he is out of State and agrees to contact enforcement staff by February 1, 2018.
- 3/7/18 Correspondence sent by Laura Miguel to Buz and Cynthia Gardiner requiring restoration plan by April 15, 2018.
- 3/15/18 Laura Miguel is contacted by Scott Rabideau, NRS, Inc. who indicates he will be assisting the Gardiners.
- 4/16/18 Email sent to Scott Rabideau requesting status. Mr. Rabideau replied that he was at a conference and would provide a timeline the following week.
- 5/2/18 Email sent to Scott Rabideau requesting status. Mr. Rabideau replied that he would submit something in 5 days.
- 6/7/18 Email sent to Scott Rabideau requesting status.
- 6/14/18 Correspondence sent to Buz and Cynthia Gardiner indicating that the matter will be referred to the Council if a restoration plan or complete application are not received by June 28, 2018.
- 6/25/18 Email received from Scott Rabideau with plan overlaying approved conditions on existing conditions. Email lays out general approach proposed to resolving violation. Deadline extended until July 31, 2018 for complete restoration plan and/or application.
- 7/31/18 Email received from Scott Rabideau indicating that Buz Gardiner had directed him to not pursue an application or restoration plan.
- 8/3/18 Notice of Administrative Fine issued to Cynthia Gardiner, owner of lot 1230.
Notice of Administrative Fine issued to Buz Gardiner, owner of lot 1229.
- 8/7/18 Notice of Enforcement Action sent to Buz and Cynthia Gardiner.

ATTACHMENTS



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

Oliver H. Stedman Government Center
Tower Hill Road
Wake Field, R.I. 02879

CORRECTED ASSENT

June 24, 1992

Buz and Cynthia Gardiner
20 Hilton Drive
Johnston, RI 02919

RE: CRMC Administrative Assent 92-6-18 -- Construct and maintain a 20' x 42' single family dwelling to be serviced by municipal sewer and water. Located at plat "N-P", lot 1229; Allagash Trail, Narragansett, RI.

Dear Mr. and Mrs. Gardiner:

A site inspection and review of plans submitted to this office for the above cited project indicates it will have no adverse effect on the plan and program adopted by the Coastal Resources Management Council.

The Coastal Resources Management Council will interpose no objection to the work proposed, as long as all work is done in accordance with plans submitted into this office and provided the following stipulations are adhered to.

ADDITIONAL STIPULATIONS

General Stipulations

- A. This assent shall be recorded in the land evidence records in its entirety the Town of Narragansett within thirty (30) days of the date of assent issuance. Certification by the Town Clerk's office that this stipulation has been complied with shall be furnished to Coastal Resources Management Council within fifteen (15) days thereafter. Failure to comply with provision will render this assent null and void.
- B. For the purpose of this permit, the coastal feature shall be coastal wetland and contiguous freshwater wetland; and the inland edge of the coastal feature shall be inland edge of wetland.
- C. The approved site plan(s) shall be those entitled "Proposed new residence for Mr. and Mrs. Buz Gardiner.", Allagash Trail - Narragansett, RI dated August, 1991, by Pezza Engineering. Except/unless as stipulated/modified herein, all details and specifications thereon shall be strictly adhered to. Any and all changes require written approval from this office.

- D. All stipulations put forth by DEM's Freshwater Wetlands shall be adhered to as condition of this CRMC assent. Any CRMC approval is null and void for construction outside of Freshwater Wetland's conditions and area of approval.
- E. Vegetation on the wetland shall remain in an undisturbed condition.
- F. No alterations (vegetative or otherwise) or activities are allowed on the coastal feature(s) or in the waterway adjacent to the site.
- G. All driveway and parking areas shall have a permeable pavement and subbase consisting of gravel, crushed stone, shells, or similar highly permeable material.
- H. All runoff of surface water into the stipulated buffer zone shall be maintained as sheet flow. No concentrated sources of runoff flow (such as pipes or swales) shall be directed into the buffer zone.
- I. This structure shall be connected to and serviced by municipal sewers.

Earthwork Stipulations

- J. The standards and specifications set forth in the most recent RI Soil Erosion and Sediment Control Handbook (RISESCH) shall be strictly adhered to.
- K. Prior to initiation of any grading, construction, or earthwork activity, a line of staked haybales and/or silt fence (Ref. RISESCH Standard "ST") shall be placed along the Northern and Eastern perimeter of the proposed area of construction or within 140 feet of the inland edge of the coastal feature. (This line shall not be located on a coastal feature nor within a stipulated buffer zone.) Bales shall be "toed in" 4 inches to prevent the underwash of sediments. This line shall be maintained by the replacement of bales as needed and by the proper upland disposal of accumulated sediments. This line shall be effectively maintained until permanent site revegetation is established. No soils nor any other materials shall be allowed to enter beyond this line, neither temporarily nor permanently.
- L. All catch basins and drains in the area, into which sediment laden waters may flow shall be ringed with haybales (toed in 4 inches and staked), or protected per Standard "SD" of the RISESCH. These controls shall be properly maintained by timely removal of accumulated sediment and replacement of bales as needed.
- K. All discharges which result from dewatering operations, must flow into sediment traps consisting of staked haybale rings enclosing crushed stone to disperse inflow velocity (Ref. RISESCH Standard "FB"). Haybales shall be "toed in" 4 to 6 inches into the ground to prevent underwash of sediments. These devices shall be maintained by removal and proper disposal of accumulated sediments and by replacement of bales and stone as needed. The devices shall not be located on any coastal feature nor in any designated buffer zone. If necessary, a matting device shall be used below the traps. These devices must be completely removed upon completion of dewatering operations.

L. All excess excavated materials, excess soils, excess construction materials, and debris (including all destructed materials) shall be removed from the site and disposed of at an inland landfill or a suitable and legal upland location. No materials shall be deposited on the coastal feature, in coastal waters, or in any areas designated as CRMC setback or buffer zone.

M. All fill materials shall be clean, free of debris and rubble, and free of materials which may cause pollution of surface waters or groundwater.

N. All areas of exposed soil which are disturbed by construction and related activities shall be revegetated as immediately as is physically possible so as to minimize erosion and sedimentation. If the season is not conducive to immediate revegetation, all exposed soils shall be temporarily stabilized with hay mulch or similar material. Soil stabilization methods shall be employed during, as well as after, the construction phase to the maximum extent possible.

O. Excavation and grading shall be limited to the area approved. Excess earthwork beyond that authorized by this assent is not permitted.

Building Stipulations

P. The approved building/architectural plans are those entitled "Proposed new residence for Mr. and Mrs. Buz Gardiner.", Allagash Trail - Narragansett, RI dated August, 1991, by Pezza Engineering. These plans have been reviewed on a limited basis (to determine whether or not they violate any standards or policies of the RICRMP, and the assure that they do not conflict with approved site plans). As per the latest amendment to the RICRMP (Section 300.3G), specific structural review in terms of building code/flood zone construction standards compliance is not performed by this office.

Any and all significant changes to the building plans (size, height, type of foundation, decks, adjacent grading, drains, etc.) requires written approval from this office. For any questions on the level of change requiring review, contact CRMC field staff.

Q. All pertinent requirements of the RI State Building Code as administered by the local building official shall be strictly adhered to.

R. It is the opinion of this office that the site of the proposed dwelling is bordering a 'V' zone (elevation 16') and an 'A' flood zone having a base flood elevation of 15' MSL. Therefore, the requirements of the Rhode Island State Building Code "Construction in Flood Hazard Areas Regulation SBC-8 April 1, 1988" are applicable. Most notably, items in 400.1 A, B, and C, and 400.2 A are applicable.

A copy of this Administrative Assent shall be kept on site during construction.

Buz and Cynthia Gardiner
CRMC Assent Number A92-6-18
June 23, 1992
Page Four

Applicant agrees that as a condition to the granting of this assent, members of the Coastal Resources Management Council or its staff shall have access to his property to make on-site inspections to insure compliance with the assent.

All applicable policies, prohibitions, and standards of the RICRMP shall be upheld.

All local, state or federal ordinances and regulations must be complied with.

Please be advised that all work must be completed within three years of the date of this letter (unless written application requesting an extension is received by CRMC sixty (60) days prior to expiration date).

This Assent is granted with the specific proviso that the construction authorized therein will be maintained in good condition by the owner thereof, his heirs, successors, or assigns for a period of fifty (50) years from the date thereof, after which time this permission shall terminate necessitating either complete removal or a new application.

Permits issued by the CRMC are issued for a finite period of time, confer no property rights, and are valid only with the conditions and stipulations under which they are granted. Permits imply no guarantee of renewal, and may be subject to denial, revocation, or modification.

CAUTION:

The limits of authorized work shall be only for that which was approved by the CRMC. Any activities or alterations which deviate from the approved plans will require a separate application and review. If the information provided to the CRMC for this review is inaccurate or did not reveal all necessary information or data, then this permit may be found to be null and void. Plans for any future alteration of the shoreline or construction or alteration within the 200' zone of CRMC jurisdiction or in coastal waters must be submitted for review to the CRMC prior to commencing such activity.

ATTENTION: ALL STRUCTURES IN THE TIDAL, COASTAL, OR NAVIGABLE WATERS OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS ARE SUBJECT TO:

1. The Superior Property Rights of the State of Rhode Island and Providence Plantations in the Submerged and Submersible Lands of the Coastal, Tidal, and Navigable Waters;
2. The Superior Navigation Servitude of the United States;
3. The Police Powers of the State of Rhode Island and the United States to regulate Structures in the Tidal, Coastal, or Navigable Waters.

Buz and Cynthia Gardiner
CRMC Assent Number A92-6-18
June 23, 1992
Page Five

THE SUBMERGED AND SUBMERSIBLE LANDS OF THE TIDAL, COASTAL, AND NAVIGABLE WATERS OF THE STATE ARE OWNED BY THE STATE AND HELD IN TRUST FOR THE PUBLIC. CONVEYANCE OF THESE LANDS IS ILLEGAL; TITLES PURPORTING TO TRANSFER SUCH LANDS ARE VOID.

ASSENT MAY BE SUBJECT TO STIPULATION "A" CIRCLED BELOW:

A. In accordance with a decision of the Coastal Resources Management Council on October 9, 1973, this Assent is granted with the proviso that it is subject to the imposition of a usage fee to be established by the Coastal Resources Management Council.

The Coastal Resources Management Council wishes to thank you for being given the opportunity to assess and review these plans. If you need additional information, please feel free to contact this office.

Sincerely yours,



Grover J. Fugate, Executive Director
Coastal Resources Management Council

GJF/lam

REVISED LIMITS OF DISTURBANCE AND LINE OF STAKED HAYBALS AS PER RI DEM DIVISION OF FRESHWATER WORKS JANUARY 7, 1992.

LOT # 1230

15' BUFFER LINE & LIMIT OF DISTURBANCE

LIMIT OF DISTURBANCE LINE

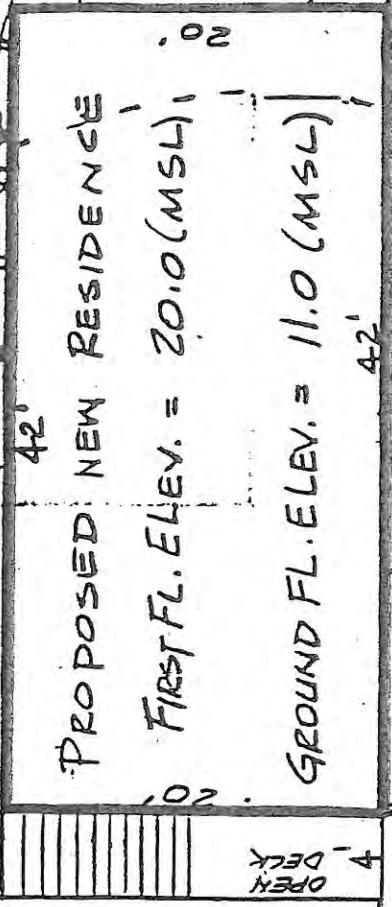
TREE PLANTING ID LINE NOTES

NOTE: LOT TOTALLY WOODED

PROPOSED NEW RESIDENCE

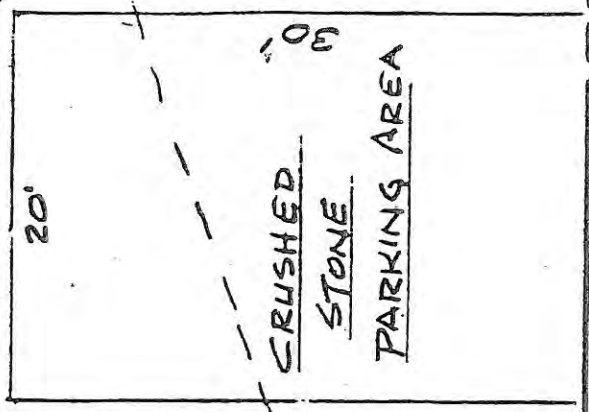
FIRST FL. ELEV. = 20.0 (MSL)

GROUND FL. ELEV. = 11.0 (MSL)



14' OPEN DECK

4' OPEN DECK



CRUSHED STONE PARKING AREA

NEW LOAMED & GRASSED AREAS

101.45'



ALLIAGASH TRAIL

OSWEGO

RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL
REPORT OF FINDINGS -- PRELIMINARY DETERMINATION

STATEMENT OF LIMITATIONS

The contents of this staff determination report shall be valid only for the period on and preceding the date of this report. This report is neither an approval nor denial of the subject proposal. It is an evaluation of CRMC regulations in effect as of November 27 2017 as they pertain to the below stated proposal, including preliminary staff recommendations.

Modifications to the below stated proposal may, upon the discretion of the CRMC, render this determination null and void.

APPLICANT INFORMATION

NAME: **Buz & Cynthia Gardiner** CRMC FILE NO. D2017-10-095
LOCATION/POLE: 120 Allagash Trail
CITY/TOWN: Narragansett PLAT: N-R LOT: 1229,1230

CONTACT PERSON(S) & ADDRESS:

Buz & Cynthia Gardiner David D'Amico PE
120 Allagash Trail 2080 Mineral Spring Ave
Narragansett, RI 02879 North Providence RI 02911

Brian Harrington
CRMC Enforcement
4808 Tower Hill Rd
Wakefield RI 02879

PRELIMINARY REVIEW INFORMATION

PROPOSAL: Addition to existing dwelling

PLAN(S) REVIEWED: "Proposed Home Addition 120 Allagash Trail..." dated Sept 2017 by D'Amico Engineering Technology, Inc.

<u>INVESTIGATOR</u>	<u>DATE</u>	<u>TIME</u>
Amy Silva	11/22/17	9:30
	11/27/17	10:00

MEASUREMENTS & OBSERVATIONS: general observations

PREVIOUS CRMC ACTIONS FOR SITE:

- 1990-12-049: Gardiner; Sewer Tie-in
- 1992-06-018: New Dwelling
- 91-0491D: DEM/FWW New Dwelling

NAME: Gardiner
CRMC FILE NUMBER: D 2017-10-095

Preliminary Buffer and Setback Requirements:

SETBACK (ref. Section 1.1.7 CRMP) 50 feet as measured from the inland edge of the coastal feature
BUFFER (ref. Section 1.1.9 CRMP) N/A

Note: Setbacks apply to "construction related activities" including filling, removing, and grading (ref: Section 1.3.1(B) CRMP). The coastal program requires a minimum setback of either 50', or the buffer zone width plus 25' (whichever is greater). Work within this minimum setback will require a variance per Section 1.1.5 of the CRMP. All variances must be requested in writing. No construction or construction related work shall occur within the required setback (exemptions include structural shoreline protection, outfalls and water dependant uses). Work within the required setback may require a Category "B" review (public notice and decision by the full coastal council) and would likely result in adverse CRMC staff recommendations to the Coastal Council during the review process.

Buffer zones are areas that must be retained in, or allowed to revert to, "an undisturbed natural condition." All structures (excluding accessory structures) should be setback a minimum of 25' from the buffer zone to allow for access, fire protection and maintenance without infringement into the buffer.

If applicable, the plan must show "area of land within 50 feet" in accordance with Rule 5.04 of The Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (the Rules), and label this area as a "buffer zone" in accordance with Rule 5.14. In addition, no activities (such as: drainage, grading, filling, etc.) may affect the freshwater wetland or the buffer zone. Where such alterations occur, or are proposed, an application shall be submitted in accordance with CRMC's Freshwater Wetland Rules.

Coastal feature verification shall be valid for one-year from the date of this Determination or until an erosion event (e.g., due to storm event, landslide, man-induced alteration, etc.) occurs that alters the coastal feature.

SUMMARY OF FINDINGS

CRMC JURISDICTION: YES NO
TYPE WATER: 2; Low Intensity use/Wesquage Pond

For the purpose of this review the coastal feature(s) shall be: Coastal Pond backed by Coastal Wetland
and the inland edge of coastal(s) feature shall be: the inland edge of the Coastal Wetland

Applicability of CRMP and SAM Plans (as amended):

CRMP Sections: 1.1.3.D; 1.1.7; 1.2.1.B; 1.2.2.C; 1.1.3; 1.3.1.C; 1.3.1.F; 1.3.5
SAMP: N/A

FWWVC JURISDICTION: YES NO
WETLAND TYPE: Shrub Wetland; intermittent stream, 100 foot jurisdictional area

STAFF CONCERNS/COMMENTS/INFORMATION REQUIREMENTS:

The wetland depicted on the submitted plans is not considered accurate.

Please be advised that DEM FWW Permit 92-0493D and CRMC Assent 1992-06-018 (Issued to Buz & Cynthia Gardiner) identified a freshwater wetland on site. The DEM Permit required the planting of a row of Northern White Cedar along a revised Limit of Disturbance (LOD) and a 15 foot buffer zone (portion of plan is attached). These shrubs are not in place and both the buffer required by the DEM permit and the identified freshwater wetland have been altered. The wetland depicted on the 1992 approved plans is now maintained as lawn area. This area appears to have been gradually cleared during the 2000s based on Google Earth Imagery. This wetland is now under the jurisdiction of the CRMC and the violation (alteration of the wetland) as well as this report have been forwarded to CRMC Enforcement Staff.

NAME: **Gardiner**

CRMC FILE NUMBER: **D 2017-10-095**

Please be advised that General Stipulation "G" of CRMC Assent 1992-06-018 required that the driveway be permeable. The driveway is currently paved and not located as shown on the approved plans. This driveway shall require stormwater management, as well as inclusion "as-built" on any future Assent submission.

Please be advised that CRMC Assent 1992-06-018 permitted a 14'x14' deck. The deck on the submitted plans is 20'x19'. Please include this un-Assented change to the deck in future Assent submission request.

Please be advised that as proposed, the addition shown on the submitted plans falls within the wetland identified by and buffer zone required by previous Assent. The addition will not receive staff support for approval in the proposed location. Approval for the addition in the proposed location will require the submission of a Formal Application to Alter Freshwater Wetlands in accordance with the FWWVC program, to keep the altered wetland in its current altered state, and is not likely to receive staff support.

Should the applicant revise the addition to fall outside the wetland area (within the location of the existing deck is most likely), the following shall apply:

The property falls within the jurisdiction of both the RICRMP and the FWWVC regulations. One single application should be submitted to this office – a RICRMP Assent application, which includes FWW Impact and Avoidance Statement in accordance with Rule 9.02.D of the FWWVC Regulations.

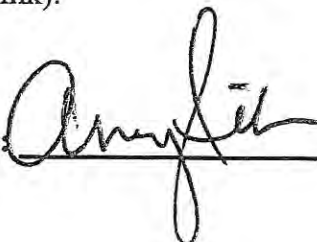
The proposed addition is greater than 600ft² in size. Stormwater management/treatment is required for all new impervious areas/areas greater than 600ft². No concentrated flows shall be allowed to coastal features, freshwater wetland features and/or coastal waters. All new driveways shall be permeable or shall have stormwater management for the first half inch of runoff. Treatment of the runoff shall be in accordance with RICRMP Section 300.6 and the Rhode Island Stormwater Design and Installation Standards Manual.

Prior to submittal for assent, all local and town approvals must be obtained, as well as OWTS approval from DEM/OWTS. Submitted plans must show all associated work with the proposed project such as earthwork, filling, removing or grading (RICRMP Section 300.2), driveway improvements (Section 300.6), utilities, associated landscaping and erosion and sedimentation controls. Guidance for stormwater management can be found on CRMC's website at: <http://www.crmc.ri.gov/stormwater.html>

In addition, a written Impact Avoidance & Minimization Statement in accordance with Rule 9.02 of the Freshwater Wetlands in the Vicinity of the Coast Program would be required for any impacts to identified freshwater wetlands on the subject property

A "CRMC Assent Application" form may be obtained from CRMC's website at <http://www.crmc.ri.gov/applicationforms.html>. An application checklist is provided with the Assent Application form. Please also provide a "Building Official's Form" (also found at the above link).

SIGNATURE: _____



STAFF BIOLOGIST



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-2069

December 5, 2017

Buz & Cynthia Gardiner
120 Allagash Trail
Narragansett, RI 02879

Cease and Desist Order

Dear Mr. and Mrs. Gardiner:

Under the regulations of the Rhode Island Coastal Resources Management Program (RICRMP), any construction, grading, or filling activities or other alterations within 200 feet of coastal feature associated with tidal waters or coastal ponds of the state or in CRMC's freshwater wetlands in the vicinity of the coast jurisdiction, requires plans for the proposed work be submitted to the Coastal Resources Management Council (CRMC) for review, evaluation, and comment prior to the proposed activity. Failure to do so is a violation of the RICRMP. After evaluation of the plans by CRMC staff, their comments and the requirements for the proposed activities are forwarded to the applicant.

It has come to the attention of the CRMC that you or your agent have undertaken alteration of the buffer zone and wetland on your property located at Plat N-R, Lots 1229, 1230, 120 Allagash Trail, Narragansett without benefit of a CRMC assent or in violation of a Council order.

This activity is in violation of the Rhode Island Coastal Resources Management Program. You are hereby issued a Cease and Desist Order Number 17-0147, dated December 5, 2017, and ordered to cease all activity at this site and to contact this office within 10 days of the date of this letter.

Failure to comply with this order shall be a violation of a duly adopted Council regulation, and subject to all fines and penalties established by law. Each day of noncompliance shall be deemed a separate and distinct violation in accordance with Section 46-23-7, G.L.R.I.

Sincerely yours,

Laura Miguel, Enforcement
Coastal Resources Management Council

/lat

CERTIFIED RECEIPT REQUESTED
7016 3010 0000 1678 0727



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-2069

August 3, 2018

Cynthia Gardiner
120 Allagash Trail
Narragansett, RI 02879

Notice of Administrative Fine

Violation Site: Oswego Trail, Narragansett
Plat: N-R Lot: 1230

Violation File No.: 17-0147


Dear Mrs. Gardiner:

On December 5, 2017, CRMC staff visited Plat N-R, Lot 1230, Oswego Trail, Town of Narragansett, and discovered that you or your agent have undertaken alteration of the wetland in violation of CRMC assent 92-6-18.

In accordance with per Rhode Island General Laws Sections 46-23-7 and 46-23-7.1, you are hereby assessed an Administrative Fine of \$2,500. In addition, a per diem fine of \$500 for each day can be assessed during which this violation continues.

You have the right to file an appeal for an Administrative Hearing, within 21 days from the receipt of this notice. The request for an Administrative Hearing must be delivered to the Council at the above address, in writing within this 21 day period. This request shall specify in detail the statements contested by you. Additionally, this request must contain a valid phone number or e-mail address where we can contact you when necessary. If no hearing is requested after the expiration of 21 day period, the Council shall issue a final order assessing the penalties specified in the notice. The penalty is due when the final order is issued.

Please be advised that the levy of this fine does not preclude any further Council action regarding this violation. In addition, should the Council determine there are other violations on said property, you may be assessed additional administrative fines. This notice of administrative fine will be filed in the land evidence records.



Jeffrey M. Wilnis, Deputy Director
Coastal Resources Management Council

/ajt-LM
Certified Receipt Requested
70163010000016781496



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
 Oliver H. Stedman Government Center
 4808 Tower Hill Road, Suite 3
 Wakefield, RI 02879-1900

(401) 783-3370
 Fax (401) 783-2069

August 3, 2018

Buz Gardiner
 120 Allagash Trail
 Narragansett, RI 02879

Notice of Administrative Fine

Violation Site: 120 Allagash Trail, Narragansett
 Plat: N-R Lot: 1229

Violation File No.: 17-0147

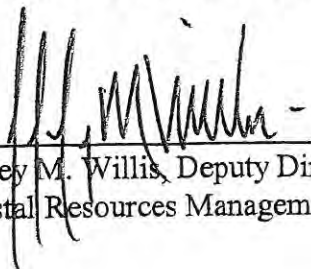
Dear Mr. Gardiner:

On December 5, 2017, CRMC staff visited Plat N-R, Lot 1229, 120 Allagash Trail, Town of Narragansett, and discovered that you or your agent have undertaken alteration of the buffer zone and wetland in violation of CRMC assent 92-6-18.

In accordance with per Rhode Island General Laws Sections 46-23-7 and 46-23-7.1, you are hereby assessed an Administrative Fine of \$2,500. In addition, a per diem fine of \$500 for each day can be assessed during which this violation continues.

You have the right to file an appeal for an Administrative Hearing, within 21 days from the receipt of this notice. The request for an Administrative Hearing must be delivered to the Council at the above address, in writing within this 21 day period. This request shall specify in detail the statements contested by you. Additionally, this request must contain a valid phone number or e-mail address where we can contact you when necessary. If no hearing is requested after the expiration of 21 day period, the Council shall issue a final order assessing the penalties specified in the notice. The penalty is due when the final order is issued.

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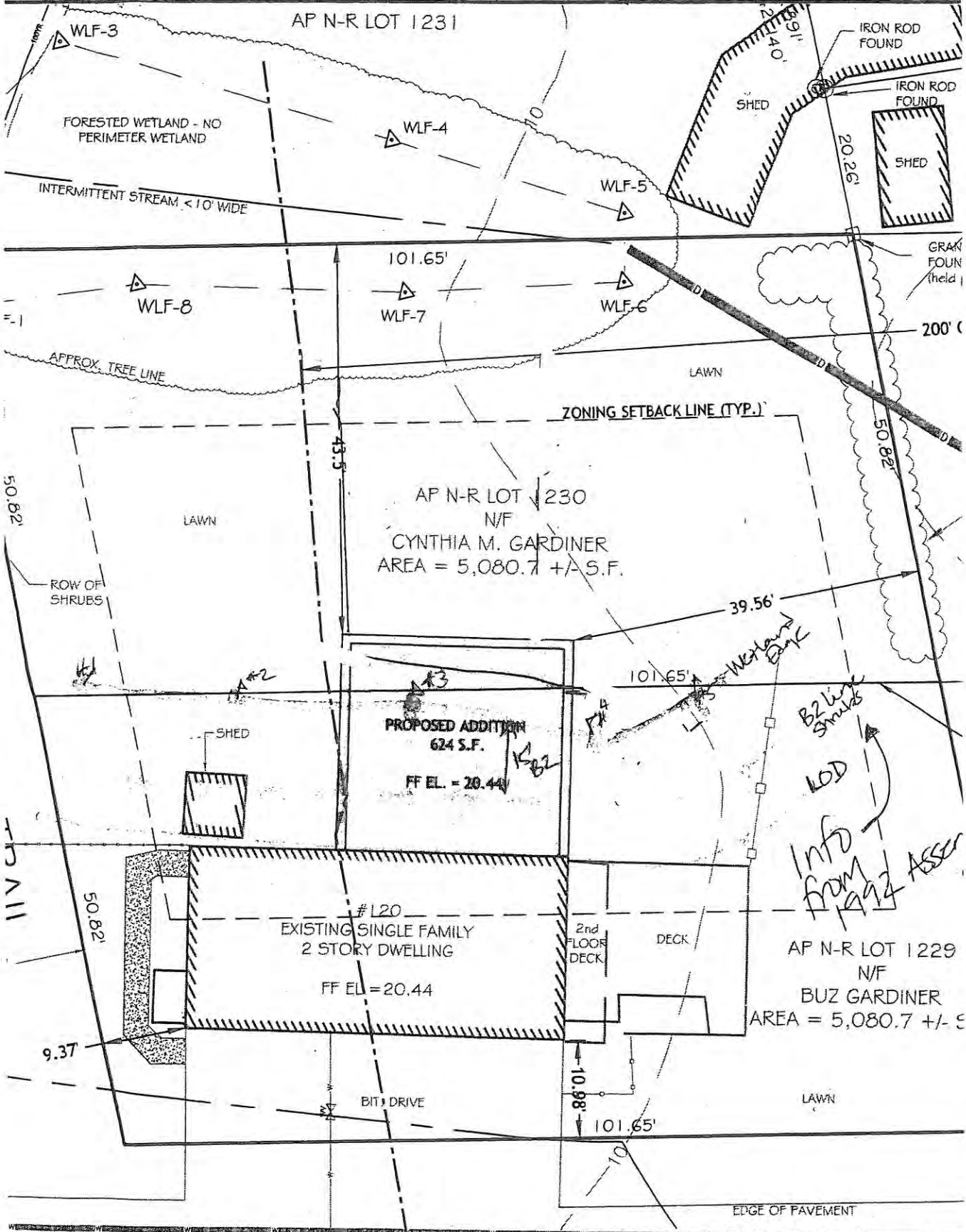

 Jeffrey M. Willis, Deputy Director
 Coastal Resources Management Council

/ajt-LM
 Certified Receipt Requested
 70163010000016781502

PROPOSED HOME ADDITION
 120 ALLAGASH TRAIL
 NARRAGANSETT, RHODE ISLAND
 AP N-R, LOTS 1229 AND 1230



F



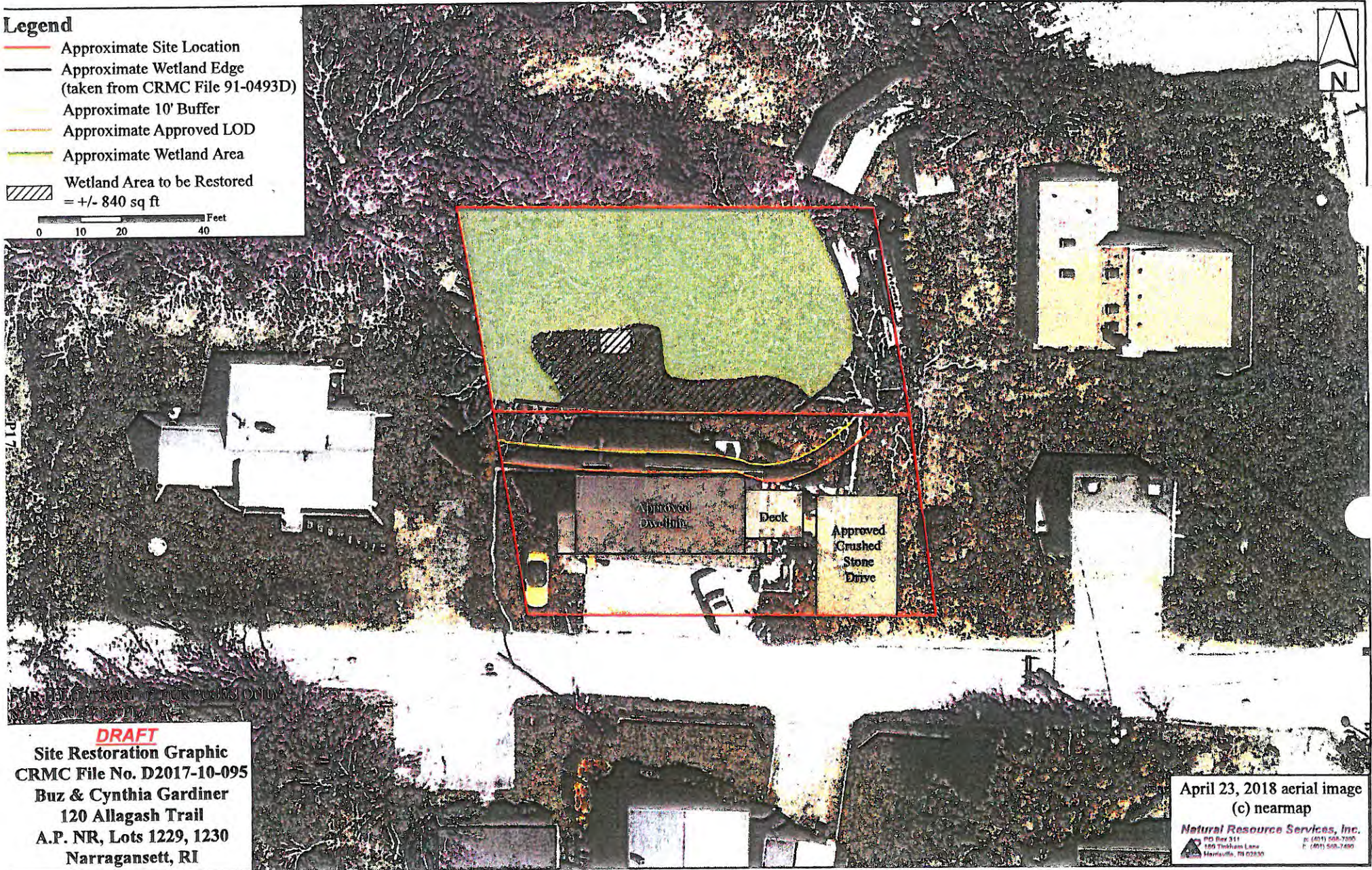
ALLAGASH TRAIL



Legend

- Approximate Site Location
- Approximate Wetland Edge (taken from CRMC File 91-0493D)
- Approximate 10' Buffer
- Approximate Approved LOD
- Approximate Wetland Area
- Wetland Area to be Restored = +/- 840 sq ft

0 10 20 40 Feet



FOR THE USE OF PERMITS ONLY

DRAFT
 Site Restoration Graphic
 CRMC File No. D2017-10-095
 Buz & Cynthia Gardiner
 120 Allagash Trail
 A.P. NR, Lots 1229, 1230
 Narragansett, RI

April 23, 2018 aerial image
 (c) nearmap
 Natural Resource Services, Inc.
 100 River 311
 100 Tinkham Lane
 Harrisville, RI 02830
 © (401) 508-7300
 F. (401) 508-7400



From: Scott Rabideau [<mailto:nrsscott@gmail.com>]
Sent: Tuesday, July 31, 2018 10:22 AM
To: Laura Miguel
Cc: gardinerconstinc@aol.com
Subject: Re: CRMC Enforcement Matter; Buz Gardiner

Laura,

I had the opportunity to speak with Mr. Gardiner last week regarding the wetland restoration plan and submission of an after-the-fact freshwater permit to the CRMC. Mr. Gardiner has directed me to inform you that he has decided not to pursue this restoration/permit option. I have informed him that by not meeting the July 31 CRMC deadline for submission of a restoration plan, the matter will likely be placed on an enforcement hearing calendar. I have recommended that he engage legal counsel to assist him with any enforcement hearing.

At this point, my engagement with Mr. Gardiner on this matter is concluded. I have made sure to copy him on this email so you can reach out to him direct on future correspondences.

Do not hesitate to contact me with any questions.

Best regards,
Scott

Scott P. Rabideau, PWS
President, Natural Resource Services, Inc.
(401) 568-7390

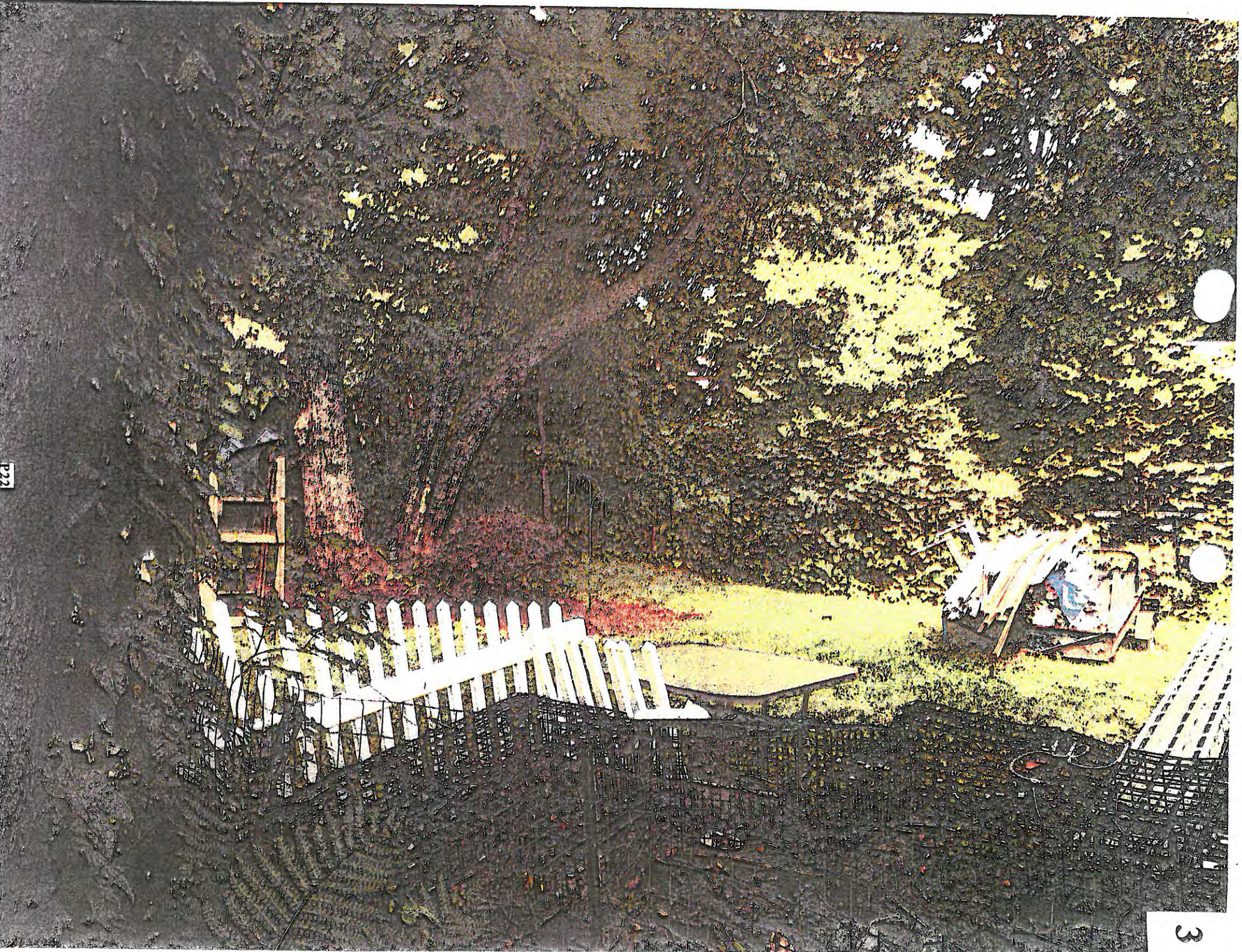
PHOTOS



1

120





22

**PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE COASTAL RESOURCES
MANAGEMENT PROGRAM:**



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767

PUBLIC NOTICE

Pursuant to R.I. Gen. Laws § 42-35-2.8 the Rhode Island Coastal Resources Management Council (CRMC) issued public notice for rule-making on August 16, 2018 for amendments to 650-RICR-20-00-1, the Red Book, and held a public hearing at 6:00 p.m. on September 11, 2018 in Conference Room A at the Department of Administration, One Capitol Hill, Providence, RI to afford the public an opportunity to offer comments on the proposed rule-making. No public testimony was offered at the hearing and one set of written comments were received during the public notice period.

The CRMC hereby gives written public notice pursuant to R.I. Gen. Laws § 42-46-6 that the Council will deliberate on the proposed amendments to 650-RICR-20-00-1, consider written comments filed in this matter and vote on the proposed amendments. Having provided an opportunity for public comment at a public hearing on September 11, 2018, the Council will not consider public testimony at this meeting.

A copy of the public notice for rule-making and the proposed amendments to the Red book (650-RICR-20-00-1) are available on the Secretary of State's web site at:
<https://rules.sos.ri.gov/promulgations/part/650-20-00-1>.

The meeting as set forth above is scheduled for **September 25, 2018 at 6:00 p.m.** in Conference Room A at the Department of Administration, One Capitol Hill, Providence, RI. The room is accessible to the disabled and persons requesting interpreter services for the hearing impaired must notify the Council office at 401-783-3370 or RI 711 at least three (3) business days in advance of the hearing date so that such assistance can be provided at no cost to the person requesting. Further information may be obtained by contacting the Coastal Resources Management Council offices at 783-3370.

Signed this 18th day of September, 2018.



Jeffrey M. Willis, Deputy Director
Coastal Resources Management Council



Memorandum

To: Jennifer Cervenka, CRMC Chair and Council members

From: James Boyd, CRMC Coastal Policy Analyst *JB*

Date: September 19, 2018

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

The CRMC issued public notice for rule-making on August 16, 2018 for proposed amendments to the Red Book. The Council held a public hearing in this matter on September 11, 2018 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 September 17, 2018 and one set of written comments dated September 6, 2018 were received from Save The Bay (STB), which were electronically distributed to Council members on September 11, 2018, and attached hereto.

The following is a list of the Red Book amendments approved for rule-making by the CRMC Planning & Procedures Subcommittee with the date of meeting and specific sections. Each of these sections were incorporated into the August 16, 2018 public notice for rule-making.

June 12, 2018

- Add new § 1.1.6(I) coastal hazard analysis
- Amend § 1.3.1(C) to add fitness of purpose review for commercial marine facilities
- Amend § 1.3.1(D) to address previously authorized docks
- Amend § 1.3.1(H) to incorporate elements of the 1978 Energy Amendments and requirement for certified verification agent for energy-related facilities.
- Amend § 1.3.1(I) to address upland and in-water dredge material disposal.

January 16, 2018

- Amend § 1.1.2(A)(130) to revise definition of residential boating facility
- Amend § 1.3.1(D) to address previously authorized docks in Type 1 waters
- Amend § 1.6(R) to modify Bristol water type adjacent to RWU (Type 4 waters)

December 19, 2017

- Amend § 1.1.2(A)(100) to revise definition of outhaul
- Amend § 1.1.2(A)(116) definition of recreational boating facility to include outhaul
- Amend § 1.7 to add new Block Island shoreline change maps

May 16, 2017

- Amend § 1.3.1(K) aquaculture for consistency with RIDEM and existing practices
- Amend § 1.3.1(O) to incorporate regulatory elements from CRMC Municipal Harbor Management Plan guidance

Prior to STB filing their comments with the Council, CRMC staff (G. Fugate and J. Boyd) met with STB staff on August 31, 2018 to review and discuss their draft comments on the Red Book amendments. It was mutually agreed that any STB comments that were deemed technical revisions and intended for clarity of the proposed rules would be included as part of the CRMC staff report and recommendations to the Council. Accordingly, this would allow for the proposed amendment process to continue without delay and not require a new public notice. However, any STB proposed changes deemed to be substantially different from the rule proposed in the notice of proposed rulemaking would have to be considered by the Planning & Procedures Subcommittee at a later date for further proposed rule-making action by the Council in accordance with R.I. Gen. Laws § 42-35-6.1.

After careful review of the September 6, 2018 STB comments, including proposed changes to existing definitions as shown in “track changes” below, CRMC staff made further edits for clarification and the recommended modifications are shown below in **yellow-highlighted text**. The proposed changes below appear to be consistent with, and a logical outgrowth of, the rules proposed in the CRMC public notice for rule-making without changing the intent of the definitions or their application within the rules in any way. Accordingly, they are recommended by CRMC staff for Council approval.

All other amendments as proposed for rule-making in the August 16, 2018 public notice are recommended for approval and adoption by the Council.

§ 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 or float 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~~ 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 average observed within a geographic region, and climate change refers to fluctuations in the Earth's climate system as a result of both natural and anthropogenic causes. Currently the long term climate change trend is evidenced by rising global temperatures; 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 those 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" means all buildings and structures and alterations to such features facilities 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.~~

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 a material increase in the intensity of use.

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.~~
52. ~~"Ecosystem" means a system formed by the interaction of a community of organisms with their environment.~~
57. "Environmental site conditions" 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. This may include ~~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.~~
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 a qualifying commercial business which has been continuously operating prior to March 3, 2015 that has lost a view of the shoreline over time. ~~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 commercial business are one of the following: a resort, restaurant, or hotel that provides hospitality services to the general public including tourists where such services are dependent upon a view of the shoreline to support their business.
62. ~~"Fauna" means animal life.~~
65. "Filling in tidal waters" means the placing placement 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 ~~these covered by~~ the creation of wetlands or and by beach replenishment ~~or nourishment pursuant to § 1.3.1(1) of this Part.~~
66. "Filling, removing, or grading of shoreline features" means:
- a. "Filling" means the deposition of materials of upland origin onto shoreline features or their contiguous areas.
 - b. "Removing" means the process of taking away any portion of a shoreline or its contiguous area by any method, including: excavation, blasting, or mining, ~~any portion of a shoreline or its contiguous area.~~

c. "Grading" means the process whereby fill or the soils of a shoreline or its contiguous area are redistributed or leveled.

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 the 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.

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.~~

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

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.

105. "Ocean dumping" means the disposal of materials or 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" means oil of any kind and in any form as defined in R.I. Gen. Laws § 46-12.5.1-1(5) ~~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.~~

"Pollutant" means any material or effluent as defined R.I. Gen. Laws § 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" or "CRMP" means the State of Rhode Island Coastal Resources Management Program.

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.

127. "Recreational structures" means swim floats, beach pavilions and other structures that are located in the water or constructed for recreational purposes on a shoreline feature, its contiguous area, or in tidal waters.

130. "Residential boating facility" means a dock, pier, wharf, or float, or combination of such facilities, ~~contiguous to 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.

132. "Restoration" means a return to 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 is typically ~~is~~ flooded by spring, moon, or other flooding tides 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 communisaustralis*); 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 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.

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

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 QWTS Rules, and discharges of heated waters to tidal waters of the state~~ For purposes of this Part sewage further includes pollutant as defined herein.

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

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.

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.

179. “Wetland walkover structure” means a ~~raised~~ pile-supported ~~facility~~ structure no more than 30 inches wide ~~which that~~ provides passage over a wetland for purposes of providing pedestrian access between areas of upland isolated by the presence of wetland ~~Any pile supported structure that does not meet the requirements of § 1.3.1(Q) of this Part or terminates in a wetland or in tidal or non-tidal waters is not a wetland walkover structure.~~

ONLINE PUBLIC COMMENTS FOR REVIEW
Date: 09/18/2018

Regulation: 650-RICR-20-00-1
Title: Red Book (650-RICR-20-00-01)

No online public comments found

From: [Kendra Beaver](#)
To: [Jim Boyd](#); [Grover Fugate](#)
Subject: Comments on CRMP
Date: Thursday, September 06, 2018 7:42:56 AM
Attachments: [copier@savebay.org_20180906_063657.pdf](#)

Kendra L. Beaver
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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 those 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 or 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.

~~62. "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 ~~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 hydrocarbons 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 [KL7]: 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 [KL8]: 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.
146. "Setback" means the minimum distance from the inland boundary of a coastal feature at which an approved activity or alteration may be permitted.
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 CWT/S Rules, and discharges of heated waters to tidal waters of the state.~~
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.~~
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.~~

Comment [KLB10]: May abut other structures

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

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

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

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 A~~ activities 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. ~~Persons proposing~~ 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. ~~Persons proposing~~ any project ...

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

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.

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

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

Comment [KLB16]: Use SAMP or delete abbreviation

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 SAMP~~Special 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/hers~~ 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

Comment [KLB21]: Significant adverse not defined, delete significant

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;

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, the application shall only be then be granted a variance only~~ if the Council finds that the following six criteria are met.

Comment [KLB22]: 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)

- 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 [KLB23]: Same as Construction setback?

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~~ 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 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.~~

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.

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.~~

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

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.

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~~ ~~to~~ 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 or maintenance 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~~90 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, ~~if 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 ~~adverse~~~~significant~~ 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 ~~adverse~~~~significant~~ 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 ~~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;

23

(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.~~

Formatted: RICR Paragraph 4

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~~ 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 ~~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 also 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.
 - (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...

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

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 spot collection, naturally occurring in a GRMC 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.