

Substantive differences between the proposed CRMC and DEM freshwater wetlands regulations

CRMC “Freshwater Wetlands in the Vicinity of the Coast” – 650-RICR-20-00-9

DEM “Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act” – 250-RICR-150-15-2 (now adopted and effective on 1/15/22)

CRMC and DEM are using identical terms and language in their respective draft regulations for freshwater wetland protection, including the new buffer standards. However, the freshwater wetland rules also have some differences that are necessary to reflect the specific CRMC and DEM regulatory procedures and authorities as prescribed in state law.

§ 9.4 – Definitions

CRMC has definitions of the following added that are not contained with the DEM regulations:

- (A)(11) “Coastal feature”
- (A)(12) “Coastal resources management plan” or “CRMP”
- (A)(39) “In the vicinity of the coast”
- (A)(47) “Management Procedures”
- (A)(66) “SAMP” Special Area Management Plan

§ 9.8 – Application Types and General Application Requirements

No provision within § 9.8.1(A) for joint OWTS and FWW application for single-family projects, as is provided within the DEM rules. Applicants must separately apply for a DEM OWTS permit when in CRMC FWW jurisdiction.

§ 9.8.9 – Fee Schedule

No fee for joint permit, as CRMC has no provision for joint OWTS and FWW application for single-family projects. Otherwise, all other fees are the same.

No fee for negotiated settlements, as there is no provision for a negotiated settlement within § 9.11 for a CRMC permit denial. Applicants must file an appeal for any permit denial directly with Superior Court in accordance with R.I. Gen. Laws § 42-35-15 and the CRMC Management Procedures (650-RICR-10-00-1).

No provision and no requirement for application hearing fees within § 9.8.9. DEM requires fees within its rules for administrative public hearings (\$2500) and adjudicatory hearings (\$2000).

§ 9.11.4 – Permit Requirements, Conditions and Renewals

In § 9.11.4(E) the CRMC issues freshwater wetland permits for a three (3) year period, which is consistent with the time period with CRMC Assents for all other activities, and in accordance with § 1.5.12 of the CRMC Management Procedures. CRMC applicants may apply for up to four (4) subsequent one (1) year extensions (7 years total). DEM proposes to issue freshwater wetland permits for a period of five (5) years, which may be renewed for a single one (1) year period (6 years total).

§ 9.12.2 - Application Submittal Requirements

Pursuant to § 9.12.2(A)(2)(e) the CRMC only requires notification to property owners that abut a project parcel as required by § 1.5.1(B) of the CRMC Management Procedures. DEM requires notification to all property owners within 200 feet of the project

§ 9.12.4 – Public Notice and Participation – Public Hearings

The CRMC provides for a 30-day public comment period in accordance with § 1.5.1(E) of the CRMC Management Procedures. DEM requires a 45-day public notice period at 250-RICR-150-15-2.12.4(A).

If a public comment is determined by the CRMC to be a substantive objection, then the applicant will be notified in accordance with § 9.12.4(C)(4) consistent with § 1.5.1 of the CRMC Management Procedures. This provision for substantive objection notification to the applicant varies from the DEM substantive objection procedure that provides an applicant to voluntarily withdraw an application or request a hearing, which requires a \$2500 fee. The CRMC regulations do not require a hearing fee.

Under CRMC § 9.12.4(D) a public hearing is conducted before the full Council, whereas a public hearing at DEM is conducted administratively by a hearing officer as specified in DEM 250-RICR-150-15-2.12.4(D).

§ 9.12.5 – Decision on an Application for a Significant Alteration

Under DEM 250-RICR-150-15-2.12.5(A) it specifies that a decision will be issued within 42-days following a public hearing. The CRMC rules at § 9.12.5(A) specify that a decision will be issued in accordance with § 1.8 of the CRMC Management Procedures (there is no time limit).

§ 9.12.6 – Permit Requirements and Conditions

Under § 9.12.6(E) of the CRMC rules a permit for a significant alteration is valid for a period of three (3) years, and may be renewed for four (4) subsequent one (1) year renewals. Pursuant to the DEM rules at 250-RICR-150-15-2.12.6(F) a permit for a significant alteration is valid only for one (1) year followed by three (3) additional one (1) year permit renewals.

In addition, the DEM rules at 250-RICR-150-15-2.12.6 requires mandatory notification of project completion and DEM will then issue a Notice of Completion to the permittee. Pursuant to § 9.12.6, the CRMC may require the applicant to file notice of completion.

§ 9.12.8 – Appeal of Decisions

Appeal of any CRMC decision must be made to Superior Court in accordance with the CRMC Management Procedures (650-RICR-10-00-1). The DEM rules provide for administrative adjudicatory hearings pursuant to 250-RICR-150-15-2.12.8.

The DEM rules at 250-RICR-150-15-2.12.9 provide for negotiated settlements and consent agreements following the denial of a permit for a significant alteration. However, as noted above, the CRMC rules do not provide for negotiate settlements, as any appeal from a CRMC decision must be made to the Superior Court in accordance with the CRMC Management Procedures.

§ 9.12.9 –Application Closure

The procedures for the closing of an application differ between the CRMC and DEM rules (§ 9.12.10 due to CRMC Management Procedure requirements.

§ 9.13 – Application Relating to Farmers

The procedures relating to farmers , as defined within the rules, within CRMC’s jurisdictional boundary are more streamlined than the DEM rules at 250-RICR-150-15-2.13, because DEM has exclusive authority for activities relating to farmers pursuant to R.I. Gen. Laws §§ 2-1-22(i), 2-1-22 (j) and 46-23-6(2)(iv).

§ 9.14.4 – Application for Permit Transfer

The proposed CRMC rules do not have a provision that requires a subsequent transferee of property subject to a permit for significant alteration to notify the CRMC within 10 days of the property transfer, as required in proposed DEM rule 250-RICR-150-15-2.14.4(B).