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In accordance with and pursuant to the provisions of the "Administrative Procedures Act" (Section 42-35-3 of the General Laws of Rhode Island) and the Rule and Regulations of the Coastal Resources Management Council, notice is hereby given of the intention of the Coastal Resources Management Council to change the management plans, policies, procedures and regulations of the agency regarding planning and management of the coastal resources of the State relative to Chapter 46-23 of the State of Rhode Island.

The following changes are proposed:

### **Management Procedures**

#### **Section 5.9 - Presentation of Expert and Lay Testimony**

**Revise Section 5.9 as follows:**

All interested parties to an application or a matter before the Council shall provide a list of all expert and lay witnesses it intends to present, as well as the subject matter on which the witness is expected to testify to the Council or subcommittee after completion of the CRMC staff reports and not less than five (5) days prior to the scheduled hearing.

*Purpose: To add requirement for all interested parties in a Council application or matter to provide a list of witnesses and subject matter intended to be presented to Council or subcommittee.*

### **RI Coastal Resources Management Program - Redbook**

#### **Section 130 – Special Exceptions**

**Revise Section 130.A.1(a) as follows:**

A. Special exceptions may be granted to prohibited activities to permit alterations and activities that do not conform with a Council goal for the areas affected or which would otherwise be prohibited by the requirements of this document only if and when the applicant has demonstrated that:

1) The proposed activity serves a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests. The activity must be one or more of the following:

(a) an activity associated with public infrastructure such as utility, energy, communications, transportation facilities, however, this exception shall not apply to activities proposed on all classes of barriers, barrier islands or spits except as provided in 210.2.D.95;

*Purpose: To correct reference to Section 210.2.D.5.*

**Section 210.2 – Barrier Islands and Spits**  
**Revise Section 210.2.D.5 as follows:**

5. The construction of new infrastructure or utilities or expansion of existing infrastructure or utilities shall be prohibited on **all barriers**. Such infrastructure or utilities shall include but not be limited to public or private water, electric, gas and sewer lines. This prohibition does not apply to individual, on-site water supply systems and onsite wastewater treatment systems, or onsite bottled gas supply. Additionally, this prohibition does not apply to such ancillary activities as the installation of cable and/or telephone lines that will service an existing individual structure. This prohibition does not apply to infrastructure which is intended to service the needs of the state such as transportation related projects, including stormwater drainage improvement projects, or transmission corridors or other infrastructure intended to meet a demonstrated state need that provides public benefit.

**Delete Section 210.2.D.9 in its entirety and combine with 210.2.D.5**

~~9.—This prohibition does not apply to infrastructure which is intended to service the needs of the state such as transportation related projects, or transmission corridors or other infrastructure intended to meet a demonstrated state need that provides public benefit.~~

*Purpose: Combine utility/infrastructure prohibitions on barriers and add stormwater drainage improvement projects as an allowable activity on barriers provided project serves a state need and provides public benefit.*

**Section 210.3 – Coastal wetlands**  
**Revise Section 210.3.B (Findings) and 210.3.C (Policies), and add new Section 210.3.D (Prohibitions) as follows:**

**B. Findings**

1. Coastal wetlands are important for a variety of reasons. They provide food and shelter for large populations of juvenile fish and are nurseries for several species of fish. The mud flats and creeks associated with many coastal wetlands are rich in shellfish, particularly soft-shelled clams. Coastal wetlands also provide important habitat for shore birds and waterfowl, and many are among the most scenic features of the Rhode Island shore. Coastal wetlands are effective in slowing erosion along protected shores.
2. Much of the original acreage of coastal wetlands in Rhode Island has been destroyed, and the pressures to fill coastal wetlands continue. Downtown Providence, much of Quonset, and many other low-lying coastal communities are built on what was once coastal wetland. We do not know how much coastal wetland has been destroyed by development, but some 10 percent of our coastal wetlands of 40 acres or more is reported to have been filled between 1955 and 1964. Since coastal wetlands are found in sheltered waters, they frequently coincide with attractive sites for marinas and waterfront homes. The pressures to fill or otherwise alter coastal wetlands therefore remain. According to a 1975 survey, there are some 3,700 acres of salt marsh in the state, of which some 10 percent were fringe marshes less than five yards wide. Approximately 90 percent of the state's salt marshes abut Type 1 and 2 waters.
3. ~~Most~~ Many of Rhode Island's wetlands are small and, when viewed in isolation, may appear to be of insignificant value. However, these wetlands serve important ecological functions. ~~In order to better understand the value of individual salt marshes, t~~The Council has sponsored research to investigate the feasibility of rating the relative value of individual coastal wetlands and: Two two years of research revealed that it is not possible to rate coastal wetlands if all ecological considerations are given equal weight. The study also showed that there is little if any correlation between the perceived scenic value of a coastal wetland and its ecological characteristics.

4. Land uses and activities abutting coastal wetlands may have a strong impact upon the wetland itself and wildlife that use the wetland. Nearby drainage patterns which affect sedimentation processes and the salinity of waters may easily be altered, with detrimental effects. ~~Wildlife must be protected from harassment. The construction of new shoreline protection structures and the Bulkheading-bulkheading~~ and filling along the inland perimeter of a marsh prevents inland migration of wetland vegetation as sea level rises, and will very likely result in the eventual permanent loss of coastal wetlands in these circumstances.

5. A study by Hancock (2009<sup>1</sup>) using the Sea Level Affecting Marsh Model estimated that a combined 43.6%, or approximately 3300 acres, of existing salt marsh in Winnapaug, Quonochontaug and Ninigret Ponds would be lost in a 1 meter sea level rise scenario by 2100.

6. To ensure the long-term viability and ecological functions of salt marshes and other coastal wetlands, it is important to provide unobstructed pathways for these coastal wetlands to migrate landward as sea levels rise. Coastal Buffer Zones (Section 150) abutting coastal wetlands provide protected vegetated upland areas where coastal wetlands may migrate landward over time as sea levels rise.

57. In light of continuing pressures to alter coastal wetlands, and in accordance with the Council's policy of "no net loss", avoidance and minimization of impacts and ~~compensation-mitigation~~ for unavoidable losses are necessary tools for retaining and restoring Rhode Island's coastal wetlands.

## C. Policies

1. The Council's goal is to preserve and, where possible, restore all coastal wetlands.
2. To offset past losses in coastal wetlands and unavoidable alterations to surviving coastal wetlands: (a) disturbed wetlands should be restored as directed by the Council or enhanced when possible; and (b) in areas selected on the basis of competent ecological study, the Council will encourage the building of new wetlands.
3. The Council's policy is that aAll alterations to salt marshes and contiguous freshwater or brackish wetlands abutting Type 1 waters are prohibited except for minimal alterations required by the ~~construction or~~ repair of an approved structural shoreline protection facility (see Section 300.7), or when associated with a Council-approved restoration activity. In Type 1 waters, structural shoreline protection may be permitted only when ~~the primary purpose is to enhance the site as a conservation area and/or a natural buffer against storms~~ used for Council-approved coastal habitat restoration projects.

(Note: the exception above is being deleted for consistency with the prohibition in 210.2.D.)

4. It is the Council's policy that aAlterations to salt marshes and contiguous freshwater or brackish wetlands abutting Type 2 waters are prohibited except for minor disturbances associated with (a) residential docks and ~~wetland walkways-walkover structures~~ approved pursuant to the standards set forth in Sections ~~300.34 and 300.17, respectively;~~ and; (b) approved repair of structural shoreline protection facilities pursuant to Section 300.14; or, (c) Council-approved restoration activities.
5. 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 at the town halls of coastal cities and towns. In these designated wetlands only the alterations described in #4 above may be permitted. 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.
6. Salt marshes adjacent to Type 3, 4, 5, and 6 waters that are not designated for preservation may be altered if: (a) the alteration is made to accommodate a designated priority use for that water area; (b) the applicant has examined all reasonable alternatives and the Council has determined that the selected alternative is the most reasonable; and (c) only the minimum alteration necessary to support the priority use is made.

7. ~~All~~ Any alterations ~~to~~ of coastal wetlands shall be ~~carried out in accordance~~ consistent with Section 300.12.

8. It is the Council's goal to provide for maximum Coastal Buffer Zone widths for projects abutting coastal wetlands that are adjacent to Type 1 and 2 waters and for coastal wetlands designated for preservation adjacent to Type 3, 4, 5, and 6 waters. In those cases where the Council may grant a variance on small lots the minimum Coastal Buffer Zone width should be no less than 25 feet.

9. It is the Council's goal to provide maximum Coastal Buffer Zone widths for projects abutting coastal wetlands that are likely, based on site conditions and best available information, to migrate landward with sea level rise. These coastal wetlands do not abut seawalls, bulkheads or other structural shoreline protection facilities or elevated landforms such as bluffs, cliffs, or rocky shorelines, among others. These unobstructed coastal wetlands will migrate landward as sea level rises and Coastal Buffer Zones provide protected upland areas that may transition to coastal wetlands in the future.

#### D. Prohibitions

1. Alterations to salt marshes and contiguous freshwater or brackish wetlands abutting Type 1 waters are prohibited except for minimal alterations required by the repair of an approved structural shoreline protection facility, or when associated with a Council-approved restoration activity. In Type 1 waters, structural shoreline protection may be permitted only when used for Council-approved coastal habitat restoration projects. (Note: this comes directly from existing policy C.3)

2. Alterations to salt marshes and contiguous freshwater or brackish wetlands abutting Type 2 waters are prohibited except as may be permitted in C.4 above. (Note: this comes directly from existing policy C.4)

3. Alterations to coastal wetlands designated for preservation adjacent to Type 3, 4, 5, and 6 are prohibited except for the activities as may be permitted in C.4 above. Dredging and filling in these designated coastal wetlands are prohibited. (Note: this comes directly from existing policy C.5)

<sup>1</sup> Hancock, Robert. 2009. Using GIS and simulation modeling to assess the impact of sea level rise on coastal marshes. [http://nrs.uri.edu/docs/nrs600/2009/AbstractsPDF/Hancock\\_Abstract\\_2009.pdf](http://nrs.uri.edu/docs/nrs600/2009/AbstractsPDF/Hancock_Abstract_2009.pdf)

*Purpose: To add new findings and Council goals regarding coastal buffer zones and add a new prohibition section consistent with existing policies.*

The Council has complied with the requirements of R.I. Gen. Laws Section 42-35-3 by considering alternative approaches to the proposed regulation(s) and has determined that there is/are no alternative approach(es) that would be as effective and less burdensome. The Council has also determined that the proposed regulation(s) do(es) not overlap or duplicate any other state regulation. The Council has complied with the requirements of R.I. Gen. Laws Section 42-35-3.3 by submitting copies of the proposed regulation(s) to the Governor's Office and the Economic Development Corporation (EDC).

Parties interested in or concerned with the above proposed changes are invited to **submit written comments by November 3, 2012**. All such comments should be directed to Grover J. Fugate, Executive Director, at the above address.

A public hearing has been scheduled for these proposed changes to be held in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI, on Tuesday, November 27, 2012, at 6:00 p.m.

Copies of the proposed regulations are also available from the Coastal Resources Management Council offices and its website – [www.crmc.ri.gov](http://www.crmc.ri.gov).

Individuals requesting interpreter services for the hearing impaired must notify the Council office at 783-3370, 72 hours in advance of the hearing date.

Further information may be obtained by contacting the Coastal Resources Management Council offices at 783-3370.

Signed this 1st day of October, 2012.



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Jeffrey M. Willis, Deputy Director  
Coastal Resources Management Council

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