Oliver Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879
401-783-3370

PUBLIC NOTICE for PROPOSED RULE-MAKING and PUBLIC HEARING

Proposed Amendments to the Coastal Resources Management Program

Table 1 - Water Type 6 Matrix and Sections 110 and 210.3

Pursuant to Chapter 46-23 of the State of Rhode Island General Laws, as amended, the Coastal Resources Management Council proposes to amend and take public comment on the following sections only of the Coastal Resources Management Program (CRMP): **Table 1 – Water Type 6 Matrix, Section 110 - Applications for Category A and Category B Council Assents, and Section 210.3 – Coastal Wetlands**. Comments will not be taken on any other section of the Coastal Resources Management Program during this notice period. In accordance with the procedures of the RI Administrative Procedures Act (R.I.G.L. § 42-35-3) and the Rules and Regulations of the Coastal Resources Management Council, notice is hereby given of the intent of the Coastal Resources Management Council to hold a public hearing, accept public comment, and afford interested persons reasonable opportunity to submit data, views or arguments orally or in writing during the 30-day comment period and the public hearing.

The **public hearing** will be held at **6:00 p.m. on November 25, 2014 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.

Summary of Proposed Amendment to Table 1 – Water Type 6 Matrix:

The purpose of this proposed amendment is to prohibit recreational mooring fields within industrial waterfronts and commercial navigation channels to avoid user conflicts and maintain the Council's designated priority industrial and commercial uses within Type 6 waters.

Summary of Proposed Amendments to Section 110:

The purpose of this proposed amendment is to provide for additional application activities within existing Section 110.C that will be eligible for administrative review and approval by the Executive Director or Deputy Director. These eligible activities will still require a minimum of 30-days public notice, but will not be required to be considered by the Council at a public hearing unless substantive objections as defined in CRMP Section 110.3 are received during the 30-day public notice period.

Summary of Proposed Amendments to Section 210.3:

The purpose of this proposed amendment is to adopt Sea Levels Affecting Marshes Model (SLAMM) maps for all 21 Rhode Island coastal communities into the Coastal Resources Management Program for coastal wetland restoration and adaptation planning purposes.

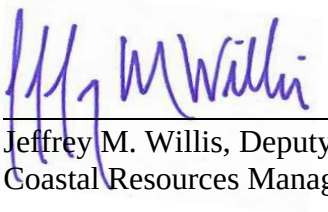
The Council has complied with the requirements of R.I. General Laws §§ 42-35.1-3 and 42-

35.1-4 and has filed copies of the proposed regulations with the Governors Office and the Office of Regulatory Reform of the Department of Administration's Office of Management and Budget. The Council has determined that the proposed regulations do not overlap or duplicate any other state regulation and will not have any adverse effect on small businesses.

The proposed regulations are available on the CRMC website – www.crmc.ri.gov. Additionally, the proposed regulations can be reviewed in person at the Coastal Resources Management Council offices located at the Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI. Further information may be obtained by contacting the Coastal Resources Management Council offices at 783-3370.

All interested persons are invited to submit written comments on the proposed amendments to Table 1 – Water Type 6 Matrix, Section 110 - Applications for Category A and Category B Council Assents, and Section 210.3 – Coastal Wetlands by 4:00 p.m. **November 10, 2014** to provide advance notice to the Council prior to the public hearing. All such comments should be directed to Grover J. Fugate, Executive Director, at the above address.

Signed this 7 day of October, 2014



Jeffrey M. Willis, Deputy Director
Coastal Resources Management Council

Proposed Amendments

New text is underlined and deleted text is ~~strikethrough~~

RI Coastal Resources Management Program

Revise existing Table 1 – Water Type 6 Matrix as follows:

Type 6 Waters[10]	Tidal Waters	Beaches and Dunes	Undeveloped Barriers	Moderately Developed Barriers	Developed Barriers	Coastal Wetlands	Headlands, Bluffs and Cliffs	Rocky Shores	Manmade Shorelines	Areas of Historic/Archaeological Significance
Filling, Removal, and Grading of Shoreline Features	n/a	B	P	A[1]	A[1]	P	B	B	A[1]	B
Residential Structures	P	P	P	P	A	P	B	B	A	B
Commercial/Industrial Structures	B	B	P	P	B	P	B	B	B	B
Recreational Structures	B	B	P	P	B	P	B	B	B	B
Recreational Mooring Areas	~~B~~P	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Marinas	B	B	P	P	B	P	B	B	B	B
Launching Ramps*	B	B	P	B	B	P	B	B	B	B
Residential Docks,*Piers,*& Floats Limited Recreational Boating Facilities	A/B[5]	B	P	P	B	B	B	B	B	B
Mooring of Houseboats	B	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Mooring of Floating Businesses	B	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Municipal Sewage Treatment Facilities	B	B	P	P[2]	B	P	B	B	B	B
Individual Sewage Disposal Systems	P	P	P	P	A	P	B	B	A	B
Point Discharges - Runoff	A	A	A	A	A	A	A	A	A	A
Point Discharges - Other	B	B	P	B	B	P	B	B	B	B
Non-Structural Shoreline Protection	A	A	A	A	A	A	A	A	A	A
Structural Shoreline Protection	B	B	P	P	P	P	B	B	B	B
Energy-related Activities/Structures	B	B	P	P[3]	B	P	B	B	B	B
Dredging - Improvement	B	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Dredging - Maintenance	A	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Open-Water Dredged Material Disposal	B	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Upland Dredged Material Disposal	n/a	B	B	B	B	P	B	B	B	B
Beach Nourishment	B	B	B	B	B	P	n/a	n/a	n/a	B
Filling in Tidal Waters	B	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Aquaculture	B	n/a	n/a	n/a	n/a	P	n/a	n/a	n/a	n/a
Mosquito Control Ditching	A	n/a	n/a	n/a	n/a	A	n/a	n/a	n/a	B
Mining	P	P	P	P	P	P	P	P	P	P
Construction of Public Roads, Bridges, Parking Lots, Railroad Lines, Airports	B	B	P	P	B	P	B	B	B	B

Revise existing Section 110 as follows:

Section 110
Applications for Category A and Category B Council Assents

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. Through the adoption and implementation of the Marine Resources Development Plan by the Council on January 10, 2006, permit applications which meet the thresholds below in paragraph C, have received no objections, and are consistent with the goals and policies of the coastal resources management program will be reviewed and acted upon administratively by the executive director or his/her designee not less than 20 calendar days after the staff report(s) is/are completed and placed in the public file. 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 subsection C 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.

If the executive director or deputy director in their 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.

C. Applications eligible for administrative review include the following.

- Subdivisions of 20 units or less;
- Residential docks less than 200 feet (MLW) in length in the Sakonnet River or the open waters of Narragansett Bay; ~~up to 75 feet (MLW) in all other waters;~~
- Residential docks up to 75 feet (MLW) in length as are permissible in CRMC water types set forth in the CRMP;
- Terminal floats less than 200 square feet;
- Aquaculture sites of up to three (3) acres in the salt ponds or upper Narragansett Bay; less than 10 acres elsewhere;
- Structural shoreline protection facilities of less than 300 linear feet;
- Dredging, and dredge material disposal at pre-approved locations of less than 100,000 cubic yards for marinas or state navigation projects;
- Beach Nourishment projects;
- Wetland mitigation that is habitat restoration when an applicant is a federal, state, or municipal entity;
- Harbor management plans that are recommended for approval;
- Boat and float lifts;
- Habitat Restoration projects undertaken by public entities or in partnership with public entities; and
- RIDOT road and bridge projects that do not require variances or special exceptions.

110.1 Category A Applications

A. The activities and alterations listed as "A" in Table 1 (shoreline features and tidal waters), Table 1A (the 200-foot area contiguous to shoreline features) or Table 1B (inland activities) include routine matters and categories of construction and maintenance work that do not require review by the full Council if criteria (1) through (4) below are all met.

1) The goals, policies, prerequisites, and standards of this document that apply to the areas and activities in question are met.

2) All buffer zone and setback requirements as contained in Sections 140 and 150 and/or as contained in applicable special area management plans are met.

3) Substantive objections are not raised by abutters of those Category A applications sent out to public notice, the CRMC members have not raised objections, or the Executive Director has not made a determination that the Category A activity in question is more appropriately reviewed as a Category B activity. (Note that starred Category A activities listed in Table 1 are put out to notice). It should be noted that all notice procedures are subject to the provisions of the Administrative Procedures Act (APA).

4) Proof of certification of compliance with all applicable state and local statutes, ordinances, and regulations is provided.

B. If the Council's executive director verifies that these criteria 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.

C. If the criteria listed in Section 110.1(A) 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.

D. Applicants desiring relief from one or more standards may apply for a variance (Section 120).

Revise existing Section 210.3 as follows:

A. Definitions

1. Coastal wetlands include salt marshes and freshwater or brackish wetlands contiguous to salt marshes or physiographical features. Areas of open water within coastal wetlands are considered a part of the wetland. In addition, coastal wetlands also include freshwater and/or brackish wetlands that are directly associated with non-tidal coastal ponds and freshwater or brackish wetlands that occur on a barrier beach or are separated from tidal waters by a barrier beach.

2. Salt marshes are areas regularly 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*), saltworts (*Salicornia* spp.), sea lavender (*Limonium carolinianum*), saltmarsh bulrush (*Scirpus* spp.), high tide bush (*Iva frutescens*).

3. Contiguous freshwater wetlands are those wetlands which border directly on salt marshes or brackish wetlands or physiographical features and which, except for size limitations, meet the definition of bog, marsh, swamp, or pond under the Rhode Island Freshwater Wetlands Act (R.I.G.L. § 2-1-18 *et seq*.). All contiguous freshwater wetlands are protected under this Program, regardless of their size.

4. Contiguous brackish wetlands are those wetlands which border directly on salt marshes and where one or more of the following species predominate: tall reed (*Phragmites communis*), tall cordgrass (*Spartina pectinata*), broadleaf cattail (*Typha latifolia*), narrowleaf cattail (*Typha angustifolia*), spike rush (*eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), creeping bentgrass (*Agrostis palustris*) sweet grass (*Hierochloe odorata*), wild rye (*elymus virginicus*).

5. High salt marsh is defined as that portion of the salt marsh that 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*); spike grass (*Distichlis spicata*); black rush (*Juncus gerardi*); tall reed (*Phragmites communis*); Sea Lavender (*Limonium carolinianum*); tall cordgrass (*Spartina pectinata*); saltmarsh bulrushes (*Scirpus* spp.); and high tide bush (*Iva frutescens*).

6. Low salt marsh is defined as that portion of the salt marsh that is flooded daily. The vegetative composition of the low salt marsh typically consists predominantly of smooth cordgrass (*Spartina alterniflora*).

7. Alterations to coastal wetlands are defined in Section 300.12.

8. Sea Level Affecting Marshes Model (SLAMM) is a model that simulates the dominant processes involved in wetland conversion and shoreline modifications during long-term sea level rise. The model projects the likely wetland conditions for selected sea level rise scenarios and the extent of landward wetland migration.

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. 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. The Council has sponsored research to investigate the feasibility of rating the relative value of individual coastal wetlands and 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. The construction of new shoreline protection structures and the 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[1]) 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.~~ SLAMM has been used world wide to model the response of coastal wetlands to sea level rise and refined since first developed in 1986.A new CRMC led study (2014) using SLAMM to assess all 21 Rhode Island coastal communities found that approximately 50% of the State's current 4000 acres of saltmarsh would be inundated and lost under a 3-foot sea level rise and about 75% would be lost under 5-feet of sea level rise. Even considering potential marsh migration and transformation of abutting inland wetlands, there will be an overall net loss of saltmarsh as a result of sea level rise inundation throughout the State.

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.

7. 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 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 all 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 (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 used for Council-approved coastal habitat restoration projects.

4. 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 (a) residential docks and wetland walkover structures approved pursuant to the standards set forth in Sections 300.4 and 300.17, respectively; (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 following alterations may be permitted: minor disturbances associated with (a) residential docks and wetland walkover structures approved pursuant to the standards set forth in Sections 300.4 and 300.17, respectively; (b) approved repair of structural shoreline protection facilities pursuant to Section 300.14; (c) Council-approved restoration activities; or (d) Council-approved limited view restoration projects for existing hospitality industry businesses. Approval of limited view restoration projects requires a public access plan consistent with Section 335 subject to CRMC 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.

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. Any alteration of coastal wetlands shall be 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.

10. The Council adopts the Sea Level Affecting Marshes Model (SLAMM) maps for all 21 Rhode Island coastal communities for coastal wetland restoration and adaptation planning purposes. The use of the SLAMM

maps is intended to inform the public, state and local authorities of the likely condition of coastal wetlands and their landward extent under future sea level rise scenarios and to assist in adaptive ecosystem management and planning. The Council's SLAMM maps are hereby incorporated by reference and are available on the CRMC web site at: www.crmc.ri.gov.

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.

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.

3. Alterations to coastal wetlands designated for preservation adjacent to Type 3, 4, 5, and 6 are prohibited except for the activities listed in C.5 above. Dredging and filling in these designated coastal wetlands are prohibited.

4. Limited view restoration projects are prohibited bordering Type 1 and 2 waters and for all existing and proposed residential projects bordering all water types

5. Any limited view restoration project which does not strictly adhere to the Council's policies and standards as stated in Sections C and E herein are prohibited. Should the hospitality use be discontinued the subject property will no longer qualify for this provision and the limited view restoration Assent will become null and void.

E. Standards

1. Limited View Restoration:
   a. A public access plan shall be provided consistent with CRMP Section 335.
   b. 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.
   c. 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 rule.

[1] ~~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~~