

**Section 300.12.  
Coastal Wetland Mitigation**

**A. Definitions**

1. Alterations to coastal wetlands are defined to include, but shall not be limited to: filling, removing or grading (as defined in Section 300.2.A.); dredging and dredged materials disposal (as defined in Section 300.9.A.); and any significant cutting or removal of vegetation; and excavation, draining, damming and/or diverting of hydrological flows in a coastal wetland. Furthermore, 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.

2. Activities which shall not be considered alterations include, but shall not be limited to; minor disturbances associated with the approved construction or repair of shoreline protection facilities in accordance with Section 300.7, minor disturbances associated with approved residential docks and walkways constructed in accordance with standards set forth in Section 300.4, insignificant or minor cutting or pruning of vegetation in accordance with a Council-approved management or restoration plan; and approved mosquito population control programs.

3. For the purposes of this section, mitigation is defined as 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.

4. Wetland restoration is defined as the re-establishment of a wetland (on the site of an historical wetland) which has been degraded to such an extent that the site performs little or none of its original wetland functions.

5. Wetland creation is defined as the construction of a new coastal wetland where one had not previously existed.

6. Mosquito ditching is defined as the maintenance and construction of ditches in coastal wetlands in order to enhance tidal flushing and thereby reduce and control mosquito breeding sites.

7. Open Marsh Water Management is defined as the maintenance and construction of reservoirs and connectors in order to enhance the tidal food web and thereby reduce and control mosquito breeding sites.

**B. Policies**

1. In cases where the Council determines that a coastal wetland may be altered (see Section 210.3.C), or grants a special exception to a prohibition listed in Section 300.12.D, the Council shall require the mitigation of all impacts to the coastal wetland. Permanently lost or significantly altered wetlands shall be replaced through the restoration of an historical wetland or the creation of a new wetland at a site approved by the Council.

2. The Council shall not grant any variance to the policies, standards, and prerequisites set forth in this section.

3. Pursuant to the Council's "no net loss" policy, the goal and minimum requirements of wetland mitigation projects shall be the replacement of permanently lost or significantly altered wetlands with wetlands of equal or greater area and ecological value. Mitigation projects shall be carried out in accordance with the standards set forth in section 300.12.E.

4. Wetlands created or restored for the purposes of replacing permanently lost or altered coastal wetlands shall be considered wetlands as defined in the RICRMP and subject to the policies contained in Section 210.3 (Coastal Wetlands), Section 140. (Setbacks) and Section 150. (Buffer Zones).

5. Activities listed in Section 300.12.A.2. shall be exempt from mitigation requirements. In addition, wetlands created for the purposes of stormwater management, erosion control, or waste management, in accordance with Section 300.6, shall not be subject to mitigation requirements.

6. Applicants proposing to alter coastal wetlands shall submit the application and the proposed mitigation plan concurrently. In cases where an applicant is proposing an alteration to coastal

wetlands prohibited under Section 300.12.D, the applicant shall be required to first meet the burdens of proof contained in Section 130 and obtain a Special Exception. If the applicant obtains a Special Exception, or a Special Exception is not necessary, then the Council shall consider the merits of the proposed alteration.

The Council shall not consider the mitigation plan in determining whether an assent shall be granted for the alteration of a coastal wetland, but shall require mitigation as a condition of the assent. If the Council approves the proposed alteration to a coastal wetland, then the applicant shall obtain the Council's approval of the mitigation plan prior to any alteration of the coastal wetland. The issuance of the assent to alter coastal wetlands subject to mitigation requirements will be based, in part, upon adequate assurance that required mitigation is feasible and will occur.

7. To the maximum extent practicable, mitigation projects shall be carried out prior to, or concurrent with, the approved alteration of the coastal wetland.

8. To the maximum extent practicable, mitigation projects shall be carried out on-site. Where no on-site alternative exists, the Council may consider off-site mitigation within a hydrologically connected area. In circumstances where an overall benefit to the state is demonstrated and no on-site alternative exists, the Council may approve mitigation projects outside the watershed in which the impact, due to the alteration of a coastal wetland, will occur.

9. In cases where the alteration is temporary, the disturbed wetland shall be restored, to the satisfaction of the Council, immediately following the permitted activity.

10. In no case shall monetary compensation be considered as an acceptable form of mitigation.

11. The Council may consider proposals for joint mitigation projects, advanced mitigation projects, and other innovative wetland mitigation approaches, such as mitigation banks, on a case-by-case basis.

12. The Council recognizes that successful mitigation projects depend on a number of variables including the type of wetland restored or created. Accordingly, replacement ratios contained

in section 300.12.F shall be considered minimum requirements.

13. Recognizing that restored and created wetlands require a period of time to become established as functional coastal wetlands, the Council may require the applicant to post a bond to ensure compliance with the mitigation plan and other Council stipulations.

14. Any violation of the approved mitigation plan shall constitute a violation of the assent to alter the existing coastal wetland.

15. The Council recognizes the nuisance caused by large breeding populations of mosquitos in portions of some coastal wetlands. The Council recognizes that the problem can be effectively controlled by good wetland management practices that include open marsh water management, ditch maintenance and, in some cases, the limited use of pesticides.

### **C. Prerequisites**

1. Applicants proposing any alteration to coastal wetlands prohibited in Section 300.12.D shall be required to obtain a Special Exception (Section 130) from the Council.

2. Applicants proposing alterations to coastal wetlands are required to obtain permits from the Army Corps of Engineers and applicable permits from the Department of Environmental Management. In some cases, mitigation projects will require additional permits from the Army Corps of Engineers and the Department of Environmental Management. Applicants shall consult with these agencies for a determination of the need for additional permits and obtain any required permits prior to undertaking any mitigation activities.

3. Mosquito control programs in any coastal wetland area will be considered only when authorization from the DEM Division of Fish and Wildlife, the R.I. Mosquito Abatement Board, and the local municipality has been obtained. Further, applicants should concurrently obtain a permit from the Army Corps of Engineers. However, in some cases the Council may require the applicant to first obtain an Army Corps of Engineers permit.

**D. Prohibitions**

1. All alterations to coastal wetlands abutting Type 1 waters are prohibited except for minimal alterations required for the construction or repair of an approved or pre-existing structural shoreline protection facility (see Section 300.7) and alterations resulting from approved mosquito population control programs.

2. Alterations to coastal wetlands abutting Type 2 waters and coastal wetlands designated for preservation adjacent to Types 3,4,5 and 6 waters are prohibited except for minor disturbances associated (a) residential docks approved pursuant to the standards set forth in Section 300.4, (b) approved construction or repair of shoreline protection facilities, and (c) approved mosquito population control programs.

3. 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: (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.

4. The practice of applying broad spectrum persistent pesticides on any coastal wetland area is prohibited.

5. Future development on any mitigation site is prohibited. All alterations to mitigation sites other than those required to maintain, or enhance the restored or created coastal wetland are prohibited.

**E. Additional Category B Requirements**

1. Applicants shall demonstrate to the Council's satisfaction that (a) the proposed alteration will accommodate a priority use, as determined by the adjacent water type, (b) the alternative selected is the most reasonable for supporting that priority use, and (c) the proposed alteration is the minimum necessary to support that alteration.

2. Any mitigation plan submitted pursuant to this section shall include, but not be limited to, the following:

(a) A site plan accurately depicting wetlands which will be altered, the proposed mitigation site, existing buffer zones and proposed buffer zones;

(b) The size, in terms of surface area, of wetlands to be altered and of the proposed mitigation site. Surface areas shall not include buffer zones; however, alterations to existing buffer zones shall be described;

(c) A description of existing elevations, soil types, flora species, vegetative densities and habitats in the wetland to be altered and for the proposed mitigation site;

(d) A description of the hydrology of the existing wetland site and proposed mitigation site including ground water levels and, where applicable, tidal and salinity ranges of the site and of adjacent inundating waters;

(e) A description of any excavation, grading, filling, etc. to be conducted as part of the mitigation plan;

(f) A description of species to be planted or seeded, spacing of plantings and/or the density of seeding, the source of vegetation to be planted, and the source of any organic soils to be introduced at the mitigation site;

(g) A schedule for implementation of the mitigation plan;

(h) Success criteria, which shall include benchmark dates and minimum survivability rates for plantings/seedings;

(i) A monitoring program; and,

(j) Evidence of financial security.

**F. Standards**

1. For alterations to Coastal Wetlands:

(a) Altered coastal wetlands shall be replaced by wetlands of a similar type (as defined in Section 210.3.A) which provide an ecological value equal to or greater than that of the altered wetland.

(b) The following ratios of replacement

coastal wetland to permanently altered or lost coastal wetland shall be considered minimum compensation requirements for mitigation projects:

- i) 2:1, area of coastal wetland restored: area permanently altered or lost.
- ii) 2:1, area of coastal wetland created: area permanently lost or altered.

Specific replacement requirements shall be determined on a case-by-case basis, taking into account such factors as size, type and ecological value of the existing coastal wetland, and the probability of achieving fully functional replacement at the proposed mitigation site. In no case shall the Council consider mitigation projects which do not meet these minimum compensation requirements.

(c) Restored and created coastal wetlands shall be subject to buffer zone and setback requirements.

2. For mosquito population control

(a) Alterations to coastal wetlands undertaken as part of a mosquito control program shall be minimal and shall utilize open marsh water management techniques in accordance with the most recent version of *Manual of Methods for Open Marsh Water Management in Rhode Island* (RIDEM).

(b) Wherever possible, marsh sediments excavated as part of an approved mosquito population control program shall be placed at the terminal end of a pre-existing mosquito ditch identified for abandonment. In cases where such a pre-existing mosquito ditch does not exist or is not a feasible sediment disposal site, marsh sediments shall be disposed of at a suitable upland location.

(c) Ditches shall be no more than 24 inches wide and not less one foot, nor more than 3 feet, deep.