

Section 100.4

Freshwater Wetlands in the Vicinity of the Coast

A. Applicability

1. A Council Assent is required for any project or activity which may alter the character of any freshwater wetland in the vicinity of the coast. Applicants are referred to the CRMC's Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast (ie. the Rules) for specific programmatic requirements.
2. The Rules apply to all freshwater wetlands within the council's jurisdiction, the jurisdictional resource areas which are area(s) of land within fifty feet (50'), riverbanks, and flood plains, and, all activities which could alter the character of any freshwater wetland or part thereof in the vicinity of the coast.
3. The authority of the CRMC to apply the Rules to freshwater wetlands in the vicinity of the coast, area(s) of land within fifty (50) feet, riverbanks, and flood plains, is that which is necessary to carry out the effective management of the resource.
4. Projects or activities subject to the CRMC's jurisdiction due to the nature of the activity, its proximity to any coastal feature, or its location within the boundaries of the Narrow River or Salt Ponds watersheds (as defined in the Narrow River and Salt Ponds Special Area Management Plans (SAMP)), and the proposed project is also subject to these Rules, the CRMC shall apply the provisions of the RICRMP and any applicable SAMP in addition to these Rules. Where these separate regulatory programs may conflict, the more stringent definition, policy, standard and/or prohibition shall apply.

B. Definitions

1. Incorporated herein is Rule 5.40 of the Council's Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, where freshwater wetland means the following:
 - (a) Bog, pond, marsh, swamp, river, area(s) subject to flooding, area(s) subject to storm flowage, floodway, flowing body of water, stream, intermittent stream, submergent and emergent plant communities, special aquatic sites, and shrub and forested wetland located in the vicinity of the coast;
 - (b) Those areas located in the vicinity of the coast, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and
 - (c) 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; biofiltration areas; and any wetlands created, altered or modified after July 16, 1971.

2. Coastal wetlands as defined in RICRMP Section 210.3 are incorporated herein by reference.
3. Tributary wetlands are freshwater wetlands that are connected via a watercourse to a coastal wetland and/or tidal waters. A tributary is 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 discharge to tidal waters, coastal ponds or coastal wetlands.

C. Findings

1. Incorporating herein by reference Rule 10.02.B of the Council's Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, the following constitute the functions and values of freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains:

(a) Wildlife and Wildlife Habitat

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains are important areas for the production and diversity of wildlife. Wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide habitat for individual species and communities of animals and plants. Animals include both game and non-game species, which may be either obligate or facultative, and which may be permanent residents, seasonal or transient in nature. Wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains serve as travel corridors, nesting sites, feeding sites, resting sites, nursery and/or brood rearing sites, escape cover, and seasonal breeding, migration, and over-wintering habitat for wildlife. Wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide critical habitat for some plant and animal species, and provide habitat for rare animal and rare plant species.

(b) Recreation and Aesthetics

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide and potentially provide a variety of important active and passive recreational and aesthetic values to the general populace. Such active and passive recreational values include, but are not limited to activities such as; hunting, fishing, trapping, cross-country skiing, ice skating, boating, waterskiing, canoeing, camping, swimming, bicycling, hiking/walking, horseback riding, harvesting of natural foods or plant materials, bird watching, education and nature studies or other animal observations and photography. Aesthetic values include, but are not limited to, the wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains visual, aural and cultural qualities such as its prominence as a distinct feature in the local area, including its prominence as open space; whether the wetland, area of land within fifty (50) feet, riverbank, or flood plain is a rare type; whether the wetland, area of land within fifty (50) feet, riverbank, or flood plain actually maintains or provides suitable habitat for any rare animal or rare plant species; whether the wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains has any outstanding or uncommon geomorphologic features; and whether the wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains contains archaeological evidence or historic significance.

(c) Flood Protection

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains protect life and/or property from flooding and flood flows by storing, retaining, metering out, and otherwise controlling flood waters from storm events. Further, wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains control the damaging effects of flood flows by dissipating erosive forces, providing frictional resistance to flood flows, and providing shoreline anchoring values.

(d) Surface Water and Groundwater

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains provide and/or maintain surface and/or groundwater supplies by acting as a recharge or discharge area, or in the case of some ponds, acting as surface water reservoirs. While groundwater recharge and discharge functions and values may vary seasonally, a freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains may, either individually or cumulatively, be an important factor in replenishing ground and surface water supplies, maintaining stream flows, transporting surface waters, and storing or metering out surface waters and/or groundwater during seasons or periods of droughts.

(e) Water Quality

Freshwater wetlands, area(s) of land within fifty (50) feet, riverbanks, and flood plains protect and/or maintain important water quality functions and values by nutrient retention or removal; pollution filtration; sediment removal; oxygen production; turbidity reduction; maintenance or modification of stream flow; temperature and oxygen regimes in both flowing and surface water bodies, and providing and maintaining safe drinking water supplies.

2. The functions and values herein listed further the goals and objectives of the Council's management programs for the protection and management of coastal resources.

D. Policies

1. It is the policy of the Council to prohibit the alteration, filling, removing or grading of any tributary or tributary wetland. In all cases the precise boundary of the freshwater wetland shall be determined through a field inspection.

E. Prerequisites

A water quality certificate from the Department of Environmental Management shall be a prerequisite for any application to alter pursuant to section 9.05 of the aforementioned rules and regulations.

F. Prohibitions

1. Filling, removing, or grading (RICRMP, Section 300.2) 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:

- (a) The fifty (50) foot wetland perimeter and river bank wetland areas outside the wetland “edge” (RIFWWA, Section 2-1-20 (d) and (g)) shall not be considered part of the wetland under this section.
- (b) Filling, removing, or grading of freshwater wetlands, excluding areas regulated as coastal wetlands (RICRMP, Section 210.3) may receive relief from this prohibition in instances where filling is required to access otherwise buildable land and when no other reasonable alternatives for access exist and when the applicant has satisfied the variance burdens of proof set forth in Section 120 of the RICRMP. 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 special area management plans and meet all of the Department of Environmental Management’s regulations and requirements for ISDS in “Critical Resource Areas.” In cases where the Council approves filling of a freshwater wetland in order to access otherwise buildable land, the applicant shall be subject to the following requirements:
 - (i) The applicant shall be required to mitigate the area of wetland lost on a 2 to 1 (2:1) area basis;
 - (ii) The wetland that is replaced shall be consistent with that which was filled;
 - (iii) The mitigation, when feasible, shall take place on-site and in an area which is hydrologically connected to the impacted wetland. When not feasible the Council shall consider other viable alternatives, including increased mitigation ratios;
 - (iv) Setback and buffer requirements shall be required for the wetland replacement area;
 - (v) Enhancement of existing wetland shall not be an acceptable form of mitigation under this section;
 - (vi) When applicable, all wetland replacement projects will require the approval of the Rhode Island Department of Environmental Management, Division of Freshwater Wetlands; and,
 - (vii) When applicable, the applicant shall concurrently submit applications to the RIDEM and to the CRMC so that a concurrent review of the proposed activities can occur.