



Save The Bay Center  
100 Save The Bay Drive  
Providence, RI 02905

P: 401-272-3540  
F: 401-273-7153  
SAVEBAY.ORG

Via email to: [jboyd@crmc.ri.gov](mailto:jboyd@crmc.ri.gov)

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Mr. James Boyd  
Coastal Resources Management Council  
Stedman Government Center  
4808 Tower Hill Road  
Wakefield, RI 02879

**PROPOSED RULEMAKING COASTAL RESOURCES MANAGEMENT COUNCIL**

**Title of Rule:** Management Procedures

**Rule Identifier:** 650-RICR-10-00-1

We support the proposed amendments to the Management Procedures of the Coastal Resources Management Council and appreciate working cooperatively with the Council in furtherance of changes to promote public notice of the issues and transparency in the Council process.

In furtherance of improving clarity and transparency in the Management Procedures we submit the following comments:

**650-10-1.1 Definitions.**

A statement should be made that all words used within the Management Procedures (the Procedures) will be defined as set forth in § 42-35-1. There is no point in reiterating the definitions, and if the law changes, the Procedures will change accordingly.

**650-10-1.3 Subcommittees.**

This section should reference § 46-23-20.1 (e) and clarify: (1) The need for a finding that a hearing officer is otherwise engaged and unable to hear a matter in a timely fashion. This finding is necessary for the Chairperson to appoint a subcommittee to act as hearing officers; and (2) “[t]hat in all contested cases an additional member shall be a resident of the coastal community affected.”

**650-10-1.4.2 H**

Language should be added to this section to state that if staff reports are not available to parties that have requested staff reports or submitted comment on the application at least five (5) business days prior to hearing, the Council shall extend the hearing date, upon request, to allow sufficient time to review staff reports. Many interested parties depend on the expertise

of staff in order to inform their cases, and it is important for experts to have an opportunity to review staff reports prior to hearing.

650-10-1.4.6 A.9

The cost of modifications should be higher to discourage piecemeal applications that permit incremental damage and make it difficult to evaluate overall impacts.

650-10-1.4.6 A.10.

The fee for a Petition for Declaratory Ruling should be removed. We were not able to find authority for the imposition of a fee and are not aware of other agencies charging a fee. The public has a statutory right to request a declaratory ruling.

650-10-1.4.6 A. 16

The definition of a “special grant” is unclear. Please define or clarify.

650-10-1.4.6 A. 21.

The fee for permitting on Brownfield sites appears to be high, almost punitive. DEM assesses a fee as well and addresses the majority of contamination issues. Fees should be lower as an incentive for the reuse of contaminated and disturbed sites.

650-1.4.7 A.1. Administrative Reviews

This section applies to activities or alterations that have occurred without permission. The fees should be higher as the Council is not able to assess the property in an undisturbed state, and there should consequences for work without a permit. All fees should be substantially increased and mandatory to deter noncompliance, and the CRMP should be consistent with this section.

650-1.4.7 A.2. Applications before the Council

The Council should adopt regulations and impose a penalty based on a written application of factors set forth in the regulations. Hardship should only be considered if the inability to pay is demonstrated (not just alleged).

650-1.4.9. Petitions for Regulation Changes

Other agencies do not charge a fee. It is unclear whether the Council has authority to impose a fee on this statutory right to petition the government for regulatory changes.

650-1.5.1 Notification and Review of Permit Applications

F. Add to the end of the sentence: If an application is modified after the public notice is issued, all parties that submitted comment on the application shall be notified of the modification at least five (5) business days prior to hearing. Interested parties that took time to comment should be advised of changes made in advance of a hearing.

L. Add to the end of first sentence: “and such revision shall be subject to public notice.”

M. Add to this section that assents shall not be issued until all enforcement issues are resolved through a written agreement enforceable in Superior Court and the penalty is paid in full. The Council should not permit alterations until there is a clear and simple path to require compliance.

650-10-1.5.9 A. Presentation of Expert and Lay Testimony

Add to the last sentence that all information submitted, including staff reports, shall also be available to interested parties 5 business days prior to the scheduled hearing. Again, this is an issue of fairness to interested parties.

650-10-1.5.10. A. Transcripts

At the end of the paragraph, it should state that after expiration of appeal period, the transcript will be available through a public records request.

650-10-1.5.12 Permit Extensions

A. This section should be reworded to delete duplicative language and clarify that in order to obtain an extension of time in which to complete the permitted work, the burden on the applicant is to apply for an extension prior to expiration of the permit and demonstrate that: (1) there was good cause for failure to complete within the permitted time, (2) there has not been a substantial change in the environmental conditions on the site, (3) sections of the CRMP applicable to the project have not been amended, and (4) staff has determined that the work that has been done was accomplished in compliance with the permit conditions.

B. The Executive Director should only be authorized to grant a one-time, one-year extension of the permit on the same grounds as the Council. Additional extensions should be reviewed by the Council to prevent applicants from circumventing the Council and obtaining a four-year extension.

C. Large scale projects may be given seven (7) years to complete, but the rest of the paragraph should be deleted. Seventeen years is too long as conditions change.

E. Applicants should get water quality certification before applying for a CRMC permit or apply simultaneously with joint notice. There should not be a one-year extension. The Executive Director does not appear to have authority to grant a waiver from Water Quality Regulations administered by the Department of Environmental Management (DEM). The authority lies within DEM.

650-10-1.5.13 B. Modification of Action.

Notification of hearing and modification of actions should be sent to all interested parties.

650-10-1.1.7 B. Preliminary Investigations

Council members should not be authorized to issue warnings. Warnings should be issued by the trained experts on staff at CRMC.

650-10-1.8 B. Final Decisions of the Council

B. 1. Agency staff should be required to make a recommendation to the Council concerning matters he or she is reviewing, as to whether the application meets the requirements and policies of the CRMP.

C. Modification of Assents and Final Decisions.

This section should be consistent with 1.5.13.

C.1. All interested parties should be sent a copy of a request for modification 5 days prior to action on a modification and a copy of the action taken.

650-10-1.12. Declaratory Order

There should also be a reference to Declaratory Orders, R.I. Gen. Laws § 42-35-8, and there is no need to reiterate the statute, but the procedure for obtaining a ruling or order should be set forth. Again, no fee is authorized by statute.

650-10-1.13. Judicial Review of Contested Cases

This section should simply reference the statute in the event it is changed and not repeat § 42-35-15.

650-10-1.14. Adoption of Management Policies

Again, this section should refer to § 42-35-3 and not reiterate the law.

650-10-1.14 Petition for Adoption of Rules.

H. This is duplicative and should be combined with Section 10-1.4.9. It should not be located in two sections but should set forth the form and procedure for submission, consideration and disposition.

Thank you for your consideration.

Kendra L. Beaver