

STATE OF RHODE ISLAND
COASTAL RESOURCES MANAGEMENT COUNCIL



MANAGEMENT PROCEDURES

AS ADOPTED BY THE COUNCIL: JANUARY 25, 2011
SECRETARY OF STATE EFFECTIVE DATE:

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1. DEFINITIONS

- 1.1 Agency:** includes boards, commissions, departments or officers thereof other than the legislature or the courts authorized by law to make rules, determine contested cases or issue permits.
- 1.2 Contested case:** means a proceeding in which the legal rights, duties or privileges of a specific party are required to be determined by the Council after an opportunity for hearing. A proceeding before the Council shall be considered contested when a substantive formal written objection and/or request for hearing is received by the Council from any interested party. Further, a proceeding shall be considered contested upon request for hearing by any four members of the Council.
- 1.3 License:** includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.
- 1.4 Licensing:** includes the agency process respecting the grant, denial, renewal, renovation, suspension, annulment, withdrawal or amendment of a license. Any person wishing to change the use where an assent or license was granted must apply to the Council for change of the use. If the use is changed without application to the Council, the assent or license becomes null and void.
- 1.5 Parties:** A person, agency or organization is a party to a proceeding before the Council if:
- (1) The person is entitled to the status of a party under 42-35-1 of the General Laws or any other provision of law; or
 - (2) upon application for leave to intervene, the person is allowed to do so by the Council on the ground that:
 - (a) such applicant is entitled by law to the status of a party; or
 - (b) such applicant could have been a complainant in such proceedings; or
 - (c) such applicant has a complaint or a defense which has question of law or fact in common with the main proceeding.
- 1.6 Person:** means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- 1.7 Rule:** means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include (1) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or (2) declaratory rulings issued pursuant to 42-35-8, or (3) intra-agency memoranda.
- 1.8 Council:** means the Rhode Island Coastal Resources Management Council or, when the context permits, to individual members, subcommittee, its staff, agents or employees. Council membership shall consist of those individuals appointed by the respective appointing authorities. Public members of the Council should attend a procedures and orientation session provided by Council staff prior to performing their duties as full Council members.

1.9 Council Office: refers to the office of the Council at the Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, Rhode Island 02879-1900.

1.10 Council Meeting: means any meeting of the full Council or a subcommittee.

1.11 New Evidence: is that which is of a material and controlling nature and was not by the exercise of ordinary diligence discoverable in time to be presented at the evidentiary hearing.

2. MEETINGS

The regular meeting schedule, unless changed by the Chairman or the Vice Chairman, shall consist of the second and fourth Tuesday of the months of September through June and only the fourth Tuesday in July and August.

2.1 A quorum consists of seven members.

2.2 A majority vote shall be a majority of those present and voting. If a Council member wishes to abstain, Council member shall announce the abstention prior to the tally of the vote. An abstention shall not be counted as a vote in the tally, but shall be counted for the purposes of maintaining a quorum.

2.3 The Council may have closed meetings. Such meetings shall be in accordance with the exceptions to the Open Meeting Law as set out in the Rhode Island General Laws, as amended.

2.4 All meetings of the Council shall be open to the public except as set out in 2.3 above and the public shall have a reasonable opportunity to be heard.

2.5 In any 12 month period, when a Council member has three (3) unnoticed non-appearances at full Council meetings, the Chairman is authorized to contact said members appointing authorities to request appointment of an active member.

3. SUBCOMMITTEES

The Chairman of the Council shall establish standing subcommittees with varying functions as approved by the Council. In the absence of the Chairman, the Vice Chairman may establish these Subcommittees. There is hereby established a standing Ocean subcommittee.

Additionally, the Chairman in his discretion may appoint a standing Ocean Subcommittee to hear contested cases resulting from the implementation of the Council's Ocean Special Area Management Plan. However, in appropriate circumstances contested cases may be heard by the full CRMC as determined by the Chairman. The Chairman and Vice Chairman shall sit ex-officio on all subcommittees.

Hearing Subcommittees shall consist of all Council members who attend the initial Subcommittee meeting and all subsequent meetings of Subcommittee.

Only those Subcommittee members who have attended all meetings of the Subcommittee may vote on the Subcommittee recommendation.

4. APPLICATION FOR COUNCIL PERMITS

4.1 Proposed Actions Requiring a Council Permit:

- (1) All developments or operations within, above or beneath the tidal waters below the mean high water mark extending out to the extent of the state's jurisdiction in the territorial sea, and those occurring on coastal features or within all directly associated contiguous areas which are necessary to preserve the integrity of coastal resources, any portion of which extends onto the most inland shoreline feature of its 200 foot contiguous area, or as otherwise set out in the Coastal Resources Management Program, require a Council Assent. (See the Glossary section of the RICRMP for a definition of development)
- (2) The design, location, construction alterations(s), or operation of:
 - (a) Power generating and desalination plants;
 - (b) Chemical or petroleum processing, transfer or storage;
 - (c) Minerals extraction;
 - (d) Sewage treatment and disposal and solid waste disposal facilities whether residential, municipal or industrial;
 - (e) Shoreline protection facilities and activities occurring on shoreline physiographical features and all directly associated contiguous areas which are necessary to preserve the integrity of such facility and/or features;
 - (f) Alterations to, or activities occurring on coastal wetlands and all directly associated contiguous areas which are necessary to preserve the integrity of such wetland.
- (3) Where the Council finds a reasonable probability or conflict with adopted Management Regulations and Policies or damage to the coastal environment.
- (4) All developments or operations which may alter the character of any freshwater wetland in the vicinity of the coast.

4.2 Information Requirements, Application Forms and Fees:

- (1) Application forms may be obtained from the Coastal Resources Management Council, Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, R.I. 02879-1900 or by calling (401) 783-3370.
- (2) An application checklist/instruction sheet will be forwarded to each applicant together with required forms.
- (3) Applicants must complete four (4) forms and return them together with processing fee to the Coastal Resources Management Council.
- (4) Public, Quasi-public Entity: The above fees may be waived for any public or quasi- public entity based upon a finding by the Executive Director of general public benefit.

- (5) Applicants shall be required to obtain and certify that they have in their possession current approvals from municipal bodies which are otherwise required for the proposed action. Municipal approval shall be construed to mean compliance and conformity with all applicable comprehensive plans and zoning ordinances and/or the necessary variance, exception and other special relief there from (see RICRMP Section 300.1).
- (6) Applicants shall further be required to obtain and certify that they have in their possession current approvals from all other agencies which are otherwise required for the proposed action.
- (7) The above required municipal and state approvals shall be construed as a prerequisite for any application before the Council considers the application. The Council may waive the requirements of obtaining approvals in the usual sequence by a majority vote of the Council. But a final assent shall not issue until all required approvals have been obtained.
- (8) In contested cases, the Subcommittee shall not proceed until it has received the comments from staff biologist, staff engineer, Historical Preservation Commission, and water quality certification comment.

4.3 Schedule of Fees

***Special Note:** All fees are filing fees and are non-refundable. Fees paid on Determination Request fees may be applied against the filing fee of other applications for Council Assent only when such application is filed within one (1) year of the Council's Determination Request report.

1. Determination Request:

- a. Those involving projects of the individual residential homeowner/potential homeowner: **\$150.00.**
- b. All other projects (development of subdivisions, condominiums, commercial, industrial, waterfront business, etc.): **\$1000.00.**
- c. Jurisdictional determinations: **\$100.00.**
- d. Jurisdictional Determinations for Individual Lot Development of Residential Properties Adjacent to New Sewer Lines that no longer require an ISDS for Development: **\$25.00.**

2. Applications for Council Assent:

***Special Note:** All fees are summative. In addition, all fees are filing fees and are non-refundable.

- a. New Residential Boating Facility (pier/dock): **\$1,500.00.**
- b. Modification of under 50% of size (area) of a current assented residential boating facility: **\$250.00.**
- c. Residential development projects (condominiums, subdivisions, paper subdivisions, etc.):

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\$3500.00 for the first six (6) units/lots and **\$400.00** for each additional unit/lot, plus one-half of one percent of estimated project cost (see below) of the infrastructure (roads, drainage, etc.) of the project.

NOTE: For the purposes of this determination a paper subdivision is a subdivision of a parcel of land which involves no application for construction (roads, utilities, dwellings, etc., except residential development projects, see above.)

d. All units and/or lots that are part of a Council-approved subdivision application and are within CRMC jurisdiction and are submitted to the Council for Assent in accordance with all conditions and stipulations of the approved subdivision application: **fee shall be equal to half of the single family residential home application fee.**

e. All others including Section 320 Reviews (**not identified above**):

1. Projects with an Estimated Project Cost (EPC) up to and including \$1000.00 shall be assessed a **\$50.00** application fee.
2. Projects with an EPC greater than \$1000.00 and less than or equal to \$2500.00 will be assessed a **\$100.00** application fee.
3. Projects with an EPC greater than \$2500.00 and less than or equal to \$5000.00 will be assessed a **\$150.00** application fee.
4. Projects with EPC greater than \$5,000.00 and less than or equal to \$10,000.00 will assessed a **\$200.00** application fee.
5. Projects with EPC greater than \$10,000.00 and less than or equal to \$25,000.00 will assessed a **\$250.00** application fee.
6. Projects with EPC greater than \$25,000.00 and less than or equal to \$50,000.00 will assessed a **\$500.00** application fee.
7. Projects with EPC greater than \$50,000.00 and less than or equal to \$100,000.00 will assessed a **\$750.00** application fee.
8. Projects with EPC greater than \$100,000.00 and less than or equal to \$150,000.00 will assessed a **\$1,000.00** application fee.
9. Projects with EPC greater than \$150,000.00 and less than or equal to \$200,000.00 will assessed a **\$1,250.00** application fee.
10. Projects with EPC greater than \$200,000.00 and less than or equal to \$250,000.00 will assessed a **\$1,500.00** application fee.
11. Projects with EPC greater than \$250,000.00 and less than or equal to \$300,000.00 will assessed a **\$1,750.00** application fee.

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12. Projects with EPC greater than \$300,000.00 and less than or equal to \$350,000.00 will assessed a **\$2,000.00** application fee.

13. Projects with EPC greater than \$350,000.00 and less than or equal to \$400,000.00 will assessed a **\$2,250.00** application fee.

14. Projects with EPC greater than \$400,000.00 and less than or equal to \$450,000.00 will assessed a **\$2,500.00** application fee.

15. Projects with EPC greater than \$450,000.00 and less than or equal to \$500,000.00 will assessed a **\$2,750.00** application fee.

16. Projects with an EPC greater than \$500,000.00 and less than or equal to \$20,000,000.00 will be assessed an application fee of **\$2,750.00** plus one-half of one percent of the EPC beyond \$500,000.00, to a maximum fee of **\$100,250.00**.

17. Projects with an EPC greater than \$20,000,000.00 will be assessed an application fee of **\$100,250.00** plus one-fourth of one percent of the EPC beyond \$20,000,000.00.

***Note:** Determination of the EPC shall be based, where applicable, on the EPC accepted by the building official subject to acceptance by the CRMC. The EPC shall include all costs associated with site preparation (e.g. earthwork, landscaping, etc.), sewage treatment and disposal (e.g. cost of an ISDS, sewer extension, sewer tie-in, etc.), and construction costs (e.g. materials, labor, installation of all items necessary to obtain a certification of occupancy, etc.). For projects where the determination is not available, the EPC shall be provided by the applicant subject to its acceptance by CRMC after review of the application. For an individual homeowner project (IHP), this can be estimated based on the best information available concerning the construction costs. Applicants for all other types of projects shall provide documentation showing the basis on which the EPC was determined. Where additional specificity in the documentation is deemed necessary by CRMC staff, a written estimate by a qualified appraiser, engineer, or architect will be supplied by the applicant.

f. Maintenance fees shall be assessed as follows:

1. Projects with an EPC up to \$500.00 will be assessed a **\$20.00** application fee;

2. Projects with EPC greater than \$500.00 and less than or equal to \$1,000.00 will assessed a **\$35.00** application fee;

3. Projects with an EPC greater than \$1,000.00 and less than or equal to \$5,000.00 will be assessed an application fee of **\$50.00**.

4. Projects with EPC greater than \$5,000.00 and less than or equal to \$10,000.00 will assessed a **\$100.00** application fee.

5. Projects with an EPC greater than \$10,000.00 and less than or equal to \$20,000,000.00 will be assessed an application fee of **\$100.00** plus one-half of one percent of the EPC beyond \$10,000.00, to a maximum fee of **\$100,050.00**.

n. Individual Sewage Disposal Systems (ISDSs) shall be charged the following application fees:

1. ISDS repairs:

i. Single family homes shall pay a **\$80.00** application fee.

ii. All other ISDS repair activities shall pay a **\$105.00** application fee.

o. If a project requires outside consultant staff or extraordinary professional assistance, the CRMC may negotiate a special grant with the applicant to pay the same in accordance with RIGL 46-23-8.

p. Aquaculture Renewal Fee: **\$75.00**

q. Experimental Aquaculture, Each Site **\$25.00**

r. (1) The Executive Director, in his discretion and with the concurrence of the Chairman, may reduce an application fee for commercial, industrial and mixed use projects within the urban core or growth center coastal communities of Providence, East Providence, Pawtucket, and Newport* or for projects that meet the requirements of GLRI 42-64-7 et seq. (Mill Building and Economic Revitalization Act), where such application is eligible for an administrative assent and meet all applicable programmatic goals, policies, and standards. The reduced fee shall be no less than the estimated processing time of Council staff of a rate per hour set by the planning and procedures subcommittee (as of May 2006: \$500 per hour). The minimum application fee shall be \$5,000.

(2) Projects that are determined to be brownfield sites under applicable DEM rules and regulations shall be assessed an application fee of \$5,000.

*These communities are defined as either Urban Core as within the RIPEC report *Strengthening Cities: A Report of the Urban Strategy Project (January 1998)* or as identified as a Growth Center by the state's *Growth Planning Council*.

s. Application fees for projects which have applied for and been accepted by the Army Corps of Engineers as non-federal dredging applicants in conjunction with the scheduled 2002 begin date of the federal maintenance dredging of the Providence River and Harbor, are hereby waived. This waiver is only available during the time that the federal Providence River and Harbor Maintenance Dredging project is operational. Upon completion of this federal navigation project, this provision will become null and void. The Executive Director shall report to the Council when this provision becomes null and void.

t. CAD Cell Disposal Fee:	Marinas, Boatyards, Yacht Clubs:	\$11.65 cy
	Commercial Facilities:	\$17.00 cy
	Residential Docks:	\$25.00 cy

3. Administrative Fees for Activities Which Have Occurred Without a Valid CRMC Approval:

a. Administrative Reviews:

1. In accordance with Council regulations, all activities or alterations which have already occurred, or have been constructed or partially constructed without a Council Assent

shall be subject to the fee schedule contained in Section 4.3.2. In addition, the Executive Director shall assess the following administrative fees which take into account the additional demand on Council resources (see RICRMP Section 160):

- i. Illegally constructed structures and unauthorized activities located in tidal waters and/or on adjacent coastal or shoreline Features (See RICRMP Section 200 and Section 210) shall be assessed a **\$500.00** administrative fee;
- ii. Illegal activities excluding those classified as maintenance activities under the RICRMP shall be assessed a **\$250.00** administrative fee; and,
- iii. Unauthorized maintenance activities shall be assessed a **\$100.00** administrative fee.

The Executive Director may, based on the impact to coastal resources, hardship on an applicant, and the cost of Council resources associated with enforcement and staff review, adjust the administrative fees described above.

b. Applications before the Council:

1. In accordance with Council regulations, all activities or alterations which have already occurred, or have been constructed or partially constructed without a Council Assent shall be subject to the fee schedule contained in Section 4.3.2. In addition, the Council shall assess an appropriate administrative fee based on a recommendation by the Executive Director. The recommended administrative fee shall take into account the impact on coastal resources, additional demand on Council resources, and hardship on an applicant (see RICRMP Section 160).

4. Contested Cases:

- a. Whenever the Council determines that an application has become a contested case that requires a subcommittee hearing(s) as defined herein and in its regulations, the applicant shall pay the actual costs of the subcommittee hearing process including, but not limited to, stenographer, staff overtime, legal staff, transcript costs, printing costs, public notice costs, rental of meeting room, and the costs of security personnel.

5. Petitions for Regulation Changes:

- a. Applicants petitioning the Council to make regulation changes pursuant to the Rhode Island Administrative Procedures Act (R.I.G.L. § 42-35-6) shall pay a fee of \$1,000.00.

6. Hardships:

- a. Where an applicant can demonstrate that the fee schedule described herein presents an undue hardship, the Council may adjust the application fee, administrative fee, and/or contested case fees.

7. Applications involving Freshwater Wetlands in the Vicinity of the Coast:

a. In cases where a proposed project or activity is subject to the permit jurisdiction of the Council solely due its proximity to freshwater wetlands in the vicinity of the coast, the Council shall charge a fee equal to that required under the Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast.

b. When a proposed project or activity is subject to the Council’s jurisdiction and permit requirements due to the nature of the project or activity, its proximity to a coastal feature, or its location within the boundaries of the Narrow River or Salt Ponds watersheds (as defined in the respective Special Area Management Plans), and the proposed project or activity is also subject to the Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast due to its proximity to freshwater wetlands, then one application fee shall be required. In such cases, the fee shall be the higher of the two fees required by this section and Rule 8.00 of the Rules and Regulations for the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast.

8. When an applicant or his/her consultant(s) submits re-designed site plans for a proposed activity after staff reports have been completed, or more than two (2) times during the course of review of an application or a modification, the executive director in his discretion may set a review fee that is additional to the application fee for such extra staff review time and that which is consistent with the rate-per-hour fee allowances of section 4.3.2(r)(1) above, provided however that the applicant will not be charged in instances where staff has requested additional information and the applicant provides the requested information.
9. **Requests for Continuances** are subject to the following fees:
- a. First Request: \$100
 - b. Second Request: \$250
 - c. Third or Greater: \$500

5. NOTIFICATION AND REVIEW OF PERMIT APPLICATIONS

5.1 Notification

- (1) Upon receipt of complete applications, including necessary plans and attachments thereto which meet all the prerequisites of the Council as set forth herein, the Council shall cause to place public notice of the pendency of said application and a brief description of the proposed activity.
- (2) Public notice shall be sent on formal applications and/or starred (*) administrative applications to immediate abutters, appropriate municipal agencies in the area or areas so affected by the activity, appropriate quasi-municipal and state agencies which may be affected by the proposed activity, appropriate citizen interest groups, as well as state and local officials in the area or areas of the proposed activity.
- (3) It further shall be the policy of this Council that anyone interested in receiving notice of the pendency of any application or matter which requires that the Council advertise a noticed public review period and is pending before this Council which would be the subject matter of this notification procedure, individually request to the Council in writing

his/her desire to receive such notification. Petitions for or against any application or matter pending before the Council shall not constitute a request for notification. This request may address itself to receipt or notification of a single application, a group of applications affecting an area or subject matter or a general request of notifications of all applications and/or matters subject to notification procedure, pending before the Council. The immediate abutters shall also be notified except when the application requires noticing more than 50 abutters. In these cases, the Council's notification procedures will be conducted in accordance with the notification requirements of the Administrative Procedures Act.

If an applicant and/or interested party is to be represented by an attorney, that party's attorney must enter an appearance in writing, to be placed on the notification list and be considered an attorney of record. The Council will make available an appropriate entry of appearance form. Should an attorney wish to withdraw his/her appearance, written notification must be sent to the Council, by registered or certified mail, return receipt requested, specifying the applicant's name and pending file number. Withdrawal may only be granted by leave of the Chairman or Executive Director.

- (4) The date of this notification shall commence a thirty (30) day comment period whereby comments concerning the application shall be received by the Council.
- (5) In the event that during this thirty (30) day period formal written objection and/or request for hearing is received by the Coastal Resources Management Council from an interested party and said formal written objection and/or request for hearing is substantiated by genuine and material reason as outlined in Section 110.3 of the RI CRMP therefore, the matter shall then become a contested case under the rules and regulations of the Council, whereupon a public hearing may be scheduled at a time immediately following the thirty (30) day objection period.
- (6) Upon the expiration of the thirty (30) day period, the Council shall consider the application including staff reports and recommendations thereon, reports and recommendations from other state and local agencies thereon, and comments thereon.

When an application requires as a condition of assent that a deed restriction is necessary, the proposed language for said restriction shall be, unless the executive director determines the application would be better processed without it, made part of the staff reports to the council.

- (7) The Council shall further investigate and review the site of the proposed activity through one or more of its own members.
- (8) Thereafter, at a meeting of the Council, the application shall be considered and acted upon.
- (9) For applications that are lacking information to begin review, staff shall prepare a letter specifying the information necessary to begin the review of said applications. If no information or reply is received within thirty days, such applications shall be deemed deficient and shall not be accepted by the Council. The applicant shall be notified of this

decision.

For applications that are active (accepted for review), staff may request additional information to aid in the review of said applications. If there is no communication or action on said request, staff shall prepare a letter, advising the applicant that such information shall be received within thirty days or said applications shall be canceled. If no reply is received within thirty days, the application shall be canceled by the Executive Director by letter (certified mail, return receipt requested). The file shall then be closed without prejudice to the applicant and the applicant notified as such.

Once a final staff report(s) is filed, an application cannot be revised except in the discretion of the executive director or the full council. The revision may be subject to the fee provisions of section 4.3.

Assents for activities on properties cited for a violation of the Program shall not be issued until all enforcement issues related to that property are resolved. This rule shall not apply when such applications are submitted to resolve an enforcement action, as directed by the Council's enforcement staff.

- (10) Whenever an application has been brought before the Council three (3) times, and the applicant or his legal counsel has failed to appear or offer an acceptable explanation for their absences, then the application shall be canceled without prejudice to the applicant.

(11) Low and Moderate Income Housing

Low and moderate income housing project applications (ref. RIGL 45-53) received by the Council that seek the preferred status afforded under the Department of Administration's regulations that implement said statute shall include a letter from the affected community noting clearly that said community has an affordable housing plan and that said application is therefore seeking said preferred status.

5.2 Contested Cases

- (1) In the event an application or matter pending before this Council becomes a contested case as defined herein, the Council shall then schedule a public hearing before a duly authorized and appointed Subcommittee on the matter.

The subcommittee shall render a recommendation within thirty (30) days of the final hearing unless the Chairman of the Council extends such period.

- (2) Notice of this public hearing shall be in conformity with Title 42 Chapter 35 of the General Laws of the State of Rhode Island to insure all parties be afforded an opportunity to be heard.
- (3) Public hearing shall not be convened until all information required by Section 4.2 of these management procedures have been received by the Subcommittee.

5.3 Hearings

- (1) Hearings required or permitted shall be conducted in accordance with appropriate rules of law and these rules and regulation. Hearings may be before a duly appointed Subcommittee or before the Council as a whole, as designated by the Chairman in his sole discretion. A Subcommittee hearing shall be required when a substantive objection is received from any party or when requested by members (a vote of four (4) or more) of the Coastal Resources Management Council.
- (2) In the case of hearings before a duly appointed subcommittee, the full hearing shall be before such subcommittee. A record shall be kept as provided herein. The subcommittee shall then report its recommendations to the full Council. The record shall be available to the full Council and all parties of record. After the subcommittee recommendation is formally submitted to the full Council, parties may present new evidence before the full Council at the full Council hearing.
- (3) Upon hearing all of the facts and reviewing the record in its entirety, the Council shall render its decision in accordance with Chapter 42-35 of the General Laws.
- (4) In any contested case, all parties shall be served with such notice as may be provided for by law, or, in the absence of such provision, as may be ordered by the Council.
- (5) In the event formal withdrawal of pending written objection to a contested matter is received and/or requested by the objector and/or interested party or representative, it shall be within the sole discretion of the Council to withdraw the matter as a contested case.
- (6) In the event that an applicant does not appear before a duly scheduled subcommittee hearing in accordance with Section 46-23-6 and 42-35-9 (d) of the General Laws, a default shall be entered against the applicant, except the Chairman, if he determines there is good cause for the applicant not appearing, may waive this requirement.
- (7) In the event that no interested party in opposition to the application appears at the subcommittee, and the applicant has not requested the opportunity to examine staff members or other state agency commentators, then the matter shall be declared an uncontested case and be assigned to the next undocketed regular Council meeting.
- (8) At any Council hearing on any application, the applicant or his legal representative must be present. In extraordinary circumstances, the Council may allow an immediate family member to speak on behalf of the applicant, but this shall be in the sole discretion of the Chairman.

5.4 Pleadings

- (1) **Forms.** All Pleadings, (including complaints, answers, motions and petition) shall be on white paper, 8 1/2" x 11" in size.
- (2) **Filing.** Whenever a pleading or other document or paper is required to be filed with the Council, it shall be filed in quadruplicate.

- (3) **Pleading**. Any person (including the Council) filing a Pleading complaint or other document shall adhere to the following form for such purpose:

At the top of the page shall appear the wording "Before the Rhode Island Coastal Resources Management Council." On the left side of the page below the foregoing shall be set out: "In the Matter of (name of applicant)." Opposite the foregoing shall appear the type of pleading offered or other properly labeled title.

The body of the pleading or other document shall be set out in numbered paragraphs which (1) identify the parties by name and address and (2) concisely state the facts which form the basis for the pleading or other pleading or documentation.

All Pleadings (except those filed by and in the name of the Council) shall be in writing and sworn to.

Upon the filing of an application and/or complaint the Council, if it has not already done so, shall assign a file number or docket number to the proceeding and shall enter said number on the original of the pleading.

5.5 Consolidation; Separate Hearings

- (1) When matters involving a common question of law or fact are pending before the Council, it may order a joint hearing of any or all the matters at issue in the proceeding; it may order all the proceedings consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
- (2) The Council, in furtherance of convenience or to avoid prejudice, may order a separate hearing of any matters or allegation against any person or of any separate issue.

5.6 Pre-hearing Conference Rule

- (1) In any proceeding the Council upon its own motion, or upon the motion of one of the parties or their qualified representatives, may in its discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:
- (a) the simplification of the issues;
 - (b) the necessity of amendments of the Pleadings;
 - (c) possibility of obtaining stipulations, admissions of facts and of documents;
 - (d) the limitation of the number of expert witnesses;
 - (e) such other matters as may aid in the disposition of the proceedings.
- (2) The Council shall make an order or statement which recites the action taken at the conference, the amendments allowed to the Pleadings or application and the agreements made by the parties or their qualified representatives as to any of the matters considered, including the settlement or simplification of issues, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order or

statement shall control the subsequent course of the proceedings unless modified for good cause by subsequent order.

5.7 Continuances:

Any party who desires a continuance shall, immediately upon receipt of notice of a hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Chairman of the CRMC or Executive Director of said desire, stating in detail the reasons why such continuance is necessary. Requests by a party to continue a hearing before the full Council may only be granted by the Chairman of the CRMC or the Executive Director and only for good cause shown. Such requests must be in writing and received by the Chairman of the CRMC or the Executive Director 24 hours in advance of the hearing. The Council generally will not grant requests for continuances when not received in writing and/or within less than 24 hours notice. Continuance requests are subject to the fee provisions of section 4.3.

Requests made in Advance for Subcommittee Hearings. Requests by a party to continue a Subcommittee hearing must be made in writing 24 hours prior to the day of the scheduled Subcommittee hearing. Such requests may be granted only by the Chairman of the CRMC, the Executive Director, the Chairman of the Subcommittee, or the acting Chairman of the subcommittee for good cause shown and may be subject to a \$750.00 administrative fee to cover costs incurred by the Subcommittee.

Requests made On the Day of Subcommittee Hearings. Requests by a party to continue a Subcommittee hearing made on the day of the hearing or at the hearing may be granted only by the Chairman of the CRMC, Executive Director, Chairman of the Subcommittee, or acting Chairman of the subcommittee, for good cause shown and shall be assessed an administrative fee. However, such fee shall not be assessed at less than \$750.00 to cover administrative costs incurred by the Subcommittee in conducting such hearing. The Chairman of the CRMC, Executive Director, Subcommittee Chairman, or acting Subcommittee Chairman shall not grant such continuance unless given adequate assurances by the moving party that the administrative fee shall be paid prior to the next scheduled hearing. Nothing herein shall prohibit the Council or Subcommittee, other than at the request by a moving party, as above described from continuing a hearing upon its own motion.

During a hearing, if it appears in the public interest or in the interest of justice that further testimony or argument should be received, the Council or Subcommittee may in its discretion continue the hearing and fix the date for introduction of additional evidence or presentation or argument. Such oral notice shall constitute final notice of such continued hearing.

After close of the Subcommittee hearing by the Subcommittee Chairman, the Subcommittee may not reopen hearings unless the matter is referred back to the Subcommittee from the full Council or the Chairman of the Council. Any new evidence may be presented to the full Council at the full Council hearing.

5.8 Rules of Evidence

(1) Subject to the provision of law and to the other provisions of these rules, all relevant

evidence is admissible which, in the opinion of the Council, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the Council shall give consideration to, but (except to the extent required by law) shall not be bound to follow, the rules of evidence governing civil proceedings, in matters not involving trial by jury, in the Superior Court of the State of Rhode Island.

- (2) When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The Council may in its discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objection to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered.
- (3) When new evidence is proffered to the Council, the Council may accept or reject the proffered evidence, or remand the matter in whole or in part to a subcommittee for further proceedings.

5.9 Presentation of Expert and Lay Testimony

All parties to an application 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.

5.10 Transcripts

Transcripts of testimony shall be available at the Council's office for examination by any party to the proceeding until expiration of the time during which any appeal or petition for judicial review authorized by law may be filed. Thereafter such a transcript shall not be available for examination by any person except with the approval of the Council after notice to all parties to such proceeding. If any party files proceedings for judicial review, the Council shall, upon request by any party, supply to such party a copy or copies of the transcript of the proceedings before it at such reasonable charge as the Council shall establish.

5.11 Finding of Fact

Any party may, at the conclusion of a hearing or within such later time as may be fixed by the Council, submit to the Council proposed findings of fact, copies thereof to be served upon each party to the proceedings.

5.12 Permit Extensions

Where the Council has issued a permit to undertake an activity in accordance with this Program, said permit shall require such activity licensed or permitted thereunder to be completed within (3) years from the date of issuance unless specifically granted a longer period of time by the Council. Extensions may be granted for good cause demonstrated by the applicant. Additionally, in determining whether to grant an extension, the Council will consider whether there has been a substantial change in the environmental conditions on the

site, whether the CRMP has been amended such that the activity would now require variances or special exceptions, or additional variances or special exceptions, and whether the applicant has made a good faith effort to undertake construction of the permitted activity. In the event an applicant or his agents cannot complete said activity within the three (3) year permitted time, unless specifically granted a longer period of time by the Council, the permit shall expire unless the applicant files a timely petition with the Council for a permit extension. The applicant may, prior to the expiration of said time, petition the Council in writing for an extension. Extensions may be granted for projects only if it has been determined by staff that the work accomplished is in compliance with the conditions of approval established by the Council.

The Executive Director in his discretion for cause shown may administratively grant an extension for a period of time of up to one (1) year from the expiration date of the permit. The Executive Director may grant a maximum of three (3) one (1) year extensions. A fourth and final one (1) year extension may be granted only by the Council and only for a period of time of up to one (1) year. However, for projects associated with public infrastructure, the Council may grant extensions for more than one (1) year.

Large Scale Projects are generally commercial or public projects which due to their size, complexity and scope have construction schedules which, at reasonable rates of build-out, exceed seven (7) years. The applicant may, prior to the expiration of a permit, petition the Council in writing for an extension beyond that period of time originally and specifically granted by the Council. The Council may grant an extension that exceeds the permitted assent completion date upon demonstration of a good faith effort to meet construction timelines. The granting of an extension by the Council shall be the minimum necessary to complete the project, but shall not exceed 10 years beyond that period of time originally and specifically granted by the Council. In granting this extension the Council may place additional conditions on the previous permit that may be necessary to bring remaining elements of the project in conformance with current regulatory standards.

A notification of permit extension shall be mailed to appropriate municipal and state agencies.

Where a proposed activity requires a Section 401 Water Quality Certification (WQC) (or its waiver) from the RIDEM as a prerequisite of the Rhode Island Coastal Resources Management Program (RICRMP), the applicant shall obtain the WQC, its waiver, or its denial within one (1) year from the date of public notice otherwise the prerequisite will be waived. However, if the applicant has not obtained the section 401 Water Quality Certificate, its waiver, its cancellation, or its denial within one (1) year of the date of public notice, the prerequisite contained in the RI CRMP may be waived by the Executive Director in his discretion if he determines that there is no significant potential for the proposed activity to result in a discharge of pollutants into the state's coastal waters. Thirty (30) days prior to waiving the section 401 WQC of the RI CRMP, the Council shall notify the RIDEM that it is considering such a waiver.

If, at any time, the RIDEM issues a denial for a section 401 WQC, then the applicant shall have thirty (30) days after such final determination of denial to obtain a Section 401 WQC otherwise the application and/or the Council's approval shall be canceled.

5.13 Modification of Actions

For good cause, a majority of the Coastal Resources Management Council members present at a bi-monthly meeting of the full Council, wherein action is to be taken, may vote to modify any said action taken hereunder provided reasons for such modifications are set forth on the record and in the minutes of the meetings, provided however, that the modification relates only to items on the bi-monthly agenda.

A notification of modification of action shall be mailed to appropriate municipal and state agencies.

5.14 Withdrawal of Applications

The applicant, at any time up to the date that final staff reports are filed, may withdraw the application without prejudice. After staff reports have been filed, the application may be withdrawn only with the permission of the Council. Once the application has been withdrawn, the matter may only be considered again if the applicant submits a new application with the appropriate fee.

5.15 Federal Consistency Determinations and Certifications:

1. Council review and notification of federal consistency certification applications for non-federal direct activities, federal permits, licenses, approvals, and federal assistance, shall be in accordance with the Rhode Island Coastal Resources Management Program and these Management Procedures.
2. For purposes of notification and review, Council review of direct federal activity consistency determinations shall be considered starred (*) administrative applications except for those activities which the Council has determined have de-minimus impact.
3. Pursuant to the review and response allowances contained at 15 CFR 930.41, a 15-day notice period will commence upon receipt of the federal consistency determination. In the event that during the fifteen (15) day comment period a formal written objection is received by the Council from an interested party, the objection must substantiate by evidence that the proposed federal activity does not conform with the RICRMP. Such objection shall describe the reasons for the objection and provide alternative measures, if they exist, that would, in the objectors opinion, make the activity consistent with the RICRMP.
4. Upon reviewing the record, the Executive Director shall render a decision on the consistency of the proposed direct federal activity based on the enforceable policies of the RICRMP and pursuant to section 307 of the Federal CZMA, or refer such matter to the full Council for such decision.
5. The Council's action on the consistency of the proposed direct federal activity shall follow the certification and appeal processes and procedures found in 15 CFR 930 et. seq.
6. The Council may rely upon the public notice provided by the Federal agency proposing the

activity or reviewing the application for the federal license or permit when such notice satisfies these requirements.

- 5.16** The Council will not act upon the same request unless there has been a substantial or material change in the circumstances regarding the application or the action of the Council.

6. PRACTICE BEFORE THE COUNCIL

- 6.1** Any person may appear before the Council in his own behalf. Any person or party who has an interest in any matter before the Council may appoint an attorney to represent him before the Council.

In order to represent a person or party before the Council, an attorney must comply with Section 5.1 of the Management Procedures.

In extraordinary circumstances, the Council may allow an immediate family member to speak on behalf of the applicant, but this shall be in the sole discretion of the Chairman.

- 6.2** All persons appearing in proceedings before the Council in a representative capacity shall conform to the standards of conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Council may decline to permit such person to appear in a representative capacity in any proceedings before the Council.

7. PRELIMINARY INVESTIGATIONS

- 7.1** Whenever authorized by law, the Council may conduct preliminary investigations into matters under its jurisdiction.

- 7.2** Whenever a member of the staff or a Coastal Resources Management Council Member witnesses a violation of the CRMC Plan or Assent, that individual is hereby authorized to issue a warning to the person violating the Plan on a form approved by the CRMC and a report of that warning shall be delivered by the staff or Council member to the Executive Director upon issuance.

8. FINAL DECISIONS OF THE COUNCIL

- 8.1** Final decisions or orders adverse to a party in a contested case shall be in writing and made part of the record. The final decisions shall include findings of fact and conclusions of law separately stated. Final decisions or orders adverse to a party in a contested case may be signed by the Chairman, Vice Chairman, or the Executive Director.

8.2 Findings of Fact

If set forth, the statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. These facts shall be based exclusively upon the

record and matters officially noticed. The parties and their attorneys of record shall be notified of the decision of the Council. The City or Town clerk and the local building official of the community of which the assent is granted shall be sent a copy of the assent or its denial.

8.3 Modification of Assents and Final Decisions

At any time prior to the expiration of an assent, the full Council by majority vote may, based upon the evidence presented to it, modify an assent. The City or Town clerk and the local building official in the community shall be notified of the modification.

The Council authorizes the Executive Director in his discretion to modify an assent or final decision of the Council when the requested modification is consistent with the prior approval of the Council and the applicant and staff review have clearly demonstrated to the Executive Director's satisfaction that the project's overall impact to the state's coastal resources will be less than or equal to the existing assent or decision.

8.4 Permit Revocation

The Council may revoke a permit for noncompliance with or violation of its terms after written notice of intention to do so has been given the holder, and the holder, in return, has been given the opportunity to present evidence to the contrary to the Council. Financial hardship on the part of a holder shall not be a defense to the revocation of a permit. The Council may also revoke a permit if it finds that the holder or his agent submitted relevant false information to the Council.

9. SERVICE OF PROCESS

9.1 Service. The Council shall cause to be served all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be served or caused to be served by the party filing.

9.2 By Whom Served. All papers served by either the Council or any party shall be served upon all representatives of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law.

9.3 Service upon Parties. The final order, and any other paper required to be served by the agency upon a party, shall be served upon such party or upon the agent designated by them or by law to receive service of such papers, and a copy shall be furnished to representatives of record.

9.4 Method of Service. Service of papers shall be made personally or, unless otherwise provided by law, by first class registered or certified mail, or telegraph.

9.5 When Service Complete. Service upon parties shall be regarded as complete: by mail, upon deposit in the United States mail properly stamped and addressed; by telegraph, when deposited with a telegraph company properly addressed, and with charges prepaid.

9.6 Filing with Council. Papers required to be filed with the Council shall be deemed filed upon actual receipt by the Council at the Council's office.

10. AGENDAS AND STAFF REPORTS

10.1 At bi-monthly meetings, staff reports shall be submitted to Council members prior to the meeting scheduled to consider that staff report and it shall be contained in the agenda.

10.2 Agenda for the bi-monthly meeting shall be delivered to Council members 96 hours prior to the meeting.

10.3 Contested hearing subcommittee agendas and staff reports shall be delivered to subcommittee members ninety-six (96) hours prior to the hearing.

11. ADVERTISING

All Subcommittee meetings shall be advertised in accordance to law.

12. DECLARATORY RULINGS

12.1 Petitions

As prescribed by section 42-35-8, G.L.R.I. 1956, as amended, any interested person may petition the Council for a declaratory ruling. The Council on its own initiative by a majority vote may conduct an inquiry regarding any matter properly subject for a declaratory ruling. Once a petition is filed, or the Council by its own accord, may initiate any investigations, staff review or comments, or seek a legal opinion if it deems necessary. All petitions for declaratory rulings must comply with the Pleadings provisions of these management procedures and must set forth in a legal memoranda, with particularity, all relevant facts, issues, and case law.

Thereafter, at the discretion of the Council, the Council may: 1) Issue a binding declaratory ruling; or 2) Issue a non-binding declaratory ruling; or 3) Notify the petitioner and/or interested parties of record that no declaratory ruling is to be issued.

The Council's decisions on declaratory ruling petitions shall be treated as final Council actions or orders in contested cases for the purposes of judicial review.

13. JUDICIAL REVIEW OF CONTESTED CASES

13.1 Any person who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. Any preliminary, procedural, or intermediate agency act of ruling is immediately reviewable in any case in which review of the final agency decision would not provide an

adequate remedy.

- 13.2** Proceedings for review are instituted by filing a complaint in the Superior Court of Providence County within (30) days after mailing notice of the final decision of the agency or, if a rehearing is requested, within thirty (30) days after the decision concerning the assessment or determination of any tax, interest or penalty made by the tax administrator must pay the amount of such tax, interest or penalty to said administrator as a prerequisite to the filing of such complaint. Copies of the complaint shall be served upon the agency and all other parties of record in the manner prescribed by applicable procedural rules.
- 13.3** The filing of the complaint does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate rules.
- 13.4** Within thirty (30) days after the service of the complaint, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties of the review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The courts may require or permit subsequent corrections or additions to the record.
- 13.5** If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings of decisions with the reviewing court.
- 13.6** The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.
- 13.7** The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
- (1) in violation of constitutional or statutory provisions;
 - (2) in excess of the statutory authority of the agency;
 - (3) made upon unlawful procedure;
 - (4) affected by other error of law;
 - (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

14. ADOPTION OF MANAGEMENT POLICIES

14.1 Adoption of Management Policies and rule making shall be in accordance with Title 42, Chapter 35 of the General Laws of the State of Rhode Island and further in accordance with the rules and regulations and procedures set forth herein.

14.2 In addition to other rule making requirements imposed by law, the Council shall:

- (1) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;
- (2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available and including a description of all forms and instructions used by the agency;
- (3) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;
- (4) Make available for public inspection all final orders, decision and opinions.

14.3 No Council rule, order, or decision is valid or effective against any person or party, nor may it be invoked by the Council for any purpose, until it has been made available for public inspection as herein required, except that this provision is not applicable in favor of any person or party who has actual knowledge thereof.

14.4 Prior to the adoption, amendment, or repeal of any rule the Council shall:

- (1) Give at least thirty (30) days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and of the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the Council for advance notice of its rule-making proceeding and published in a newspaper or newspapers having aggregate general circulation throughout the state, provided, however, that if said action is limited in its applicability to a particular area, then said publication may be in a newspaper having general circulation in said area.
- (2) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by twenty-five (25) members. The Council shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the Council, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

14.5 If the Council finds that an imminent peril to the public health safety or welfare requires adoption of a rule upon less than thirty (30) days' notice, and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule so adopted may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding ninety (90) days.

14.6 No rule hereafter adopted is valid unless adopted in substantial compliance with this section, but no contest of any rule on the ground of non-compliance with the procedural requirements of this section may be commenced after two (2) years from its effective date.

14.7 Filing and Taking Effect of Rules

(1) The Council shall file forthwith in the office of the Secretary of State a certified copy of each rule adopted by it. The Secretary of State shall keep a permanent register of the rules open to public inspection.

(2) Each rule hereafter adopted is effective twenty (20) days after filing, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule may become effective immediately upon filing with the Secretary of State, or at a stated date less than twenty (20) days thereafter, if the Council finds that this effective date is necessary because of imminent perils to the public health, safety, or welfare. The Council's finding and a brief statement of the reasons therefore shall be filed with the rule in the office of the Secretary of State. The Council shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

14.8 Petition for Adoption of Rules

Any interested person may petition the Council requesting the promulgation, amendment or repeal of any rule. The Council shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Upon submission of a petition, the Council within thirty (30) days shall either deny the petition in writing (stating its reasons for the denials) or initiate rule-making proceedings.