**650-RICR-10-00-1**

# TITLE 650 – COASTAL RESOURCES MANAGEMENT COUNCIL

## CHAPTER 10 – GENERAL ADMINISTRATION

## SUBCHAPTER 00 – N/A

PART 1 – MANAGEMENT PROCEDURES


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## 1.1 Definitions

A. "Agency" means and 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.

B. "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 (4) members of the Council.

C. "License" means and 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.

D. "Licensing" means and 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.

E. "Parties" means 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 R.I. Gen. Laws § 42-35-1 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.

F. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

G. "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 R.I. Gen. Laws § 42-35-8, or

3. Intra agency memoranda.

H. "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.

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

J. "Council meeting" means any meeting of the full Council or a subcommittee.

K. "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.

## 1.2 Meetings and Members

A. The regular meeting schedule, unless changed by the Chairman or the Vice Chairman, shall consist of the second (2nd) and fourth (4th) Tuesday of the months of September through June and only the fourth (4th) Tuesday in July and August.

B. A quorum consists of six (6) members.

C. 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 a hearing and vote on the matter. An abstention shall not be counted as a vote in the tally, but shall be counted for the purposes of maintaining a quorum.

D. The Council may have closed meetings. Such meetings shall be in accordance with the exceptions to the Open Meeting Law as set out in Rhode Island General Laws Chapter 42-46, as amended.

E. All meetings of the Council shall be open to the public except as set out in § 1.2(D) of this Part above and the public shall have a reasonable opportunity to be heard.

F. In any twelve (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.

G. Prior to serving on the Council all members shall complete a training program developed by the agency staff. As a condition of continuing to serve on the Council, members must routinely attend and serve on a subcommittee and attend training.

## 1.3 Subcommittees

A. 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.

B. Additionally, the Chairman in his/her discretion may appoint standing Special Area Management Plan (SAMP) Subcommittees to hear contested cases resulting from the implementation of the Council's Special Area Management Plans. However, in appropriate circumstances, contested cases may be heard by the full CRMC, or *ad hoc* Subcommittees, as determined by the Chairman. The Chairman and Vice Chairman shall sit *ex officio* on all Subcommittees.

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

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

## 1.4 Application for Council Permits

### 1.4.1 Proposed Actions Requiring a Council Permit

A. 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 two hundred foot (200') contiguous area, or as otherwise set out in the Coastal Resources Management Program, require a Council Assent. (See the definition of development in Part 20-00-1 of this Title)

B. The design, location, construction alterations(s), or operation of:

1. Power generating and desalination plants;

2. Chemical or petroleum processing, transfer or storage;

3. Minerals extraction;

4. Sewage treatment and disposal and solid waste disposal facilities whether residential, municipal or industrial;

5. 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;

6. Alterations to, or activities occurring on coastal wetlands and all directly associated contiguous areas which are necessary to preserve the integrity of such wetland.

C. Where the Council finds a reasonable probability or conflict with adopted Regulations of this Title or damage to the coastal environment.

D. All developments or operations which may alter the character of any freshwater wetland in the vicinity of the coast.

### 1.4.2 Information Requirements, Application Forms and Fees

A. Application forms may be obtained from the Coastal Resources Management Council, Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, R.I. 02879-1900, by calling (401) 783-3370, or from the CRMC website: www.crmc.ri.gov.

B. An application checklist/instruction sheet will be provided to each applicant together with required forms.

C. Applicants must complete four (4) application forms and return them together with the proper application processing fee to the Coastal Resources Management Council. Application processing fees are non-refundable in the event the CRMC denies an application or another State agency denies a permit that is a prerequisite for a CRMC Assent.

D. 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.

E. 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 § 20-00-1.3.1(A) of this Title). However, qualifying businesses may be exempt from this requirement provided they meet the provisions of R.I. Gen. Laws § 42-35-3.5.

F. 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. However, qualifying businesses may be exempt from this requirement provided they meet the provisions of R.I. Gen. Laws § 42-35-3.5.

G. 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 be issued until all required approvals have been obtained.

H. 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.

I. Provided they meet the provisions of R.I. Gen. Laws § 42-35-3.5, a qualifying business may request, in writing, a concurrent review at the time of filing a CRMC application. Upon receiving the written request, the CRMC will conduct a simultaneous application review with other applicable State agencies and the municipality provided the business obtains a preliminary determination from the local municipality that demonstrates the proposed project is consistent with the applicable municipal zoning ordinances. Under this process, the CRMC will not require prior approvals or permits from municipalities or State agencies under §§ 1.4.2(E) and (F) of this Part above to conduct the simultaneous review. The CRMC, however, will not issue the CRMC Assent until such time that the applicant submits to the CRMC the required municipal and State agency permits.

### 1.4.3 Application Requirements for Expedited Review of Projects Seeking Insurance Institute for Business & Home Safety (IBHS) Fortified Home™ Program Designation

A. Applicants for projects seeking the IBHS Fortified Home™ Program Certification shall file with their CRMC Assent application a copy of their Fortified Home™ Evaluation Application.

B. Fortified Bronze level applications are eligible for expedited review only until December 31, 2017. Beginning January 1, 2018, only Fortified Silver or Gold level projects will be eligible for the expedited permit incentive.

C. Bronze level re-roofing projects on existing homes are eligible for expedited review and Assent issuance within five (5) business days or less, provided there are no changes in the rooflines or structural footprint expansion.

D. Silver and Gold level projects for new home construction or renovation to existing homes are eligible for expedited application review and Assent issuance within fifteen (15) business days or less provided they have a complete application as determined by CRMC staff, meet Category A application requirements, and there

are no variance requests for setback, buffer and stormwater standards as specified in §§ 20-00-1.1.9, 1.1.11 and 1.3.1(F) of this Title, respectively.

E. Fortified Home™ Program applicants must provide a permit bond payable to the CRMC in the amount of five thousand dollars ($5,000.00) for Bronze level certification and twenty thousand dollars ($20,000.00) for Silver and Gold level certifications. The CRMC shall release the permit bond upon the project completing the requirements of the Fortified Home™ Program and providing certification of such to the CRMC within ninety (90) days following the issuance of a Certificate of Occupancy issued by the local building official. Upon a determination by CRMC staff that the applicant failed to provide the Fortified Home™ Program certification within the specified period, the applicant shall be in default and the bond shall be forfeited to the CRMC. Further, two (2) defaults by an applicant will commence their ineligibility for the expedited review program, pursuant to this section, for a period of five (5) years.

### 1.4.4 Schedule of Fees

A. All filing fees are set by the Council and are non-refundable.

B. Only when an application is filed within one (1) year of a Council Determination Request report may the filing fee be applied against the filing fee of other applications for Council Assent.

### 1.4.5 Determination Request

A. Those projects for a single-family residential structure (existing or proposed), including a coastal feature verification for the site, filed by a homeowner or potential homeowner: three hundred dollars ($300.00)

B. All other projects (e.g., development of subdivisions, condominiums, commercial, industrial, waterfront business, etc.), including a coastal feature verification for the site: one thousand dollars ($1,000.00)

C. Jurisdictional determinations: one hundred dollars ($100.00)

### 1.4.6 Applications for Council Assent

A. All fees are summative. In addition, all fees are filing fees and are non-refundable.

1. New Residential Boating Facility (pier/dock): one thousand five hundred dollars ($1,500.00)

2. Modification of under fifty percent (50%) of size (area) of a current assented residential boating facility: two hundred fifty dollars ($250.00)

3. Residential development projects (condominiums, subdivisions, paper subdivisions, etc.): three thousand five hundred dollars ($3,500.00) for the first six (6) units/lots and four hundred dollars ($400.00) for each additional unit/lot, plus one half of one percent (0.5%) of estimated project cost (see below) of the infrastructure (roads, drainage, etc.) of the project. 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.

4. 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

5. All other projects (not identified herein, including reviews conducted pursuant to § 20-00-1.3.3 of this Title):

    a. Estimated Project Cost (EPC). 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 Onsite Wastewater Treatment Systems (OWTS), 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, 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.

        (1) Projects with an (EPC) up to and including five hundred dollars ($500.00) shall be assessed a twenty-five dollar ($25.00) application fee.

        (2) Projects with an (EPC) greater than five hundred dollars ($500.00) and less than or equal to one thousand dollars ($1,000.00) shall be assessed a fifty dollar ($50.00) application fee.

(3) Projects with an EPC greater than one thousand dollars ($1,000.00) and less than or equal to two thousand five hundred dollars ($2,500.00) will be assessed a one hundred dollar ($100.00) application fee.

(4) Projects with an EPC greater than two thousand five hundred dollars ($2,500.00) and less than or equal to five thousand dollars ($5,000.00) will be assessed a one hundred fifty dollar ($150.00) application fee.

(5) Projects with EPC greater than five thousand dollars ($5,000.00) and less than or equal to ten thousand dollars ($10,000.00) will assessed a two hundred dollar ($200.00) application fee.

(6) Projects with EPC greater than ten thousand dollars ($10,000.00) and less than or equal to twenty-five thousand dollars ($25,000.00) will assessed a two hundred fifty dollar ($250.00) application fee.

(7) Projects with EPC greater than twenty-five thousand dollars ($25,000.00) and less than or equal to fifty thousand dollars ($50,000.00) will assessed a five hundred dollar ($500.00) application fee.

(8) Projects with EPC greater than fifty thousand dollars ($50,000.00) and less than or equal to one hundred thousand dollars ($100,000.00) will assessed a seven hundred fifty dollar ($750.00) application fee.

(9) Projects with EPC greater than one hundred thousand dollars ($100,000.00) and less than or equal to one hundred fifty thousand dollars ($150,000.00) will assessed a one thousand dollar ($1,000.00) application fee.

(10) Projects with EPC greater than one hundred fifty thousand dollars ($150,000.00) and less than or equal to two hundred thousand dollars ($200,000.00) will assessed a one thousand two hundred fifty dollar ($1,250.00) application fee.

(11) Projects with EPC greater than two hundred thousand dollars ($200,000.00) and less than or equal to two hundred fifty thousand dollars ($250,000.00) will assessed a one thousand five hundred dollar ($1,500.00) application fee.

(12) Projects with EPC greater than two hundred fifty thousand dollars ($250,000.00) and less than or equal to three hundred thousand dollars ($300,000.00) will assessed a one

thousand seven hundred fifty dollar ($1,750.00) application fee.

(13) Projects with EPC greater than three hundred thousand dollars ($300,000.00) and less than or equal to three hundred fifty thousand dollars ($350,000.00) will assessed a two thousand dollar ($2,000.00) application fee.

(14) Projects with EPC greater than three hundred fifty thousand dollars ($350,000.00) and less than or equal to four hundred thousand dollars ($400,000.00) will assessed a two thousand two hundred fifty dollar ($2,250.00) application fee.

(15) Projects with EPC greater than four hundred thousand dollars ($400,000.00) and less than or equal to four hundred fifty thousand dollars ($450,000.00) will assessed a two thousand five hundred dollar ($2,500.00) application fee.

(16) Projects with EPC greater than four hundred fifty thousand dollars ($450,000.00) and less than or equal to five hundred thousand dollars ($500,000.00) will assessed a two thousand seven hundred fifty dollar ($2,750.00) application fee.

(17) Projects with an EPC greater than five hundred thousand dollars ($500,000.00) and less than or equal to twenty million dollars ($20,000,000.00) will be assessed an application fee of two thousand seven hundred fifty dollars ($2,750.00) plus one-half of one percent (0.5%) of the EPC beyond five hundred thousand dollars ($500,000.00), to a maximum fee of one hundred thousand two hundred and fifty dollars ($100,250.00).

(18) Projects with an EPC greater than twenty million dollars ($20,000,000.00) will be assessed an application fee of one hundred thousand two hundred fifty dollars ($100,250.00) plus one-fourth of one percent (0.25%) of the EPC beyond twenty million dollars ($20,000,000.00).

6. Maintenance fees shall be assessed as follows:

a. Projects with an EPC up to five hundred dollars ($500.00) will be assessed a twenty dollar ($20.00) application fee;

b. Projects with EPC greater than five hundred dollars ($500.00) and less than or equal to one thousand dollars ($1,000.00) will assessed a thirty-five dollar ($35.00) application fee;

c. Projects with an EPC greater than one thousand dollars ($1,000.00) and less than or equal to five thousand dollars ($5,000.00) will be assessed an application fee of fifty dollars ($50.00).

d. Projects with EPC greater than five thousand dollars ($5,000.00) and less than or equal to ten thousand dollars ($10,000.00) will assessed a one hundred dollar ($100.00) application fee.

e. Projects with an EPC greater than ten thousand dollars ($10,000.00) and less than or equal to twenty million dollars ($20,000,000.00) will be assessed an application fee of one hundred dollars ($100.00) plus one-half of one percent (0.5%) of the EPC beyond ten thousand dollars ($10,000.00), to a maximum fee of one hundred thousand fifty dollars ($100,050.00).

f. Projects with an EPC greater than twenty million dollars ($20,000,000.00) will be assessed an application fee of one hundred thousand fifty dollars ($100,050.00) plus one-fourth of one percent (0.25%) of the EPC beyond twenty million dollars ($20,000,000.00).

8. Assent Renewal or Extensions:

a. Single Family Residence: seventy-five dollars ($75.00)

b. All Others: two hundred fifty dollars ($250.00)

9. Request for Modification of Assent shall be assessed the following application fees:

a. Single Family Residence where no public hearing is necessary: one hundred dollars ($100.00)

b. All others shall be charged the appropriate application fee or two hundred fifty dollars ($250.00) whichever is greater.

c. CRMC permitted aquaculture operation: one hundred dollars ($100.00)

10. Beach Vehicle Permits:

a. Annual, in-State vehicle registration: one hundred dollars ($100.00)

b. Annual, out-of-State vehicle registration: two hundred dollars ($200.00)

~~c. Three (3) day pass, in-State vehicle registration: twenty-five dollars ($25.00)~~

~~d. Three (3) day pass, out-of-State vehicle registration: sixty dollars ($60.00)~~

11. Lightering fee: two hundred fifty dollars ($250.00) each transfer

12. Buffer Zone Alterations and/or Management Plans shall be assessed the following application fees based on acreage affected:

    a. When the buffer zone alteration and/or management plan covers less than or equal to one-half (1/2) an acre: five hundred dollars ($500.00)

    b. When the buffer zone alteration and/or management plan covers an area greater than one-half (1/2) an acre but less than or equal to one (1) acre: six hundred dollars ($600.00)

    c. When the buffer zone alteration and/or management plan covers an area greater than one (1) acre but less than or equal to five (5) acres: seven hundred fifty dollars ($750.00)

    d. When the buffer zone alteration and/or management plan covers an area greater than five (5) acres: one thousand dollars ($1,000.00)

13. Structural Shoreline Protection Facilities shall be changed an application fee as follows:

    a. New structural shoreline protection facilities shall be charged an application fee of one thousand five hundred dollars ($1,500.00) for the first one hundred linear feet (100') and fifteen dollars ($15.00) per linear foot thereafter.

    b. Maintenance to structural shoreline protection facilities shall be charged an application fee in accordance with § 1.4.6(A)(6) of this Part above.

14. Onsite Wastewater Treatment Systems (OWTS) shall be charged the following application fees:

    a. Single family homes (alteration or repair): eighty dollars ($80.00)

    b. All other OWTS (alteration or repair): one hundred five dollars ($105.00)

15. 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 R.I. Gen. Laws § 46-23-8.

16. Aquaculture Renewal Fee: seventy-five dollars ($75.00)

17. Recreational Aquaculture Fee:

    a. Initial: fifty dollars ($50.00)

    b. Annual: twenty-five dollars ($25.00)

18. Experimental Aquaculture, Each Site: twenty-five dollars ($25.00)

19. 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 R.I. Gen. Laws § 42-64-7 *et seq*. (Mill Building and Economic Revitalization Act), where such application is eligible for an administrative Assent and meets 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: five hundred dollars ($500.00) per hour). The minimum application fee shall be five thousand dollars ($5,000.00).

20. Projects that are determined to be brownfield sites under applicable DEM Rules and Regulations (250-RICR-140-30-2) shall be assessed an application fee of five thousand dollars ($5,000.00).

21. 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 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, and 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.

22. CAD Cell Disposal Fee:

    a. Marinas, Boatyards, Yacht Clubs: eleven dollars and sixty-five cents ($11.65) per cubic yard (cy)

    b. Commercial Facilities: seventeen dollars ($17.00) per cy

c. Residential Docks: twenty-five dollars ($25.00) per cy

23. § 20-00-1.3.3 Waiver Requests: one thousand dollars ($1,000.00)

24. Project reviews conducted pursuant to § 20-00-1.3.3 of this Title, which are determined to require a Council Assent, shall pay an application fee in accordance with § 1.4.6(A)(5) of this Part above.

25. The application fee for Coastal Hazard Resiliency Projects, including but not limited to flood proofing, elevating structures and other accepted methods, in association with Army Corps of Engineers funded projects shall be waived.

### 1.4.7 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 § 1.4.6 of this Part. In addition, the Executive Director shall assess the following administrative fees which take into account the additional demand on Council resources (see § 20-00-1.1.12 of this Title, formerly RICRMP Section 160):

   a. Illegally constructed structures and unauthorized activities located in tidal waters and/or on adjacent coastal or shoreline features shall be assessed a five hundred dollar ($500.00) administrative fee;

   b. Illegal activities excluding those classified as maintenance activities under the RICRMP shall be assessed a two hundred fifty dollar ($250.00) administrative fee; and,

   c. Unauthorized maintenance activities shall be assessed a one hundred dollar ($100.00) administrative fee.

   d. 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.

2. Applications before the Council:

   a. 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 § 1.4.6 of this Part. 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.

### 1.4.8 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.

### 1.4.9 Petitions for Regulation Changes

A. Applicants petitioning the Council to make Regulation changes pursuant to the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-6, shall file a written request detailing the proposed Regulation change with track changes, proposed text, and the reasoning and necessity for the proposed Regulation change.

### 1.4.10 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.

### 1.4.11 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 Part 20-00-2 of this Title, Coastal Resources Management Program-Rules and Regulations Governing 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 Part 20-00-2 of this Title, Coastal Resources Management Program-Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, due to its proximity to freshwater wetlands, then one (1) application fee shall be required. In such cases, the fee shall be the higher of the two (2) fees required by this section and Part 20-00-2.

### 1.4.12 Modifications to Pending Applications

A. 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 § 1.4.6(A)(20) of this Part 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.

### 1.4.13 Requests for Continuances Are Subject to the Following Fees

A. First (1st) Request: one hundred dollars ($100.00)

B. Second (2nd) Request: two hundred fifty dollars ($250.00)

C. Third (3rd) or Greater: five hundred dollars ($500.00)

### 1.4.14 Transatlantic Cables. Consistent with R.I. Gen. Laws Chapter 46-23 et seq. and Specifically R.I. Gen. Laws § 46-23-1(f)(2), the Fee for Transatlantic Cables Making Landfall in Rhode Island Shall Be Set at:

A. Forty thousand dollars ($40,000.00) per annum per active cable; and,

B. Two thousand five hundred dollars ($2,500.00) one (1) time fee per inactive cable.

1. The annual fee for existing active cables shall be assessed by the CRMC immediately upon enactment and pro-rated to the calendar year. All such subsequently CRMC-approved active cables shall be assessed at the time of approval and pro-rated to the calendar year. Inactive cable fees are due in full upon enactment.

2. The annual fee shall be due on January 1st of each year.

3. The fee schedule shall be re-evaluated every five (5) years.

4. For purposes of this Regulation a transatlantic cable is one that spans or crosses the Atlantic Ocean from Rhode Island to another country other than Canada or Mexico. It resides in, on or over Rhode Island's submerged lands within the State's three (3) mile limit.

5. As further defined herein, an active transatlantic cable is a cable functioning and operating for its intended purposes. An inactive transatlantic cable is a cable which is not active and intended by its record owner to be permanently inactive. Inactive does not include temporary

periods of inactivity for maintenance, repairs, replacement or other similar purposes.

6. The record owner of an active transatlantic cable that makes landfall in Rhode Island shall provide written notice to CRMC of the record owner's termination of activity of an active submerged transatlantic cable that makes landfall in Rhode Island. Such notice shall be provided to CRMC within ten (10) days of such termination. Once a cable is considered inactive, the one (1) time fee shall become applicable in the next calendar year.

7. The record owner of an inactive transatlantic cable that makes landfall in Rhode Island will provide written notice to CRMC of the record owner's reactivation of an inactive submerged transatlantic cable that makes landfall in Rhode Island. Such notice shall be provided to CRMC within ten (10) days of such reactivation.

8. If there is a change in ownership the record owner shall notify CRMC of the change in ownership and who the new record owner is within thirty (30) days of the change.

## 1.5. Notification and Review of Permit Applications

### 1.5.1 Notification

A. 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, the Regulations from which variances are sought and the percent of the deviation from the standard and/or whether a special exception is required.

B. 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.

C. 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 fifty (50) abutters. In these cases, the Council's notification procedures will be conducted in accordance with the notification requirements of the Administrative Procedures Act.

D. 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.

E. The date of this notification shall commence a thirty (30) day comment period whereby comments concerning the application shall be received by the Council.

F. 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 § 20-00-1.1.6(G) of this Title 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.

G. 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.

H. The Council shall further investigate and review the site of the proposed activity through one (1) or more of its own members.

I. Thereafter, at a meeting of the Council, the application shall be considered and acted upon.

J. 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 (30) days, such applications shall be deemed deficient and shall not be accepted by the Council. The applicant shall be notified of this decision.

K. 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 (30) days or said applications shall be canceled. If no reply is received within thirty (30) 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.

L. 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 §§ 1.4.4 through 1.4.14 of this Part.

M. 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.

N. 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.

O. Low and Moderate Income Housing. Low and moderate income housing project applications received by the Council that seek the preferred status afforded under R.I. Gen. Laws Chapter 45-53 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.

### 1.5.2 Contested Cases

A. 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.

B. Notice of this public hearing shall be in conformity with R.I Gen. Laws Chapter 42-35 to ensure all parties be afforded an opportunity to be heard.

C. Public hearing shall not be convened until all information required by § 1.4.2 of this Part has been received by the Subcommittee.

### 1.5.3 Hearings

A. Hearings required or permitted shall be conducted in accordance with appropriate Rules of Law and these Rules and Regulations. Hearings may be before a duly appointed Subcommittee before the Council as a whole, as

designated by the Chairman in his/her 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.

B. 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.

C. Upon hearing all of the facts and reviewing the record in its entirety, the Council shall render its decision in accordance with R.I. Gen. Laws Chapter 42-35.

D. 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.

E. 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.

F. In the event that an applicant does not appear before a duly scheduled Subcommittee hearing in accordance with R.I. Gen. Laws §§ 46-23-6 and 42-35-9(d), 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.

G. 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.

H. 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.

### 1.5.4 Pleadings

A. Forms. All Pleadings, (including complaints, answers, motions and petition) shall be on white paper, eight and one half inches by eleven inches (8 1/2" x 11") in size.

B. Filing. Whenever a pleading or other document or paper is required to be filed with the Council, it shall be filed in quadruplicate.

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

1. 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.

2. The body of the pleading or other document shall be set out in numbered paragraphs which:

a. Identify the parties by name and address; and

b. Concisely state the facts which form the basis for the pleading or other pleading or documentation.

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

4. 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.

### 1.5.5 Consolidation; Separate Hearings

A. 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.

B. 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.

### 1.5.6 Pre-hearing Conference Rule

A. In any proceeding of the Council upon its own motion, or upon the motion of one (1) of the parties or their qualified representatives, may in its discretion direct the parties of their qualified representatives to appear at a specified time and place for a conference to consider:

1. The simplification of the issues;

2. The necessity of amendments of the Pleadings;

3. Possibility of obtaining stipulations, admissions of facts and of documents;

4. The limitation of the number of expert witnesses; and

5. Such other matters as may aid in the disposition of the proceedings.

B. 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.

### 1.5.7 Continuances

A. 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 twenty-four (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 twenty-four (24) hours' notice. Continuance requests are subject to the fee provisions of § 1.4.4 of this Part.

B. Requests made in Advance for Subcommittee Hearings. Requests by a party to continue a Subcommittee hearing must be made in writing twenty-four (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 seven hundred fifty dollar ($750.00) administrative fee to cover costs incurred by the Subcommittee.

C. 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 seven hundred fifty dollars ($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.

D. 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.

E. 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.

### 1.5.8 Rules of Evidence

A. 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.

B. 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.

C. 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.

### 1.5.9 Presentation of Expert and Lay Testimony

A. 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 and any new evidence, reports, or data on which the witness is expected to testify or the party intends to introduce to the Council or Subcommittee after completion of the CRMC staff reports and not less than seven (7) business days prior to the scheduled hearing. The introduction at the hearing of any new evidence, reports, or data may result in a delay and rescheduling of the hearing.

### 1.5.10 Transcripts

A. 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.

**1.5.11 Finding of Fact**

A. 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.

**1.5.12 Permit Extensions**

A. 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 written petition with the Council for a permit extension. The applicant may, 30 days 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.

B. 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 (4th) 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.

C. 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, 30

days 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 itself 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 ten (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.

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

E. 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 certification, its waiver, its cancellation, or its denial within one (1) year of the date of public notice, the prerequisite contained in the Rhode Island 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 RICRMP, the Council shall notify the RIDEM that it is considering such a waiver.

F. 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.

### 1.5.13 Modification of Actions

A. 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.

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

### 1.5.14 Withdrawal of Applications

A. 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.

### 1.5.15 Federal Consistency Determinations and Certifications

A. 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.

B. 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 minimis* impact.

C. Pursuant to the review and response allowances contained at 15 C.F.R. § 930.41, a fifteen (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 objector's opinion, make the activity consistent with the RICRMP.

D. 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 § 307 of the Federal CZMA (16 U.S.C. § 1456), or refer such matter to the full Council for such decision.

E. 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 C.F.R. Part 930 *et seq*.

F. 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.

### 1.5.16 Same Application Request

A. 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.

## 1.6 Practice Before the Council

A. 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.

B. In order to represent a person or party before the Council, an attorney must comply with § 1.5.1 of this Part.

C. 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.

D. 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.

## 1.7 Preliminary Investigations

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

B. 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.

## 1.8 Final Decisions of the Council

A. 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.

B. 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.

1. The Council shall consider the written recommendations of agency staff in making a final decision, in addition to any new evidence or sworn testimony offered at the meeting in which each case is heard.

2. The Council shall make written express findings of fact and conclusions of law, separately stated, on each case. If the Council does not follow the recommendation of the agency staff, then it must specifically set forth the reasons therefore.

C. Modification of Assents and Final Decisions

1. 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.

2. 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.

D. Permit Revocation

1. 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.

## 1.9 Service of Process

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

## 1.10 Agendas and Staff Reports

A. 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.

B. Agenda for the bi-monthly meeting shall be delivered to Council members ninety-six (96) hours prior to the meeting.

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

## 1.11 Advertising

A. All Council and Subcommittee meetings shall be advertised in accordance to law.

## 1.12 Declaratory Rulings

A. Petitions

1. As prescribed by R.I. Gen. Laws § 42-35-8, 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.

2. Thereafter, at the discretion of the Council, the Council may:

   a. Issue a binding declaratory ruling; or

b. Issue a non-binding declaratory ruling; or

c. Notify the petitioner and/or interested parties of record that no declaratory ruling is to be issued.

3. 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.

## 1.13 Judicial Review of Contested Cases

A. 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.

B. Proceedings for review are instituted by filing a complaint in the Superior Court of Providence County within thirty (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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

## 1.14 Adoption of Management Policies

A. Adoption of Management Policies and rulemaking shall be in accordance with R.I. Gen. Laws Chapter 42-35 and further in accordance with the Rules and Regulations and procedures set forth herein.

B. In addition to other rulemaking 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.

C. 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.

D. 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 rulemaking 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.

E. 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.

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

G. 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.

H. Petition for Adoption of Rules

1. 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 rulemaking proceedings.

## 1.15 Access to Public Records

A. Purpose & Authority

1. The Coastal Resources Management Council is a public agency subject to the provisions of the Rhode Island Access to Public Records Act (APRA), codified at R.I. Gen. Laws § 38-2-1, *et seq*., and these Regulations are being adopted under the authority of that Act. These Regulations are intended to help the public obtain the information they request and to guide the Council staff as they comply with requests.

B. Public Records Officer

1. The person holding the position of Office Manager shall be the Council's Public Records Officer. He or she may be contacted at 4808 Tower Hill Road, Suite 3, Wakefield, RI 02879, Phone (401) 783-3370, Fax (401) 783-3767.

C. What Records Are Public

1. Public Records and Availability – Under the APRA, all records the Council keeps are presumed to be public unless they are deemed non-public by the Act. The Council shall make all records deemed public by the APRA available to any person that may request them. Such public records include all applications, transcripts, agendas, minutes, reports, documents, papers, letters, maps, books, tapes, photographs, films, recordings and computer stored records made or received pursuant to any law or Regulation, or in connection with the transaction of any official Council business, that are not otherwise deemed non-public by the APRA.

2. Non-Public Records – The APRA deems certain personnel, medical, trade secret, investigatory, law enforcement, preliminary drafts, notes, impressions, memoranda, working papers, and other documents non-public and the Council shall not make public any records deemed non-public by the APRA.

D. How to Make a Request

1. Who to Request Records From – Requests for public records shall be made to the Public Records Officer.

2. Written Requests Preferred – To help ensure the public obtains the records and/or information they request, to avoid confusion that has arisen in the past, and to ensure public record requests are recognized and handled expeditiously, the Council prefers public records request be made in writing and it may promulgate a form for such requests. The public does not have to use any specific form.

3. Requests for Certain Documents – Although written requests are preferred, consistent with State law and these Regulations, a written request is not required to access the following documents:

    a. Documents prepared for the public;

    b. Documents readily available to the public; and

    c. Public information available pursuant to R.I. Gen. Laws § 42-35-2, which is a portion of the Administrative Procedures Act.

    d. Council and Sub-Committee Agendas

    e. Council and Sub-Committee Minutes

    f. Council Transcripts

    g. Council Decisions

h. Assents

i. Public Hearing Notices

j. Public Hearing Minutes

k. Public Hearing Transcripts

l. Public documents submitted at Council meetings or Public Hearings

m. Coastal Program (sometimes referred to as The Red Book)

n. Management Procedures

o. Council Orders

4. Purpose of Request – The Council may ask the purpose of a request in order to help identify the records requested but it shall not withhold any public records based on the purpose for which the records are sought, nor shall the Council require, as a condition of fulfilling a public records request, that the requestor provide a reason for the request.

5. Identity of the Requester – The Council may request the name and contact information for a person making a request in order to contact them if questions arise regarding their requests and to notify them when records are available. However, except as otherwise noted in these Regulations, the Council shall not require a person to identify themselves nor to provide any contact information.

6. Identifying Records – Requestors searching for a particular file or set of records are invited to search the Council website, http://www.crmc.ri.gov, to identify the appropriate file number for the records they desire.

7. Staff Assistance Identifying Records – Requestors are encouraged to speak with Council staff to help identify the records they wish to request.

E. Time for Complying with Requests

1. Time to Comply – The Council shall endeavor to permit the inspection or copying of public records within ten (10) business days after receiving a request.

2. Extensions of Time – If the Council does not permit the inspection or copying of public records within ten (10) business days, it shall forthwith explain in writing the need for additional time to comply with the request. Any such explanation must be particularized to the specific request made. In such case, the Council may have up to an additional twenty (20)

business days to comply with the request if it can demonstrate that the voluminous nature of the request, the number of requests for records pending, or the difficulty in searching for and retrieving or copying the requested records, is such that additional time is necessary to avoid imposing an undue burden on the Council.

3. Records in Storage or Use – If a public record requested is in active use or in storage and, therefore, not available at the time access is requested, the Council shall so inform the requestor and make an appointment for the person to examine such records as expeditiously as they may be made available.

4. Records Generally Unavailable – Records that are the subject of a scheduled Council meeting, hearing or workshop will generally be in use by the Council and not available for public inspection the day of the meeting, hearing or workshop.

5. Timing of Requests – The Council shall try to accommodate walk-in requests for readily available records but at least twenty-four (24) hours advance notice is strongly preferred because, among other reasons, the staff person who handles requests may not be available.

F. Methods of Complying with Requests

1. Inspection During Normal Business Hours – The Council shall make public records in its possession, custody or control available for inspection during its normal business hours at its office in South Kingstown, Rhode Island. [8:30 A.M. to 4:00 P.M., Monday through Friday]

2. Inspecting Records – When inspecting records, only one (1) file or set of records at a time will be provided in order to reduce the risk of documents being misplaced.

3. Alternate Ways of Inspecting Records – A requestor may elect to obtain records in any media in which the Council is reasonably capable of providing them. At the election of the requestor, the Council shall provide copies of the public records electronically, by facsimile, or by mail in accordance with the requestor's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The requestor shall be responsible for the actual cost of delivery, if any.

4. Form of Records – The Council shall not be required to reorganize, consolidate, or compile data or records into any form it does not already maintain the data or records in at the time the request to inspect the data or records was made except to the extent that such records are in an electronic format and the Council would not be unduly burdened in providing such data.

5. Transcripts – Requestors who desire a stenographic transcript of the Council proceedings may contact the stenographer directly. [As of October 2020, Rebecca J. Forte DBA Irons & Associates is the stenographic firm the Council utilizes. Contact (401) 474-8441.]

6. Checking-Out Transcripts – Requestors who provide their name, a valid government issued identification bearing their name and photograph, and their contact information, may also 'check-out' transcripts, and take them out of the Council's office, for up to twenty-four (24) hours if the Public Records Officer determines allowing the transcripts to leave the Council office will not interfere with the Council's operations nor present more than a *de minimis* risk of not being returned.

G. Research and Copying Charges

1. Charges Authorized and Payment Required – The Council shall assess search, retrieval and copying charges in accordance with these Regulations. Upon request, the Council shall provide an estimate of the costs of responding to a request prior to fulfilling it. Upon request, the Council shall provide a detailed itemization of the costs assessed. The requestor shall pay the charges prior to inspecting or receiving the documents. The Council does not accept cash, credit or debit cards. The Council does accept checks and money orders.

2. Searching and Retrieval Charges

   a. The Council shall not charge for the first (1st) hour of time spent searching for and retrieving records.

   b. The Council shall charge fifteen dollars ($15.00) per hour for each additional hour, after the first (1st) hour, spent searching for and retrieving records.

   c. For the purposes of these Regulations, multiple requests from any person or entity to the Council within a thirty (30) day time period shall be considered one (1) request.

   d. The Council may charge the reasonable actual cost for retrieving records from storage if it is assessed a retrieval fee.

3. Copying Charges

   a. The Council can currently make copies of documents up to eleven inches by seventeen inches (11" x 17").

   b. The Council shall not charge for the first (1st) five (5) pages of any copies it makes.

c. The Council shall charge fifteen cents ($0.15) per page for copies it makes in excess of five (5) pages.

d. If a requestor desires copies of documents larger than eleven inches by seventeen inches (11" x 17"), and the Council can reasonably do so, the Council will bring the oversized documents to a local vendor to make copies and the requestor may then pay the vendor for the copies.

e. Requestors who desire copies of documents larger than eleven inches by seventeen inches (11" x 17") contained in pending applications may also request them from the applicant, engineer or attorney involved. Applicants, engineers and attorneys are encouraged to make them available at costs.

H. Denial of Access

1. Determining What Records Are Public – Consistent with these Regulations and the APRA, the Public Records Officer shall determine which records are public and which are not.

2. Records the Council Does Not Have – The Council shall inform the requestor if the records requested do not exist or are not within the Council's custody or control.

3. Non-Public Records and Redaction – If a record is deemed non-public pursuant to the APRA or these Regulations, any reasonably segregable portion of it shall be available to the public after the deletion of the information which is the basis of its designation as non-public. If an entire record is deemed non-public, the Council shall state in writing that no portion of the record contains reasonable segregable information that is public.

4. Denying Access – If the Public Records Officer determines the requested records, or any part of the requested records, are not public, she or he shall inform the requestor of the specific reasons for the determination, in writing, within ten (10) business days of the request. The writing shall indicate the procedures for appealing the determination.

5. Appealing Denials – In addition to any appeal right contained in the APRA, the requestor may appeal the determination that records are not public to the Council's Chief Administrative Officer. The Council's Chief Administrative Officer is its Executive Director. Such appeals should be in writing. [As of September 2020, the Council Executive Director is Jeffrey M. Willis.] The Executive Director shall review the Public Records Officer's determination and make a final determination whether or not to allow public access within ten (10) business days after the submission of the appeal.

I. Miscellaneous

1. Posting on Web Site & Availability to Public – The Council's Public Educator and Information Coordinator shall cause a copy of these Regulations to be maintained on the Council web site. [As of January 1, 2013, that person is Laura Dwyer.] The Council's Office Manager shall ensure a copy of these Regulations is available to the public at the Council's office.

2. Disclosures to Attorney General – The Council's Executive Director shall identify, and then at least annually identify, in writing to the Rhode Island Attorney General, the Council's Public Records Officer and the Executive Director shall annually confirm to the Attorney General that the Public Records Officer has been provided orientation and training regarding the APRA.