

**Response to Comments on the
RIDEM Climate Resilience Fund Regulations
250-RICR-170-05-1**

November 25, 2019

The Rhode Island Department of Environmental Management (DEM) has received five comments on the proposed adoption of the Climate Resilience Fund Regulations (250-RICR-170-05-1). The public comment period began with the public notice on September 23, 2019 and ended at 4:00 pm on October 23, 2019. The comments are available for public review at the RI Department of Environmental Management, 235 Promenade Street, Providence, RI 02908 (Attention: Elizabeth Stone, Office of the Director).

Comment #1:

Comments received on September 23, 2019 from Caitlin Chaffee, Policy Analyst with the RI Coastal Resources Management Council. CRMC identified a small typo in Section 1.7(A)(1).

Response:

In response to this comment, DEM will correct that typo/error and change “project *state* date” to “project *start* date.”

Comment #2:

Comment received on October 23, 2019 from Jeffrey Emidy, Deputy Director of the RI Historical Preservation and Heritage Commission (RIHPHC). The Commission commented that they would like an amendment to the proposed regulations whereby DEM informs applicants of their obligation to initiate consultation for project review with RIHPHC.

Response:

In response to this comment, DEM does not feel that specifically calling out RIHPHC potential permitting requirements in regulation is necessary. The language in the proposed regulations is consistent with numerous other DEM regulations which create a framework for the issuance of grants. Rather, we feel this concern is best addressed by including it in the RFP which will be used by potential applicants to apply for Climate Resilience Funds. Hence, no changes will be made to the proposed regulations, but language will be added to the RFP to be released for these funds which will inform potential applicants of the need to consult with the RIHPHC if necessary.

Comment #3:

Comments received on October 13, 2019 from John Kenny, Big Train Farm. It is specifically recommended that projects that: 1) implement regenerative agricultural practices and build soil health on farms; 2) provide direct education to farmers; and 3) promote land acquisition should all be eligible for funding under these proposed regulations.

Response:

DEM would like to thank Mr. Kenny for his extended comments (including resources for further reading) on regenerative agricultural practices.

In response to this comment, DEM does not feel that regenerative agricultural practices per se are the intended focus of this funding as approved by the RI General Assembly in 2018. However, that does not mean that specific resilience projects (in line with the outlined project categories in Section 1.7.1(A) of the regulations) which may aid farmers are not eligible. Similarly, land acquisition is an eligible cost pursuant to the regulations, so long as it complies with Section 1.7(A) (2).

Comment #4:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

§1.4(A)(2) Definition for "Climate resilience project." We believe that the definition as written is too narrow and should more clearly include natural systems as a resource that the state is trying to protect from the impacts of climate change.

Response:

In response to this comment (and similar comments offered on this definition by Save the Bay – see below), DEM will amend the proposed regulations to ensure that the importance of natural systems is reflected in the definition.

Comment #5:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

§1.5(B)(1) Frequency of Awards and Announcements. The rules state that funds will be made available "not less than annually." The Council is supportive of this program and would love to see it funded so that grants can be awarded annually. However, based on our involvement with grant programs for local open space grants and local recreation grants, we have concerns about the staff capacity of RIDEM and other agencies to manage this grant program with grant proposals and awards annually.

Response:

In response to this comment, DEM agrees that an amendment to the language is warranted and will amend the regulations.

Comment #6:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

As currently drafted, the rules state that: "... projects that involve the acquisition of land shall be considered so long as the acquisition is deemed part (50% or less) of the overall cost of the project. ..." As currently drafted, we believe that this provision is confusing and could preclude grant funding for some potentially very good resiliency projects. We recommend that the 50% be increased to 75%. Further, we recommend that this rule be clarified so that the land conservation costs included in the grant request are 75% or less of the grant proposal.

Response:

In response to this comment, DEM feels that 50% strikes an appropriate balance when it comes to resilience projects that may include the need for land acquisition. This language is intended to let applicants know that only 50% or less of the requested grant assistance can be used towards land acquisition. As such, the proposed regulations will remain as is.

Comment #7:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

§1.7(B)(2) "Applications for funds should highlight ...the community resilience benefits delivered within the grant period." We are curious how the rules envision that this provision can be addressed. It seems unlikely to us that climate change impacts from a severe storm or rising temperature or rising sea level will be evident during the grant period. If this provision is retained in the final rules, we ask for clarification about what is intended.

Response:

In response to this comment, DEM agrees that an amendment to the language is warranted and will amend the regulations.

Comment #8:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

§1.7.2(B)(4) Ineligible costs. We ask that this be revised consistent with our comments on §1.7 A above.

Response:

In response to this comment and #6 above, DEM feels that 50% strikes an appropriate balance when it comes to resilience projects that may include the need for land acquisition. As such, the proposed regulations will remain as is.

Comment #9:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

§1.8.1 (A)(2)(h) Application review. "The estimated costs, and cost effectiveness, of the project in its entirety." We ask that this be clarified consistent with our comments above related to the percentage of the project cost for land acquisition.

Response:

In response to this comment, DEM agrees that an amendment to the language is warranted and will amend the regulations.

Comment #10:

Comments received on October 15, 2019 from Rupert Friday, Executive Director, RI Land Trust Council.

§1.9(A)(2) Grant Awards. "recipients will have ninety (90 days from the date of the acceptance of the grant offer to provide proof of the necessary Grant match ..." We request that the 90 days be increased for projects that involve land acquisition. Land acquisition projects typically require multiple grant applications and fundraising initiatives. It would be rare that timing for all of the grant applications and notifications of grant awards fall within a 90 day window.

Response:

In response to this comment, DEM would like to note that that it already extended the period for an applicant to show proof of match based upon feedback prior to the filing of the proposed regulations. Given the desire of the state to issue this funding in a timely manner, waiting beyond 90 days would interrupt the cycle of issuing funding and moving ahead with resilience projects statewide. As such, the proposed regulations will remain as is.

Comment #11:

Comments received on October 23, 2019 from Topher Hamblett, Director of Advocacy, Save the Bay.

Save The Bay is concerned that these regulations, as written, could be interpreted in a manner that allows the funds to be used for projects outside the scope of the original intent.

Response:

In response to this comment, DEM would respectfully disagree that the proposed regulations as written could or would be used outside of the scope of the original intent. The language as enacted by the General Assembly in the FY 2019 Budget (H-7200Aaa) also includes the following - "These funds are expected to leverage significant matching funds to support local programs to improve community resiliency and public safety in the face of increased flooding, major storm events, and environmental degradation." Hence, DEM feels language about promoting community resilience and public safety are appropriately used in the proposed regulations.

In response to the specific red-lined regulatory amendments put forth by Save the Bay, here is a summary of their proposed changes and DEM's response:

- a) Comment: In Section 1.1, it is proposed that: 1) the phrase "similar and related" be replaced with "the same"; 2) the phrase "with specific priority to projects that improve community resilience and public safety" be deleted; and 3) the phrase "economic viability" be deleted.

Response: DEM agrees with the first and third comment/amendment highlighted above, and will incorporate as proposed. With respect to the second comment about deleting language related to community resilience and public safety, DEM believes this language is appropriately used and will maintain the language as is.

- b) Comment: In Section 1.4(A)(2), it is proposed that: 1) the phrase "protect assets and property from" be deleted; 2) the phrase "restore and/or improve the resilience of vulnerable coastal habitats, and restore rivers and stream floodplains from" be added; 3) the word "shall" be deleted; and 4) the definition end with the following language "and reducing the vulnerability of low-lying infrastructure through the removal, relocation or redesign of infrastructure provided the project restores and/or improves coastal habitats, rivers and stream floodplains."

Response: Comments from Save the Bay and the RI Land Trust Council (see Comment #4 above) both ask that the definition of a "climate resilience project" be expanded upon with additional language added about coastal area, river and stream floodplains. As such, DEM will amend the definition as follows:

"Climate resilience project" means projects that restore and/or improve the resilience of vulnerable coastal zones and rivers and stream floodplains in the face of climate change impacts (e.g. increasing precipitation, sea level rise, increasing temperatures, severe weather events). Projects can include the removal, relocation or redesign of infrastructure combined with, or solely, nature-based solutions.

- c) Comment: In section 1.4(A)(3), it is proposed that: 1) the phrase "implementation and/or installation of a permitted project, including the removal, relocation or redesign of infrastructure" be added; and 2) the phrase "building, alteration, rehabilitation, improvement or extension of a project, including the necessary planning, design and engineering associated with the specific project" be deleted.

Response: DEM agrees that the proposed amendments improve upon the definition of "construction." However, we do not agree that all the language proposed to be removed improves the definition. As such, DEM will amend the definition as follows:

"Construction" means the implementation and/or installation of a project, including the removal, relocation or redesign of infrastructure, and can

include necessary planning, design and engineering activities associated with the project.

- d) Comment: It is proposed that a new definition of “Redesign” be added to the regulations. It would read as follows - “Redesign” includes the design of new culverts, or other infrastructure that is relocated or removed from coastal habitats or river and stream floodplains. Redesign does not include elevating, replacing or repairing infrastructure in an area experiencing or projected to experience climate change impacts, or the creation of shoreline protection structures.

Response: The proposed, new definition of the word “redesign” will not be added to the proposed regulations. DEM feels the language as suggested by Save the Bay is too limiting.

- e) Comment: In Section 1.4(A)(16), it is proposed that: 1) the phrase “individuals, institutions, businesses” be deleted; and 2) the word “communities” be added.

Response: The proposed changes render the definition inconsistent with the definition of ‘climate resilience’ in Resilient Rhody, Rhode Island’s statewide climate resilience action strategy. As such, DEM will keep the definition as is.

- f) Comment: In Section 1.5(A)(1), it is proposed that language be added to give applicants 60 days to apply for funding once the RFP is issued.

Response: The language in the proposed regulations is consistent with numerous other DEM regulations which create a framework for the issuance of grants. Rather, we feel this concern is best addressed by including it in the RFP which will be used by potential applicants to apply for Climate Resilience Funds. Hence, no changes will be made to the proposed regulations, but language will be added to the RFP to be released for these funds which will inform potential applicants of the specific time period for submitting applications.

- g) Comment: In Section 1.7(A), it is proposed that the word “solely” be added.

Response: DEM agrees, and Section 1.7(A) will be amended as proposed.

- h) Comment: In section 1.7(B), it is proposed that: 1) the phrase “to the ecological health of the area that is the subject of the application” be added; and 2) the phrase “environmental and” be added before the word “community”; 3) the phrase “ecosystem and” be added after the word “improve”; 4) the phrase “RI Wildlife Action Plan, the Salt Marsh Restoration Strategy” be added after the phrase “how the project is consistent with”; and 5) the phrase “and strict compliance with all applicable laws” be added to the very end of 1.7(B).

Response: DEM agrees with the first, second and third proposed amendment highlighted above and will incorporate (please note that other public comments suggested changes to this section which will also be incorporated). With respect to the fourth comment, DEM does not support the inclusion of additional, specific plans. Specific plans may change (or be amended) in years to come.

With respect to the fifth comment, DEM does not support this exact language, but agrees that the phrase “and all applicable laws” is an appropriate amendment. DEM received additional comments proposing amendments to this same section of the regulations. As such, DEM will amend this section as follows:

Climate resilience projects should show a clear nexus between climate change impacts to the ecological health of the area that is the subject of the application and the proposed resilience actions and outcomes. Applications for funds should highlight:

- 1. the specific climate change impacts that the project is designed to address;*
- 2. both the expected near-term (0-10 years) and long-term (10-25 years) benefits to improve ecosystems and community resilience; and*
- 3. how the project is consistent with state resilience plans, local hazard mitigation plans, and all applicable laws.*

i) Comment: In section 1.7.2(B), it is proposed that the following language be added:

7. Elevating, replacing or repairing infrastructure, or constructing new infrastructure, in its existing location that is experiencing climate change impacts.
8. Constructing new shoreline protection structures.
9. Repairing roads.

Response: Section 1.7.2(B) - which covers ineligible project costs - will not be amended as proposed. DEM feels the language as suggested by Save the Bay is more about specific *types of projects*, not actual *costs* associated with a project. This section of the regulations is about ineligible costs, not ineligible project types.

j) Comment: In Section 1.8.1(A), it is proposed that the following language be added: “The Committee, appointed by the Director, shall include the following members: the Executive Director of the Coastal Resources Management Council (CRMC), or his or her designee, the state’s Resiliency Coordinator, and at least one representative from DEM. Additional members may include a representative from NOAA or other federal agencies involved in habitat and community resiliency.”

Response: DEM agrees with the vast majority of the proposed changes to Section 1.8.1(A). As such, DEM will amend the section as follows:

The Director shall establish a Review Committee to review the completed applications. The Committee, appointed by the Director, may include the following members: the Executive Director of the Coastal Resources Management Council (CRMC), or his or her designee, the state’s Chief Resilience Officer, and at least one representative from DEM. Additional members may include a representative from NOAA or other federal agencies

involved in habitat and community resiliency. The Review Committee shall review all applications to determine eligibility and completeness.

- k) Comment: In Section 1.8.1(A)(2)(a), it is proposed that: 1) the phrase “the ecosystems and” be added before the phrase “community resilience”; and 2) the phrase “of Resilient Rhody” be deleted and replaced with “set forth in 1.7 B.3 above.”

Response: DEM agrees, and Section 1.8.1(A)(2)(a) will be amended as proposed.

- l) Comment: In Section 1.8.1(A)(2)(j), it is proposed that: 1) the word “environmental” be added before the phrase “economic impact”; and 2) the phrase “economic impact, funds leveraged, potential permanent jobs created, tax revenues enhanced” be deleted.

Response: Section 1.8.1(A)(2)(j) will be amended. DEM agrees that the phrase “economic impact, funds leveraged, potential permanent jobs created, tax revenues enhanced” should be removed. However, DEM disagrees that the word “environmental” should be added to subsection (j). The environmental benefits of projects are already appropriately captured in subsection (e).

- m) Comment: In Section 1.8.1(A)(2), it is proposed that the following three new sections be added:

- k. Whether the project can be shown to create or replace habitat losses that benefit fish and wildlife resources.
- l. Potential water quality improvements.
- m. Potential improvements to fish and wildlife habitats for species which are identified as rare or endangered by the Rhode Island natural history survey of the federal Endangered Species Act [16 U.S.C. 1531 et seq].

Response: Section 1.8.1(A)(2) will not be amended exactly as proposed. DEM feels water quality impacts are already addressed in subsection (e) which discusses environmental impacts to waters of the State. However, DEM agrees that referencing the benefits to fish and wildlife is important. As such, DEM will amend 1.8.1(A)(2)(e) as follows:

(e) The beneficial environmental impact to the land, waters, fish and wildlife, and people of the State.

- n) Comment: In Section 1.8.1(A)(4), it is proposed that: 1) the phrase “and the amount of the award... in writing” be added to the first sentence; and 2) an entirely new sentence be added to the end of the subsection which shall read “If the Director does not follow the Committee recommendation, he/she shall specify the reasons in writing.”

Response: Section 1.8.1(A)(4) will not be amended as proposed. This language is consistent with

language in other sets of regulations promulgated by the Department for the issuance of state bond funds.