

Section 300.10. Filling in Tidal Waters

A. Definition

1. "Filling in Tidal Waters" is the placing of materials from upland sources below the mean high water and includes the utilization of dredged materials to create land in tidal waters for purposes other than those covered by the creation of wetlands and by beach replenishment or nourishment pursuant to Section 300.9. Filling which is determined by the Council to be incidental to activities conducted in accordance with Section 300.7 is not "filling in tidal waters" and is addressed by the Policies, Prerequisites, Prohibitions, Requirements, and Standards contained in Section 300.7.

B. Policies

1. It is the Council's policy to discourage and minimize the filling of coastal waters.
2. In considering the merits of any given proposal to fill tidal waters, the Council shall weigh the public benefit to be served by the proposal against the loss or degradation of the affected public resource(s).
3. Filling may be permitted where necessary for an approved erosion control or bulkheading project, but only when it has been demonstrated that the amount of filling has been minimized in accordance with the requirements of Section 300.7
4. It is the Council's policy to require a public access plan, in accordance with Section 335, as part of any application for filling of tidal waters.

In accordance with Section 120, a variance from this policy may be granted if an applicant can demonstrate that no significant public access impacts will occur as a result of the proposed project.

5. In accordance with GLRI 46-23-6.D(3) and 46-23-16, the Council is authorized to grant, modify, or deny licenses, permits, and easements for the use of coastal resources which are held in trust by the state for all its citizens, and impose fees for private use of these resources.

Licenses, permits and easements issued by the Council for the use of public trust resources remain subject to the public trust, convey no title, are valid only with the conditions and stipulations with which they are granted, and imply no guarantee of renewal.

C. Prerequisites

1. Except for federal consistency reviews, applicants for projects requiring filling in tidal waters shall be required to obtain a Section 401 (Clean Water Act) Water Quality Certification or its waiver from the Department of Environmental Management (DEM) before the Council can issue an assent for the project. The application for the Section 401 Water Quality Certification will be forwarded to the DEM when all Council Application forms have been completed.
2. Permits for projects requiring filling in tidal waters must be obtained concurrently from the Army Corps of Engineers and the Council. Council and Army Corps requirements are designed to complement one another; applicants should consider the requirements of both agencies when beginning the permit process. In some cases, the Council may require an applicant to obtain applicable Army Corps of Engineers permits prior to applying to the Council. A CRMC Assent is not valid unless the applicant has received all required Army Corps of Engineers approvals.

D. Prohibitions

1. Filling in Type 1 and 2 waters is prohibited.
2. Regulations governing the filling and other disturbances to wetlands are set forth in Section 210.3.
3. Filling in Type 3, 4, 5, and 6 waters is prohibited unless (a) the filling is made to accommodate a designated priority use for that water area; (b) the applicant has examined all reasonable alternatives and the Council has determined that the selected alternative is the most reasonable; and (c) the filling is the minimum necessary to support the priority use.

E. Fees

See Section 160.