



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

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In accordance with notice to members of the Rhode Island Coastal Resources Management Council's Planning and Procedures subcommittee, a meeting of the subcommittee was held on Tuesday, November 20, 2007 at 5:00 p.m. at Piccerilli Gilstein & Co, 144 Westminster Street, Providence, RI.

MEMBERS PRESENT

Michael M. Tikoian, Chair
Paul Lemont, Vice Chair
Donald Gomez
Bruce Dawson
Russ Chateaufneuf, DEM

STAFF PRESENT

Grover Fugate, CRMC Executive Director
Jeff Willis, Deputy Director
James Boyd, Coastal Policy Analyst
Kevin Cute, Marine Resources Specialist
Brian Goldman, Legal Counsel

OTHER ATTENDEES

Ames B. Colt, Ph.D., Chairman, Coordination Team

Call to Order. Mr. Tikoian called the meeting to order at 5:05 p.m.

Hearing no objection, Mr. Tikoian asked the subcommittee to dispense with the reading of the usual opening statements, but to have them reflected within the record nonetheless:

Mr. Tikoian made a brief statement of the subcommittee's function and purpose. The Planning and Procedures subcommittee meeting is an open public meeting; it is not a public hearing. Therefore, discussion is available to the Council members themselves, and to all else at the allowance of the Chairman. Mr. Tikoian further explained that the subcommittee is the program and policy development arm of the Council, and that any programmatic decisions made by this group must ultimately be approved by the full Council in accordance with all proper procedures.

Mr. Tikoian made a statement as to why the subcommittee meetings are held at his offices, Piccerilli Gilstein & Company. Mr. Tikoian stated that the meetings are held at Piccerilli Gilstein & Company to facilitate a number of issues: ease of transition from the previous location (CRMC's Providence office at 40 Fountain Street) which had to be changed because the Council's downtown office was closed due to budget cuts; accommodation of subcommittee members whose work locations and/or residences are in or nearer to Providence; and, it's cost to the agency: free.

The Chair asked the members if there were any questions concerning the September 24, 2007 meeting minutes that was included in their agenda packets. There were no questions and Mr. Tikoian requested a motion to approve the subcommittee's September 24, 2007 meeting minutes.

Mr. Gomez, seconded by Mr. Dawson, moved to approve the September 24, 2007 meeting minutes. All voted in favor of the motion to approve.

Mr. Tikoian asked G. Fugate if there were any staff reports. G. Fugate stated that staff held a public workshop regarding proposed sea level rise regulations as directed previously by the subcommittee, so as to gain comments that may lead to revisions in the proposed regulations. One person attended the workshop held October 12, 2007. He also stated that no comments were raised during the workshop that would require revising the proposed regulations. Therefore, as per a previous decision of the subcommittee, he has directed staff to prepare the subcommittee report that seeks full council concurrence to begin rule-making.

Item 3.A – Submerged Cables Fee per 2007 legislation. J. Willis and Ames B. Colt presented this issue in implementing the legislative provisions for creating an annual fee for submerged telecommunications cables, as allowed from budget article 30 – Trans-Atlantic Submarine Cable Fee - of the 2007 legislative session. A. Colt presented a memo to the subcommittee regarding the basis of other jurisdictions' for charging such fees and what allowable expenditures from such fees would be, as set in the legislation. A. Colt also presented the findings of a NOAA report on fair market value analysis of fiber optic cable fees in National Marine Sanctuaries across the country which addresses how to determine fair market value of the loss of access to an ocean resource that offers supports other economic values. The report concluded that a value of \$280,000 from a specific submerged cable activity could be a typical value in the future for installations on submerged lands. A. Colt also noted that that the PUC stated to him that it does not have jurisdiction over the promulgation of the fee. A. Colt presented a table of fees assessed for cables using public lands of selected states and explained the difference between annual rate assessments; fees set and paid over the life of a lease; and, setting fees in statute, as New York has done.

A. Colt presented that the fees collected from submerged cables would be placed in a restricted receipts accounts and administered by the Coordination Team to implement environmental and economic monitoring programs, as allowed by legislation, and which have been developed by the Coordination Team through the efforts of its Environmental and Economic monitoring collaboratives. A. Colt briefly explained the environmental and economic monitoring priorities that would be funded through the account.

Mr. Lemont stated that he is concerned that these fees shouldn't be used to maximize revenues for monitoring. A. Colt explained that the legislation identifies multiple potential sources of revenue. Mr. Chateaufort stated that DEM is also being tasked by the legislation to generate revenue for environmental and economic monitoring efforts under the Coordination Team and that DEM has begun rule-making for such, using the legislation as their basis.

Mr. Lemont explained how utility cables have a value to their owner that can be established and determined on a per foot basis. This could be done for these submerged cables. Depreciation needs to be accounted for. Mr. Gomez offered that the land upon which the cable sits doesn't depreciate so that fact should also be taken into consideration when developing a fee. Mr. Tikoian noted that the legislation calls for dollar amount maximum; any fee that may ultimately be assessed by the council should be determined in a way that accounts for environmental use allowances. He also noted that the needs to generate revenue to implement the Coordination Team's environmental monitoring efforts should be kept separate when developing a basis to assess a fee for submerged cables. Mr. Lemont reiterated his position that the fee should be based on the value of the activity to the owner/operator of the activity and not to the seller of the land/ROW. Mr. Lemont stated that he believes that more and more submerged cables have the potential to land in RI from other activities and that if any fee is established for such he would prefer that the fee not be onerous such that it becomes a fee that is passed along to customers. Mr. Gomez asked if there have been any legal challenges to the agency's fees. B. Goldman answered that there have not.

B. Goldman noted that any fee to be charged needs to be justifiable. A reasoned articulated position needs to be developed as part and parcel of any potential rule-making. B. Goldman felt that a fair market analysis should be justifiable.

A general discussion was held concerning the current fiscal situation of the state and what could become of any revenues potentially generated from such fees, even when placed into a restricted receipts account.

Mr. Tikoian felt that a public hearing could be held to help the council solicit input on establishing a fee. He noted that the work prepared by staff and A. Colt should be a basic part of the information package at the hearing and also asked A. Colt to amend the memorandum given to the subcommittee so that it contains additional jurisdictions' fee information as well as addressing the issue of valuation of the activity to the operator/owner. Mr. Lemont would like legal counsel to develop with staff and/or review the stated purpose of holding a public hearing for submerged cables fees.

Mr. Lemont, seconded by Mr. Dawson, moved to advertise a public hearing that would consider a proposal by the RI Bays, Rivers, & Watersheds Coordination Team to establish a fee for trans-atlantic submarine cables pursuant to Budget Article 30 of the 2007 legislative session, the purpose statement for such notice to be approved by legal counsel prior to seeking full counsel concurrence. All voted in favor of the motion to approve.

Item 4.A – Management Procedures - Section 5.1(9) – Notification. J. Willis explained that this issue is staff-generated primarily due to times when applicants – or more appropriately their consultants - have submitted revised plans after staff have written and filed their reports on the application. These revised plans are submitted in response to the staff reports as the staff reports contain comments and/or recommendations that are not favorable to the proposed activity. Since staff reports have been completed, there is no mechanism to review the newly-submitted plans, since staff have completed their work on the application. J. Willis added that this proposed revision to the management procedures addresses this issue and also makes the submittal of revised plans after staff reports have been filed subject to a fee.

Mr. Chateaufeuf noted that DEM experiences similar situations. The subcommittee discussed the issue and felt that the issue of charging a fee should be discretionary. B. Goldman offered revised language as follows:

~~“Once a final staff report(s) is filed, except in the discretion of the executive director or the full council, an on an active application, the application cannot then seek to be revised, the application unless to bring the application into full conformance or allowed such by the Council only. Should the Council make such an allowance, the applicant is The revision may be subject to the fee provisions of section 4.3.”~~

Mr. Lemont, seconded by Mr. Dawson, moved to approve the proposed regulations as revised by legal counsel. All voted in favor of the motion to approve.

Item 4.B – Management Procedures - Section 5.7 – Continuances. J. Willis explained that this proposal is designed to address multiple requests for continuances, as each semi-monthly meeting of the council contains requests for continuances of applications, and that if granted causes a significant amount of effort to ensure that all parties are correctly notified, and that new agendas are printed; delivered and posted properly. Additionally staff time is significant as phone calls to applicants are often required; mailings need to be created, printed and mailed; and rescheduling options are often needed to be coordinated. J. Willis noted that the fee schedule proposed in Agenda item 4.C (revise § 4.3.9) addressed this issue as well.

The subcommittee directed staff to compile how much staff time is needed to adequately conform with all the responsibilities of notice requirements should a continuance be granted, and bring this information back for additional consideration.

Mr. Dawson, seconded by Mr. Chateauf, moved to table discussion and action of this item as well as the revisions to section 4.3.9 of agenda item 4.C for a future meeting. All voted in favor of the motion to approve.

Item 4.C – Management Procedures - Section 4.3 – Schedule of Fees. J. Willis explained that this proposal runs with agenda item 4.A – section 5.1(9) revisions and revises the existing fee section to account for applications that seek to be revised once staff reports have been filed.

Mr. Dawson, seconded by Mr. Chateauf, moved to approve the proposed revisions as presented. All voted in favor of the motion to approve.

Item 4.D – Redbook - Section 130 – Special Exceptions. G. Fugate explained that barriers are an extremely fragile coastal feature that by their nature are in constant movement, especially during storm events. Additionally during such events, the conditions associated with barriers can be significant and dangerous, which is why the program has developed policies that provide special protection and management options for barriers. The proposed revisions recognize the fragile and dangerous nature of barriers during storm events and seek modify the special exception provisions to reflect that.

The subcommittee discussed the issue and agreed that barriers need special protection. B. Goldman offered revised language as follows:

“A(1) The proposed activity serves a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests. The activity must be one or more of the following: (a) an activity associated with public infrastructure such as utility, energy, communications, transportation facilities. ~~However this exception shall not apply to activities proposed except when located on all classes of barriers, barrier islands or spits, on which all public and private infrastructure is prohibited and shall not qualify for a special exception;~~ (b) a water-dependent activity that generates substantial economic gain to the state; and/or (c) an activity that provides access to the shore for broad segments of the public.”

Mr. Gomez, seconded by Mr. Dawson, moved to approve the proposed regulations as revised by legal counsel. All voted in favor of the motion to approve.

Item 4.E – Redbook - Section 210.2 – Barrier Islands and Spits. G. Fugate explained that barriers are an extremely fragile coastal feature; that they move, especially in storm events; that they are located in coastal velocity zones; and, that they act as a front-line protective barrier to the resources, structures and activities behind them. He also mentioned that in Massachusetts, Barnstable County denies building in certain coastal flood velocity zones – ones where barriers are located – due to the dangerous conditions experienced thereon and that such a denial was upheld through the Massachusetts highest court. G. Fugate also re-iterated that during storm events, the conditions associated with barriers can be significant and dangerous, which is why the program has developed policies that provide special protection and management options for barriers. It is for these public health and safety reasons that emergency response personnel should not access these areas during coastal storm events.

The subcommittee discussed the issue and agreed that barriers need special protection. The subcommittee offered revised language as follows:

3. The damage that barrier islands and spits can sustain in major storm events is significant and as such they are considered high hazard areas. During actual storm events, high hazard areas can create dangerous

situations even for emergency response personnel and as such all these personnel, including emergency response personnel, should be kept out of these areas during major storm events.

Mr. Dawson, seconded by Mr. Gomez, moved to approve the proposed regulations as revised by the subcommittee, renumbering paragraphs 3 and 4 as 4 and 5. All voted in favor of the motion to approve.

Item 4.F – Redbook – Table 1 – Type 6 Waters.

Mr. Lemont, seconded by Mr. Dawson, moved to table discussion and action of this item. All voted in favor of the motion to approve.

Item 4.G – Greenwich Bay SAMP – Sections 680.1 and 940.1 – Commercial Fishing Docks. J. Boyd presented the issue of clarifying and revising the existing provisions on commercial fishing docks so that they can be realistically implemented. J. Boyd explained how he met with and discussed the issue with the commercial shellfishing community and from those meetings/discussions was able to better address the issue and its implementation. Changes presented herein represent coordination efforts between staff and the commercial shellfishing community.

Mr. Tikoian felt that the term commercial fishing dock needed to be better defined/explained within the context of these SAMP sections. The subcommittee and staff discussed various definitions that address this issue.

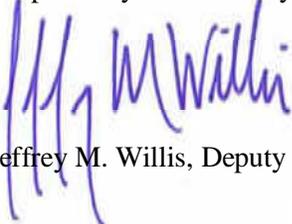
Mr. Dawson, seconded by Mr. Lemont, moved to directed staff to finalize a definition of the term commercial fishing dock and have legal counsel review it prior to undertaking any rule-making. All voted in favor of the motion to approve.

Item 5.A – Harbor Management Plans: Report and status. K. Cute presented a status report on harbor management plans by coastal community, attached herein as reference. K. Cute explained that while many towns are working to develop/finalize their HMPs, their major constraint in getting them done in a timely fashion is resources, primarily staffing resources. Mr. Gomez agreed that this was a major issue at the municipal level. K. Cute explained that there are six communities that need additional assistance from staff and that he will dedicate more of his efforts to these communities to help them develop/finalize their HMPs.

The subcommittee thanked Kevin for his efforts.

ADJOURNMENT. Mr. Lemont, seconded by Mr. Gomez and Mr. Dawson, moved to adjourn the subcommittee meeting. All voted in favor of the motion and the meeting adjourned at 7:07 p.m.

Respectfully submitted by



Jeffrey M. Willis, Deputy Director