

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, October 10, 2006 at 6:00 PM at the Narragansett Bay Commission Boardroom – One Service Road, Providence, RI.

MEMBERS

Mike Tikoian, Chair
Paul Lemont, Vice Chair
Ray Coia
Joe Shekarchi
Jerry Zarrella
Dave Abedon
Bruce Dawson
Neill Gray
Dir. Michael Sullivan

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Dave Reis, CRMC Environmental Scientist
Dan Goulet, CRMC Dredging Coordinator
Jim Boyd, CRMC Special Area Management I

Brian Goldman, Legal Counsel
John Longo, Deputy Legal Council

1. Chair Tikoian called the meeting to order at 6:07 p.m.

Chair Tikoian made a brief statement on the council's permitting process

2. READING OF THE MINUTES OF THE PREVIOUS MEETING:

Chair Tikoian noted that there were two sets of minutes in front of council members, one for the meeting of September 19th and one for the meeting of September 26th. Mr. Coia, seconded by Director Sullivan moved approval of the minutes of the September 19th meeting. The motion was carried on a unanimous voice vote.

Vice Chair Lemont requested that page 4 third line from the 1st paragraph be amended to delete "Chair Tikoian was opposed". Vice Chair Lemont noted when he, Mr. Ricci, and Mr. Zarrella left the meeting at 7:35 p.m. and requested that the minutes also reflect that he returned to the meeting and voted on the remaining issues. Mr. Dawson requested that page 2 under the Gilbane application that it be changed from "property time" to "proper time". Mr. Gray requested that Page 4 third line under Revise Section 300.4.E. Standard be amended to delete "put it at" to "add" a maximum depth of three feet; page 5 10th line from the bottom be change from "9 feet" to "5 feet". Vice Chair Lemont, seconded by Mr. Coia moved approval of the minutes of the September 26th meeting as amended. The motion was carried on a unanimous voice vote.

Mr. Zarrella arrived at 6:10 p.m.

3. SUBCOMMITTEE REPORTS

There were no subcommittee reports.

4. STAFF REPORTS

There were no staff reports.

Mr. Shekarchi arrived at 6:20 p.m.

5. POLICY DISCUSSIONS – PRESENTATION ON SETBACKS AND BUFFERS

Mr. Fugate gave council members a presentation on setbacks and buffers. Mr. Fugate said buffers and setbacks are probably one of the key elements within the program that affects a lot of coastal development in this area. Mr. Fugate gave council members a brief history on the council's buffer zone policy back to 1983. Mr. Fugate noted that previously the buffer setback was usually handled by the biologist and the setback was usually handled by the engineer and whatever of the two was greater at the time of the recommendation, it was usually the buffer, and the buffer would fit within the setback recommendation. Mr. Fugate said under the new program they are wrapped into one. Mr. Fugate stated that there is an automatic 25' setback off of the coastal feature and buffer for fire departments/ equipment to allow fire access behind the structure. Mr. Fugate said erosion setbacks take precedent over the normal setback and buffer program. Mr. Fugate said the setbacks for erosion are generally measured from a number of features depending on what you have in front of your house such as a beach. Mr. Fugate stated that since the 1990's they have been tapering with the whole setback and buffer policy and trying to make it more practical and workable for property owners and they even developed a set of guidelines that allow for vegetative alterations. Mr. Fugate said tonight's policy discussion on setback and buffers focuses on urban areas and next time they will focus on suburban areas. Mr. Fugate noted that there are series of regulation changes tonight that effect buffers and setbacks in urban areas. Mr. Fugate said a lot of the urban areas which include large old industrial sites and Brownfield sites regulated under DEM. Mr. Fugate said because of the size of the sites they would require a 150 to 175 foot buffer which included the buffer and setback. Mr. Fugate said this was suppose to remain an undisturbed natural buffer. Mr. Fugate said in highly urbanized environments like Providence, East Providence and Pawtucket this was not a practical situation. Mr. Fugate said one of the first priorities was to look at their whole buffer and setback program in terms of goals and what they are trying to achieve and also look at what was going on at the national level. Mr. Fugate said they developed the urban coastal greenway to address this.

Jennifer McCann, URI Coastal Resources Center and RI Sea Grant, said they are facilitating the Metro Bay Special Area Management process on behalf of CRMC. Ms. McCann passed out a packet which emphasized the public process implemented during the creation of the Urban Coastal Greenway policy development as a reminder to where the Metro Bay SAMP bound is which includes the coastal areas of Cranston, Providence, Pawtucket and East Providence. Ms. McCann said the first phase was to see what is going on, what the issues are, what are the constraints both on the side of the technical people, the staff, the developers and the environmental community within the Metro Bay region. Ms. McCann said the next phase was to put together a technical

committed to look at these issues and the constraints as well as examples from other areas and put together a draft urban coastal policy. Ms. McCann said the packet outlined the key technical committee members, the dates of technical committee meetings and public hearings. Ms. McCann said this process ran from January 2005 thru October 2006. Ms. McCann said notes for all the technical meeting were available for council members. Ms. McCann said the last part of the process was the public comment period and that they did two 30-day public period comment processes. Chair Tikoian thanked Ms. McCann for her presentation.

6. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM AND MANAGEMENT

RICRMP

1. Urban Coastal Greenways/Providence Harbor SAMP

Chair Tikoian opened the public hearing. Cynthia Giles, Conservation Law Foundation, said there are many good parts to this program including the element for storm water treatment and management, the low impact development and public access. She said however, they are concerned about the compensation provisions. Ms. Giles felt that there are circumstances where a variance would necessary but not possible to comply with. Ms. Giles felt that the way the policy is written it was too easy to obtain a variance and most developers would choose this route rather than comply with the buffer requirements. Ms. Giles said this policy change would allow for developers to pay to reduce the size of the buffer which would otherwise be required. Ms. Giles said there is a 20 percent of value in the policy and was not sure how the 20 percent was selected. Ms. Giles said one policy allows for creation and restoration of a wetland as compensation. Ms. Giles felt the way the policy was set up there was incentives for a developer to opt out and not observe the buffer zone requirements by the council. Ms. Giles urged the council to reconsider the conservation provision and require higher payments if you are going to require payment to eliminate the other alternatives for compensating for the loss of buffers. Mr. Fugate replied that the 20 percent value came from EDC. Mr. Fugate noted that the policy requires that if you are getting close to the shore you need to get back: 1) 15 % revegetation of site; 2) 100 % storm water treatment; and 3) perpendicular and lateral access to the site along the shore. Mr. Fugate said the compensation provision is there so they can build up money in an account to be used to either acquire habitat or to go back and renovate degraded habitats so they can get restoration in those areas or be used to purchase public access or increase public access in those areas. Mr. Fugate believed the compensation value was low for these areas and they have committed to go and evaluate that again but did not think it was an impediment and prevent the council from moving forward to adopting the policy. Mr. Fugate said this was something they should continue to look at and discuss further. Mr. Shekarchi asked if the 20 percent was based on the assessed value or fair market value and how it was determined. Mr. Fugate replied that the CRMC would hire an appraiser to go out and appraise the value of each community because the value is different by community and this would give them a waterfront value which would be evaluated every two years capturing the market changes that occur. Mr. Shekarchi said its CRMC selecting the appraiser not the applicant saying what the value is. Mr. Fugate replied it's the CRMC that hires the appraiser and they make the value. Mr. Fugate talked about wetland compensation, fringe marshes and how that is done. Mr. Abedon said there were a lot of Brownfield sites and asked what the percentage was. Mr. Fugate replied about 70 percent. Mr. Abedon asked once they start collecting the 20

percent fee where does it go. Mr. Fugate replied that Save the Bay introduced a bill that year and that this would be part of the OSPAR account. Mr. Abedon asked if this will carry over and accumulate. Mr. Fugate said yes. Mr. Abedon noted that Mr. Fugate said the 20 percent seemed low. Mr. Fugate replied that someone said it seemed low. Mr. Fugate explained that EDC indicated that they thought a range of 15 to 20 percent would not infringe upon a development and they took the higher value. Mr. Fugate said they advertised the 20 percent and they are committed to go back and look at this issue and have further discussion. Mr. Abedon said this was just a starting point. Mr. Fugate said yes. Mr. Zarrella had a question regarding the legislation for the special account and asked what happens if the legislation does not get passed where does the money go, does it go in the general fund. Mr. Fugate replied yes. Mr. Zarrella asked if the funds go into the general fund, how come they don't have a report from the House and Senate Oversight Committee. Mr. Fugate stated that the legislature is aware of this policy and they met with the Senate and House leadership and both chairs of the Environmental Committee as well as policy staff and they are in favor of this. Mr. Fugate explained that they were concerned with approving a piece of legislation creating an account for a regulation that did not exist and wanted the council to go forward on the regulation and put it in place then they would be able to create the account and see what the revenue stream was going to be and what the conditions were. Eugenia Marks, Audubon Society, agreed with Ms. Giles stating that recreation of wetlands generally do not work in some marsh area. Ms. Marks was concerned with wildlife in the City and felt it was a valid concern. Ms. Marks was concerned with the value of buffers. Ms. Marks wanted the river and the inner buffer of 20 feet kept by the council. Mr. Fugate replied that the value of those buffers are on pages 48, 49, 50 and 51. Jane Austin, Director of Policy and Advocacy for Save the Bay, recognized the importance of this policy and said that they had worked with CRMC and CRC on this regulation. Ms. Austin felt this was an important set of policies and that there is some strong coastal and freshwater wetland protections. She said the framework for the Coastal Greenways trust is positive and benefits the public when considering variances for buffers and setbacks. Mr. Fugate noted that a question had been raised during discussion regarding mitigation and said there is a mitigation option in lieu of public access for those people who did not want it. Ms. Austin addressed the 20 percent and said they suggested that the multiplier be more like 50 or 75 percent based on the standard values used to obtain easements. Ms. Austin said they had also been concerned with the habitat trust and that legislation had been introduced this session on this but not by them. Ms. Austin said their other concerns had been addressed. Donald Pryor, a resident of Providence, stated that he had submitted comments on the proposed changes. Mr. Pryor was concerned with the compensation percentage and felt it needed to be looked into further. Mr. Pryor suggested that the compensation provision should be removed from the policy and heard separately so the percentage could be adequately based on factual information and a fund mechanism could be adequately based on legal statutory language. Mr. Pryor wanted the council to consider mitigation as an alternative and look at restoration and conservation. Chair Tikoian called for public comment. There was none. Chair Tikoian closed the public hearing. Director Sullivan said that if you look at the sequence of the Clean Water Act of avoid, minimize and then mitigate there is plenty of reason why we need to keep the mitigation aspect of the proposal within the plan. Director Sullivan felt Ms. Giles made a good point regarding the issue of the functionality of restored wetlands or created wetland not being addressed and that it was not fully addressed in his mind. Director Sullivan thought the suggestion of a performance period and performance bond being put in was good. Director Sullivan felt a 3 to 1 ratio for restoration was better than 1 to 1 or 2 to 1 ratio. Director Sullivan felt the 20-foot minimum for buffer for storm water was narrow and thought a 30-foot was more

functional. Director Sullivan said he was supportive of the inclusion of the mitigation and compensation provision but was uncomfortable with the 20 percent valuation. Director Sullivan felt the 24-month cycle for reevaluation was too long in a volatile market. Mr. Fugate clarified some of the statements made and said that they hired a freshwater ecologist to go out and assess the a habitat areas and the council was not walking away from the habitat values in these areas. Mr. Fugate said the wetland discussions have to make sure some wetland protection remains the same as it is in the Red Book and not allow an alteration of a wetland for those projects. Mr. Fugate said the 20-foot area was the 20-foot standard consistent with the capital district. Mr. Fugate said when they assessed the inner harbor areas there area a lot of public infrastructure already in place such as road and sidewalks adjacent to the area. Mr. Zarrella felt the policy was great but was uncomfortable with a buffer area being for sale and that people will just pay the fund. Mr. Zarrella agreed with Ms. Giles that this needs to be looked into further. Mr. Zarrella also had a problem with voting on something when the fund was not in place and there was no legislation pending and felt the General Assembly should have voted on this first and created the fund. Mr. Zarrella wanted to see this go back so they can get the fund and take a look at the compensation. Director Sullivan also noted that even bio remediation or bio filtration facilities need an active management plan. Mr. Fugate replied that they recognized this and are in the midst of developing a technical manual that shows how to design, the size and how to build and there are also maintenance requirements. Director Sullivan asked how long before they had this. Mr. Fugate said they have a draft version manual already which will go out to technical agencies and the public for comment. Mr. Fugate said a manual would probably be in place in 60 to 90 days. Chair Tikoian thanked everyone for their comments and input. Chair Tikoian noted that like all their polices there are not definite and the dynamics could be changed from time to time. Chair Tikoian said this policy was important to the urban areas of Rhode Island and that communities are waiting for this council to enact a policy. Vice Chair Lemont said there are four bay communities waiting and a lot of development sitting on the shelf. Vice Chair Lemont, seconded by Mr. Coia moved approval of the proposed changes to Urban Coastal Greenways/Providence Harbor SAMP . Director Sullivan said he was uncomfortable taking action tonight because he felt there could be substantive improves specifically on the compensation value calculation and he was hesitant to say yes to the performance bond and a functionality of any mitigation. Chair Tikoian asked if we take out these components and work on them would he be comfortable with that. Director Sullivan said he preferred to wait 30 days to address some of the points raised in the public testimony. Mr. Reis felt it was very important to put some policy in place so that staff has some guidelines for these projects. Mr. Boyd addressed the compensation and mitigation issues and said they could impose a condition of the permit that compensation could be done at the completion of the project and not an upfront fee. Chair Tikoian was not sure this could be done legally and would have to check with legal counsel. Mr. Boyd said with respect to the mitigation issue the only time mitigation is going to be necessary is when the public access would not be provided as part of the project but most communities are going to require public access as par to their local approval. Mr. Shekarchi, seconded by Director Sullivan moved to amend the motion to raise the fee from 20 percent to 50 percent, that the appraisals be done every 12 months not 24 months and a performance bond for up to 48 months on the remediated sites. The motion on the amendment passed on unanimous voice vote.

Mr. Shekarchi left the meeting at 7:33 p.m.

2. Revise Section 300.4 Recreational Boating Facilities

Mr. Fugate introduced Mr. Goulet to discuss this policy change. Mr. Fugate noted that they have seen 10, 12 even 15 marina expansion applications over the last couple of years. Mr. Fugate said Mr. Goulet was a marina consultant and gave a little background on Mr. Goulet. Mr. Fugate said given the number of marina expansion applications they wanted to make sure their regulations were up to the best that they could be and that Mr. Goulet contact NOAA and they gave them a couple of states they were in front as in terms of marina design and regulation. Mr. Goulet explained that he went to every state coastal program and compared it to ours and looked at the regulatory approach of each of these programs, limitations and standards and put them together. Mr. Goulet said they wanted to make sure we had measurable standards. Mr. Goulet said there were several drafts of the proposed changes and that went out to public notice. Mr. Goulet said there was a tremendous amount of feedback and they had a public hearing. Mr. Goulet said RIMTA regarding the extension period, which had been granted. He also said they had several meetings with RIPTA, met with Save the Bay and received a lot of call from marina owners and other contractors. Mr. Goulet said they took all of their concerns in and made a second version that is before the council. Chair Tikoian opened the public hearing. Wendy Waller, Save the Bay, acknowledged all the work that had gone into this regulation change. Ms. Waller was concerned with Section 300.17, which related to walkover structures and said she understood it was the intent to capture the walkover structures within the new boating facilities regulations and to keep these standards as well. Ms. Waller wanted to make sure these regulations were included in the change so there is no confusion. Chair Tikoian asked if she had any suggested language. Ms. Waller did not have anything specific. Mr. Fugate explained that there is a 100-foot limitation on walkover structures and if this was adopted that prohibition might continue into the dock regulations. Chair Tikoian said basically if there is a walkover structure to get to a dock of more than 100 feet it would be prohibited and it is not prohibited now. Mr. Fugate replied yes. Mr. Goulet said Ms. Waller's concern is that they have had proposals in the past that are additive and they would get 100-foot wetland walkover structure and then a dock from there and Ms. Waller wanted to eliminate them double dipping. Ms. Waller agreed. Michael Keyworth, RI Marine Trade Association, applauded CRMC for the considerable effort they have put into this. Mr. Keyworth noted that they had met with Mr. Goulet several times regarding concerns of the industry which were addressed. Mr. Keyworth was in favor of the proposed regulation changes. Director Sullivan had a questions on page 2 the definition of transient berthing and said it was his understanding that RIMTA was looking to shift 30 days from the current two weeks, advocating no discharge, and asking to bring transient down to zero. Director Sullivan asked Mr. Keyworth to explain this. Mr. Keyworth said they were trying to find the facility itself and capture some of the parking regulations that are requirements of CRMC. Mr. Keyworth said by way of redefining, separating and segregating transient facilities as opposed to permanent mooring-type facilities they were hoping to redefine the regulation with regard to the parking and other issues. Mr. Keyworth said on the issue of discharge RIMTA has been on record for more than 20 years on their no discharge stance. Mr. Keyworth said the only way that CRMC can view the facilities is as facilities and the vessels themselves are separate entities regulated by different law. Mr. Gray asked if we have anything in the new regulations regarding a minimum dock height for lateral access. Mr. Goulet said on page 18 and that staff felt it was important not to put a fixed number because they would box themselves in and felt that they need to do this based on site conditions. Mr. Goulet said this would force lateral access for residential docks so new docks would have to provide lateral access. Mr. Goulet said there was nothing in the regulations for lateral access and now there is a requirement for lateral access and this was a completely new requirement. Mr. Gray said they had not required lateral access before. Mr. Goulet

replied no. Director Sullivan felt the walkover structure portion should be excluded and handled separately and that staff should bring this back to the full council. Director Sullivan, seconded by Vice Chair Lemont moved approval of the changes to Section 300.4. Residential Boating Facilities with the exclusion of the walkover section and that it be readdress by staff and brought back to the full council. The motion carried. Mr. Gray abstained.

7. **Chair Tikoian read through the agenda to see which applicants/attorneys were present.**

Chair Tikoian called for a recess at 7:54 p.m. Chair Tikoian called the meeting back to order at 7:57 p.m.

8. **APPLICATIONS REQUESTING AN EXTENSION OF EXISTING ASSENT:**

2006-01-075 ALFRED ELSON & ANNE LEYDEN – Construct and maintain a residential boating facility consisting of a 4' wide by 92' long fixed timber pier that leads to a ramp that leads to a 150 square foot terminal float. The proposed structure is to extend 75' seaward of the cited Mean Low Water mark. Variances to several RICRMP dock standards are required. Located at plat 27, lot 32; 22 Tyler Point Road, Barrington, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application.

Joseph DeAngelis, attorney for the applicants and Herb Sirois, the applicants' engineer were present on behalf of the applicants. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was to construct a residential boating facility to extend 75' beyond mean low water with a 4'x-91' fixed pier, a 3'x25' ramp and 150 s.f. float. Mr. Reis stated that there are two variances required for the use of materials other than timber and a 25' length variance to standard 50' beyond mean low water to extend 75' beyond mean low water to obtain a 3' depth of water. Mr. Reis stated that staff recommended approval of the application pending the council's consideration of an objection. Mr. DeAngelis made a brief statement on the application. Mr. DeAngelis stated that the application was to construct a residential dock in type 3 waters. Mr. DeAngelis noted that they are only seeking a 22' length variance not a 25' length variance in order to get a 3' depth of water. Mr. DeAngelis stated that they proposed to use fiberglass and trek rather than timber for the dock construction. Mr. Sirois was accepted as an expert witness. Mr. Sirois stated that there were two variances being sought by the applicant for a 22' length variance to obtain a 3' depth at mean low water. Mr. Sirois stated that at moon low tide they would only have 10 to 12 inches of water about 1 ½ foot depth of water at 50' mark from mean low water. Mr. Sirois stated that the applicant wanted to reduce long-term maintenance and use a more environmentally friendly material that does not leach which he discussed this with staff and staff had no objection. Mr. Sirois felt the applicant met all six criteria in Section 120 for a variance. Mr. Fugate explained to council members the original standard for building materials. Mr. Fugate said that they were seeing request for residential docks with steel encased concrete piles which were being pinned in ledge and the council was concerned that if there was a storm and a dock was destroyed they would be left with piles in the water with no markings or lightening and they would become a navigation hazard. Mr. Fugate said if a dock was made of timber and destroyed, it was easier to remove the timber. Mr. Fugate said the new fiberglass piles that are proposed would be consistent with the new regulations and are fairly easy to remove and there was no

objection to the material used. Mr. Abedon noted that Mr. Sirois said they were more environmentally friendly. Mr. Sirois replied yes they do not leach.

Objector.

Penelope Manzella, an objector was present. Ms. Manzella stated that she sent a letter of objection to the council. Mr. Goldman noted that the letter of objection was page 19 in the council's packet. Ms. Manzella was concerned with keeping the wetland and said that she has kept her wetland along her property absolutely pure. Ms. Manzella said there is eel grass in the area and it is pristine and has been forever. Ms. Manzella was opposed to putting a dock into the river that would jet out. Ms. Manzella noted that the Barrington Conservation Commission objected to the property being built on. Ms. Manzella stated that she objected to this dock because they want to put it straight out and could cause navigation problems for other boats. Vice Chair Lemont noted that there was a letter of no objection from the Harbor Management Commission. Ms. Manzella replied that she was referring to the Barrington Conservation Committee. Vice Chair Lemont replied there was no letter of objection received. Mr. Dawson noted that Mr. Elson, Striper Cove Marina, was not objecting to his own dock. Mr. DeAngelis responded by Mr. Elson does not own Striper Marina but manages it and the marina is owned by a women who signed a letter of no objection. Director Sullivan, seconded by Mr. Zarrella moved approval of the application with all staff stipulations and the two variances.

Mr. Zarrella left the meeting at 8:10 p.m.

2002-05-052 RI DEPARTMENT OF TRANSPORTATION – Replacement of Washington Bridge #200; Providence, Rhode Island. First Council Extension.

Ed, RI DOT was present on behalf of the applicant. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that this was for replacement of the Washington Bridge and this was DOT's first full council extension request. Mr. Fugate said there were no problems with the construction of the facilities in accordance with the stipulations. Mr. Coia, seconded by Mr. Dawson moved approval of the application with all staff stipulations. The motion was carried on a unanimous voice vote.

9. PUBLIC HEARING ON SPECIAL EXCEPTION BEFORE THE FULL COUNCIL:

2006-06-042 NARRAGANSETT BAY COMMISSION --Conduct "Grotto Brook Siphon Replacement Project" within sewer easement owned by NBC. This project includes work within a Coastal Wetland designated for Protection in a Type 4 Water (Seekonk River). A Special Exception has been requested for that work. 1036 square feet of wetland will be lost and a replication area of 2326 square feet is proposed. In addition, 1215 square feet of wetland will be restored after the siphon installation is complete. Located just north of the Intersection of Gulf Avenue and River Drive, Providence, RI.

Tom Bruchner, an engineer manager for Narragansett Bay Commission was present on behalf of the applicant. Mr. Reis gave council members a brief summary on the application. Mr. Reis stated that the application was to construct the Grotta bike site and replacement projects on site replacing line within the sewer easement owned by the Narragansett Bay Commission. Mr. Reis stated that the project also includes work

within a coastal wetland designated for preservation abutting Type 4 waters for the Seekonk River. Mr. Reis said the application requires a special exception to do work within the wetland. Mr. Reis said approximately 1,036 s.f. Of wetland will be lost and replaced on a 2 to 1 basis. Mr. Reis also said 1,215 s.f. of wetland will be impacted during construction but would be restored. Mr. Reis said he recommended approval of the application with all staff stipulations and there is no staff engineer objection to the application. Chair Tikoian opened the public hearing. Wendy Waller, Save the Bay, said that they are one of the parties that allow work towards reestablishing wetlands and said they would request two additional stipulations. One they would like to see an as-built survey done to assure that the pre-restoration elevations are accurate and secondly, a post-restoration photo station so they can monitor the site once a year. Chair Tikoian asked who would take the pictures and incur the cost. Ms. Waller replied the applicants. Chair Tikoian said asked how many years they would do this. Ms. Waller said once a year for five years. Mr. Gray asked what a photo station at the construction site was. Ms. Waller replied it would be one spot designated so the picture can be taken in the same spot every year. Eugenia Marks, Audubon Society, wanted to make comment on the issue of the fragmites in the restoration. Chair Tikoian noted that this was not part of the special exception but would give her a chance to speak on this. There was no further public comment. Chair Tikoian closed the public hearing. Mr. Bruchner explained to council members that they have set it up with Save the Bay that they would be responsible along with Grace Donnelly for doing the restoration and the intent of the permit is that they will set aside this special species and after construction is completed, they will replant the plants. Mr. Bruchner said since they are not actually doing the replanting would ask that any photo station be administered by the parties doing the plantings. Chair Tikoian felt this was a fair request. Mr. Bruchner felt that if the plants were not successfully planted by the people who volunteered that the Bay Commission should not be held responsible. Chair Tikoian asked Save the Bay if this could be worked out. Mr. Gray asked for clarification on who was doing the restoration. Mr. Bruchner replied that the restoration would be done by volunteers. Mr. Reis explained that there are actually two activities here, one is replacement of the wetland that will be permanently destroyed and the other is the restoration of the area that is going to be temporarily disturbed. Mr. Reis stated that the applicant is responsible for the restoration. Mr. Reis did not think the requirement for photos to demonstrate that there is adequate restoration was a hardship for this type of work. Chair Tikoian agreed. Chair Tikoian asked the applicant who contracts the people that do the restoration, it is contracted by NBC. Mr. Bruchner replied yes, they hire a contractor who will then hire a someone to do the work which is supervised by a biologist. Mr. Reis noted that any permit the council would issue for temporary alteration of a wetland would require that the wetland be restored in terms of supporting salt marsh habitat and it needs to be restored to a vegetative salt marsh environment. Chair Tikoian asked if the council made the picture taken on an annual basis as one of the stipulation and the pictures show that the restoration failed, what happens? Mr. Reis replied there would be enforcement taken indicating that the wetland restoration was not restored and it needed to be mitigated. Chair Tikoian asked if the pictures were not taken how they would determine if it failed or did not fail. Mr. Reis said they would typically monitor the situation and the applicant is also proposing to have the work supervised by a qualified biologist. Chair Tikoian said this biologist would have to submit a report to staff. Mr. Reis replied yes. Chair Tikoian asked how often they would have to submit a report. Mr. Reis was not sure but said it would be a combination of getting reports from the biologist and staff going out and taking a look at the situation to monitor and make sure the habitat came back and if it did not they would notify the applicants. Mr. Bruchner asked how long they would monitor this. Chair Tikoian said someone suggested 5 years. Mr.

Bruchner asked normally when they do an inspection to see if the wetland was restored how far forward do they go. Mr. Reis replied typically at least two growing seasons following the reestablishment of the sediment so you are looking at 3 to 5 years. Mr. Abedon asked if there was a successful ecosystem there now. Director Sullivan replied yes. Mr. Abedon said so you want another successful ecosystem no mater how long and the applicant is getting a special exception to do this. Mr. Fugate said in the spartina situations you will know within 3 to 5 years whether you get a successful colonization or not. Mr. Fugate said if the grades are at proper elevation usually, spartina has no problem colonizing the area. Mr. Gray said that is what makes the request for a survey of grades to primarily make sure that we have a database. Mr. Fugate replied yes. Chair Tikoian asked if staff was comfortable with the recommendation. Mr. Reis replied yes. Mr. Gray said heard the applicant say he was not responsible for this and was concerned with who was responsible and wanted to be clear on who was responsible. Mr. Reis said because this was a special exception they would verify that the area had been restored and they typically do site visits and take photographs for the file. Mr. Reis said they do not have a specific post-restoration monitoring requirement it's a somewhat standardized practice. Chair Tikoian asked for any further comment. There was none. Chair Tikoian closed the public hearing. Vice Chair Lemont, seconded by Mr. Coia moved approval of the special exception. Chair Tikoian called for a roll call vote:

On the motion for approval of the special exception:

Director Sullivan	Yes	Mr. Dawson	Yes
Mr. Abedon	Yes	Vice Chair Lemont	Yes
Mr. Gray	Yes	Chair Tikoian	Yes
Mr. Coia	Yes		

7 Affirmative	0 Negative	0 Absentation
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The motion carried.

Chair Tikoian asked for discussion on the application. Eugenia Marks, Audubon Society, was concerned with the fragmites already growing there and asked if there was a stipulation in the permit for fragmites treatment either with hand painting stems and also to try to keep the fragmites from growing in the area where the manholes will be removed. Ms. Marks also asked about the scheduling of the work between November and March practically regarding the wetland. Mr. Reis replied that the proposed work would be done in the winter of 2006. Mr. Reis said as far as the fragmites treatment there is no stipulation recommended for fragmites treatment bud said it would not be a bad idea. Mr. Reis said for the replacement of the wetland for mitigation purposes they are recommending that it be restored to a low marsh which is easier to replicate than a high marsh and would be less invaded by fragmites as fragmites do not do well in these circumstances. Director Sullivan felt this was a good and needed project. Director Sullivan said the Corps of Engineers has jurisdiction and that DEM just received the water quality certification. Director Sullivan requested that any approval of the application be submit to water quality certification being received. Vice Chair Lemont, seconded by Mr. Abedon moved approval of the application with all staff stipulations, the assent be held pending water quality certification and a stipulation for the photo station and pre-construction survey. The motion was carried on a unanimous voice vote.

10. Mr. Fugate noted that there was one more program change to Section 300.14 the dune section maintenance. Chair Tikoian opened the public hearing. Cynthia Giles, Conservation Law Commission, noted that this was not on the agenda. Chair Tikoian held this change until the next meeting.

Chair Tikoian asked where they stood on the SAV policies. Mr. Fugate replied that they are ready to bring the SAV policies before the policy and planning subcommittee and will be heard at their next meeting.

11. **Category "A" List**

There were none held.

There being no further business, the meeting adjourned at 8:27 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field