

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, December 12, 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
Tom Ricci
Joe Shekarchi
Dave Abedon
Bruce Dawson
Neill Gray
Bob Balou, DEM

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director
Ken Anderson, CRMC Senior Engineer

John Longo, Deputy, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:00 p.m.

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

2. **READING OF THE MINUTES OF THE PREVIOUS MEETING:**

Mr. Gray requested that page 6, line 19 be amended to change the word "requested" to "required". Mr. Dawson requested that on page 2, line 9 the word "or" be changed to the word "on". Vice Chair Lemont, seconded by Mr. Coia moved approval of the November 14, 2006 minutes as amended. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont reported that the P&P subcommittee met on November 21st and recommended that the Management Procedures be revised regarding meeting attendance for council members which clarifies when meetings are held and addresses unexcused absences of council members at meetings and to revise Section 300.11, 300.11.C.1, 300.11.F.1 and 300.11.G relating to aquacultures -- the purpose of the changes are to make this section more precise in how they address marine aquacultures. Vice Chair Lemont requested that these revisions/changes be received, placed out to public notice and placed on the next available agenda.

4. **STAFF REPORTS**

There were no staff reports.

5. PRESENTATION - CRMC responsibility for Public Access – G. Fugate, CRMC

Chair Tikoian stated that Mr. Fugate was not feeling well and that they would continue his presentation to the next council meeting.

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

7. CONTINUANCES:

1973-08-015 NANCY GILBANE – To alter the design of the floating dockage at an existing residential boating facility. As initially permitted in 1994 the floating dock consisted of a 200 square foot (20' x 10') float that extended 35 +/- feet seaward of the fixed pier. In 2004 the design was modified to allow the use of a 33' x 4' access float which extended 40 +/- feet seaward of the fixed pier and which was used to access a 20' x 6' float and a 20' x 4' float (total SF 200 SF). The applicant now seeks permission to alter the float design as shown on the attached plans. The design calls for the installation of two 20' x 5' floating docks and a 26' x 6' float for a total terminal float SF of 356 SF. The new float arrangement will extend 40' +/- feet seaward of the fixed pier and 75' +/- beyond MLW. The proposed design is variant to RICRMP Standard 300.4.E.3.d by 206 square feet. Project location: plat 26, lot 20; 140 Adams Point Road, Barrington, RI.

The applicant was not present. Chair Tikoian stated that the applicant's attorney requested that the application not be heard and that the application be withdrawn. Vice Chair Lemont, seconded by Mr. Coia moved to accept the withdrawal of the application. The motion was carried on a unanimous voice vote.

8. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM AND MANAGEMENT PROCEDURES:

**RICRMP/Management Procedures
Section 4.3.2 Schedule of Fees (Revise)**

Chair Tikoian opened the public hearing. Mr. Fugate explained that they were taking over the state aquatic CAD cells and that this would make the fee structure in alignment and consistent with the statute. Chair Tikoian called for public comment. There was no public comment. Chair Tikoian closed the public hearing. Vice Chair Lemont, seconded by Mr. Coia moved approval of the revisions to Section 4.3.2 Schedule of Fees. The motion was carried on a unanimous voice vote.

Section 5.12 Permit Extensions

Chair Tikoian opened the public hearing. Mr. Fugate explained the proposed change and said currently he grants the 1st administrative extension of an assent and the council grants the 2nd, 3rd and 4th extensions of an assent. Mr. Fugate stated that this change would allow him to grant three administrative extensions of an assent and the final extension of an assent would have to come before the full council. Chair Tikoian called for public comment:

Ann Morrill, Kickemuit River Council, objected to the proposed changes to extension requests and felt they were hurt by extensions granted in the past. Ms. Morrill requested notification of extension request and that they are allowed to have input. Ms. Morrill was concerned with any extensions being given in the Kickemuit area. Mr. Fugate noted to council members that staff prepared a memo to the original language and suggested a change on page 2. Mr. Fugate said it was not clear on the actual process for the extension and this language would clear up how the extension process will go. Chair Tikoian called for public comment. There was no further public comment. Chair Tikoian closed the public hearing. Mr. Gray asked if there would be 5 extensions allowed. Mr. Fugate replied no, there would be 3 administrative extensions and one full council extension. Vice Chair Lemont noted that Ms. Morrill testimony concerned one area for extensions and that extensions would not create a problem for everyone. Mr. Coia explained that some of the extensions would be granted by the executive director laterally and they would not be heard on the extension and that they wanted to be heard on any extension requests. Mr. Abedon said if they object to an application they hire an expert witness. Mr. Abedon asked how they would know what is happening with an application. Mr. Fugate replied if an extension goes before the full council they would be given notice. Mr. Fugate noted that an application has to be in full compliance before any extension is granted. Mr. Fugate said if they received any public comment on an application it would kick the application up to the full council. Vice Chair Lemont, seconded by Mr. Coia moved approval of the proposed changes to Section 5.12 Permit Extensions. Mr. Balou stated that people receive public notice of an extension that are on the council agenda now. Mr. Balou asked how the public would know about a request for an extension of an application if there were no public notice for an agenda. Mr. Dawson had a question for Ms. Morrill. Chair Tikoian reopened the public hearing at Mr. Dawson's request. Mr. Dawson asked Ms. Morrill what they wanted. Ms. Morrill replied they wanted to know if there was a request for an extension and be made aware of any extension requests. There was no further comment. Chair Tikoian closed the public hearing. Mr. Fugate explained that any contested case situations would come before the full council. Mr. Fugate said parties are usually notified when there is an extension request. Mr. Dawson felt they should be notified not "usually notified". Chair Tikoian noted that an application has gone through the regular review process before any extension is granted. The motion carried. Mr. Balou was opposed.

MR. RICCI ARRIVED AT 6:19 p.m. MR. SHEKARCHI LEFT THE MEETING AT 7:45 P.M. TO ATTEND ANOTHER MEETING.

RICRMP

Section 110. Applications for Category A and Category B Council Assents

A. The regulations contained herein are regulations that must be met by all persons who undertake alterations and activities under the Council's jurisdiction.

B. Through the adoption and implementation of the Marine Resources Development Plan by the Council on January 10, 2006, uncontested permit applications which meet the thresholds below, and are consistent with the goals and policies of the coastal resources management program will be reviewed and acted upon administratively by the executive director or his/her designee. Category B applications which are above these thresholds or are contested will be reviewed by the full Council. All prerequisites, policies, prohibitions and standards shall remain in full force and effect and any reference to review and/or action by the full council cited herein shall be superseded by this rule. If the executive director or deputy director in their discretion determines the application does not meet the goals and policies contained in the coastal resources management program and its applicable special area management plans they may require that the application be reviewed and acted upon by the full council. The applicant will be notified of that determination in writing.

C. Applications eligible for administrative review include the following.

- Subdivisions of less than 20 units;
- Residential Docks less than 200 feet (MLW) in length;
- Terminal floats less than 200 square feet;
- Aquaculture sites of less than 10 acres;
- Seawalls of less than 300 linear feet;
- Dredging of less than 100,000 cubic yards;
- Wetland mitigation that is habitat restoration when an applicant is federal, state, or municipal entity;
- Uncontested harbor management plans that are recommended for approval;
- Boat and float lifts that meet program requirements.

The purpose of this proposed change is to, under stated instances, have certain activities reviewed and granted administratively.

Chair Tikoian opened the public hearing. Mr. Fugate explained the program changes to Section 110. Mr. Fugate noted that this change was part of the was completion of a task to bring the MAP into compliance with the general assembly statue for MAP. Mr. Mr. Fugate said NOAH reviewed and issued a report concerning CRMC and requested that they shift some of the approving authority to the staff level to allow the council to have more policy discussions. Mr. Fugate said there was a draft proposal with certain thresholds for Category B applications and 30-day notice and meeting criteria's. Mr. Fugate explained that if there is an objection or a contested case the application would come before the full council and if a case was not objected to or contested to the executive director could sign off on the application. Mr. Fugate said this would open up time for the council to have more policy discussions, public comment and workshops. Mr. Fugate said the Senate Policy staff was in full support of this change. Mr. Fugate noted that any approvals would be up to the discretion of the executive director. Chair Tikoian noted that this does not change the category of applications A's will be A's and B's will be B's. Chair Tikoian explained that if there are no objections to an application, the executive director can sign off on the application and if there was an objection the application would have to come before the full council. Mr. Fugate noted a few of the conditions/limits of the changes. Mr. Fugate said there would be a 200' length range given for eel grass areas and staff suggested the range of up to 200' in the

Sakonnet River and Narragansett Bay areas and all other lengths limits were up to 75'. He said aquacultures would go from 20 acres to 3 acres and 100 c.y. of dredging for navigation and existing marina operations. Mr. Willis stated that there had been public workshops held on these changes and public comment had been received and changes were made from the public comments received and this was reflected in his memo dated 12/12/06. Mr. Willis noted that the new language was double underlined versus single underlined. Mr. Willis stated that Save the Bay requested that all public notice requirements in place now remain in place.

Public Comment.

Ann Morrill, Kickemuit River Council, objected to the proposed changes. Ms. Morrill felt this would allow the executive director to approve applications without city and town harbor approvals. Ms. Morrill felt the notice was poorly timed because of the election. Ms. Morrill was opposed to Section 110 and allowing dredging of 100,000 cy of dredge and felt any dredging would affect Kickemuit River. Chair Tikoian stated that notice of the program change went to every city and town clerk. Ms. Morrill wanted type 1 and type 2 waters exempt from these regulation changes. Ms. Morrill wanted CRMC staff and budget to be joined with DEM. Chair Tikoian noted that there was a list of names and address where the notice was mailed and that Matt Cornell, the Bristol Harbor Master received a copy of the proposed program changes. Joe Arruda, Kickemuit River Council, was opposed to the program changes. Mr. Arruda felt that dredging and docks went hand in hand. Chair Tikoian noted that dredging would only be for marinas and navigation not private docks. Mr. Arruda felt there would be a request for dredging for a dock in the Kickemuit River. Linda Formica, Kickemuit River Council, was also opposed to the regulation change. Ms. Formica stated that there was one common dock in the river which was approved administratively and they did not want this to happen again. Ms. Formica stated that she was concerned with the word "commercial" and wanted it taken out as she felt it was a loophole. Chair Tikoian stated that the executive director does not arbitrarily grant extensions or assents that they must meet the CRMC rules and regulations. Mr. Fugate commented on the Frost dock that the members of the Kickemuit River Council were referring to and stated that this dock predated the council and had been approved in 1967 by the Providence River Council. Mr. Fugate noted that the council only came into effect in 1971. Mr. Fugate stated that the Frost dock applied for a grandfather dock application in 1985 to bring into compliance under the CRMC grandfather dock guidelines. Ms. Formica was concerned with how the regulations would be read. Mr. Fugate explained the process for the new regulations. Mr. Fugate stated that dredging at existing marinas would be for maintenance only and not allowed in type 2 waters. Ms. Formica felt if the water quality type changed they would be able to dredge. Cynthia Giles, Conservation Law Foundation, commented on the council moving the permitting process and doing more policy issues. Ms. Giles stated that she had done some research and looked at the council's record for last seven years for subdivisions of 20 units or less and felt that this regulation change had no benefit as there had only been 8 applications in 7 years that fell under this regulation change. Ms. Giles wanted to know who would benefit from this change and noted that there are currently only 3 applications pending before the council that would benefit from this regulation change. Chair Tikoian noted that staff had not made any recommendation on these applications and that she was raising issues that were not before the council. Ms. Giles felt this would reduce the public's opportunity to speak on an application. Chair Tikoian replied that there was no change for public comment on applications and that they could still make public comment and if there was an objection the application would come before the full council. Ms. Giles felt this would reduce the public's scrutiny of the council and there was a need for more public accountability by the council. Chair

Tikoian noted that the public would still have the opportunity for public comment on any application and that the files would be at the CRMC office for their review. Mr. Abedon stated that the point they were raising is that there would be one less bite at the application if the decisions were made administratively. Mr. Abedon asked if someone could appeal an administrative decision. Mr. Fugate replied yes. Mr. Ricci asked if one objection was received outside the 30-day period if the application would still go to the full council. Chair Tikoian replied yes. Ms. Giles was opposed to this regulation change. Douglas Croft asked if the seawall and riprap regulation would still be the same. Mr. Fugate replied yes. Jerry Tachino, RI Marine Trade Association President, noted that there were 250 members in their association and they were in favor of this program change. Mr. Tachino stated that the RI Marine Trade Association strongly supported this initiative to promote environmental protection for the state. Ken Cubic, RI Marine Trade Association, stated that he was in favor of this regulation change. Chair Tikoian noted that the council had received two letters of support from the RI EPA and the RI Builder Association which were in the file. Jane Austin, Executive Director Save the Bay, felt it was an important aspect of the council to limit the set of activities identified. Ms. Austin noted that the changes made by staff addressed and protect the public notice process which was a concern of Save the Bay. Ms. Austin stated that this change would shift a lot of the responsibility to staff from the council and felt this was a reasonable change. Tim Dolin, Charlestown, stated that with just the applicant putting in the information that staff also needed to look at town and local level permitting process. Mr. Richard, Greenwich Bay Watershed Group, felt this loosened the regulations and wanted to make sure all applications with objections came before the full council. Mr. Richard felt that there would be less focus on right-of-ways as this does not fall under this rule. Chair Tikoian called for public comment. There was no further public comment. Chair Tikoian closed the public hearing.

Chair Tikoian noted that the executive director suggested holding permits for 5, 10 or 15 days after an administrative recommendation to allow a period of time for public comment. Mr. Fugate suggested adding another line to the regulation change that once the staff reports are completed that the public be allowed 5, 10 or 15 days to file an objection after reading the staff reports and if there was no objection the permit would be granted administratively and if an objection was filed it would have to come before the full council. Mr. Gray noted that saving time on permitting was not the intent of the council. Mr. Balou had questions on some of the language regarding what it means in Section B by "meet the thresholds below" and felt it needed to be clarified and on what "uncontested" and "contested" meant. Mr. Balou felt the words "that meet the program requirements" in Section C after Boat and Float Lifts should be deleted. Mr. Balou asked if there were variance requests if staff would defer to the council. Mr. Balou was also concerned with the public review process.

Chair Tikoian called for a recess at 7:49 p.m. the meeting was called back to order at 7:54 p.m.

Chair Tikoian suggested a 20 calendar-day waiting period on permits okayed by the executive director. Mr. Balou asked if affirmative findings by staff that all criteria and standards are met needed to be added to the language. Chair Tikoian replied that all criteria would have to be met before any approvals are granted. Chair Tikoian suggested adding in Section B after the word "designee" on line 4 "not less than 20 calendar days after the staff reports are completed and placed in the public file. After Council discussion, Section B changes included deleting the word "uncontested" on line 2; adding after the word "and" on line 2 "have received no objection"; line 4 "are above

these thresholds or are contested” replace with “have received an objection”. The second paragraph of B line 2 after the word “in the “ add “Red Book, SAMP or variance requirements and ...” . Vice Chair Lemont felt this change was a long time in coming. Vice Chair Lemont, seconded by Mr. Gray moved approval of the proposed changes to Section 110 as amended. Chair Tikoian noted that this change was part of the NOAH evaluation recommendation that the council address more policy issues and discussion. Chair Tikoian said many interviewed agreed the council’s time would be more effectively spent on policy as stated in the MRPP which shifts the permitting process to staff. The motion was carried on a unanimous voice vote.

CHAIR TIKOIAN REQUESTED THAT THE MINUTES REFLECT THAT MR. SHEKARCHI HAD TO LEAVE THE MEETING TO ATTEND A MEETING.

9. ADMINISTRATIVE APPLICATION BEFORE THE COUNCIL FOR DECISION:

2005-12-015 ACCRINGTON REALTY, LLC – Construct a 24’ x 34’ single family dwelling with deck and permeable driveway. Dwelling will be connected to city sewer system. Located at plat 361, lot 877; Hermit Drive, Warwick, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application. Donald Packer, attorney for the applicant was present. Scott Rabideau, the applicant’s wetland biologist was present on behalf of the applicant. Dave Martin, an objector was also present. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the applicant was to construct a 24’ x 34’ single-family dwelling. Mr. Anderson stated that the applicant required a 92% variance to the 150’ buffer. Mr. Anderson suggested that the council look at the site plan on page 6 in the packet. Mr. Anderson noted that staff recommended approval of the application and stated that there were unique conditions at the site. Mr. Packer agreed with the staff report and requested that they hear from the objector first. David Martin, the objector, stated that his residence is within 100 feet of this location. Mr. Martin submitted a letter of objection that he faxed to CRMC to council members. Mr. Martin was concerned with the variances and felt that they were excessive. Mr. Martin stated that Section 150 of the CRMC rules required a 150’ buffer and the applicant was suggesting a 12’ buffer. Mr. Martin stated that Section 140 requires a 25’ setback at the inland edge of the buffer not the inland edge of the coastal feature. Mr. Martin said the applicant was proposing a 14’ setback, which requires a 44% variance on the setback. Mr. Martin stated that the applicant owns lot 183, which would give the applicant access to this area, and the rest of the land can be a conservation easement. Mr. Martin said there is a lot of wildlife present and felt the applicant could use the back of section of the land and donate the front section of the land. Mr. Balou asked about the alternate site and asked if they look at this site. Mr. Rabideau replied that he prepared the report for CRMC dated 11/16/05. Mr. Rabideau explained that this was 1.9 acres of land which is horseshoe shaped. Mr. Rabideau said in the upland area they would have to alter a contiguous freshwater wetland in type 1 waters which is prohibited under the CRMC rules. Mr. Rabideau said they did a preliminary determination on the application with CRMC before seeking zoning approval. Mr. Rabideau said they would use 4,500 s.f. of the 2-acre lot and that the foundation would be 850 s.f. of the lot. Mr. Rabideau said there would be over one acre of land in a conservation easement. Mr. Rabideau felt they meet the CRMC program and Section 120 criteria. Mr. Rabideau said this was the minimum variance necessary and there would be minimum environmental impact. Mr. Rabideau explained that they received a zoning variance for the side yard and pulled the house further from the coastal feature. Mr. Ricci asked staff about Mr. Martin’s recommendation to move

the location of the house to an alternate site and asked if it would require alteration of a wetland. Mr. Anderson replied that he was not familiar with the alternate site and could not answer that. Mr. Gray asked what the full variance to the buffer and setback. Mr. Anderson replied staff only addressed the buffer zone variance and that the total setback was part of the buffer zone variance. Mr. Anderson said there was 175' buffer and setback and the dwelling was 26 feet from the coastal feature. Mr. Gray asked if 92% of the 150' setback gave the minimum setback of 26'. Mr. Fugate explained that the variances seem massive from a minuet standpoint but this was the only portion to locate the structure. Mr. Fugate said the rest of the lot would be in a conservation easement and that the biologist felt comfortable with this and recommended approval of the variance. Mr. Fugate stated that the structure construction was only 26 feet. Mr. Balou asked if this was in an area of disturbance already or was this another area. Mr. Anderson replied that this was all contained within the manicured lawn area which was already a disturbed area. Mr. Scott concurred. Mr. Balou asked about the flood zone issue and standards. Mr. Anderson explained that the flood zone was in the local building ordinances for consistency for compliance with flood zone regulations. Vice Chair Lemont asked if there was any impact on the wildlife in the area. Mr. Rabideau said this was consistent with what is there already and protects the habitat. Vice Chair Lemont asked if this was the minimum disturbance necessary. Mr. Rabideau replied yes. Mr. Ricci stated that based on the staff recommendation and Mr. Rubidium's statement that the alternate site would require alternation of a wetland moved approval of the application. Mr. Ricci, seconded by Mr. Coia moved approval of the application with all staff stipulations and the variance. There was another objector. Mr. Ricci withdrew his motion and Mr. Coia withdrew his second to the motion. Ed Pezzi, an objector, stated that the previous owner has created this hardship. Mr. Pezzi stated that the applicant also owned lot 813 and could build on that lot. Vice Chair Lemont asked if he was suggesting that the applicant build on Petit Drive instead of building on Lot 877 and asked what the applicant would do with Lot 877. Mr. Packer noted that Lot 813 was a separate lot and was not part of this application. Mr. Packer stated that the objectors appealed the local zoning approval and they lost. Vice Chair Lemont accepted Mr. Rabideau as a wetland biologist expert. Vice Chair Lemont asked about the photograph on page 23 he referred to in the packet. Mr. Rabideau replied that the photograph in the packed was dated 2002 and he was referring to the 2003 photograph which he authenticated. Mr. Long marked the Pezza map which was part of the fax as an exhibit. Jerry Gravina, an objector, stated that he was opposed to the application. Mr. Gravina stated that there were birds and nests on the property, and wanted to know where the runoff would go. Mr. Balou replied that the driveway was made of crushed stone and would absorb the runoff. Mr. Gray asked who mowed the area. Mr. Gravina replied Mr. Zadman, owner of Lot 326, mowed the area. Mr. Gray asked how long the area has been mowed. Mr. Gravina did not know. Mr. Ricci noted that staff recommended approval of the application and Mr. Rabideau stated that the alternate site would require alteration of a wetland. Mr. Ricci, seconded by Mr. Coia moved approval of the application with all staff stipulations and the variance. Mr. Balou reluctantly supported the motion. The motion was carried on a unanimous voice vote.

10. Enforcement Report – October 2006

There were none held.

11. Category “A” List

There were none held.

There being no further business to discuss, the meeting was adjourned at 8:47 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field