

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, February 27, 2007 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
Jerry Zarrella
Bruce Dawson
Dave Abedon
Neill Gray
Mike Sullivan, DEM
Tom Ricci
Joe Shekarchi
Donald Gomez

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Jeff Willis, CRMC Deputy Director
Ken Anderson, CRMC Senior Engineer
Tom Medeiros, CRMC Engineer
Dan Goulet, CRMC Dredge Coordinator

Brian Goldman, Legal Counsel

1. Chair Tikoian called the meeting to order at 6:05 p.m.

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

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

Mr. Coia, seconded by Mr. Zarrella moved approval of the minutes of the February 13, 2007 meeting. The motion was carried on a unanimous voice vote.

3. **STAFF REPORTS**

Mr. Fugate noted that program changes had been passed out to council members to be inserted into their red books to keep them up-to-date.

4. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont stated that the Policy and Planning Subcommittee met on February 22nd and recommended proposed changes to the RICRMP Section 300.1.8 submerged aquatic vegetation for more detailed findings and Section 300.4 recreational boating facilities – technical changes regarding docks in high fetch areas. Chair Tikoian requested that the proposed changes be accepted and sent out to public notice and come back before the full council for a public hearing.

5. PRESENTATION - Introduction to FONSI process – Grover Fugate

- **FONSI Section 110, 120, 130, 160, 170, 180 – Grover Fugate**

Mr. Fugate gave a presentation on FONSI applications, discussed Sections 110, 120, 130, 160, 170 and 180 and updated council members on the CRMC activities. Mr. Fugate explained the different types of applications: Category A's, Category B's, FONSI's, Federal Consistency, Warwick Preliminary Determination, Emergency Permits, Extensions, Cancellations, Modifications and Preliminary Determinations. Mr. Fugate also explained application statistics and said they generally process 1,300 applications per year. Mr. Fugate defined sections of the program: Section 120 –Variances; Section 130 – Special Exceptions; Section 160 – Fees; Section 170 – Enforcement Section; and Section 180 – Emergency Permitting which had two types of permits 1) catastrophic storm assents and 2) imminent peril assents.

Mr. Fugate updated council members on the CRMC current activities which included:

- Tri-state SAM – which covers RI, CT and MA.
- Storm water training UNH
- Storm water testing protocol
- Suburban buffer (training designers) and noted that Mr. Boyd would be giving a presentation on this in Washington and Oregon
- Suburban buffer – training landscapers
- Woonasquatucket River Management Workshop
- Invasive Control Workshop and Certification
- Save the Bay – Brownfield's presentation
- Staff legal training – 3 days
- Urban design manual
- Metro Bay Public Access Sign
- Green Subdivision project
- Coastal Turf Protocol
- Continued Management of Ninigret Pond
- Plans and specs for Winnapaug
- Feasibility study for Brush Neck Cove
- Feasibility study for Bullock Cove
- Aquidneck Island Westside SAMP
- Coastal Erosion Technology Advisory Committee
- Metro Bay Partnership Meetings
- Water Sheet Planning and Working Waterfront Workshops – NOAA, NOS, CRC, 4 CITES (May1 & 2)
- NOAA – UCG National Program Managers Meeting (Jim Boyd to attend)
- NOAA – UCG – Oregon Meeting (Jim Boyd to attend)
- Non-Point National Conference – (Jeff Willis to give presentation on Clean Water)
- Harbor Management Plans – Westerly, Warwick, Little Compton and East Greenwich
- State Dredging Teams Meeting (Dan Goulet)
- Stormwater Manual Revision w/ DEM
- Update Southshore Erosion Maps (Tiverton) – Out to Public Notice

Chair Tikoian thanked Mr. Fugate for his presentation

Mr. Shekarchi left the meeting at 7:05 p.m.

8. **Chair Tikoian read through the agenda to see which applicants/attorneys were present.**
9. **APPLICATIONS WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND ARE BEFORE THE FULL COUNCIL FOR DECISION:**

2006-02-054 CRAIG FONTAINE – Construct and maintain a residential boating facility to consist of a 4' x 121' fixed timber pier, a 4' x 10' access float to a 5' x 30' (150 square foot) float. The terminus of the proposed dock extends to 105.6 – feet beyond mean low water (MLW), requiring a 56- foot length variance from RI-CRMP Section 300.4 standard (see attached plans). Located at Plat 358, Lot 180; 55 Harris Avenue, Warwick, RI.

Craig Fontaine, the applicant was present. Mr. Anderson gave council members a brief summary on the application. Mr. Anderson stated that the application was to construct a 4'x121' fixed timber pier with a 4'x10' access float to a 5'x30' (150 s.f. float). Mr. Anderson said the application requires a 56' length variance beyond mean low water. Mr. Anderson said there was no staff objection to the application. Mr. Fontaine had nothing to add to the application. Mr. Coia, seconded by Mr. Gray and Mr. Ricci moved approval of the application with all staff stipulations and the length variance. The motion was carried on a unanimous voice vote.

2007- 01-054 RI DEPT. of ENVIRONMENTAL MANAGEMENT – To perform maintenance dredging of approximately 8000 CY of sandy material from the northern end of the federal channel to the escape road ridge to be disposed in the nearshore area off of Browning Beach in Matunuck RI. Located at Point Judith Harbor, South Kingstown, RI.

Director Sullivan recused himself.

Larry Mouradjian, DEM Associate Director for Water Resources and Ron Gagnon, DEM Chief of Technical Support were present on behalf of the applicant. Dan Goulet gave council members a brief summary on the application. Mr. Goulet stated that the application was to dredge in the hump area and channel and they would be piggybacking on the ongoing federal project. Mr. Goulet said they would use the near shore disposal site for the dredge materials. Mr. Goulet noted that the federal project ran into debris and trash along the shore and on the beaches and they are working on cleaning this up. Mr. Goulet said that DEM and CRMC jointly noticed the project and they received many comments from the Audubon Society, Save the Bay, RI Chapter of Surfrider Foundation and the Town of South Kingstown. Mr. Goulet said that staff recommended a modification to the dredge plan and that they dredge only 2000 s.f. in the hump area only now for navigation. Mr. Goulet felt this was an important project to the site. Mr. Goulet noted that there were 3 additional staff stipulations noted on page 4 in the packet. Chair Tikoian asked Mr. Goulet to explain what the debris was. Mr. Goulet replied beer cans, lots of lobster elastics, chunks of metals, diesel fuel filters, timber and lobster pots that have washed up on the shore. Chair Tikoian asked who was picking up the trash. Mr. Goulet replied that the Army Corps directed their contractors to pick up the debris. Mr. Goulet said staff is monitoring and visiting the site to check on the clean up. Mr. Goulet said they were cleaning up the area for the habitat. Chair Tikoian asked about the disposal site for the beach nourishment. Mr. Fugate explained that the "circle" area showed the shore face in 2006 and that the "square" area showed the shore face line in 2007, which showed the changes and cumulating since.

Mr. Fugate said the shore face is becoming healthier. Mr. Goulet said there has been a lot of interest and volunteers in the beach cleanup. Mr. Dawson noted that Mr. Mouradjian letter referenced a dredge window of 2008-2009 and asked if the dredge window had been set. Mr. Goulet replied yes. Mr. Mouradjian stated that they are asking to add their permit to the existing Army Corps project. Mr. Mouradjian said there is a navigation burden for commercial fishermen. Mr. Mouradjian said it would be a benefit to them to add on to the existing federal project. Mr. Gagnon said that CRMC, DEM and the Army Corps participated in a public forum on February 15th. Chair Tikoian stated that staff was recommending 2000 c.y. of dredge instead of the 8000 c.y. requested. Mr. Mouradjian replied they are asking for the 2000 c.y. now and that they will need to get funding for the additional dredging. Mr. Zarrella asked if the funding was for 2000 or 8000 c.y. Mr. Mouradjian replied they have funding for 2000 c.y. and he thinks they can get the funding for the rest before the next dredge window. Chair Tikoian noted that this would have normally been a Category B application approved by the Executive Director because it was under 10,000 c.y. for dredging and that it was before the full council because there was a lot of interest in this project.

PUBLIC COMMENT/OBJECTORS:

Wendy Wallik, Save the Bay, submitted public comment to the council and said that they echoed staff concerns and recommendations. Ms. Wallik stated that they were in favor of the application and offered their assistance with the project. Ms. Wallik requested that the CRMC staff stipulations be included in any approval issued by CRMC. Eugenia Marks, Audubon Society of RI, submitted written comment to the council previously. Ms. Marks stated that they were concerned with the dumping of trash and wanted to make sure it was not done in the future. Ms. Marks stated that she was concerned with the habitat and that any debris would interfere with them getting food and nesting. Ms. Marks wanted CRMC and DEM to work on a better waste management plan for this area. Chair Tikoian asked staff if they discussed how the trash got into the water at the forum. Mr. Goulet replied yes and they are working on a way to calculate dredge material for solid waste. Mr. Goulet said they are recommending only 2000 c.y. of dredging now. Dave Prescott, Chair of RI Chapter of Surfrider Foundation, stated that their mission is to project the coastal waves. Mr. Prescott stated that their organization volunteered for the clean up and had many volunteers. Mr. Prescott stated that they were concerned with some of the types of debris found such as fishing knives and metals as they could be harmful to people. Mr. Prescott asked that the Army Corps step up their cleanup efforts. Mr. Prescott stated that they were not opposed to the dredging but were concerned with the dumping and trash. Mr. Prescott supported a trash mitigation plan and wanted all debris clean up in the future. Chair Tikoian thanked Mr. Prescott's organization for working in a cooperative manner with CRMC on the cleanup, hosting the public forum and volunteering with the clean up. Chair Tikoian called for further public comment. There was no further public comment. Chair Tikoian asked if DEM agreed to the staff stipulations. Mr. Mouradjian replied yes. Vice Chair Lemont, seconded by Mr. Coia and Mr. Zarrella moved approval of the application as modified to dredge 2000 c.y. with all staff stipulations. The motion carried.

2005-07-132 ANDREAS AND CARA LUDWIG – Construct and maintain a wooden stairway on a coastal cliff. Located at Plat N-S, Lot 452; 256 Colonel John Gardner Road, Narragansett, RI.

Chair Tikoian recused himself. Vice Chair Lemont presided over the application. Mr. Zarrella noted that he had contacted the Ethics Commission to get a ruling as to whether he should recuse himself as he had done business with one of the applicant's

expert witnesses and was informed it would take 30 days for them to make an advisory opinion. Mr. Zarrella recused himself.

Joseph DeAngelis, attorney for the applicant was present. John Carter, the applicants' registered landscape architect and land erosion specialist was also present on behalf of the applicants. Dan McDonald, an objector was also present. Vice Chair Lemont explained that this application had been continued from the previous meeting to allow Mr. DeAngelis an opportunity to review maps introduced by Mr. Willis that the applicant's had not had a chance to review. Vice Chair Lemont stated that Mr. Ricci had recused himself at the last meeting. Mr. Ricci stated that a witnesses had said the abutting property was owned by the Bonnet Shore Association which he and his wife are a member of and he had recused himself out of an abundance of caution. Mr. Ricci explained that he had looked into this further and found out that the Bonnet Shores Land Trust owns the land therefore there would be no conflict for him to vote on the application. Mr. Ricci felt he could vote on the application. Vice Chair Lemont asked who was not present at the last meeting. Mr. Gomez and Mr. Ricci noted that they had not been present for this application. Vice Chair Lemont asked if they had read the record. Both replied yes. Vice Chair Lemont noted that all sitting members present have read the record and proceeded with the application. Mr. Goldman gave council members an update on the application and stated that Mr. Willis referred to a document and report that Mr. DeAngelis had not had a chance to review and that the application had been continued to allow the applicant's to review the information. Mr. Goldman stated that they had left off with Mr. Willis giving rebuttal testimony to the testimony presented. Vice Chair Lemont noted, that an objection had been filed by Mr. DeAngelis and asked what legal counsel's opinion was on this. Mr. Goldman replied that the objection was to material presented by Mr. Willis. Mr. DeAngelis explained that he had prepared the objection in anticipation of Mr. Willis submitting this evidence into the record. Mr. Willis explained that he done research and the materials that he found are what make up the policies that exist today. Vice Chair Lemont noted that they left off with Mr. Willis introducing a map that defined Bonnet Point. Mr. Fugate explained that Bonnet Point was defined as a cliff face as suggested by staff. Mr. Fugate stated that the council must decide whether this activity poses a threat to erosion, decide whether the cliff face is part of the Bonnet Point and if there would be to erosion. Mr. Medeiros noted that Section 210.4.C prohibits construction in type 1 waters on a cliff or bluff and if it would accelerate erosion. Mr. Medeiros stated that Bonnet Point is a scenic vista and this activity would be prohibited. Mr. Medeiros stated that if this area is in Bonnet Point, which staff agrees it, felt the stairway construction would adversely impact the cliff. Mr. DeAngelis stated that he had no objection to Mr. Willis submitted the US Geology map but objected to the overlay map being submitted. Mr. DeAngelis requested that if the overlay map was not being submitted that any testimony relating to the overlay map be stricken from the record. Mr. Goldman asked Mr. Willis what his purpose was to bring map to council attention. Mr. Willis replied he had found it the date before the last meeting and tried to introduce it into evidence. Mr. Willis stated that he had found coastal handbook which had the maps and overlays in them. Mr. Willis felt there was a clear connection in the study and that the council had later used this information to come up with its policies for natural coastal areas. Mr. Willis felt the application resided within the Bonnet Point jurisdiction. Mr. Fugate noted that this was background documentation for the 1978 plan. Mr. Willis stated that based on this information he made the conclusion that the application was within the Bonnet Point natural area. Director Sullivan stated that based on the submitted material and the testimony of the experts felt that the purposed structure would cause an adverse impact on the coastal feature, fractures to the rock, instability and increase erosion. Director Sullivan suggested all would result in a conflict with the CRMC goals and cause significant adverse impact to

the cliff and the vista. Director Sullivan moved to deny the application. Mr. DeAngelis called for a point of order and requested to be allowed to cross-examine Mr. Willis. Vice Chair Lemont set aside the motion. Mr. Goldman asked Mr. Willis about his interpretation of the documentation and if it would have changed his opinion. Mr. Willis replied that the staff report did not change and that this information further bolsters his position that the application was within the Bonnet Point area and should be denied. Mr. Goldman suggested letting in the documentation for whatever weight it has. Mr. DeAngelis noted that the documentation was labeled draft and was not sure that it had been accepted by the council or any other agency. Mr. Gray felt that last week the council had enough information on the application to make a decision. Mr. Gray felt there was enough testimony and evidence presented for him to make a decision on the application. Vice Chair Lemont asked if Mr. DeAngelis to finish presenting his case. Mr. DeAngelis replied yes but that he had a few questions for Mr. Willis. Mr. DeAngelis requested that the Seavy report and the handbook be copied and put into the record. Mr. Goldman noted that Mr. Willis had submitted a portion of the Seavy report already. Mr. DeAngelis requested that the whole book be copied and be made part of the record. Mr. DeAngelis stated that the applicant had no access to the water. Mr. Willis replied that there might be other opportunities for the applicant to get to the water. Mr. DeAngelis noted that Mr. Willis' memo dated May 25th felt that the applicant's property was in the Bonnet Point. Mr. Willis replied yes. Mr. DeAngelis stated that the Seavy report designated eight sites as natural area and they were all tourist attractions. Mr. Angelis stated that there are all homes on Col. James Gardner Road, which are private, and not a tourist attraction. Mr. DeAngelis stated that in 1975 Mr. Seavy's discussed Bonnet Point as five acres. Mr. Willis believed that the 5-acre reference extended and included the cliff and bluff areas. Mr. Fugate stated that in previous instances he had to go back and look at the old plan and the new plan when he had to testify in court. Mr. Fugate stated that most of the planning work was done to meet federal requirements. Mr. Fugate stated that the council is suppose to identify area of particular concern and areas for preservation and restoration and that then translated into what they called rocky shorelines, beaches and coastal wetlands. Mr. Fugate stated that the 1978 plan which formed the Red Book, the Bonnet Shores is mapped in this area of particular concern under the program. Mr. DeAngelis asked Mr. Fugate how long he had been with CRMC and if he was familiar with the changes in the regulations that did not include cliff faces. Mr. DeAngelis felt that the cliff face had been changed in the regulation since the plan was implemented. Mr. DeAngelis did not feel that this was a scenic vista. Mr. Fugate stated that this area was considered a scenic vista. Mr. Fugate said the cliff face is a tourist attraction and disagreed with Mr. DeAngelis. Mr. Fugate replied since 1986 and that he was familiar with the changes and the definition change but felt that cliff faces were still included. Mr. Gomez stated that the issue of the tourist attraction is the real value of the view from the water and that the word adjacent includes the coastal feature and they not be bond by the 5-acre measure. Mr. Gray concurred. Director Sullivan, seconded by Mr. Gray moved to deny the application with reference to Section 210.4.c. that the proposed structure will cause and indirectly cause adverse impact on a coastal feature specifically reduce vegetative stability, vegetative density as a result as an insertion of the structure; increase vulnerability of vegetation from shading, terminal radiance induced by differential heating will accelerate cracking and fracturing of this coastal feature known as the Bonnet or Bonnet Point, which is a scenic feature; and that the decrease stability will cause erosion and increase vulnerability of this feature to storm damage, decrease quality of the vista and scenic value, that these individual and cumulative effects would result in a conflict with the CRMC goals and responsibilities and result in a significant adverse impact to coastal feature, and sight conditions are such that significant damage will result in the future; and that there are no hardships in

existence. Director Sullivan noted that specifically when he talks about the fractures he talks about what he considers Bonnet Point, which is the rock features along the vista in that area. Mr. Ricci and Mr. Coia were opposed. Mr. Coia stated that he voted no on the application because he was not convinced that the application fell within the Bonnet Point area. The motion carried.

NOTE: Mr. Zarrella left the meeting at 7:15 p.m.

10. Enforcement Report – January, 2007

There were none held.

11. Category “A” List

There were none held.

There being no further business to discuss, the meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field