

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 24, 2007 at 6:00 p.m. in the Boardroom of the Narragansett Bay Commission, One Service Road, Providence.

### **Members Present**

Michael M. Tikoian, Chair  
Paul Lemont, Vice Chair  
Raymond Coia  
K. Joseph Shekarchi  
Donald Gomez  
Bruce Dawson  
Michael Sullivan  
Neill Gray

### **Staff Present**

Grover J. Fugate, CRMC Executive Director  
David Reis, CRMC Supervising Environmental Scientist  
Janet Freedman, CRMC Coastal Geologist

Brian Goldman, Esq.; CRMC Legal Counsel

1. **Point Judith Dredging Project and Sediment Management – Bryan Oakley, URI Geology**  
Mr. Oakley was accompanied by Dr. Jon Boothroyd. Mr. Oakley talked about mapping procedures used on shoreface of Matunuck and Moonstone barrier to determine a placement site of dredge material taken from Point Judith Dredging project. Mr. Oakley used a visual presentation to provide council members with information on how the site was determined for the placement of sediment on beaches. Mr. Oakley gave a project overview stating that maintenance dredging was performed in Point Judith Harbor removing 90,000 cubic meters of sediment. Sediment was put on barge that brought it over and dropped it in shallow water allowing the natural process to bring it to the shoreline. A 3.7 square kilometer section of shoreface was identified as a possible placement site for placement of dredge material. Side Scan Sonar procedure was explained by Mr. Oakley using visual presentation. Mr. Oakley explained the Benthic Geologic Habitat of the placement site using colored tables and slides. Mr. Oakley explained that the south shore of Rhode Island has 6 main transport pathways of sediment. Mr. Oakley explained wave water motion, sand coming back to shoreline in fair-weather conditions. Down-welling is how sand is taken away from shoreline during storm surges. Upwelling is how sand is returned to the shoreline after storms surge.

Mr. Oakley stated that two sites were selected for sand placement so that it could work its way back to shoreline. Slides shown of South Kingstown Town Beach showing difference between beach profile monitoring done in 1996 and more recently on February 16, 2007 (two days after Valentine's day storm).

Mr. Oakley concluded by saying that even with the minor problem of some debris in the sediment, the sand was migrating to the shoreline and procedure seemed to be successful.

## 2. **Barrier Beaches, Sea Walls, and Erosive Bluffs – Janet Freedman, CRMC Coastal Geologist**

Ms. Freedman gave visual presentation first talking about barrier beaches and CRMC regulations protecting them and showing slides of the Newport NOAA tide gauge, slides of the current storm damage, and Overwash fan for years 11/2005, 10/2006 and 4/2007 differences.

Ms. Freedman talked about Browning's cottages through the years and showing that erosion dune guard fencing which is not preventative during storm surges. Ms. Freedman talked about cottages that were being moved to upland locations because of the loss of shoreline over the years. Ms. Freedman talked about an experimental process using Coir tacos which are coconut fiber logs filled with sand and used on eroding bluffs. Ms. Freedman stated that the sand filled logs seemed to have worked; although the storm surge was high enough to go over bags, the bags protected shoreline.

Ms. Freedman gave explanation of barriers and their three classifications – developed, moderately developed and undeveloped. Ms. Freedman explained CRMC regulations regarding barriers and the importance of implementing the regulations.

Ms. Freedman spoke about shoreline protection structures – revetments, seawalls, bulkheads, groins – and CRMC regulations regarding these structures. Ms. Freedman stated that property owners cannot regain property that has been lost. Mr. Tikoian stated that no variances can be granted on prohibitions. Mr. Fugate spoke about some California coastal regulations. Grover Fugate stated that when structural shoreline protection is constructed on a beach area, within 10 years the beach usually erodes up to the shoreline protection structure and does not regenerate.

Ms. Freedman explained the significance of the Erosion Control Technical Advisory Committee which CRMC and URI participates in.

Mr. Fugate stated that Senator Reed created an authorization within Army Corps of Engineers budget for South Shore Regional Sediment Study and budget looking at all sources of sediment, where it's going and how to best manage the sediment. ACOE to work with CRMC and URI on this project; just waiting for appropriation of study. Hoping study will help to identify more potential solutions for dealing with loss of shoreline.

Mr. Gomez asked about the relationship between CRMC and DEM when processing dredging application. Mr. Fugate stated that it is a joint application process and that Danni Goulet, CRMC Dredging Coordinator and Ron Gagnon from DEM work closely together on dredge applications and that there is also a process by which there is a shared public notice period.

Mr. Shekarchi left meeting at 6:55 p.m. to attend zoning board meeting.

Mr. Tikoian thanked Brian Oakley and URI staff for presentation and for the close relationship that CRMC has been able to build with them. Mr. Fugate stated that the Shoreline Change Maps were a product of the growing relationship between CRMC and URI.

Mr. Tikoian thanked Janet Freedman for her presentation and mentioned how important the CRMC's policy staff is to CRMC's overall objective.

3. **Chair Tikoian called the permitting section of meeting to order at 6:55 p.m.**

Chair Tikoian read a brief statement of clarification on the Council's permitting process.

4. **READING OF THE MINUTES OF THE PREVIOUS MEETING**

Mr. Coia motioned approval of the minutes of the previous meeting. Motion was seconded and carried on a unanimous voice vote.

5. **SUBCOMMITTEE REPORTS.**

There were no subcommittee reports.

6. **STAFF REPORTS**

Mr. Fugate stated that CRMC and DEM held a joint workshop for municipal officials on Low Impact Development Techniques. Mr. Fugate stated that workshop was well attended and that both CRMC and DEM is pleased with the results.

Mr. Fugate also stated that a Working Waterfront workshop will be held on May 1 and 2<sup>nd</sup>; conducted for Providence and East Providence working waterfront. The workshop will look into industrial waterfronts and trying to provide a proper mix and balance between the waterfronts that have industrial use plus redevelopment that is occurring in these areas. The conference is being supported by NOAA and people are coming in from all over the country and with international interest as well. The conference is being sponsored by CRMC, URI Coastal Resources Center and RI Seagrant.

7. Chair Tikoian read through Agenda to see which applicants/attorneys are present. Applications which has been out to notice for 30 days and are before the Council for Decision.

8. Applications which have been Out to Notice for 30 days and are before the Full Council for decision:

**2006-09-054 ANDREA STEWART – Residential boating facility consisting of a 4' x 103' (+/-) fixed pier, a 3' x 20' ramp and a 10' x 15' float. Fiberglass piles to support the deck shall be utilized in lieu of the standard timber piles (Ref. RICRMP 300.4.3(o)). Additionally, "Trex" (wood and plastic compost) decking will be installed in lieu of the standard wood decking. The facility will extend 75' beyond Mean Low Water. The standard length is 50' beyond Mean Low Water. Therefore, a 25' variance is required (Ref RICRMP 300.4.E.3(k)). Located at plat 17, lot 122; 6 Pokanoket Trail, Warren, RI.**

Mrs. Andrea Stewart, the applicant, was present. There was no opposition present. Dave Reis gave Council a brief summary on the application. The facility was proposed for the Kickemuit River. The applicant proposed to use fiber glass piles as opposed to wooden piles to which staff had no objection. Dock to extend 75' beyond Mean Low Water requiring a 25' length variance. Water depth is -3' at Mean Low Water. Dave Reis stated that staff recommended approval of application. Mr. Reis stated that there were two letters of objection in file. Neil Gray asked question on CRMC water depth regulations. Dave Reis stated that the applicant had been granted a Category II ACOE permit. Ray Coia, seconded by Neil Gray, motioned for approval of dock application. Motion carried. Mr. Lemont opposed.

2004-08-097 FREDERICK AND LOUIS WILLIAMS – Construct and maintain a single family dwelling, septic system (ISDS), individual well, detached shed and driveway. As proposed, the project will result in approximately 10,840 square feet of disturbance (loss) to jurisdictional wetlands of which approximately 3,800 square feet of disturbance will occur within the “swamp” itself. The affected wetland is regulated by CRMC’s Freshwater Wetlands in the Vicinity of the Coast Program. Located at plat 7, lot 8; West Main Road (1655’ south of Swamp Rd intersection, west side of West Main Road); Little Compton, RI.

John Boehnert, Attorney for the applicant was present. Scott Rabidue, Environmental consultant for the applicant was present as well as William Smith, Engineer. Objecting to the application was Cynthia Giles, Conservation Law Foundation and Wendy Waller, Save the Bay.

Dave Reis gave Council a brief summary on the application explaining application and its history. Mr. Reis stated that the owner had offered modifications to proposal as presented on page 2 of staff report. Applicant went back to local zoning board to receive zoning approve to move dwelling back; applicant concedes to remove the shed from proposal as well as a conservation easement for remainder of the land. Dave Reis explained that the new information was placed in the front of the agenda package and the old information in the back. Dave Reis stated that because the applicant had made all changes, staff still recommended approval of application.

Mr. Boehnert gave short overview of application. Mr. Boehnert stated that the Williams’ relocated the house closer to the road thereby reducing the intrusion into the wetland area and they also agreed to remove the woodworking shed. Mr. Boehnert also stated that the applicants agreed to a conservation easement on 96% of their property leaving only 8300 s.f. of the property for the house.

Mr. Boehnert called the applicant’s environmental consultant Scott Rabidue for presentation and questioning. It was established that Mr. Rabidue was an expert witness in wetland biology. Mr. Rabidue presented the application in reference to the biological impacts on the wetland. Mr. Rabidue stated that the previous configuration on the lot was changed at the CRMC staff’s request and that in doing so, applicants had to seek further variances from the town of Little Compton. John Boehnert questioned Mr. Rabidue who stated that in his biological opinion the Williams’ avoided the wetland as much as possible. Mr. Rabidue used plans/drawings to show differences in proposals and the variances required by the Town of Little Compton. Mr. Rabidue stated that the applicant received relief from town so that the structures could be placed at 25’ to west main road and 25’ to existing easement on the northerly side of the property; this will keep the entirety of the house out of the biological wetland. Mr. Rabidue stated that the house was a modest house for the property and for the neighborhood and that all ancillary structures were eliminated. Mr. Rabidue stated that the year yard will be about 12’ in size; and that screening vegetation and enhancement plantings along the back of the property are proposed which are pretty standard for any freshwater wetland application (to screen any activity that takes place around the house from the wetland). Mr. Rabidue stated that another mitigating measure the applicant’s agreed to is that the conservation easement will be established for the balance of the property which is an unusual circumstance for a freshwater wetland application. The conservation easement means there will never be activities in that freshwater wetland. Mr. Rabidue stated that wetlands functions and values are protected with this proposal and all of the standards of 10.03 are met. Mr. Rabidue passed out a GIS Aerial photograph to Council members for review showing previous conservation easement proposed with shed on site showing to upland areas. Mr. Rabidue spoke of existing disturbance on an auditory level; house will

not offer any additional impacts. Mr. Tikoian asked about previous impact to wetland which created enforcement situation with DEM. Mr. Rabidue stated that owners were unaware of required DEM wetlands permit; had received local approval to build and ISDS permit from DEM, subsequently a foundation was installed. Site has since been remediated (foundation removed). Mr. Rabidue stated that it would be 30 years before a significant canopy could be attained. Mr. Gomez questioned Dave Reis is the conservation easement appeased the Town of Little Compton's questions in regards to building on lot. Dave Reis stated that Conservation easement used was typical language. John Boehnert stated that the conditions from the Town were adhered to.

Cynthia Giles of the Conservation Law Foundation recommended in argument to the Council that the application should be denied on the basis that the applicant had not demonstrated to the Council what was required for a granting of a variance. Ms. Giles stated that the owner created their own hardship with the size of the house and the conservation easement was not relative because the applicant's should not be able to build on lot. Ms. Giles stated that the CRMC's purpose was to protect the wetlands. Ms. Giles stated that CRMC should not agree to a building scenario on lot to avoid a takings issue. Ms. Giles recommended CRMC do a takings analysis prior to making decision. Ms. Giles stated that DEM went all the way to Superior court to defend the wetlands previously and the CRMC should uphold defending of the wetlands. Mr. Boehnert recounted saying for the record that he had not mentioned the takings issue and that the Williams' received DEM ISDS approval prior to purchasing the property to make sure they could build on it. The clearing of land was not a deliberate act of noncompliance with state regulations. Mr. Reis stated that when an enforcement situation occurs and is subsequently rectified, the owner's of the property start the application process with a clean slate. CRMC is evaluating this application for the first time. Mr. Goldman stated for the record that CRMC does not make takings evaluation, it is an entirely separate process from the state agency.

Wendy Waller from Save the Bay stated that Save the Bay recommended that the Council deny the application on the basis that the alteration of 6600 sf of jurisdictional wetlands should not be allowed. Ms. Waller stated that the application can be denied under the regulations in place at the time the application was filed. Ms. Waller quotes from CRMC transcript of meeting for Williams application from a year ago, when Mr. Reis talks of CRMC wetland Regs 3.01 A B C D... regarding buffer and setback of 50 feet. Ms. Waller stated that applicant did not demonstrate enough avoidance and minimization of probable impacts to wetland. Ms. Waller warns council of precedent situation in the event that approval is granted.

Mr. Boehnert closed his presentation to the Council by saying that the testimony from the expert witness and the recommendation from CRMC staff who offered in their professional opinion to approve the application, should tell Council that the application should be approved. Mr. Boehnert also stated that the Council should not allow people to tell the Council how to interpret their own set of rules and regulations.

Discussion among the Council members and staff on how there was a decrease in impact of the wetlands if the house is the same size. Mr. Reis stated that the house was moved closer to the road and that even though there would be initial wetland disturbance when the well was put in, that area would be allowed to regrow thereby removing that area of disturbance. The installation of the well is only a temporary disturbance. Mr. Reis also stated that the elimination of the sheds also lessened the disturbance. Council members asked if applicant would consider a reduction in the size of the home which would further eliminate wetland disturbance. Paul Lemont asked Mr. Rabidue about the water situation in the wetland, was there standing water there at all times? Mr. Rabidue stated

that in some parts of the wetland there is a semi-permanent hydrology and that in some portions of the wetland there is water during certain times of the year. Paul Lemont asked Mr. Rabidue about mosquito management. Grover Fugate asked about the foundation structure. Mr. William Smith, the applicant's engineer, stated that there was not a full basement proposed that the foundation was a slab on grade. Mr. Fugate asked if it were possible to introduce a pier supported section into the plans to eliminate some wetland disturbance; also creation of a retaining wall for fill to keep out of wetland. Mr. Smith stated that the idea would be expensive for the applicant and that he was not a structural engineer. Neill Gray stated that the applicant could reduce wetland disturbance by reconfiguring house on lot; it could be same size just different layout.

Chair Tikoian asked Mr. Boehnert if he wanted to speak with the applicant's to discuss the possibility of a reduction of house size or a reconfiguration of house layout.

Two minute recess. Mr. Boehnert meets with client.

Mr. Boehnert returned stating that the applicant thought they had made a sincere effort the accommodate CRMC's concerns but that they would agree to the reconfiguration/redesign of the house to keep house and fill out of the wetland with the exception of the temporary situation with the well. Chair Tikoian thanked applicant for working with staff. Arrangements were made to bring application back before the Council on June 12, 2007 (30 days).

Mike Sullivan motioned, with a second from Ray Coia, to continue application for 30 days to be heard on June 12, 2007. Application was continued on a unanimous voice vote.

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

**1. Shoreline Change Maps**

Chair Tikoian opened the public hearing. Mr. Fugate gave council members a brief explanation on the Shoreline Change Maps. Mr. Fugate explained that CRMC is working with URI to create updated maps and make them available for use. Chair Tikoian called for public comment. John Williams stated that his questions had been answered earlier. Chair Tikoian closed the public hearing. Paul Lemont, seconded by Ray Coia, motioned to approve. Motion approved on unanimous voice vote.

**2. Section 140.C – Setbacks**

Chair Tikoian opened the public hearing. Mr. Fugate gave council members a brief explanation on the change saying that the setbacks are due to the shoreline change maps. Chair Tikoian called for public comment. There was none. Chair Tikoian closed the public hearing. Bruce Dawson, seconded by Ray Coia, motioned approval of change. Motion carried on a unanimous voice vote.

**3. Delete Table 2, along with accompanying note.**

Chair Tikoian opened the public hearing. Mr. Fugate gave council members a brief explanation on the change. Chair Tikoian called for public comment. There was none. Chair Tikoian closed the public hearing. Bruce Dawson, seconded by Ray Coia, motioned approval. Motion carried on a unanimous voice vote.

4. **Table 1.B – Review Categories for Inland Activities (Section 320 and Section 325)**

Chair Tikoian opened the public hearing. Mr. Fugate gave council members a brief explanation on the change. Chair Tikoian called for public comment. Cynthia Giles asked if the intention of this change was to change category classification on some applications (B to A). Mr. Fugate explained. Chair Tikoian closed the public hearing. Bruce Dawson, seconded by Ray Coia, motioned approval. Motion carried on a unanimous voice vote.

5. **Section 300.18 – Submerged Aquatic Vegetation**

Chair Tikoian opened the public hearing. Mr. Fugate gave council members a brief explanation on the change saying that it was a complete rewrite to establish a series of standards. Also includes additional prohibitions. Mr. Reis stated that he had handed out memo from Jeff Willis for CRMC staff requesting technical and minor revisions to certain regulations to be heard tonight and Section 300.18 is in the memo. Chair Tikoian called for public comment. There was none. Chair Tikoian closed the public hearing. Ray Coia, seconded by Paul Lemont, motioned to approve as amended. Bruce Dawson requested a language revision in 300.18.E.5.d so that it says 1200 lb capacity or less. Ray Coia amends motion. Seconded by Michael Sullivan. Motion passed on unanimous voice vote.

6. **Section 300.4 – Recreational Boating Facilities**

Chair Tikoian opened the public hearing. Mr. Fugate gave council members a brief explanation on the change. Discussion on floats and gps equipment. Memo from Jeff Willis reviewed. Chair Tikoian called for public comment. There was none. Chair Tikoian closed the public hearing. Paul Lemont, seconded by Ray Coia, motioned approval. Motion passed on unanimous voice vote.

There being no further business before the council the meeting, the council adjourned at 7:15 p.m.

Respectfully submitted,

Grover Fugate  
Executive Director CRMC

Reported by Lisa A. Mattscheck