

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, September 25, 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  
Bruce Dawson  
Dave Abedon  
Neill Gray  
Don Gomez  
Ron Gagnon, DEM (Representing Director Sullivan)

**MEMBERS ABSENT**

Tom Ricci  
Joe Shekarchi  
Jerry Zarrella

**STAFF PRESENT**

Grover Fugate, CRMC Deputy Director

David Reis, CRMC Biologist  
Tom Medeiros, CRMC Senior Engineer  
Brian Harrington, CRMC Enforcement  
Laura Miguel, CRMC Enforcement  
Tracy Silvia, CRMC

Brian Goldman, Legal Counsel

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

Ms. Field read a brief statement of clarification on the council's permitting process.

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

Mr. Coia, seconded by Mr. Dawson moved approval of the minutes of the September 11, 2007 meeting. The motion was carried on a unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were no subcommittee reports.

4. **STAFF REPORTS**

Mr. Fugate informed council members that there would be a 2-day conference coming up shortly sponsored by CRMC, which is on a Friday and Saturday. Mr. Fugate told them to email the office if they were interested in attending.

Mr. Fugate also stated that the council is working on a climate change policy which will be a technical presentation given by John King, the geologist.

**5. PRESENTATION: Public Access -- Kevin Cute, CRMC**

Mr. Cute stated that he would be giving a presentation on public access to the shore. Mr. Cute stated that he is with the policy section of CRMC and deals with public access issues. Mr. Cute said his presentation would touch on the three methods on how the Council currently creates public access to the shore and describe some outcomes associated with each of them. Mr. Cute said first there are the regulatory methods, Metro Bay SAMP Urban Coastal Greenway; the Red Book Section 335 which requires that public access plans be created under certain types of developments with activities; and CRMC's first method, a statutory method (RIGL 46-23-6) where they designate on a continuing basis public rights-of- ways. Mr. Cute stated that public access depends on site conditions and development. Mr. Cute showed pictures of public access areas in Apponaug Cove Marina and the Thames Street Landing – Stone Harbor Condominiums. Mr. Cute said there 25 different projects for public access plans. Mr. Cute said that CRMC has the statutory authority to designate rights-of-ways, under RIGL 46-23-6. Mr. Cute showed slides of several rights-of-ways the council has designated. Mr. Cute explained how rights-of-ways are designated. Mr. Cute said any obstruction of a right-of-way is illegal. Mr. Cute explained how someone can adopt a right-of-way and stated that there is a Memorandum of Understanding in the council's packet that explains it. Mr. Cute said there are 221 rights-of-ways throughout the state. Mr. Cute stated that there were five (5) rights-of-ways adopted in 2007 by Save Bristol Harbor and there are seven (7) pending adoptions. Mr. Gomez asked who maintains the rights-of-ways. Mr. Cute responded that typically the maintenance responsibility follows with the proprietor, which tends to be Town properties. Mr. Gomez asked if this was documented in the MOU. Mr. Cute replied yes. Chair Tikoian thanked Mr. Cute for his presentation. Chair Tikoian also thanked Vice Chair Lemont, who is chair of the Rights-of-Way Subcommittee and the members who meet on it and Mr. Goldman for his hard work.

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

**7. EVIDENTIARY HEARING FOR RESTORATION:**

**2004-0081 THOMAS WHITTINGTON – Unauthorized construction of a wall (using stone from the beach), poured concrete stairs, earthwork (filling, removing, and grading), and cutting of vegetation on a coastal feature without a permit. Located at plat 40, lot 31; Prospect Lane, Portsmouth, RI.**

Chair Tikoian recused himself. Vice Chair Lemont presided over the application. Joseph DeAngelis, attorney or the applicant was present on behalf of the applicant. Vice Chair Lemont stated that this pertains to an unauthorized construction of a wall, poured concrete stairs, earthwork and cutting of vegetation on a coastal feature without an assent. Vice Chair Lemont asked Mr. Goldman to explain what happened. Mr. Goldman stated that there was a memo in the council member's packets from him an unsigned one dated Sept. 20<sup>th</sup> and a signed one dated Sept. 21<sup>st</sup>. Mr. Goldman said he

was going to recommend to the council that they continue this matter to clear up a procedural issue that arose and he noticed it when he was preparing for tonight's hearing. Mr. Goldman explained that this matter was heard at an administrative fine hearing in March 2006 and a ruling was made that a \$1,000 fine, which is the maximum fine at the time, be imposed unless within 45 days the Whittingtons submitted a restoration plan that was acceptable to staff. Mr. Goldman said the reason that staff took this position was because this was a prohibited activity and a special exception was required. Mr. Goldman said there was not much they could do at the administrative fine level but issue a fine. He said his memo, the order was, it could be issued within 45 days if the site wasn't restored, a \$1,000 order fine should issue then. Mr. Goldman said the applicant could appeal this. Mr. Goldman said he would defer to the full council to consider whether or not they want to issue a restoration order or pursue further equity action. Mr. Goldman said there was a miscommunication of staff or staff did not completely understand what he had asked but the fine was never issued in this matter until last week. Mr. Goldman said he asked Mr. Fugate if the fine had been issued and he indicated that it has not. Mr. Goldman said in order to clarify the procedural issue that it finally went out at the end of last week. Mr. Goldman suggested to the council since the fine had gone out that they reschedule the matter for another hearing. Mr. Goldman said he had also conveyed his recommendation to Mr. De Angelis and staff. Vice Chair Lemont asked when he recommended the council hear the matter. Mr. Goldman said whenever they have availability. Mr. DeAngelis said he was ready anytime. Mr. Coia, seconded by Mr. Gomez moved to continue the matter to the next available agenda. Mr. Dawson asked if they had confirmation that the Whittington's received the fine. Mr. DeAngelis replied that he did not have a copy but the Whittingtons got a copy and they'll take an appeal of that. The matter was continued.

**8. APPLICATION REQUESTING SPECIAL EXCEPTION BEFORE THE FULL COUNCIL:**

**2007-06-075 QUONSET DEVELOPMENT CORPORATION -- construct and maintain: a public roadway segment (approximately 2,300 linear feet) that will link Commerce Park Road to existing and future development within the Quonset Business Park. The project includes roadway construction, a culvert crossing of an intermittent stream, a new drainage system with stormwater management facilities and miscellaneous site grading and preparatory work for future development. The proposed roadway will result in the filling of 2,690 sq. ft. of a freshwater "tributary wetland". In total, approximately 2,790 sq. ft. of "biological wetland" and 38,590 sq. ft. of "jurisdictional wetland" (perimeter wetland and river bank) will be impacted by the project. The filling of tributary wetland is prohibited by RI CRMP Section 100.4.F.1 thereby requiring a special exception. A salt marsh restoration project is proposed to mitigate for environmental impacts to the tributary wetland and surrounding areas of jurisdictional wetland. (The impacted freshwater tributary wetland is linked to the salt marsh by a stream channel which flows through the salt marsh and into Narragansett Bay via a tidal inlet which passes through an adjacent barrier beach strand). Located at plat 192, lots 2, 3, 5; Jones Road at Thorpe, North Kingstown, RI**

Steven King, CEO and acting Managing Director at Quonset Development Corporation, the applicant 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 a public roadway segment, approximately 2,300 feet that will link Commerce Park Road to existing and future development within the Quonset Business Park. Mr. Reis said the project includes roadway construction, a culvert crossing intermittent stream, new drainage system, stormwater management facilities for future development. Mr. Reis

said the proposed roadway would result in filling 2,790 s.f. of tributary wetland which is now prohibited in the CRMC regulation. He said the proposed roadway will result in filling of a tributary wetland and will also impact the jurisdictional wetland by 38,590 s.f. Mr. Reis said the jurisdictional wetland is more of a buffer on a wetland. Mr. Reis said in order to compensate for the impact to the freshwater wetland, a salt marsh restoration plan is being proposed by the applicant. Mr. Reis said they are impacting about 3,000 s.f. of biological wetland and proposing to enhance approximately 4 acres of very degraded salt marsh. Mr. Reis said staff reviewed the project thoroughly and recommend approval. Mr. Reis felt the applicant met the special exception requirements. Mr. Reis said the only outstanding issue is the alternate means for location for serving a compelling public purpose cited and staff did not feel there was enough information to make a conclusion. Mr. Reis said the QDC had a graphic they were going to present tonight to address this. Mr. Reis said staff recommends approval with stipulations. Chair Tikoian opened up the public hearing on the special exception. Mr. King passed out a graphic of "Maritime Way – Quonset Business Park" to council members for their review. Mr. King explained that the exhibit he distributed demonstrates Maritime Way which is shown in red. Mr. King said this is an extension of the existing road network at Quonset Business Park and will provide access to the parcels that are identified on the exhibit as 4 and 5. Mr. King said these areas are currently undeveloped. Mr. King explained the site. Mr. Reis stated that he felt this was suitable. Chair Tikoian asked about the light gray lines on the graphic and asked if they were existing roadway. Mr. King replied yes. Chair Tikoian asked where access was and where is the existing road to go to that area. Mr. King replied Davisville Road. Vice Chair Lemont stated that looking at this map, the proposed roadway will result in 2,690 s.f. of tributary wetland and 38,590 in jurisdictional wetland. Vice Chair Lemont asked where this was in relation to Maritime Way. Mr. Reis replied on page 26 in the council's packet. Vice Chair Lemont stated that the area described is about 40,000 s.f. which is just short of an acre. Mr. Reis replied yes. Vice Chair Lemont noted that the applicant is a quasi state agency and asked if there was any favored treatment. Mr. Reis replied no. Mr. Gray asked if the Port of Davisville was exclusively used by NORAD. Mr. King replied no that it is predominantly used by NORAD but can be used by anybody. Mr. Gray asked how you access the property. Mr. King replied through Davisville Road. Mr. Gray stated that its confusing, it looks like Davisville Road is part of NORAD and can't be used. Mr. King said it could be used for port traffic but they would have difficulty once Parcel 4 is developed. Mr. King said this would be used more as a general public access type as they don't want the public coming into the secured area where all the automobiles are stored. Mr. King said there is a secured gate at the top of Davisville Road. Mr. Gray asked if the other users in the development can use the port, dock there and go up Davisville Road. Mr. King replied yes. Mr. Gray asked even when NORAD is receiving cars. Mr. King said yes. Mr. Gray said Parcel 4 will have access to Davisville Road. Mr. King replied yes. Chair Tikoian reminded council members that the council had already approved a global public access program for this tidal areas to facilitate such developments so they would not have to come back before the council, so there is a comprehensive public access plan for the site. Mr. Gray asked where the public access and free parking spaces on this. Mr. King replied at the end of the cul-de-sac. Mr. Reis clarified that on page 27 of the Council's agenda at the end of the cul-de-sac you can see the little bump-out on cu-de-sac that are actually parking spaces. Mr. Gray asked if he could drive down Maritime Way even if he did not have business with any of these companies without being harassed. Mr. King replied absolutely. Mr. Gray asked if they had any problem with the staff stipulations. Mr. King replied no, they read them and agree to them. Chair Tikoian called for public 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:

|            |     |                   |     |
|------------|-----|-------------------|-----|
| Mr. Gagnon | Yes | Mr. Gomez         | Yes |
| Mr. Abedon | Yes | Mr. Coia          | Yes |
| Mr. Gray   | Yes | Vice Chair Lemont | Yes |
| Mr. Dawson | Yes | Chair Tikoian     | Yes |

8 Affirmative            0 Negative            0 Absentation

The motion carried.

Chair Tikoian asked for question on the application. There were no comments from council members or the public. Vice Chair Lemont, seconded by Mr. Coia moved approval of the application with all staff stipulations and the special exception. The motion was carried on unanimous voice vote.

**9. APPLICATION REQUESTING AN EXTENSION OF EXISTING ASSENT:**

**1996-02-044 ROBERT FROST – 1st Extension request. Project located at plat 13D, lot 324; 15 Read Avenue, Warren, RI.**

The applicant was not present. Margaret Hogan, attorney for the objectors – Kickemuit River Council, was present on behalf of the objectors. Chair Tikoian asked legal counsel if the council could proceed on the extension request without Mr. Frost being present. Mr. Goldman replied yes as the applicant had been notified of the hearing and had a communication with Mr. Fugate about tonight’s hearing. Mr. Fugate gave council members a brief summary on the application. Mr. Fugate stated that the application had been continued because of existing enforcement action that was outstanding on the application. Mr. Fugate said there were two areas that Mr. Frost exceeded the limit on his plan and had placed additional material where it shouldn’t have been. Mr. Fugate said the matter was continued to give Mr. Frost the opportunity to correct the situation. Mr. Fugate said enforcement staff went out and met Mr. Frost on site and directed him as to what had to be removed. Mr. Fugate that they had offered Mr. Frost the opportunity to prepare a restoration plan through his engineer, but he declined and started removing the material himself. Mr. Fugate said one area has been cleaned up fairly well and seems to be in conformance but the other area is not. Mr. Fugate said Mr. Frost send a letter and alleges that he does not want to pull anymore rocks unless he talks to oyr engineer. Mr. Fugate said Mr. Frost had spoken to the CRMC staff engineer. Mr. Fugate said the rock is still in an area it should not be and there is ongoing enforcement action. Chair Tikoian asked if staff had been to the site since the council had authorized the continuance and what is the condition of the site today. Mr. Harrington replied that that went out to the site on July 24<sup>th</sup> to show Mr. Frost what needed to be removed to bring the site in conformance with the plan and had a second visit on August 4<sup>th</sup>. Mr. Harrington stated that the pictures from their visits are in the council’s packets, P2 and P3. Mr. Harrington explained P2 and said they put pieces of wood at the limits of what would be the toe of the slope and what had to be removed to bring it into conformance. Chair Tikoian asked if they met with the owner at the site visit. Mr. Harrington replied yes, Mr. Frost is in the picture. Chair Tikoian stated that Mr.

Frost was there and they instructed him as to what CRMC would agree to. Mr. Harrington replied yes. Ms. Miguel added that they used the rock based on aerial photographs and they don't normally go out with sticks and show something like this. Chair Tikoian asked if the conditions were the same since their July and August 4<sup>th</sup> visit. Ms. Miguel said there were minor differences and nothing close to what they wanted him to do. Vice Chair Lemont said looking at picture two, the piece of wood runs perpendicular to the dock and if the rock were brought backed to this point, staff feels this would be in compliance. Mr. Harrington said right. Vice Chair Lemont asked what criteria they used to say the rock to the front was in violation. Mr. Harrington replied they used the approved plans. Ms. Miguel said they used the November 2002 assent modification plans. Vice Chair Lemont asked if the rock was in existence at that time. Ms. Miguel replied no. Vice Chair Lemont asked when the rock was added. Mr. Harrington said he did not know the exact date. Vice Chair Lemont said it was sometime after the approved plan. Vice Chair Lemont asked about the photograph with the person's hand on the dock and asked if that was pipe to the left of the dock. Mr. Fugate replied it was the remnant bulkhead. Vice Chair Lemont stated that if everything was moved back to the bulkhead it would be okay. Mr. Harrington explained that the bulkhead was on the approved plan and they measured four feet out from that point. Mr. Harrington noted on page 6 showed what was done in August. Ms. Miguel added that the picture was taken at high tide so it was probably not clear that the rock extends down into the water pretty much the same way it did when they were there on July 24<sup>th</sup> and prior to that on June 12<sup>th</sup>. Mr. Fugate asked Mr. Medeiros to explain what was approved in the first instances in terms of bulkhead and return. Chair Tikoian noted that there were more enforcement questions and wanted to address them first. Mr. Gray requested that in the future to make it easier for the council that they have consistent pictures taken at the same tide because it makes it difficult to see what is there and not there. Mr. Fugate asked Mr. Medeiros and Ms. Sylvia to explain the approved plan, what the terminus of the dock was supposed to be and where it meets the bulkhead. Mr. Medeiros stated the approved plan is on page P38 and P39 in the packet. Mr. Medeiros explained the review process of the dock and the history of Mr. Frost's dock. Mr. Medeiros stated that Mr. Frost's dock had been grandfathered in for a residential boating facility but Mr. Frost wanted it classified as a commercial facility. Mr. Medeiros noted that they reviewed the dock as a commercial facility under Section 300.3 of the Red Book which says any dock to be designed as a commercial facility needed to be designed by a registered professional engineer. Mr. Medeiros stated that Mr. Frost had hired Ron Stamp to design the plan for the dock. Mr. Medeiros said Mr. Frost felt that something had gone wrong in his design and did not like what he proposed. Ms. Sylvia added that they had numerous site visits with both Mr. Frosts and that it was pretty clear during their review where the limits of disturbance would be. She said they even pulled out tapes to measure the areas. Ms. Sylvia stated that there had been previous infractions into the coastal wetland on both sides. Ms. Sylvia noted that the staff stipulations are in the agenda packet on page 35 and 36 and that stipulation F reminded them that they are not to disturb the coastal wetland. Ms. Sylvia stated that there was an existing violation which is stipulation K regarding the sheet piles and that they should be constructed during the coastal wetland dormant season in order to protect the coastal vegetation. Ms. Sylvia stated that Mr. Frost had asked them to extend their dormant season date. She stated that this has been a multi-year process and has been over several seasons. Mr. Gray asked about the stone at the inboard end of the pier indicated what he was going to put there to ramp up to the pier. Mr. Medeiros replied yes, he did intend to bring some additional rock fill within the sheet pile wall. Mr. Gray stated that on page 2 you can see the stone area going sideways from the pier quite a ways and asked if this was on the plan. Mr. Medeiros replied that this was a profile view

of the dock. Mr. Gray stated that the stonework should have been done very close or a little bit outside of the steel work maybe a foot or so. Mr. Medeiros replied yes. Ms. Sylvia stated that stonework is only slightly. Ms. Sylvia explained that if you look at the picture with Mr. Frost standing on the edge of the rock and the marsh is behind him, the stone goes further than the stick that is perpendicular to the dock and much further seaward. Mr. Gray said the plan said there is to be nothing seaward. Mr. Medeiros replied yes. Mr. Gray stated that in Mr. Frost's letter dated June 21<sup>st</sup> he felt that Tom should have picked up on how much stone was needed there and wanted him in his review to say that there was more rock needed than what he initially planned. Mr. Medeiros replied yes. Mr. Medeiros felt that Mr. Frost possible ran into a problem with the design and then took matters into his own hands and placed additional stone. Mr. Medeiros took issue with Mr. Frost's comments about staff and their responsibilities and felt that it was not their responsibility to design the dock it was the responsibility of the applicant's engineer. Mr. Fugate said when they discovered the enforcement issue, he discussed the issue with Tom and said if there is a problem with the design they were willing to review another design to correct the situation and bring it back in. He said Mr. Frost chose not to go this route and decided to start pulling the stone and said removing the stone was going to jeopardize his structure. Chair Tikoian asked Mr. Goldman to clarify the assent. Mr. Goldman stated that the council needed to get the assent in conformance with the Superior Court judgment which allows certain limited commercial activities and prohibits others. Ms. Hogan, attorney for the objectors, Kickemuit River Council, stated that at the previous hearing they had learned that there was an enforcement action issue and suggested that the council not take up the issue until the enforcement action was resolved and the application had been continued. Ms. Hogan stated that she had seen Mr. Frost's letter and it seems that he has taken the position that he has done all he's going to do and he'll do whatever the council wants as long as the council absolves him of any liability if anything happens. Ms. Hogan felt this was an absurd position to take and that it was the burden of the applicant to make sure the proposed structure is safe and meets the programmatic requirements. Ms. Hogan stated that it is still their position that the council not take up the extension request until the enforcement issue is resolved. Chair Tikoian stated that he had been appalled by the letter Mr. Frost sent to the council and parts of it disturbed him and most of the letter threatened the council and said he would go to the Governor and the media. Chair Tikoian stated that after sitting here and listening, he is inclined to deny any type of extension request and order restoration of the area and hoped his fellow council members would support that recommendation. Vice Chair Lemont, seconded by Mr. Gomez moved to deny the extension request, order restoration of the site to comply with the assent and clarification of the assent such that this is a residential dock with limited commercial use consistent with the 1976 Superior Court judgment. Mr. Goldman stated that they could put a period of time for the restoration to be complete and if it was not complete that Mr. Fugate has the ability to issue a fine. Vice Chair Lemont, seconded by Mr. Gomez amended the motion that the restoration had to be completed within 20 days. Mr. Gray asked what the council's ability was to enforce and get this restored. Mr. Goldman said the best way was by the motion just made, you issue a written decision, the applicant has the right to appeal it to Superior Court and it will take that process and the court affirms the council's decision. Mr. Goldman said if Mr. Frost does not comply he would be in contempt of the court order. Mr. Gray said so basically this is the end of the row for the applicant. Mr. Goldman replied correct. The motion was carried on a unanimous voice vote. Ken Morrill wanted to comment on Mr. Frost's the description of prop dredge. Chair Tikoian suggested that he give the information to the executive director. Mr. Morrill felt that dredging would be the next issued raised. Chair Tikoian

stated that the council would address it when it occurs. The motion was carried on a unanimous voice vote.

**10. PUBLIC HEARING ON PROPOSED CHANGES TO THE RI COASTAL RESOURCES MANAGEMENT PROGRAM:**

**RICRMP/Management Procedures**

**1. Revise Section 4.3.2(t) – Schedule of Fees** as follows:

(t) CAD Cell Disposal Fee: Marinas, Boatyards, Yacht Clubs: \$11.65 cy  
Commercial Facilities: \$15.00 cy  
Residential Docks: \$25.00 cy

*The purpose is to differentiate CAD cell disposal fees by activity type*

**2. Revise 5.1(6)**

**RICRMP/REDBOOK**

**3. Revise Section 110.C Applications for Category A and Category B Council Assents**

**4. Add Section 300.9.D.3**

**5. Proposed water type change - Providence Quadrangle**

Chair Tikoian asked Mr. Fugate to explain the proposed changes. Mr. Fugate explained the program changes. Mr. Fugate stated that there is a change to the schedule of fees for CAD cell disposal and they are proposing to keep the current charge in place which is \$11.65 that they charge for marinas, boatyards and clubs and increase the fees for commercial facilities and residential docks to \$15. Mr. Fugate said the second change is a procedural change regarding deed restriction language so they understand what the deed restriction language is. Mr. Fugate stated that the third change is a technical change, changing from seawall to structural shoreline protection. Mr. Fugate said the fourth change deals with prop dredging which the council did not have a prohibition or regulation to deal with this and this would put in place any prohibition of that type of dredging activity. Mr. Fugate noted that there were some suggested changes by Mr. Willis in his interoffice memo in the back of the council's packet. He said they are asking if the council recognized this that it was not intended to impact commercial fishing activity. Mr. Fugate stated that the last change is to change the water type around the Save the Bay area from Type 6 to Type 4 waters which are more appropriate. Mr. Fugate noted that Mr. Willis had suggested changes on this in his memo in the back of the council's packet. Chair Tikoian opened up the public hearing. Mr. Gray asked where municipalities fell under the CAD cell fees. Mr. Fugate said they would be charged \$11.65. Mr. Fugate noted that the additional fees will go into an account to be used for further dredging operations. Chair Tikoian called for public comment on the changes. There was no public comment. Chair Tikoian closed the public hearing. Mr. Coia, seconded by Mr. Gray moved approval of the proposed program changes. The motion was carried on a unanimous voice vote.

11. **Category "A" List**

There were none held.

There being no further business to discuss. The meeting was adjourned at 7:47 p.m.

Respectfully submitted,

Grover Fugate, Executive Director

Reported by Lori A. Field