In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, October 28, 2008 at 6:00 PM at the Narragansett Bay Commission Boardroom – One Service Road, Providence, RI.

MEMBERS

Paul Lemont, Vice Chair
Ray Coia
Don Gomez
Jerry Zarrella
Neill Gray
Bruce Dawson
Michael Sullivan

MEMBERS ABSENT

Mike Tikoian, Chair
Tom Ricci
Dave Abedon
Joe Shekarchi

STAFF PRESENT

Grover Fugate, CRMC Executive Director

Tracy Silvia, CRMC Biologist
Jim Boyd, CRMC Coastal Policy
Dan Goulet, CRMC Dredging Coordinator

Brian Goldman, CRMC Legal Counsel

1. Vice Chair Lemont called the meeting to order at 6:00 p.m. Vice Chair Lemont stated that Chair Tikoian is away and he would be acting Chairman tonight.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING:

Mr. Coia, seconded by Mr. Zarrella moved approval of the minutes of the October 14, 2008 meeting as presented. The motion was carried on a unanimous voice vote.

3. SUBCOMMITTEE REPORTS

Vice Chair Lemont stated that the Right-of-Way Subcommittee, which consisted of himself and Mr. Shekarchi, met in Warwick to discuss the Overlook Drive question as to whether or not it was a right-of-way. Vice Chair Lemont said the recommendation of the subcommittee was that it is a right-of-way and requested that it be placed on the next agenda for discussion by the full council. Vice Chair Lemont said council members would receive copies of this report prior to that meeting.

Director Sullivan asked about the Dawnus right-of-way in Barrington, which has been a subject of emails his agency has been receiving. Director Sullivan said given there is some dispute and discussion about, asked if there was any change in the status from its recognized right-of-way including the parking. Vice Chair Lemont noted that the council does not get involved with parking. Vice Chair Lemont stated with regard to the parking it was designated as a right-of-way and that has not changed.

Mr. Fugate added there has been an enforcement notice of violation issued to the Town of Barrington for some work that went beyond the original limits that were approved and the town is in the mist of trying to correct that situation now. Mr. Goldman said he was directed by the right-of-way subcommittee to correspond with the Town Solicitor regarding the position on the parking issue. Mr. Goldman said the sum and substance of it is that they could under the applicable case law regulate hours of parking on the street provided it did not impair access to the right-of-way. Mr. Goldman asked Director Sullivan if he would like a copy of that letter. Director Sullivan replied yes and also asked Mr. Fugate for a copy of the notice of violation.

4. STAFF REPORTS

There were no staff reports.

5. EDUCATIONAL SERIES – James Boyd – Aquidneck Island and Metro Bay SAMP updates.

Mr. Boyd gave council members an update on the Aquidneck Island and the Metro Bay SAMPs. Mr. Boyd said in October 2006 the council adopted the Urban Coastal Greenway Policy. Mr. Boyd showed a map of proposed SAMP areas on Aquidneck Island and said the map on the left reflects part of that policy and the development areas in red, habitat areas in green and then the Woonasquatucket inner harbor regions in the gold color. Mr. Boyd stated they had some challenges with the Metro Bay Region in terms of an already very densely built-out development and a number of Brownfield sites on the Providence Harbor area as well as the Seekonk area. He said there challenge was to acknowledge the constraints of these Brownfield sites. Mr. Boyd said the idea was to create flexibility in the program and provide predictability in the process, which is why they developed the urban coastal greenways. Mr. Boyd said if they were to impose a 200' buffer that the buffer would take up 35% of the parcel and make this development economically unfeasible. Mr. Boyd said the vision is to create a more dense, robust mixed-use development and provide an urban coastal greenway that would average 50 feet in width and the public benefit would be gaining 1,800 l.f. of public access along the shoreline. Mr. Boyd gave examples of urban coastal greenways such as the American Locomotive Works – 1,700 l.f. of shoreline public access and Johnson & Wales – 900 l.f. of shoreline public access and 12 public parking spaces. Mr. Boyd gave a quick summary of some of the projects that have been constructed with CRMC assents that are creating urban coastal greenways and said they are gaining well over a mile of public access along the Seekonk River, the Woonasquatucket River and the Providence Harbor. Mr. Boyd said one aspect of the Metro Bay Region that they are going to address is hazard and said they have drafted a hazards chapter, which will come before the full council in the coming months and addresses the sea level rise. Mr. Boyd noted that the council in January 2008 adopted a sea level rise policy – Section 145.

Mr. Boyd discussed the Aquidneck Island SAMP and said on October 16th they held a public workshop on the island. Mr. Boyd noted that this is a collaborative effort not only between the council and the island communities but also the Navy because they are a large player here owning about 1,500 acres on the west side of the island some of which will be made available to the state and/or local communities. Mr. Boyd said in the last 10 years the island has adopted a west side master plan which is their vision of what the communities want to see happen on the west side of the island which is largely undeveloped because a lot of this is vacant land and are former tank farms used by the Navy. Mr. Boyd said a SAMP on Aquidneck Island was an opportunity to implement a master plan. Mr. Boyd said the local priorities for the Aquidneck Island SAMP are public access along the coast, development standards for new development and to preserve important habitats. Mr. Boyd stated the Aquidneck Island Land Trust has done a phenomenal job on the island preserving open space on the island. Mr. Boyd said a SAMP will help them prioritize what they want to do. Mr. Boyd said the West Side Master Plan Growth Center developed draft plans with proposed SAMP redevelopment zones. Mr. Boyd said there was also the potential use of the Newport Naval Hospital and the Melville – Weaver Cove area. Mr. Boyd said their next steps would be complete a habitat assessment and trail map and recreation access areas. He said

they will further redefine the development standards for these growth areas on the west side of the island. Mr. Boyd stated they would likely hold a CRMC workshop on the island with Council members in a public forum as they go through the adoption process. Vice Chair Lemont thanked Mr. Boyd for his presentation.

6. Vice Chair Lemont read though the agenda to see which applicants/ attorneys were present.

7. CONTINUANCES:

2007-11-039 JAMES O'CONNELL -- Demolish existing two bedroom residence and garage. Construct a new three bedroom residence with garage below and all associated site grading and utilities. Located plat 116se, lot 14; 93 Shore Drive, Middletown, RI.

The applicant was not present. Mr. Fugate stated that the applicant requested a continuance to try to work out substantial revisions on his application. The application was continued.

8. Vice Chair Lemont made a brief statement of clarification on the council's permitting process.

9. APPLICATIONS WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND ARE BEFORE THE FULL COUNCIL FOR DECISION:

2008-03-128 WICKFORD SHIPYARD -- Construct and maintain expand an existing marina from 136 vessels to 200 vessels (64 vessel increase or 47%). The expansion will expand the Marina Perimeter limit. There are no variances from the 300.4 standards for marinas requested as part of the proposal. Located at plat 91, lot 124; 125 Steamboat Avenue, North Kingstown, RI.

Donald Fraser, the applicant was present. Richard St. Jean, the applicant's engineer was also present on behalf of the applicant. Mr. Goulet gave council members a brief summary on the application. Mr. Goulet said the application was to expand an existing marina from 136 vessels to 205 vessels which is a 51 percent expansion of the marina perimeter limit. Mr. Goulet said there are no variances requested and there is no dredging proposed. Mr. Goulet stated staff recommended approval of the application. Mr. Goulet said they received a letter last night from the Town of North Kingstown stating they had an objection or a stipulation they wanted added. Mr. Goulet said the town said the applicant needed to receive approval from its development plan, which according to the Town has not happened yet. Mr. Goulet said the town was asking for a continuance on the application. Mr. Goulet noted there was also a letter from the Town stating they had no substantial objection to the application which was in the packet. Vice Chair Lemont stated the council received letters of no substantial objection from the Conservation Commission, the Harbor Management Commission and the Town Council. Vice Chair Lemont noted that everyone has given their approvals and now the Planning Department comes along and says they have a problem. Mr. Fugate asked Mr. Goulet if there was any alteration of the parking area to support the expansion of the marina. Mr. Goulet replied there is parking on the proposed plan which meets CRMC requirements and it also state's it meets the town's parking requirement. Mr. Zarrella stated that the CRMC rules and regulations say if they meet all the criteria of the town that the council hear the application. Mr. Zarrella felt the letter from the town manager and town council speak for the application and felt the council should move forward on the application. Vice Chair Lemont explained the council has three options, they could postpone the application, pass it with no restrictions or pass it subject to acceptance by the town planner. Mr. Dawson also felt the council should move forward on the application. Mr. St. Jean stated that the applicant wanted to increase their slip count. Mr. St. Jean said they have a waiting list for 80-90 boats that they have to turn away. Mr. St. Jean stated

that Brewers Marina also has a waiting list. Mr. St. Jean said they have plenty of parking spaces. Mr. St. Jean explained that the Town has undergone some changes in their Planning Department and he believes that's the confusion. Mr. St. Jean said they have 261 parking spaces and the town requires 254 parking spaces. He said the problem they are having is that the town is saying the parking spaces they have are for winter storage and cannot be counted as parking spaces. Mr. St. Jean said their argument is that this would rule out every marina in the State because during the wintertime people are not using the boat slips and traditionally the marina operators use those spaces for boat storage. Mr. St. Jean felt they met the parking requirements. Mr. St. Jean noted there are a couple of spots that people use for working on their boats. Vice Chair Lemont said he was not sure this was an issue for the council and not an issue the council wants to get involved in. Vice Chair Lemont stated that the council was here to hear the issue on whether or not the marina should be expanded. Vice Chair Lemont said the council could still grant the application but they would be subject to the planning department rules. Vice Chair Lemont asked when they last had a conversation with the town. Mr. St. Jean replied about a month ago. Vice Chair Lemont stated that staff recommended approval of the application but they would still have a cloud hanging over their head until the parking issue is resolved. Vice Chair Lemont suggested that they sit down with the town to work out the parking issue. Mr. Gray had some concerns. Mr. Gray said they are expanding out to the channel setback from the Federal channel and wanted to know how far the structures are off the new marina perimeter. Mr. Gray said he has seen boats perpendicular to the dock and wanted no berthing on the outside of the marina perimeter limit. Mr. Goulet replied staff agrees and this is part of their stipulations on page P2. Mr. Dawson said north of the bulkhead where they put their dock labeled A they have a URI boat berthed there and asked what would happened to that boat. Mr. Frazer said the boat would be staying there. Mr. Dawson asked if the gas dock would stay where it is. Mr. Fraser replied the gas dock goes out 20 feet further to meet the requirements of the new system. Mr. Dawson asked if there would be transient boats on the gas dock. Mr. Fraser replied yes. Mr. Dawson noted that he saw concrete docks there last year and asked what was happening with them. Mr. Fraser replied the cement docks would be used on the inside of the expansion. Mr. Fraser said they would be using planking for everything else except for what they already built. Mr. Dawson asked if they would be replacing the old Styrofoam floats. Mr. Fraser replied yes. Mr. Zarrella, seconded by Mr. Gray and Mr. Gomez moved approval of the application with all staff stipulations on P2 and P5 and that the assent be held until the applicant and the Town of North Kingstown Planning Department work out a reasonable agreement on the parking issue. Director Sullivan asked what happens if the applicant and the town do not agree or reconcile on the parking issue. Director Sullivan stated the letter dated yesterday raises flags to him. Director Sullivan noted that on page 2 of the letter it states that boat storage spaces cannot be used as parking spaces. Director Sullivan asked what happens if there is no agreement. Mr. Zarrella noted that he used the word reasonable agreement and if there is no agreement that the application come back before the full council. Mr. Fugate said if there is an impasse between the parities that the application would come back before the full council. The motion was carried on a unanimous voice vote.

2008-05-099 QUONSET/DAVISVILLE YACHT CLUB -- Construct and maintain: Expand an existing marina perimeter limit and add an additional 39 slips with associated parking. Located at plat 194, lot 14; 81 Wescott Road, North Kingstown, RI.

Chris Courtney, the Commodore, for Quonset/Davisville Yacht Club the applicant was present. Bill Adams, Richard Lipsitz, the applicant's engineer and Heidi from QDC were also present on behalf of the applicant. Mr. Goulet gave council members a brief summary on the application. Mr. Goulet stated that the application was a modest expansion. Mr. Goulet said the request is to add 39 slips for a total of 139 slips and they are modifying their marina perimeter limit. Mr. Goulet stated there is very limited upland work associated with this. Mr. Goulet said staff recommends approval of the application. Director Sullivan, seconded by Mr. Zarrella and Mr. Coia moved approval of the application with all staff stipulations. Mr. Dawson asked if any of the 39 slips are outside the dock near the marina perimeter on the east side and asked if there would be any vessels berthed there. Mr. Adams replied yes. Mr. Dawson noted there is a stipulation they can, with the Executive Director's approval, if it is deemed

there is no interference with navigation. Mr. Fugate replied that this is part of the application tonight for the council's approval, not his. Mr. Gray asked if there was any moorings inside this area. Mr. Adams replied yes on the north side but the moorings would be moved. Mr. Gray asked if any of the spaces would be open to the public. Mr. Adams replied for transient use. Mr. Gray asked who controls the moorings. Mr. Adams replied the Town of North Kingstown. Mr. Gray said they are expanding the finger piers to the east. Mr. Adams replied yes. Mr. Dawson said the Town of North Kingstown maintains a large mooring field in this area and the applicant gave up their moorings for the marina expansion. Mr. Fugate noted that Mr. Goulet's report indicates there be no berthing outside the marina perimeter limit. Mr. Fugate asked if the applicant was asking to dock boats outside the marina perimeter limit. Mr. Goulet replied the boats would be docked within the marina perimeter limit. Mr. Gray said they won't be able to raft up. Mr. Goulet replied yes. The motion was carried on a unanimous voice vote.

2007-07-059 MATISSA, LLC -- Construct an addition onto an existing residence with associated drainage and landscaping improvements. Located at plat 3, lot 96; 17 Willow Way, Barrington, RI.

Thomas Romano, attorney for the applicant was present. Brandon Faneuf, the applicant's biologist, Richard Lipsitz, the applicant's land surveyor and Mark Rapp, the applicant's architect were also present on behalf of the applicant. Christopher D'Ovidio, attorney for the objector, Lisa Fein was also present. John DeRugeris, the objector's engineer and Linda Steere, the applicant's biologist were also present on behalf of the objector. Ms. Silvia gave council a brief update on the application. Ms. Silvia said the application was continued so the applicant could obtain a certification that they are a Rhode Island LLC. Mr. Romano explained that this was a Connecticut LLC that was not registered in Rhode Island as of the last meeting. Mr. Romano said they have filed in Rhode Island last Friday and have a certificate of the filing that they are a registered LLC in the State of Rhode Island for the record. Mr. Goldman marked it as an exhibit. Ms. Silvia explained that there were three parties objecting to the application at the last meeting and that the council took testimony from two of the objectors. Ms. Silvia said Chair Tikoian asked staff to address the objectors' comments. Ms. Silvia said a revised staff addendum was written last week on the 21st which is in the council's packet. Ms. Silvia said it was still staff's opinion that the project as proposed meets the requirements of CRMC. Mr. Romano said the applicant is proposing an addition to an existing residential structure and ordinarily this would have been a Category A application but there were some objectors. Mr. Romano felt the application met all of the CRMC criteria. Mr. Romano said the objectors raised issues at the last meeting and staff reviewed the application again and came to the same conclusion again and still recommended approval of the application. Mr. Romano said the application does not require any variances or a special exception. Mr. Romano noted in order to alleviate some of the concerns of the abutters they removed the existing driveway which is currently asphalt and are replacing it with a permeable surface. He said they are also proposing to install a rain garden which is basically a basin to capture any runoff from a 25-year storm event. Mr. Romano qualified Mr. Faneuf as an expert in biology. Mr. D'Ovidio objected to recognizing Mr. Faneuf as an expert. Mr. Zarrella asked Mr. Faneuf if he worked for DEM and in what capacity. Mr. Faneuf replied that he worked for DEM for five years as a staff biologist. Mr. Faneuf stated that he was familiar with the property and that he was hired to specifically identify the coastal features and their relevance to building setbacks and future plans for construction. Mr. Faneuf stated that he identified the coastal feature. Mr. Romano asked about the wetland feature, the dune that was mentioned at the last meeting. Mr. Faneuf stated that he read the amended staff report regarding whether there was a dune on the site and agreed with staff that there was no dune on the site. Mr. Faneuf addressed Mr. Reitsma's comments about a connection between a pipe from the wetland to the coast and that the wetland was tidally influenced. Mr. Faneuf said he investigated the site again and found a catch basin, sump basin that is a conduit for stormwater. Mr. Faneuf said at the end of Third Street there is an inlet which the stormwater from Third Street heads into this inlet which he presumes connects to the sump basin adjacent to the freshwater wetland. Mr. Faneuf said the wetland is far enough removed from any coastal feature or tidal influence. Mr. Faneuf felt the buffers proposed met the CRMC requirements. Mr. Faneuf said even if it was considered a coastal feature the setback would

still be 75 feet which is 25 feet more than the freshwater feature which is 50 feet. Mr. Faneuf stated that his opinion on the application have not changed. Mr. D'Ovidio crossed examined Mr. Faneuf and noted that he inaccurately identified the coastal feature on the 2007 plan in the wrong place and staff requested that he correct it. Mr. Faneuf replied yes. Mr. D'Ovidio asked about the dune on the site. Mr. Faneuf stated that the did not see a dune on the site. Mr. Lipsitz, the applicant's land surveyor, stated that the plans submitted to the council depict the proposed addition on the site which does not exist outside of any setbacks. Mr. Zarrella asked what the proposed driveway would be made of. Mr. Lipsitz replied that it is a permeable surface of gravel and shell. Mr. Romano felt that the applicant met the CRMC requirements and that there are no variances or a special exception requested. Mr. Romano noted that they are changing the driveway from an asphalt drive to a permeable surface driveway and also adding a rain garden to capture 25-year runoff which they did not have to do. Mr. Romano rested his case. Vice Chair Lemont stated that he is familiar with the area and has some concerns. Vice Chair Lemont was concerned with the tidal rise we are facing in the coming years mentioned earlier by Mr. Boyd. Vice Chair Lemont stated that looking at some of the pictures on pages 50, 51, 52, and 57 in the packet it shows the houses and roads submerged underwater. Vice Chair Lemont questioned whether it made sense to build where given the right conditions and the right flooding the house is going to be surrounded by water and parts of it are going to be submerged. Mr. Romano replied that he has seen the pictures and the videos which make it look very dramatic. Mr. Romano said staff saw them as well and determined that these were tidal driven not flooding or storm events and recommended approval of the application. Mr. Romano said the proposed construction would be on pilings. Mr. Lipsitz noted that both the original house and the new addition meet the FEMA regulations for construction, elevation, flood protection and the FEMA flood zone.

OBJECTORS:

Mr. D'Ovidio said the summary of the objection of his client is first the location of the coastal feature and whether it be the upland edge of the beach or the dune was misidentified and miss located on the site plan; second, is Section 145 the rising sea level in Rhode Island; and third, Section 300.3.b which states the policy of the council should be to prevent, minimize or mitigate the risk of storm damage to property and coastal resources and take necessary action to prevent loss of life and property. Mr. D'Ovidio qualified Mr. DeRugeris as an expert professional engineer and submitted his CV as an exhibit. Mr. Coia, seconded by Mr. Grey and Mr. Zarrella moved to except Mr. DeRugeris as an expert professional engineer. The motion was carried on a unanimous voice vote. Mr. D'Ovidio requested that the site plan prepared by Mr. DeRugeris be marked as an exhibit. Mr. Goldman asked if a copy of the plan had been provided to staff. Mr. D'Ovidio replied no. Mr. Goldman explained that the rules required that he provide the plan to staff five days in advance of the hearing to give them time to review the plan. Mr. D'Ovidio argued that this was not explained at the last meeting. Mr. Goldman replied that on page 90 of the transcript from the last meeting Chair Tikoian admonishes all that parties, that in fairness to all parties that they present copies of plans or documents to the applicant, objectors and staff and let staff use it as part of their review so when it comes back before the council next time it would be part of the council's packet. Vice Chair Lemont ruled that the plan could not be introduced. Mr. DeRugeris stated that he visited the site with the staff engineer and Mike Campagnone, who is also a professional engineer. Mr. DeRugeris said while on the site he did a visual inspection of the site with respect to the topography and dug one test pit on the property directly abutting this property. Mr. DeRugeris said this was part of the geological formation that the house in question sits on. He said they did a soil evaluation of the material and then walked the coastal features and basically did a site evaluation. Mr. DeRugeris said they found 2 layers of sandy material and evidence of 16" high water table. Mr. DeRugeris said the applicant did a pit test at elevation 7 but did not mention whether the material in the pit was tested. Mr. DeRugeris said there was ground water testing and that a rain garden was proposed at elevation 5. Mr. DeRugeris said the stormwater contains pollutants. Mr. DeRugeris said he read the staff report addendum 4.3 regarding fill being on the site. Mr. DeRugeris felt that fill

had been placed on the site. Mr. DeRugeris felt the fill on the site could effect the elevation. Mr. Romano objected and noted that the staff report states "fill was placed on the subject lot as a result of a 1959 Corps of Engineers dredge project". Mr. DeRugeris testified that in his opinion and examination of the site there was a difference in the topography of the subject lot in comparison to the adjacent topography of the adjacent lot. Mr. DeRugeris felt there was 3 to 4 feet of fill surrounding the house. Mr. DeRugeris disagreed with the staff report that there was fill placed on this site. Mr. DeRugeris submitted a certified copy of the 1985 assent to the council as an exhibit. Mr. D'Ovidio referred to page 10 of the 1985 assent where is says "soil type and characteristics". Mr. D'Ovidio noted that it says "sand well graded, site and north of site appear to have been filled. Coarse dredge material." Mr. DeRugeris felt the use of fill would affect the structural support of the building in a V hazard zone and flood zone. Mr. DeRugeris felt there would be erosion in the event of a storm and it could affect the structure.

Vice Chair Lemont called for a recess at 8:30 p.m. Vice Chair Lemont called the meeting back to order at 8:35 p.m.

Mr. DeRugeris noted that under CRMC Section 300.3.B.1 that the use of fill for structural support of a building in a flood hazard V zone is prohibited. Mr. D'Ovidio referred to the 1985 assent page 3 regarding Stipulation T "The break-away walls stipulated in separate item shall be limited to open lattice walls" and stipulation S indicates "enclosed with break-away walls intended to collapse under stress without jeopardizing the structural support of the building". Mr. D'Ovidio showed Mr. DeRugeris pictures of the existing house and asked if it had lattice structures. Mr. DeRugeris replied yes. Vice Chair Lemont asked if he were to build in compliance with the modern requirements would he drive pilings. Mr. DeRugeris replied typically you would want a pile foundation. Vice Chair Lemont said the construction would not be on top of the fill. Mr. DeReguris replied yes. Vice Chair Lemont said if they drove pilings to refusal and placed the structure on top of those pilings whether there is fill there is immaterial. Mr. DeRugeris replied yes. Mr. DeRugeris said the wind and the wave loads that the house will incur in the course of a storm would cause it to sway. Mr. Fugate added there has been a lot of discussion on the building code items and noted that the council pulled out of the building code arena back in the 90's and left it to the locals. Mr. Fugate said subsequent additions are suppose to be reviewed by the local building inspector and certified by the local building inspector. He said the council does not review and certify for loading on these foundations, this is a building code issue. Mr. Fugate said in terms of the fill, whether it is natural, land forms, manmade land forms or whatever, they are going to be subject to the same erosive force. Mr. Fugate said the foundations would have to be driven and put in according to standards no matter whether there is fill, natural or manmade. Mr. D'Ovidio said he was trying to provide enough facts in the record to correlate to this prohibition which says no structures in fill in a V zone. Mr. DeRugeris testified when he visited the site and was walking in the beach area he did observe land formation with some vegetation. Mr. Romano objected. Mr. Zarrella noted that they were trying to let the council know there is fill on the property and the fill has been placed where the new house is going to be built and this will cause the house to sway. Mr. Zarrella said no one has told him if the fill has been compacted and if it is compacted can it go right back to where it originally was. He asked can you get 99 percent compaction or 100 percent compaction. Mr. D'Ovidio said the information is in the record and they were concerned with it as it relates to the prohibition and that they don't have any information from staff or the applicant's engineer that there isn't going to be a structural problem. Vice Chair Lemont explained that there are lots of areas along the coast an in this area where the channels have been dredged over the years and each time there is a dredging they would place some of the fill that was taken out of the channel onto the land. Vice Chair Lemont said the dredge here came from something that was dredged out of cove or out of the channel and that was why he was asking the questions about pilings being driven to refusal. Vice Chair Lemont said it really has no impact. Mr. Zarrella agreed with Vice Chair Lemont and did not feel the fill was an issue. Mr. D'Ovidio said he just wanted to point out in 1985, neither this section of the regulations nor the section concerning the rising sea level was part of the CRMC regulations. Mr. Gray said the council

does not have the information before them on how the house is being built, what kind of foundation or whether it is being built on pilings and from what Mr. Fugate said it's not part of the CRMC review process it is done by the local building inspector. Mr. Gray did not see where counsel was going with this testimony, as it was not part of the CRMC purview, it is the building inspectors. Mr. Fugate explained the prohibition was put in because they have attempted to elevate these structures above the V zone and built to what is essentially an A zone standard. Mr. Fugate said in other words they put the fill in and then just build on top of the fill and using the fill for structural support. Mr. Fugate said this is a pile-supported foundation and this is a building code issue the building official will have to review and the V zone plans which is not done until the Council grants the assent. Mr. Gray said the building inspector is going to require them to build properly. Mr. Fugate replied yes. Mr. Gray stated it is not supported by the fill and that the problem with the fill could be that it washes away and they do not have enough support around the piles. Mr. Fugate replied the prohibition was made for the structures that sit solely on fill. Mr. Gray noted that the council listened to testimony on the fill for an hour and a half, which is not going to be used in the judgment on the application. Mr. D'Ovidio felt the regulation was very clear and the prohibition was there for a reason. Mr. Gray said he understood but the council is not dealing with the foundation style. Linda Steere, the objector's biologist, said she was familiar with the site and she worked for CRMC when the initial assent was issued for this home. Ms. Steere said she reviewed the 1985 and in her opinion there was fill on the site which was stated in her report. Ms. Steere said she had the opportunity to go to the site and investigate the wetland feature and the coastal feature. Ms. Steere disagreed with the applicant's biologist on the location of the wetland and the wetland edge for the freshwater pond associated with this site. She said she disagreed with the wetland flagging and felt it was a substantial distance to the west of the existing flags. Ms. Steere said she also disagreed with his categorization of what type of freshwater wetland this was. Ms. Steere said there is tidal differential in this particular wetland. Ms. Steere said she delineated where she thought the coastal feature was on the plan that was not submitted into evidence tonight. Ms. Steere said she also noticed accumulated sand on the site and felt there was a dune on the site that met the CRMC definition of a dune. Ms. Steere said she flagged the dune area. Ms. Steere was not sure what the distance from the existing house to the coastal feature and dune was because she did not have a scale to measure. Ms. Steere felt there is construction fill within the coastal feature setback from the dune. Ms. Steere disagreed with the applicant's biologist report on the location of the coastal feature and dune. Mr. Fugate noted that the CRMC coastal geologist identified this as the coastal feature and did not find a dune on the site. Mr. D'Ovidio objected to Mr. Fugate's statement as Ms. Freeman was not present to testify. Vice Chair Lemont noted in August 1985 Ms. Steere made out the biologist reports and on page 19 of her report there is no reference to a dune there. Ms. Steere said correct. Vice Chair Lemont said on the second page of the report she wrote she had no biological objections to the proposed dwelling. Ms. Steere said that was for the proposal in 1985 and the rules have changed since then. Vice Chair Lemont stated she had no objection to building on this lot and now she is saying because the house is increasing by 100 percent she has an objection. Ms. Steere said yes the new addition is much closer to the coastal feature. Mr. D'Ovidio asked Ms. Steere about the council's setbacks and the staff's practice to cap at 100 percent. Ms. Steere said she never capped at 100 percent and would always multiply the buffer by the foot. Ms. Silva clarified some comments in Ms. Steere's testimony and said she reviewed many applications and has never seen it go beyond 100 percent. Ms. Silvia said the 50-foot buffer in 1985 was recommended by the biologist which the applicant is in compliance with. She also said if this was determined to be a dune, the top of the dune crest is not the inland edge of the feature on the dune, it's the inland edge of a fore dune zone instead. Lisa Fein, the abutter and objector, said she has lived next door to this house for two and one-half years. Mr. D'Ovidio authenticated the photographs in the council's packet. Ms. Fein stated that she had taken the pictures. Ms. Fein explained that there have been three rains and flooding like this in two years. Ms. Fein stated that the pictures show the serious flooding in the area. Ms. Fein said she was concerned with the application because they have seen some horrific flooding in two and one-half years. She said had if she knew it was so bad she may not have moved there. Ms. Fein said during the flooding they cannot get out of their home for five to seven hours. Ms. Fein stated she was concerned if there was an emergency that emergency vehicles could not get to them. Ms. Fein was concerned if the project was approved with a 100% increase doubling its size

that it would have an impact on the storm flow and runoff onto her property. Ms. Fein wanted the council to deny the application. Mr. D'Ovidio made a closing statement and felt the rules and regulations were clear. Mr. D'Ovidio felt this was a flood prone area and felt there was fill on the property which could cause structural problems. Mr. D'Ovidio was also concerned with the rising sea level and how it would effect this area. Mr. Gray had a question on the picture on page P50 in the packet. Mr. Gray said he is seeing the flooding quite clearly and tidal flooding. Mr. Gray said there is no land mass between Narragansett Bay and the flooding around these houses. Mr. Gray asked if this happened once a month, at every moon tide or is it basically connected with a storm surge. Ms. Fein replied it happens during a storm surge. Mr. Fein also stated that there was a strong south wind when they left home tonight and the water gets piled up in the alcove and they are not sure they will make it back home tonight because the winds are 30 knots. Mr. Fugate explained that there are two things that can cause it, one is a storm surge where you can get an elevated rise in sea level that occurs and when the wind picks up. Mr. Gomez said it is obvious that there is occasional flooding and it's apparent it is tidal flooding. Mr. Gomez asked if they have seen any flooding loss as a result of this flooding and has there been any damage. Ms. Silvia replied that she does not have any direct evidence of that but said there has been some flood damage to some of the homes in the area but that the newer houses are being elevated. Mr. Gomez said the council spent a lot of time talking about flooding taking away soil and weakening the structure but that he did not see any damage. Ms. Silvia replied the area was not identified as a high erosion zone typical of some of our south shore features. Mr. Gomez said that was the point he was trying to make. Mr. Romano made a closing statement. Mr. Romano stated that their house has existed since 1987 and they are proposing an addition. Mr. Romano said they met all the CRMC regulations and are not looking for any relief. Mr. Romano noted that the pictures show that these are tidal driven events and not surface runoff. Mr. Romano said their addition is not going to have any impact on this. Mr. Romano stated that their biologist concurs with the CRMC biologist. Mr. Romano said they meet all the setbacks requirements. Mr. Romano requested that the council approve the application. Mr. Gray said he did not see any way that this structure was going to create a worse situation in this area. Mr. Gray was concerned with the rising sea level and the flooding of the area. Mr. Gray asked if the council was suppose to support construction in an area that will flood at various times. Mr. Gray felt right now if any time anybody in this area comes in for something it should be denied and they should find a way to clear this area out because it is not suitable for people to live in. Mr. Gray said when is flooding too much. Mr. Gray was not in favor of increasing construction in this area. Director Sullivan agreed with Mr. Gray. Director Sullivan felt the request before the council demonstrates with its percentage increase, an increased risk to the public and an increased responsibility to the state in terms of potential damage to people. Director Sullivan felt this was an excessive request and an expansion of this magnitude should not be granted. Mr. Gomez noted that they are not putting a new building on a vacant lot but an addition to an existing building. Mr. Gomez commended staff on their review of the application. Mr. Gomez said he does not like to see smaller houses being doubled in size because of the effect on the coastline but said the applicant meet the FEMA standards. Mr. Gomez was in favor of the application. Mr. Dawson agreed with Mr. Gray and Director Sullivan and said this area seems to be a good area not to have a single house in with what's going on there and it is only going to get worse in the future. Mr. Dawson stated that he was going to vote against the application. Mr. Zarrella felt that there was not anything in the rules and regulations that could support denial of the application. Director Sullivan felt it would increase public risk. Mr. Zarrella was in support of the application. Vice Chair Lemont noted that the regulations don't prohibit them but he was persuaded that we are living in a era when we have the ability to make some good common sense decisions and said to him it did not make sense to put an addition this size on a piece of land where they know the tides are rising. Vice Chair Lemont said the council has a responsibility to protect the public and to protect the coastal areas. Vice Chair Lemont said he was not going to support the application.

Director Sullivan, seconded by Mr. Dawson moved to deny the application. Vice Chair Lemont called for a role call vote on the motion.

Directors Sullivan	Yes	Mr. Gomez	Yes

Mr. Gray	Yes	Mr. Coia	Yes
Mr. Zarrella	No	Vice Chair Lemont	Yes
Mr. Dawson	Yes		

6 Affirmative 1 Negative 0 Absentation.

The motion to deny the application carried.

10. Enforcement Report – September 2008

There were none held.

11. Category "A" List

There were none held.

Director Sullivan requested that the council offer its acknowledgement and congratulations to Mr. Fugate on receiving the Lifetime Achievement Award from URI Sea Grant.

There being no further business to discuss. The meeting was adjourned at 9:40 p.m.

Respectfully submitted,
Grover Fugate, Executive Director

Reported by Lori A. Field