

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, November 24, 2009 at 6:00 p.m. in Conference Room A, Administration Building, One Capitol Hill, Providence, RI.

Members Present

Michael Tikoian, Chair
Paul Lemont, Vice Chair
David Abedon
Bruce Dawson
Ray Coia
Don Gomez
Ron Gagnon, DEM Representative

John T. Longo, Legal Counsel

STAFF PRESENT

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David Beutel, Aquaculture Coordinator
David S. Reis, Spv Environmental Scientist
Laura K. Miguel, Prin Environmental Scientist
Brian A. Harrington, Sr. Environmental Scientist

1. Chair Tikoian called the meeting to order at 6:00 p.m. and read a brief statement on the Council's permitting process for the record.

Chair Tikoian asked Mr. Fugate to give his presentation on the Ocean SAMP after meeting is adjourned.

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

Mr. Coia motioned, seconded by Mr. Lemont, to approve minutes of previous meeting, October 21, 2009. Motion to approve minutes was carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont, reported that on November 19, the Ocean SAMP Subcommittee had a hearing on the first chapter of the SAMP -- Chapter Six: Recreation and Tourism. Vice Chair Lemont stated that the chapter's objective is to provide information mainly on the types, locations, and values of marine recreational and coastal tourism activities within the Ocean SAMP Area. Vice Chair Lemont recommended that the Chapter be put out for ruling. There were no objections heard for the recommendation.

4. **STAFF REPORTS**

Mr. Fugate reported out two items. The first being that a Task Force has been formed with MMS at the request of Governor Carcieri through Secretary Salazar to look at the Federal waters off the Rhode Island coastline for a potential wind farm project. Mr. Fugate stated that the Task force's first meeting went well and that an area was suggested for the Federal Government to look at which will potentially go out for requested interest sometime in December or January.

The second item Mr. Fugate reported was that a Stake Holders meeting scheduled for December 2nd at 6:00 p.m. at the URI Bay Campus where they will be discussing the transportation and infrastructure, marine infrastructure chapter of the Ocean SAMP.

5. **CHAIR TIKOIAN READ THROUGH THE AGENDA TO SEE WHICH APPLICANTS/ ATTORNEYS WERE PRESENT.**

Chair Tikoian stated that two applicants (2009-06-087 Sun Farm Oysters and 2006-04-062 Gunter Hafer) had requested continuances and that the requests had been granted. All else in attendance.

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

2009-08-088 CITY OF NEWPORT – Construct “Easton Beach Ultraviolet (UV) Stormwater Treatment System.” Stormwater flow from Easton Pond drainage “moat”/breachway will be routed through UV system to reduce bacterial load, prior to discharge to Easton Beach, to reduce beach closures due to elevated bacteria levels. The application requires a “Special Exception” from the RICRMP to undertake construction on a Moderately Developed Barrier Beach and in CRMC Type 1 waters. Located at plat 15, lots 1 and 2; Plat 116 NW, lot 58; North of Memorial Boulevard, at Easton Pond breachway, Newport and Middletown, RI.

Julia Forgue, Director of Utilities for the City of Newport was present. Mr. Reis gave brief overview of project stating that the City wished to construct and operate an ultraviolet stormwater treatment system. Mr. Reis stated that the stormwater flow from Easton Pond drainage will be routed through the UV system to reduce the bacteria loads prior to the discharge of Easton Beach to reduce beach closures from elevated bacteria levels. Mr. Reis stated that the application requires a special exception for the construction on a moderately developed barrier beach in Type 1 waters. Mr. Reis stated that the project includes replacement of a portion of the breachway channel bottom within reinforced concrete channel, which would require dredging of approx 135 cy. Mr. Reis stated that staff had no objections to the application and concluded that the project met the approval for a special exception. No presentation by applicant. Chair Tikoian opened the public hearing on the special exception. No objections heard. Chair Tikoian closed the public hearing. Vice Chair Lemont motioned, seconded by Mr. Coia, for approval of the special exception. Attorney Longo conducted roll call vote on Special Exception.

Mr. Gagnon	Yes	Mr. Abedon	Yes
Mr. Driscoll	Yes	Vice Chair Lemont	Yes
Mr. Coia	Yes	Mr. Gomez	Yes
Mr. Dawson	Yes	Chair Tikoian	Yes

Motion to approve special exception carried on unanimous vote.

Vice Chair Lemont motioned, seconded by Mr. Coia, to approve application with special exception. Motion carried on unanimous voice vote.

7. **Enforcement Matter before the Full Council:**

06-0088 MICHAEL HYCHKO -- Undertaken construction of a parking area in nonconformance with CRMC Assent A2006-05-118 within 200 feet of a coastal feature from your property located at Plat 9, Lot 51, Charlestown Beach Road, Charlestown, RI.

Chair Tikoian recused himself due to affiliation with attorney Joe DeAngelis. Vice Chair Lemont was Chair during this portion of the meeting.

Michael Hychko present as well as neighbor Tom Lakowski in support of project. Mr. Willis gave brief overview of the matter stating that at their meeting in June 2008 the Council directed him to handle the matter. Mr. Willis stated that he tried to work with Mr. Hychko to resolve the enforcement issue and spent a significant amount of time on the phone with him as he lives in Connecticut. Mr. Willis stated that he'd been to the site a few times but could not resolve the issue at the site or over the phone at which point he turned the matter over to the CRMC enforcement staff. Mr. Harrington gave an overview of the timeline of events that occurred when the enforcement staff began with the application stating that Mr. Hychko had been issued an Assent to install a 30 x 20 parking area. Mr. Harrington stated that they received complaints which initiated a site visit which uncovered several violations. Mr. Harrington informed the Council that the owner constructed the approved parking area with the dimensions of 60 by 40, that there was significant earthwork undertaken to the dune, that a chainlink fence was installed without a permit and that a significant amount of vegetation was destroyed as well. Mr. Harrington stated that in response to the violation, CRMC enforcement staff sent a Cease and Desist Order 06-0088 dated July 5, 2006 and a \$2,500 Notice of Administrative Fine. Mr. Harrington stated that an Administrative Fine Hearing was held on January 19, 2007 at which the hearing officer ruled that a consent agreement was to be drafted and signed as part of resolution of the violation. Upon the signing of the Consent Agreement the \$2,500 Notice of Administrative Fine was to be rescinded and restoration was required on the site. Mr. Harrington stated that as of October 2007, the Consent Agreement had not been signed and the site had not been restored; so, another Administrative Fine Hearing was held on October 19, 2007. Mr. Hychko failed to attend the hearing and the Hearing Officer ordered a \$2,500 Final Order of Administrative Fine be issued. Mr. Harrington stated that per the Hearing Officer the matter was to be referred to the full Council for an evidentiary hearing. Mr. Harrington stated that Staff is seeking a restoration order for the site. Mr. Harrington stated that the \$2,500 Final Order of Administrative Fine was issued on 11-5-2007 and was paid on December 6, 2007. The matter was scheduled before the Full Council on June 24, 2008 and the council directed Mr. Fugate to have Mr. Willis handle the matter which could not be resolved, therefore it's been rescheduled for today.

Vice Chair Lemont asked for clarification on the key points, 60 x 40 parking area instead of 30 x 20 and fence along the road, none of which had been removed, restored or resolved. Ms. Miguel stated that the fence installed was a chain link fence as opposed to the authorized snow fencing.

Mr. Hychko stated that he was representing himself and that accompanying him was the adjacent property owner Tom Lakowski to support his project as the fence borders his property. Mr. Hychko was sworn in. Vice Chair Lemont clarified the Council's position to Mr. Hychko by stating that if Mr. Hychko does not agree to come into compliance with the Assent, the Council could take remedial action and order restoration. Mr. Hychko gives dates and summaries of correspondence of his that he sent to CRMC for the record. Mr. Hychko stated that he's had numerous discussions with Mr. Harrington. Mr. Hychko stated that at the meeting in January of 2007, he agreed to remove the chain link fence and use snow fencing and that he was told to submit an application for the intended work. Mr. Hychko stated that he received the Consent Agreement in May of 2007 and was supposed to have the work done by the following month. Mr. Hychko stated that he did not agree with item #7 which stated that authorized fencing was not permitted along the road, but that the original Assent stated that fence will be installed along property boundaries. Mr. Hychko stated that the parking area was measured to be 20 feet to the dune by 36 feet at this time. Vice Chair Lemont asked if Staff had been to the lot recently. Mr. Harrington stated that he and Ms. Miguel had been to the property that day and although they did not measure the parking area but that the fence is still in the unauthorized position along the road and that the depth of the lot is not as deep as it was originally because the sand filled back in but that the lot was still not in compliance with the original assent. Mr. Hychko stated that in 2004 the lot had been previously dug out by a neighbor. Vice Chair Lemont stated that the order was to restore the property and that the parking area should only be 20 x 30 regardless of what happened prior to ownership of lot. Mr. Hychko stated that he does not have an issue with restoring property but that he would like to be able to keep the fencing along the road on his property to prevent use of property when he is not there. Mr. Harrington pointed out that the fence in its current location appears to be on Town property. Mr. Hychko stated that the fence is within three inches of the boundary line as determined by the monuments and pins. Mr. Hychko stated that he met with the Town who marked the front boundary and that the Town did not have an issue with the placement of the fence. Mr. Hychko then stated that his only disagreement with the situation is that in the Consent Agreement it states that

the fencing cannot go along the road and he is extremely concerned with the activities that occur on his property when he is not there. Mr. Hychko also stated that the snow fencing often times gets destroyed by people who use the wood for fires at night during the parties that occur in the vicinity. Mr. Willis explained his telephone conversation with Mr. Hychko and stated that the CRMC never allows for fencing along the street. Mr. Hychko argued that the area is a very high traffic area and without fencing along the road his property is subject to use as a private beach. Mr. Hychko stated that at the hearing on January 19, 2007 he was told by Mr. Goldman that he had to restore the property, take the fence down and reapply for the fence along the road. Mr. Harrington stated that Brian Goldman's signed Consent Agreement was for the removal of the entire chainlink fence, install 20 x 30 foot of snow fence using 3 x 3 wood posts, and apply for fence along the property and road. Mr. Harrington stated that the applicant had the opportunity to apply for it but that it was not definite he would be approved. Argument by Mr. Hychko. Mr. Fugate stated that Mr. Goldman can not authorize anything that wasn't authorized in the permit, meaning that Mr. Goldman could not authorize the fence in the hearing and that a subsequent application would have had to be submitted. Mr. Fugate suggested to Mr. Hychko that he place the snow fencing in either a diamond pattern or a herring bone pattern to act as a barrier to anybody trying to cross the lot and it will help build the dune up. Mr. Hychko read his original permit to the Council which stated that the fence could be installed along the northern property boundary which is the road. Mr. Fugate clarified that the permit was referring to the vegetation line on the northern boundary not the road. Mr. Hychko again asked to be able to fence off the front of his property, agreeing to narrow the parking area down. Mr. Lakomski read a short letter into the record stating that the fencing along the property line deters vandalism on both properties. Mr. Fugate and Mr. Hychko discuss where the fence is permitted. Mr. Hychko requested to be able to have 20 feet of parking area from the bottom of the dune. Mr. Fugate showed Mr. Hychko where the 20 feet started from which was not the bottom of the dune. It was agreed upon by all parties to meet at the site the Saturday after Thanksgiving which was November 28, 2009. Mr. Fugate suggested that any measurements taken run from the telephone pole so there is a hard and fast line. Vice Chair Lemont recommended to the Council that a restoration order in full be issued. Ms. Miguel asked for a specific timeframe in which restoration should be completed and that the metal road poles will be gone and replaced with three foot wooden poles. Ms. Miguel stated that Enforcement staff should be work with Mr. Hychko within a two week timeframe. Mr. Longo stated concerns that there may still be a misunderstanding between parties on what will be allowed and that the Assent is the ruling document. Mr. Longo corrected Mr. Hychko saying that Mr. Fugate cannot change what is in the Assent and that staff will meet with applicant and will then follow up to make sure property is in compliance with assent. Mr. Driscoll motioned, seconded by Mr. Gomez, to order restoration in compliance with original assent. Motion carried on unanimous voice vote.

8. Public Hearing on changes to Rhode Island Coastal Resources Management Program:

Chair Tikoian opens public hearing on changes to section 300.1 of the RICRMP. Mr. Beutel explains regulation changes to the Council stating that the regulation changes are the work of two years of the RI aquaculture working group, from 2007-2008. Mr. Beutel stated that the program changes came before the Council in October but were postponed at the request of the RIDEM due to issues they had. Mr. Beutel stated that what is before the Council tonight is everything except for two items that CRMC and RIDEM are still working on and that they planned to meet on December 7 to finalize the two items. Mr. Beutel stated that he recommended approval of the changes before the Council as presented. In Summary, Mr. Beutel stated that there were three major issues that came out of the aquaculture working group – two were in the prohibitions; one being the 5% cap of the area for aquaculture in any of the coastal ponds meaning that no more than 5% of any coastal pond will be designated for aquaculture; and the other being that no one could take native shellfish from the area. The 3rd major change was in standards which created a recreational aquaculture permit. Chair Tikoian discussed with Mr. Beutel his interaction with the local municipalities on the 5% regulation making sure that municipalities were in favor of the change. Chair Tikoian also discussed with Mr. Beutel the measurement of the 5% in which Mr. Beutel stated that CRMC has area maps of all the ponds and that the area of the pond can be calculated. Mr. Beutel stated, in answer to Chair Tikoian's inquiries, that permitting process will be finalized within the office for the recreational aquaculture process. Ames Colt, from Bays, Rivers and Watershed Coordination Team, asked if there was a maximum size lease per applicant? Mr. Fugate stated that there is a lease size limitation in the salt pond, with further discussion

following. Chair Tikoian closed the public hearing. Vice Chair Lemont motioned for adoption as revised and recommended by staff, seconded by Mr. Dawson. Motion carried on unanimous voice vote.

9. Category “A” List and Enforcement report August 2009

None were held.

There being no further business to discuss. The hearing was adjourned at 7:10 p.m.

Respectfully submitted,
Grover Fugate, Executive Director

Reported by Lisa A. Mattscheck

Mr. Fugate gave an update on Ocean Special Area Management Plan which is attached in its entirety hereto.