In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, December 14, 2010 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

MEMBERS PRESENT	**STAFF PRESENT**
Michael Tikoian, Chair	Grover J. Fugate, Executive Director
Paul Lemont, Vice Chair	Jeffrey M. Willis, Deputy Director
David Abedon	Kenneth Anderson, Spv Civil Engineer
Michael Sullivan	James Boyd, Coastal Analyst
Donald Gomez	Amy L. Silva, Sr. Environmental Scientist
Robert Driscoll	
Bruce Dawson	Brian Goldman, Legal Counsel

1. CALL TO ORDER

Chair Tikoian called the meeting to order at 6:00 p.m. and made brief statement regarding process of approval from the Council.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING:

Chair Tikoian called for approval of the minutes from the previous meetings. Vice Chair Lemont motioned, seconded by Mr. Abedon, to approve the minutes of the previous meeting. Motion carried on unanimous voice vote.

3. SUBCOMMITTEE REPORTS

There were none.

4. STAFF REPORTS

Mr. Fugate informed Council that there was a meeting with OCRM for OSAMP changes and that once the changes were approved on the federal level they would be brought before the OSAMP Subcommittee to go out for rule making.

5. APPROVAL OF THE PERIOD 9 PROGRESS REPORT OF THE R.I. OCEAN SAMP

Ms. Jen McCann of URI CRC RI Sea Grant program gave a very brief overview of the Period 9 Progress report of the OSAMP. Ms. McCann stated that there would be one more progress report submitted at the end of February 2011. Vice Chair Lemont motioned, seconded by Mr. Driscoll, for approval of progress report. Motion carried on a unanimous voice vote.

6. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM (REDBOOK)

Mr. Willis gave a brief overview to the Council of the changes.

<u>Revise</u> Section 210.3.C.4 Coastal Wetlands

Chair Tikoian opened the public hearing for public comment to which there was none. Chair Tikoian closed the public hearing. Director Sullivan motioned, seconded by Vice Chair Lemont, to approve changes to the RICRMP. Motion carried on unanimous voice vote.

<u>Revise</u> Section 335.C.2 Protection and Enhancement of Public Access to the Shore

Chair Tikoian opened the public hearing for public comment to which there was none. Chair Tikoian closed the public hearing. Director Sullivan motioned, seconded by Vice Chair Lemont, to approve changes to the RICRMP. Motion carried on unanimous voice vote.

<u>Revise</u> Section 300.14 Maintenance of Structures/Table 4a. Dwelling Rebuilds and Additions for Maintenance Activities under Section 300.14

Chair Tikoian opened the public hearing for public comment to which there was none. Chair Tikoian closed the public hearing. Vice Chair Lemont motioned, seconded by Director Sullivan, to approve changes to the RICRMP. Director Sullivan suggested that the asterisk (*) be moved directly below table for better understanding. Motion with change carried on unanimous voice vote.

<u>Revise</u> Section 210.2.D Barrier Islands and Spits

Chair Tikoian opened the public hearing for public comment to which there was none. Chair Tikoian closed the public hearing. Director Sullivan motioned, seconded by Vice Chair Lemont, to approve changes to the RICRMP. Motion carried on unanimous voice vote.

<u>Revise</u> Section 130 Special Exceptions

Chair Tikoian opened the public hearing for public comment to which there was none. Chair Tikoian closed the public hearing. Director Sullivan motioned, seconded by Vice Chair Lemont, to approve changes to the RICRMP. Motion carried on unanimous voice vote.

<u>Revise</u> Section 300.6 Treatment of Sewage and Stormwater

Mr. Boyd explained the intent of proposed amendments to bring CRMP Section 300.6 into compliance with The Cleaner bay Act of 2007. The Act mandated that CRMC and DEM revise the state stormwater manual, now completed, and revise their respective rules to be in compliance with the Act. Mr. Boyd further explained that two comments were submitted during the CRMC public comment period (Dominion Energy and RIDOT) and that staff had prepared recent modifications to the proposed amendments to address the public comments. Mr. Boyd recommended passage of the amendments with staff revisions as detailed in the Council memorandum.

Chair Tikoian opened the Public Hearing and asked for public comment to which there was none. Director Sullivan thanked staff at CRMC especially Mr. Boyd for coordination with RIDEM on the modification to the regulations. Director Sullivan motioned, seconded by Vice Chair Lemont, for the approval of the changes to Section 300.6. Chair Tikoian offered congratulations to staff as well. Motion carried on unanimous voice vote.

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

2002-10-045 ECONOMIC DEVELOPMENT CORPORATION -- Designate a Public Access Plan for all of Quonsett Davisville Port & Commerce Park in North Kingstown, RI.

Mr. Anderson gave brief overview of request to the Council stating that RIEDC was asking to renew the Public Access Plan for Quonsett Davisville Port and Commerce Park with minor modification of plan. Director Sullivan motioned approval with deferment on 'Shops at Quonset' as recommended by staff. Motion seconded by Vice Chair Lemont. Motion carried on unanimous voice vote.

8. **PUBLIC HEARING ON APPLICATIONS REQUESTING SPECIAL EXCEPTION BEFORE THE FULL COUNCIL:**

2009-10-040 CITY OF NEWPORT -- Repairs and improvements to the existing North and West Embankment of "South Easton Pond" (Easton Pond) consisting of work on the embankment slopes and "moat" channel bank, on impoundment side. The pond is CRMC "Type 1 Waters". Therefore, work requires a "special exception" per Section 130. The proposal results from City of Newport's primary interest to improve water supply infrastructure to minimize impacts to water quality. (Approx 4,000 l.f. total). Located at plat 15, lot 1; Ellery Road, Newport, RI.

Ms. Julia Forgue, City Utilities Director, present for the City as well as Scott Rabideau of NRS and Dean Audette of Fuss & O'Neal. Mr. Anderson gave brief overview of the application to the Council stating that the City was requesting to reconstruct 4,000 linear feet of embankment berm which enclosed the City's drinking water source. Mr. Anderson stated that the application required two special exceptions – one for filling portion of Type 1 waters; and one for filling in portion of freshwater wetland. Mr. Anderson stated that staff had worked with the City of Newport on application and staff had no objection to the project. Ms. Forgue stated that the City had reviewed staff reports. Abutting property owner John Reed is sworn in. Mr. Reed provides a copy of statement to the Council which was submitted after the comment period. The City of Newport did not have an objection to submittal of document. Mr. Reed read his letter to Council expressing concern in regards to the 3:1 slope on the Easton Pond side of berm preferring that the slope be made steeper such as 2:1 which is the same as the remote side stating that the steeper slope would prevent encroachment into pond and decrease the fill to the wetland. Mr. Anderson stated that the steeper slope is less stable and the 3:1 slope has a safer stability. Mr. Rabideau is sworn in stating that the City is proposed to alter 3000 s.f. of wetland and restore an acre of wetlands and that the 2:1 ratio is not needed. Mr. Rabideau stated that a Water Quality Certification was received from RIDEM. Mr. Audette of Fuss& O'Neal is sworn in an attested to the 3:1 slope for safety and maintenance factors. Mr. Phil Moreski of Fuss & O'Neal also spoke to the reasoning behind the 3:1 slope and that is would address the 100 year flooding concern. Vice Chair Lemont asked Ms. Forgue if there would be a gain in water volume. Ms. Forgue stated there would be no gain in water volume; maintenance activity for reinforcing and strengthening the dam. Director Sullivan motioned approval of Type 1 Waters special exception; seconded by Vice Chair Lemont.

Roll Call Vote:

Mr. Sullivan	Yes	Mr. Abedon	Yes	Chair Tikoian Yes
Mr. Gomez	Yes	Mr. Dawson	Yes	
Mr. Driscoll	Yes	VC Lemont	Yes	

Motion carried on unanimous vote.

Director Sullivan motioned approval of filling freshwater wetlands special exception, seconded by Vice Chair Lemont.

Roll Call Vote:

Mr. Sullivan	Yes	Mr. Abedon	Yes	Chair Tikoian	Yes
Mr. Gomez	Yes	Mr. Dawson	Yes		
Mr. Driscoll	Yes	VC. Lemont	Yes		

Motion carried on unanimous vote.

Director Sullivan motioned, seconded by Vice Chair Lemont, for approval of entire application. Motion carried on unanimous voice vote.

2008-11-062 MARK BARD – Construct new 3-bedroom, 24' x 62' dwelling (1,488 sf), with 10' x 62' second floor cantilevered deck, OWTS (septic system), pervious driveway, and associated site work. Located at plat 12, lot 87; Clarkes Village Road, Jamestown, RI.

Present for applicant is Attorney Elizabeth Noonan of Adler Pollock & Sheehan, Joseph Frisella, PE of Frisella Engineering, and Peter Rosen, Ph.D. of Northeastern University. Present for the objectors is Christopher Little, of Little Medeiros Kinder Bulman, and Whitney PC, and Richard Pastore, PE.

Mr. Anderson gave a brief overview of the application to the Council stating that the CRMC reviewing staff -- Engineer, Biologist, and Geologist -- recommended denial of the application. Mr. Anderson also relayed that the applicant had been denied the front yard dimensional variance request by the Town of Jamestown.

Attorney Noonan stated that the property was a constrained lot and cannot meet the standards. Ms. Noonan stated that the house was designed at an appropriate size with an Advantex Septic system approved by RIDEM. Mr. Frisella was sworn in, qualified as an expert witness and questioned by Attorney Noonan. Mr. Frisella's resume and licenses were marked Bard 1a and 1b. Mr. Frisella testified to his knowledge and experience of the piece of property. Mr. Frisella explained a plan that was distributed to Council explaining that minor changes had been made so that contours adjusted to meet FEMA maps and the addition of galleys for roof drainage. Mr. Frisella stated that he had prepared the application for Mr. Bard and that the lot fronted Hull Cove and Atlantic Ocean, with a ledge embankment and level ground with mown grass. Mr. Frisella explained the dimensions of the structure as 62' x 24' with 24' of garage. Mr. Frisella explained the soil type on the property saying it was sand loam which is good for drainage. Mr. Frisella stated that there would be no impact on the stability of the bluff from the size of the house as the soil beneath the dwelling could withstand the load of the dwelling using a diagram to explain (marked as Bard 3 full). Aerial Photo introduced as Bard 4 full. Mr. Frisella used the aerial photo to show that the scarping on slope was not present on photo which was dated sometime in 2000. Mr. Frisella stated that he had researched the property regarding storms over the past five years mainly using two major storms – October 2005 and March 2010. Mr. Frisella introduced a map showing the coastal feature at various times; map was marked as Bard 5 full. Mr. Frisella stated that the erosion shown on the property was due to surface runoff and a catch basin in the town roadway which had failed. Mr. Frisella stated that he informed the Town and the catch basin was replaced and operating properly. Mr. Frisella introduced photos he took of the site during storm

events marked Bard 6 A B C D full. Mr. Frisella explained the drainage from the town road to the catch basin which functioned properly during the storms and stated that during the March 2010 storm there was no erosion on property due to storm event or catch basin failure. Mr. Frisella discusses his analysis of storm data in detail. Mr. Frisella moves on to explain the two galley drainage system allowing half of the drainage on the north side and half of the drainage on the south side of the narrow dwelling; proposed on new plan are dry wells on each side of dwelling. Mr. Frisella explained that an approved restoration plan provided for nonstructural shoreline protection consisting of coir logs and plantings. Ms. Noonan asks Mr. Frisella to explain response to variance criteria to which he responds that buffers and setbacks are as allowed for property; no significant environmental/cumulative impacts from runoff. Mr. Frisella stated that the dimensions of the dwelling are reasonable for the piece of undeveloped land and that the disallowing of the utilization of the property would create a hardship for the property owner. Mr. Frisella stated that there would be no adverse environmental impacts on the property as the bluff retains stability and no erosion takes place. Mr. Anderson explained the buffer zone and setback requirements set forth in the regulations and then explained what was depicted on the plans was not the Table 2A requirement of 50" and 75' setback. Mr. Frisella answered that they depicted on the plan the commonly approved 50% reduction.

Mr. Little cross examines Mr. Frisella.

Mr. Little stated that the Exhibit #2 plan showed a different footprint than was proposed to the local zoning board. To ascertain the difference between the elevation of the property and the elevation of the town road, Mr. Little asks Mr. Frisella to explain the grading and filling to take place on property for building of the house and the elevation figures for the dwelling foundation. Mr. Little asked about the size of the house and whether or not a smaller house would fit the lot better not encroaching so closely to the buffer. There was discussion on whether or not the cantilevered deck would come into play as far as square footage for the calculation of the buffer zone and setback. It was determined that it would not. Mr. Little asked Mr. Frisella about the surface water runoff and if the groundwater was assessed. Mr. Frisella stated that the foundation would have not effect on the groundwater flow as the structure would be build above the water table. Ownership history of the property was discussed; as was Mr. Frisella's association with previous owners. Mr. Frisella stated that he had known both the Kosacz and Schulmanns and now is working for the Bards. Discussion on CRMC's position on buffer activity at this site as relayed in 2005 letter from Grover Fugate to Mr. Frisella. Mr. Little questioned Mr. Frisella about the erosion on the coastal feature to which Mr. Frisella answered he was confident it was not from wave action but from improper road drainage as well as the scarping on the rock face is from the property getting runoff from the street prior to catch basin being fixed. Mr. Frisella stated that the property was restoring itself since the catch basin was corrected. Mr. Little asked Mr. Frisella about the hay bales that were on the property for protection of the coastal feature and whether it would prevent against erosion. Mr. Frisella stated that the haybales would prevent silt from road runoff but would not prevent water flow. End cross examination.

Director Sullivan questioned Mr. Frisella on groundwater flow. Mr. Frisella answered that there would be no change to the saturated ground water flow using vadose zone water table. Mr. Frisella stated that the two catchments for downspouts are 4 x 4 chambers. Director Sullivan questioned Mr. Frisella regarding the disruption of groundwater flow from the 3' depth of 6"-8" wall associated with the driveway. Mr. Frisella contends that it would not disrupt vadoze zone groundwater flow. Director Sullivan questioned Mr. Frisella on climate change and the effect on

the property due to future sea level rise. Mr. Frisella contends that the structure will not be affected.

Ms. Noonan calls Peter Rosen, PhD as next witness. Dr. Rosen's information is submitted for the record as Bard 7 and distributed to the Council. Dr. Rosen is sworn in and gives background of expertise. Dr. Rosen stated that he visited the property in the summer of 2010 and also reviewed document, plans, photos and aerial. Dr. Rosen explained the geologic feature of Exhibit 8 photo stating that the bluff was bedrock which is an unchanging feature and that he does not agree with the coastal feature description of CRMC staff which says that the feature is sedimentary rock. Dr. Rosen states that the feature is phillite which is a harder substance and is resistant to wave action. Dr. Rosen confirmed Mr. Frisella's belief that the slump on the bluff is due to surface runoff from Clarke's Village Road prior to the maintenance of the catch basin. Dr. Rosen testified that the bluff restoration plan should be successful up on the bedrock bench as the surface runoff no longer flows in that direction. Dr. Rosen testified that the construction of the dwelling will not affect groundwater, however he did state that urban pollutants would be added and suggested using granular slow release fertilizer on the lawn. Dr. Rosen stated that the OWTS would have no affect on the stability of the bluff. Dr. Rosen testified that bluff stability would maintain even during waves of 100 year storm because bluff is on a bedrock bench and can be readily managed. Dr. Rosen stated that climate change would affect property because the catch basin was working properly and the sea level rise would not affect property in a significant way nor would the development of a house of property affect the bluff.

Mr. Little cross examines Dr. Rosen.

Mr. Little asked Dr. Rosen about the affects of a 100 year storm event. Dr. Rosen stated that storm surges could produce 10'-27' wave action that would hit the bluff but that the storms are rare events. Dr. Rosen stated again that he attributed the erosion on the bluff to a malfunctioning catch basin.

Ms. Noonan re-directs Dr. Rosen regarding expertise. Dr. Rosen stated that he had a few dozen peer reviewed publications and had applied experience from being on local conservation commission.

Director Sullivan asked Dr. Rosen about licenses. Dr. Rosen stated that he did not have a pesticide license nor did he have a nutrient management license. Dr. Sullivan asked Dr. Rosen about dissipation of wave energy to which Dr. Rosen explained that water moves in all directions upwards, lateral and backwards but only during sizable storms would this effect bluff. Director Sullivan questioned Dr. Rosen on soil morphology. Dr. Rosen stated that the most effective location for the OWTS was the furthest distance possible from the coastal feature. Dr. Rosen stated that he had observed soil from a nearby test pit not located on subject lot and saw a change in color of soil with the upper layer a lighter color due to sand content and that the pit was dry at ten feet. Discussion on how water flows through the fractures in rock.

Scott Rabideau, NRS was sworn in and questioned by Ms. Noonan. Mr. Rabideau's resume was entered as exhibit 10 and he was determined to be an expert witness. Mr. Rabideau stated that he had identified the coastal feature on the original preliminary determination submitted to CRMC. Mr. Rabideau stated that he was familiar with the CRMC staff reports and with the Section 120 criteria. Mr. Rabideau stated that he did not feel there would be an environmental impact due to the

project and that the current property was maintained as a mown lot with limited habitat value and with or without a dwelling the lot would still serve the same function.

Mr. Little cross examines Mr. Rabideau.

Mr. Little questioned Mr. Rabideau on his knowledge of CRMP Section 150 to which Mr. Rabideau stated that he was familiar with it. Mr. Rabideau stated that it was his determination that the goals of section 150 could be achieved with an 8' buffer due to the fact that on the property right now, in its current state, is completely mowed. Mr. Rabideau stated that due to property constraints it would not be possible to achieve the suggested buffer zone and that the proposal offered a reasonable use of the property.

Mr. Goldman stated that the exhibits were admitted in full and that letters were part of file.

Ms. Noonan confirmed that Mr. DeAngelis was not representing Mr. Bard.

Category "A" List -- None held

7. <u>ADJOURN</u>

Vice Chair Lemont motioned, seconded by Mr. Dawson, to continue application to future date. Motion carried on unanimous voice vote. Meeting adjourned.

Respectfully submitted,

Lisa A. Mattscheck