

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Wednesday, May 4, 2011 at 6:00 p.m. in Conference Room B of the Administration Building, One Capitol Hill, Providence, RI.

MEMBERS PRESENT

Michael Tikoian, Chair
Paul Lemont, Vice Chair
Dave Abedon
Donald Gomez
Bruce Dawson
Ray Coia
Ron Gagnon, RIDEM

STAFF PRESENT

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David S. Reis, Spv Environmental Scientist
Danni Goulet, Marine Infrastructure Coordinator
Janet Freedman, Coastal Geologist
Rich Lucia, Sr. Civil Engineer
Laura Miguel, Enforcement
Brian Harrington, Enforcement

MEMBERS ABSENT

Robert Driscoll
John Longo, Legal Counsel
Brian Goldman, Legal Counsel

1. CALL TO ORDER

Chair Tikoian called the meeting to order at 6:00 p.m. and made opening statement.

2. APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING:

Chair Tikoian called for approval of the minutes from the previous meeting. Mr. Coia motioned, seconded by Vice Chair Lemont, for approval of minutes from April 12, 2011 meeting. Motion carried on a unanimous voice vote.

3. STAFF REPORTS

Mr. Fugate informed the Council about a workshop between NOAA, Rhode Island, Massachusetts, and Connecticut on areas of mutual concern regarding wind energy.

4. SUBCOMMITTEE REPORTS

There were none.

5. PUBLIC HEARING ON CHANGES TO THE RI COASTAL RESOURCES MANAGEMENT COUNCIL:

Management Procedures

Revise Section 4.2 -- Information Requirements, Application Forms and Fees and Section 4.3.2 Schedule of Fees as follows:

Mr. Willis gave brief overview of change to Council stating that the section revision is to be in conformance with recent legislative requirements as contained in RIGL 42-35-3.5 and to make editorial revisions; also to revise the fee schedule by adding initial and annual fees for recreational aquaculture activities. Chair Tikoian opened public hearing and hearing no comments, closed the hearing. Vice

Chair Lemont motioned, seconded by Mr. Coia, to approve program change. Motion carried on unanimous voice vote.

Ocean Special Area Management Plan (Ocean SAMP):

Mr. Fugate gave brief overview to the Council of the proposed revisions stating that the purpose of these proposed revisions to the Ocean Special Area Management Plan are in response to comments received from the NOAA Office of Ocean and Coastal Resource Management to address issues that would bring the plan into conformance with federal CZMA requirements. Mr. Fugate stated that a series of three memos was distributed to the Council explaining the comments received. Mr. Fugate stated that the third memo distributed to the Council involved comments from the Conservation Law Foundation, the Audobon Society and the Nature Conservancy. Chair Tikoian stated his concerns and asked if comments should be brought back before OSAMP Subcommittee for review. Mr. Fugate stated that the changes were in response to comments and were not significant in nature. Mr. Fugate stressed that NOAA is very anxious to see OSAMP completed and would like to use it as model for the National Conference. Vice Chair Lemont suggested delaying the public hearing for OSAMP changes until the Council's May 10, 2011 meeting. Tricia Jedele, Conservation Law Foundation, stated that their concern was that there were certain section of the regulatory section moved to general policies and language being added that general policies could not be used by the state as enforceable policies for consistency review. Ms. Jedele informed the Council that the issues had been resolved which resulted in multiple changes of the document. Vice Char motioned approval of changes making it contingent to appearing on next Tuesday's docket; motioned seconded by Mr. Dawson. Secretary of State filing timeframe was discussed. Motion carried on unanimous voice vote to approve changes contingent on bring back before Council on May 10, 2011.

Redbook – Revise Table 4. Undeveloped, Moderately Developed, and Developed Barriers

Mr. Willis gave brief overview of proposed change stating that the purpose is to correctly identify the barrier designation for Fogland Point, Tiverton. Chair Tikoian opened the public hearing, and hearing no comments, closed the public hearing. Mr. Coia motioned, seconded by Mr. Dawson for approval of program change. Motion carried on unanimous voice vote.

6. APPLICATION REQUESTING SPECIAL EXCEPTION AND ARE BEFORE THE FULL COUNCIL FOR DECISION:

2010-08-041 TOWN OF CHARLESTOWN -- Construct and maintain passive recreational and trail improvements at the former Town of Charlestown Driving Range. Proposed improvements will provide the Town of Charlestown and the surrounding region with a passive recreation facility and pedestrian access to the coastal resources of Ninigret Pond and Mud Cove. The project requires a special exception to: RICRMP 300.17.E.1. (10' x 20' observation platform, platform not allowed); RICRMP 300.17.E.2. (crossing greater than 10 acres wetland, 170' length, high fish and wildlife habitat); RICRMP 210.3(C)(4) (Alteration to coastal wetlands). Project location: Plat 5, Lot 14; Post Road, Charlestown, RI.

Attorney Peter Ruggiero, Legal Counsel for Town of Charlestown present as well as George Gifford, wetlands biologist and landscape architect. Mr. Lucia gave brief overview of project stating that project required both Special exceptions and variances in regards to a wetland walkover structure. Mr. Lucia stated that CRMC staff recommended approval on upland part of project but deferred approval of walkover structure as the applicant did not submit written variance and special exception documentation. Mr. Lucia stated that staff recommended modifying walkover structure so that pilings

were 15 feet on center and they recommended 1" gap in decking; other three variances and special exceptions were deferred to council. Mr. Lucia stated that the applicant did not take any of the recommendations

Peter Ruggiero Counsel for Town of Charlestown was present for applicant and brought George Gifford, wetlands biologist and landscape architect before the Council to answer questions. Mr. Ruggiero gave overview of experience of Mr. Gifford submitting his resume as exhibit Town #1 to qualify him as landscape architect and wetland biologist. Mr. Gifford stated that he prepared the plans for this project and reviewed those plans with Council. Mr. Gifford stated that the land was previously used as the Charlestown municipal driving range and gave additional history of recreational use. Mr. Gifford stated that RIDEM held title to lot 24 and that the project is partly being funded by grant from RIDEM. Mr. Gifford explained that a nature trail is proposed which consists of a 6 foot wide stone dust path create meandering trail system with open field area. Mr. Reis stated that the portion of the project that received the most comments is raised wooden boardwalk where southern terminus is a wetland overlook structure which is prohibited by our program but is the primary purpose of the project. Mr. Ruggiero stated that the Town was given a choice to break the project into two applications but the Town decided to present project as a whole.

Mr. Gifford explained that one variance to RICRMP 300.17.F2 – height of walkover structure and explained why it was designed at less than 30 inches off the ground by saying that the State Building Code specifies that if the structure was to be at 30" or more above surrounding land surface the structure must have guard rails and hand rails. Mr. Gifford explained that the Town wanted to avoid guard rails and hand rails wherever possible; therefore the structure was proposed at 18-24 inches above ground. Mr. Gifford explained that the next variance to RICRMP 300.17.F3 regarding the maximum width of structure was 2.5 feet. Mr. Gifford stated that the proposed structure was designed at 6' in width because the State Building Code requirement is that they must provide a minimum of 36" for accessible route. Mr. Gifford explained that the structure leads to a dead end route; therefore, the requirement was doubled so that at 6' a wheel chair would not have to back up and move out of way to bump out structure for someone coming in opposite direction. Mr. Gifford explained variance to RICRMP 300.17.F5 which states that the decking surface be at a 1" separation but that the project proposed 1/8" separation. Mr. Gifford explained that the State Building Code stated that the decking cannot exceed 1/2" separation. Mr. Gifford explained that pressure treated lumber is moist from lumber yard and shrinks approximately a 1/4" when dry; the project was proposed with a separation of 1/8" so that when dries keep within 1/2" requirement of the State Building Code. Mr. Gifford explains variance to RICRMP 300.17.F4 which states that pilings are to be set at 15' but project is proposed 8'. Mr. Gifford stated that hand rails are proposed in one isolated spot at the end of the overlook structure to keep public from entering wetland. Mr. Ruggiero stated that the project was intended as a passive recreational facility for wildlife observation and educational purposes. It was stated that a maintenance plan will be submitted if approved.

John Dorsey, Esq, representing Sportsmen's Cove abutting property owner (organization). Mr. Dorsey stated that the structure as proposed was prohibited under CRMC regulations and should not be approved. Mr. Dorsey questioned Mr. Gifford regarding the purpose of the project. Mr. Gifford explained that the structure would bring people from an upland area to Ninigret Pond. Mr. Dorsey stated that the purpose of the walkover structure is to bring upland and upland together and that no where in our regulations does it allow for a structure to connect upland to wetland. Mr. Gifford reiterated his position that the elevated boardwalk allows people to walkover a wetland to get to Ninigret Pond. Mr. Dorsey stated that the applicant did not show any attempts to use alternatives for structure that would work with CRMC regulations such as substituting materials or length changes that would minimize the need for variances or special exceptions. Mr. Dorsey stated that there was a national park in the surrounding area that served the same purpose as proposed project. Chair Tikoian

questioned applicant’s representative regarding compelling public purpose and provision of public access. Mr. Gifford stated that the nature trails and walkways provided for educational and observational purposes. Vice Chair Lemont inquired as to the purpose of the property owned by Sportsmen’s Cove. Mr. Dorsey stated that the abutter would like to see a less intrusive means to present the boardwalk structure. Mr. Dawson suggested having a looping system with the boardwalk thereby eliminating the need for greater widths and technically the boardwalk would connect upland to upland. Mr. Reis stated that while working with the applicant on the variance and special exception criteria the grant money issue came up and the project needed to move quickly. Mr. Reis stated that staff does believe it qualifies for special exception. Mr. Abedon stated that although Mr. Reis’ information was helpful, he does not understand why applicant did not work as hard to conform to CRMC regulation as they did to confirm to state building code. Mr. Gomez asked if any other environmental groups were contacted for their input and ideas. Closing arguments made. Vice Chair Lemont motioned, seconded by Mr. Dawson, to approve special exception to RICRMP Section 300.17.E.1.

Roll Call vote:

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

Motion carried.

Vice Chair Lemont motioned, seconded by Mr. Dawson, to approve special exception to RICRMP Section 300.17.E.2.

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

Motion carried.

Vice Chair Lemont motioned, seconded by Mr. Dawson, to approve special exception to RICRMP Section 210.3.C.4.

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

Motion carried.

Mr. Dawson motioned for approval of application with five variances; with stipulation stating in accordance with section three requiring prior written consent from RIDEM for any alteration on their property. Motion seconded by Vice Chair Lemont. Motion carried with Mr. Gagnon abstaining from vote.

7. **STATUS, STAFF BRIEFING AND RATIFICATION OF MATUNUCK EROSION TEMPORARY PERMIT AND PROCESS.**

Chair Tikoian addressed the Council stating that emails and documentation had been sent regarding the serious erosion issues in the East Matunuck area of the Town of South Kingstown located in the southern end of the state. Chair Tikoian stated that members of the CRMC had joined together with the South Kingstown Town Council, Senator Sosnowski and Representative Walsh, and CRMC staff members to try to come up with solutions to the erosion problem. Chair Tikoian asked Mr. Fugate to update the Council on the progress since that meeting.

Mr. Fugate stated that, at the request of the Chair, the CRMC staff had generated a report which included temporary solutions that might deal with the immediate erosion issue. Mr. Fugate stated that the staff was a little uncomfortable with the solution but that it could be done with temporary wooden bulkheads with no tie backs positioned above mean high water so that they remain out of ACOE jurisdiction enabling them to proceed out the door immediately. Mr. Fugate stated that these temporary structures would be given a 12 month approval giving the property owner a reasonable timeframe to pursue other permanent means of erosion control. Mr. Fugate stated the temporary permit templates were created and are ready to be issued as of two Fridays ago.

Chair Tikoian stated that he had requested concurrence of members to have staff produce report to cover three areas -- Standards and guidelines of temporary structures; Development of recommendations of water type changes; and to come up with long term solution recommendations. Chair Tikoian stated that CRMC had issued Cease and Desist Orders and Notices of Violations and that the Executive Director made a unilateral call to suspend those Cease and Desists and Notices of Violation. Chair Tikoian stated that following a recent storm event, CRMC Staff issued a Cease and Desist Order for the use of creosoted piles. Chair Tikoian stated that at the request of town officials a meeting was held Thursday, April 28, 2011 at CRMC headquarters in which the Governor's office was helpful in making sure there was representation from the Department of Transportation. Chair Tikoian stated that he had been to visit the area and that the impact to the road was, in his judgment, significant and that the waterline was beneath the road. Chair Tikoian stated that CRMC Legal counsel advised him it was appropriate for temporary permit and that this procedure was done in accordance with our rules. Chair Tikoian stated that Mr. David Smith of Rhode Island Emergency Management had asked CRMC to coordinate with Town and with DOT to try to prevent a catastrophic event. Chair Tikoian stated that he informed Council members via email of actions and asked that it be put on agenda for update and public vetting. Chair Tikoian stated that he had had three conversations with RIDEM director in regards to action and also conversations with the governor's office and that all are in concurrence.

Mr. Stephen Alfred, Town Manager: Mr. Alfred expressed the Town's appreciation to Council and Chair. Mr. Alfred stated that a letter was sent via email which addressed concerns with report from staff saying that it is their opinion that the staff recommended stipulations and concerns will be difficult for property owners to adhere to. Mr. Alfred spoke about the importance of the preservation and maintenance of Matunuck Beach Road relaying that there were 240 full time homes and three businesses south of area that would be jeopardized by a significant storm event. Mr. Alfred stated that the Town is looking into how to preserve road and that CRMC staff recommendation that the road be moved further from the water was not an option. Mr. Alfred also stated that the option of constructing bridge from adjoining road was not an option and that the only way to go forward is to protect road. Mr. Alfred stated that the entire 1400 feet of property needed a predisaster permit and that the Town would like to get an assent which provides preauthorization for maintenance work. Mr. Alfred stated that the Town was advocating on behalf of private properties which will protect the town road in their protection of their property. Mr. Alfred stated that the Town had met with RIDOT earlier that day and that the State will be making money available to the Town of South Kingstown to protect Matunuck Beach Road (embankment). Mr. Alfred stated that the Town intends to come up with a design and

work with CRMC staff to get assent for 1400 feet but need to do construction work in 250' of vacant lot. Mr. Alfred stated that the Town would provide those design plans to staff and will commence construction. Mr. Alfred stated that the Town looked at providing steel wall for the length of row itself but has concerns with steel sheet wall as there is no deflection of ocean energy. Mr. Alfred stated that the Town would like to continue the revetment wall as they think it will provide for ability to disperse energy. Mr. Alfred stated that temporary assent applications have been prepared. Mr. Alfred stated that the town had concerns with application process based on staff report and did not want to see a two tiered approach with soft solutions utilized first; it is their opinion that sand bagging does not work and the 1st sentence of the staff report should be stricken. Mr. Alfred also stated that the Town was concerned about the Temporary structure approval time period being limited to 12 months with a six month extension option. Mr. Alfred stated that tiebacks would be necessary for the stability of structure which could become compromised by an aggressive storm event. Mr. Alfred stated that the changes he is proposing do not affect town directly but that he is speaking on behalf of property owners as their projects will in turn protect the road for longer period of time. Mr. Alfred introduced the members of the South Kingstown Town Council saying that they all believe there is an imminent threat and they all want to protect private interests.

Ella Whaley, Town Council spoke to the necessity of providing for public safety. Ms. Whaley also thanked Chair Tikoian and Senator Sosnowski for their efforts stating that it is time to be proactive instead of reactive.

Sen Sosnowski spoke thanking the Chairman and CRMC staff for their efforts and hoped to have a continued cooperative relationship.

Chair Tikoian called for comments from the general public:

Ms. Jane Austen from Save the Bay stated that although the comments from Save the Bay were sent to the Council in written form she wished to explain a few comments on procedural issues. Ms. Austen stated that Save the Bay felt that the Temporary Assent does not fulfill Section 180 requirements and also wanted to point out that the Staff report does not recommend action as temporary solutions will not protect the properties from scouring or beach erosion causing imminent peril. Ms. Austen stated that the temporary solution will have negative impacts on adjoining shorelines and that the long term damage for RI shoreline was laid out in Staff report. Ms. Austen stated that the Town's solution for hard armoring would require formal rule making by the Council. Ms. Austen stated that individual attempts for property protection would exacerbate erosion for private adjoining property owners and that Save The Bay would like CRMC to look at the long term effects of armoring. Ms. Austen stated that the issue of RIDOT expending money on road to protect private property owners should be discussed further in a more formal format. Ms. Austen raised many questions, such as: What are the implications if a property owner does not want to participate in armoring? How does this affect other communities? Do other State agencies have a significant interest in this project? Is there a precedent being set for type 1 waters?

South Kingstown Council member Carol McEntee spoke saying that they commend Council and CRMC staff but that she disagrees with Save the Bay. Ms. McEntee stated that the Executive Director has right to grant an emergency assent and spoke to the importance of providing medical care to people if necessary and road is out. Ms. McEntee stated that Matunuck needed to have protection and that no other coastal area in the State is as affected as Matunuckas this area is surrounded by two walls and that the area in between needs protection.

Mr. Alfred stated that Matunuck Beach Road is within 15' of the water and wanted to clarify that RIDOT is using State monies only on the area that is not privately owned.

Vice Chair Lemont stated that CRMC supports Save The Bay and that he was in attendance at the meeting that CRMC Council attended with the South Kingstown Town Council. Vice Chair Lemont was concerned about a comment made at that meeting and wanted to clarify that CRMC has been here for a long time trying to work on environmentally plausible solutions to Matunuck issue. Vice Chair Lemont stated that he was in support of Chair Tikoian in this matter and while it may not be best solution, it has provided an avenue of discussion and cooperation between the CRMC and the Town of South Kingstown to work towards a long term solution.

Mr. Gomez expressed his support of Save The Bay stating that for the most part their comments were excellent. Mr. Gomez stated that the CRMC Educational series has been a great avenue in showing CRMC's purpose of preservation and protection of Rhode Island's coast. Mr. Gomez states that CRMC does acknowledge that there is a problem and he agrees with Vice Chair Lemont that there must be Council support to come up with a viable solution agreeable to both parties. Mr. Gomez stated that he is concerned regarding the criticism of CRMC and he believes that CRMC has done a good job in protecting Rhode Island's coast

Tricia Jedele of the Conservation Law Foundation asked to speak on precedent setting aspect. Ms. Jedele spoke of having read the Staff report which talked of the previous attempts at shoreline protection measures which have failed. Ms. Jedele stated that she also listened to the comments from town council wanting to find a solution to holding the sea back. Ms. Jedele tasked the Council to find long term solutions and to act responsibly. Ms. Jedele asked Council not or approve temporary measures without knowing what long term affects they will have. Ms. Jedele stated that the Council should be mindful of what public trust issues will be with temporary structures as they have an obligation to maintain public trust.

James O'Neill, South Kingstown Town Council member spoke stating that the water type change from Type 1 waters to Type 2 waters should be addressed. Mr. O'Neill stated that the Matunuck community goes back 300 years and that the area does not meet the conditions of Type 1 waters as it is developed land and already has seawalls present. Mr. O'Neill stated that the permits that have been issued the last 15 years -- very temporary solutions, sand bags, burrito bags -- don't work; and that there is a need for something more permanent. Mr. O'Neill reiterated that need for the temporary measures to be able to extend beyond the 12-18 months. Mr. O'Neill talked of the Town of South Kingstown being a leader in the State regarding environmental changes. Mr. O'Neill spoke of the positive aspect of Matunuck in regards to tourism. Mr. O'Neill stated that steel sheeting should be used to help the road situation.

Mr. Goldman made clarifications regarding Section 180 of the Redbook stating that Emergency assents are an established procedure. Mr. Goldman stated that the assent was drafted with relevant criteria included. Mr. Goldman stated that emergency assents not temporary in nature but that Mr. Fugate made it clear that the timber bulkheads may be subject to fail in moderate storm. Mr. Goldman read parts of the Temporary Assent stating that the bulkheads would be temporary only.

Ms. Kathy Fogarty of the South Kingstown Town Council stated that the issue of impediment for access to water for people would not be an access issue at all because the town beach provides access to the water and that public safety is the biggest issue as there are homes and waterlines there. Ms. Fogarty spoke of economics and tourism dollars that are brought into the State which comes from the Matunuck area.

Mr. Nathan Vinhateiro spoke on behalf of the public. Mr. Vinhateiro stated that he does not live in Matunuck but does live in South Kingstown. Mr. Vinhateiro stated that he surfed in the Matunuck area

frequently and that the stretch of shoreline is an important access point for getting in and getting out of the water.

Mr. Vincent Murray spoke of Village of Matunuck most important example of seasonal community. Mr. Murray's concern was that the Deep Hole fishermen's access will be inaccessible.

Chair Tikoian asked if there were any objections to action relative to temporary permits with none heard. Chair Tikoian asked Council to organize next course of action and a meeting was tentatively schedule for the Council to meet in South Kingstown with the Town Council within two weeks. Mr. Willis stated that the suggestions generated in the staff report could be discussed at greater length. Mr. Alfred stated that the Town needed to file a temporary permit application for road protection. Mr. Fugate informed Council that two preliminary determination applications had been submitted to the office seeking programmatic review only; this type of application will not generate a permit. Mr. Fugate stated that the Council should be looking at policy options if looking for some kind of structural shoreline protection for that area. Mr. Fugate stated that staff will have to explore policy and lay out for the Council; the draft policy will have to go to public notice; the process could take up to two to three weeks. Mr. Reis clarified that the two apps for preliminary determinations were for private residence, not for any type of road maintenance, and that these two apps will require staff review. Mr. Reis stated that the preliminary determination applications were proposals to fill far beyond what has been discussed and considered, that these were very complicated set of circumstances which required ACOE decision. Meeting set up tentatively for May 31st in the South Kingstown Town Hall.

8. **ADMIN FINE HEARING**

09-0121, 09-0122, 09-0126, 09-0127, 09-0128, 09-0129 PBH REALTY, LLC; Jamestown

Mr. Goldman gave a brief overview on the background of the enforcement situation saying that he was the hearing officer for this case and that he was under the impression that the parties involved had reached a resolution at their last scheduled Administrative Fine Hearing. Mr. Goldman stated that he imposed a \$10,000 fine in total and thought it was done.

Ms. Miguel is sworn in and gives a timeline overview of the enforcement situation stating that this hearing concerns six Cease and Desist Orders and a Notice of Administrative Fine. Ms. Miguel agreed with Mr. Goldman that they thought an agreement had been reached but that it quickly fell apart. Ms. Miguel stated that there was an assent issued for the site in 2001 which established a 200-foot buffer zone on the property. Ms. Miguel stated that previous to the six violations there were also two other violations on the site with the current owner; one for clearing and the second for resuming work in violation of Cease and Desist Order; these two violations were resolved. Ms. Miguel stated that the 2009 Cease and Desist orders were issued in response to a complaint call and subsequent site visit to the property. Ms. Miguel clarified that the first violation case 09-0121 is for an alteration of a tributary and wetland which is a prohibited activity under the RICRMP and that authorization of this activity would require a special exception. Ms. Miguel stated that there was an alteration of their 200' buffer, alteration of the freshwater wetland, alteration of a riverbank, diversion of water flows into and out of freshwater wetland and no water quality certificate. Ms. Miguel stated that an Appeal to the Administrative Fine was received in December and that when she contacted the owner's attorney, she informed them that a restoration plan should be prepared for the hearing. Ms. Miguel showed pictures of site violations to the Council. Ms. Miguel stated that she and Brian Harrington visited the site the previous day and showed the most current photo of the site. Ms. Miguel stated that she was under the impression that what was agreed to on October 14, 2010 was that they would restore the site to what was approved in the 2001 Assent including the grades. Ms. Miguel stated that not long after the fine

hearing, they had a meeting on site where the owner's consultant stated that they wanted to negotiate. Ms. Miguel informed them they she did not have the authority to negotiate a special exception and that site would either have to be restored or they would have to apply for a special exception.

Ms. Ruth Silman, Esq. present on behalf of PBH Realty as well as Barbara Szepatowski, Environmental Consultant. Ms. Silman stated that they were unsure as to why they are here as they too believed to have had an agreement. Ms. Silman stated that she had a restoration plan and one page list of things to be done after the meeting in October; and then a few days later they were told that the Restoration plan was not acceptable and a meeting was suggested. Ms. Silman stated that they did not know that a site visit was conducted yesterday. Ms. Silman brought up violation on abutting property and stated that perhaps that violation is causing issues on her client's property. Ms. Silman stated that she hoped the Council would nudge the implementation of a couple of amendments that were agreed upon previously and also the imposition of the \$10,000 fine along with a full Consent Order.

Ms. Szepatowski was put under oath. Ms. Szepatowski stated that she had prepared the restoration plan for this property and had worked on property starting in February 2010 to present. Ms. Szepatowski stated that she felt the meeting that had on site were very successful with the exception of one point; the impoundment structure. Ms. Szepatowski stated that the property was part of golf course from the 1800's and that it was obvious to them that the shallow area there had been a pond or area that collected water and they wanted to bring back what had existed for years and years. Ms. Szepatowski also informed the Council of the abutting property pond and stated that they were at a loss as to why there were no fines or cd's issued for that property. Mr. Harrington stated that a violation issued earlier this year to the abutting property owner but that CRMC enforcement staff did not know about pond. Mr. Harrington stated that the pond on the abutting property was there before PBH created their pond so nothing would have changed flow wise.

Discussion on CRMC enforcement procedure and determination of who reviewed the restoration plan when it was submitted to CRMC. Ms. Miguel stated that Ken Anderson, Dave Reis, Danni Goulet, Brian Harrington and herself had reviewed the plan with the staff where engineering and programmatic questions were answered. Ms. Miguel stated that it was determined by staff that the plan was okay with the with the exception of pond and the wall. Ms. Miguel stated that the understanding was that they were agreeing not to have the pond anymore. The other issue could be left to negotiate later such as plantings. Ms. Miguel stated that she sent an e-mail to Ms. Silman to that affect. Ms. Silman stated that they thought that the plan they submitted with the cross sections was what CRMC wanted and that the two sides were now at an impasse. Discussion of evidence of pond's previous existence; golf course score card indicating water feature.

Ms. Szepatowski stated that there is a vineyard on the property and the pond is needed for irrigation. Ms. Szepatowski also stated that the property is in the farmland program and taxed under the Jamestown program. Ms. Miguel stated that in correspondence between the farmer on the site, the division of agriculture and CRMC it was made clear that they were subject to CRMC regulations.

Ms. Miguel stated that the CRMC approach is that when a site is no longer maintained and reverts back to original state it should remain as such. Ms. Miguel stated that the previous consultant recognized and depicted the stream on the plan of the property.

Mr. Gagnon stated that RIDEM would not authorize the alteration of a stream.

Ms. Dawson asked why they had not pursued Ms. Miguel's November 9th, 2010 email stating that the plan was not acceptable. Ms. Silman argued that they thought they had come to agreement with staff which included keeping the pond. Ms. Silman distributed letter to Council talking of agreement and a

task list with deadline. Mr. Gomez stated that the letter Ms. Silman gave to Council says proposed pond area becomes proposed restoration area; Laura version is supported by document that they were just handed; impoundment needs to be removed to restore the stream.

Chair Tikoian asked if stream and pond could be incorporated on property. Ms. Miguel stated that it would still require a special exception as the activity is prohibited by the RICRMP.

Mr. Fugate stated that it's not just filling pond but also that the new work that was done be removed and that previous grades get reestablished; gravity will set in and the stream will disappear.

Ms. Miguel stated that the previous 2001 Assent was recorded in land evidence records so the current owner would have had notice that there was an assent for the property prior to it being purchased.

Chair Tikoian asked if there was a way to mitigate this in another fashion such as a fine and a habitat restoration project someplace else on the property

Mr. Fugate stated that staff does not seek restoration because you cannot replicate freshwater wetland habitats and values.

Ms. Szepatowski stated that they offered to remove all of the invasive species in the entire coastal area on the property. Mr. Fugate stated that although they could do that, it is not considered restoration of the environment.

Mr. Fugate stated that if they wanted to construct an irrigation pond, it can be requested through DEM's agriculture division, but not by altering stream; cannot divert stream or alter freshwater wetlands.

Ms. Silman stated that they were waiting to pay the outstanding fines until they got a draft Consent Order. Ms. Miguel stated that the decision of hearing officer was there would be a total of \$10,000 split six ways and conditional on acceptable restoration plan.

Vice Chair Lemont asked if the issue could go back and try to be worked out and then come back with a compromised plan. Mr. Fugate stated that if the owner agreed to remove the headwall there would not be an issue. Ms. Szepatowski stated that they are working to keep the headwall in place for irrigation. Vice Chair Lemont stated that if the owner is ordered to remove the wall, the owner should remove it or CRMC will go to court to have it removed.

Discussion on property to north and their violation and how it will affect PBH property.

Ms. Silman agreed to try to work things out with staff. Vice Chair Lemont stated that the more you talk the better off you are. Chair Tikoian stated that he would like the Executive Director involved in the entire process. Vice Chair Lemont motions to send enforcement case back to staff to work things out and bring back before the Council acting as Hearing Officer on the June 14th meeting. Mr. Dawson seconded the motion. Motion carried on unanimous voice vote.

9. CATEGORY "A" LIST

None held.

10. ADJOURN

Mr. Dawson motioned, seconded by Mr. Coia, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned.

Respectfully submitted,

Lisa A. Mattscheck
Recording Secretary