

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, June 14, 2011 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Donald Gomez
Bruce Dawson
Janet Coit, RIDEM
Tony Affigne
Guillaume de Ramel
Mike Hudner

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David S. Reis, Spv Env Scientist
Richard Lucia, Sr. Civil Engineer
David Beutel, Aquaculture Coordinator

Brian A. Goldman, Legal Counsel

Members Excused

David Abedon
Raymond C. Coia

1. **CALL TO ORDER**

Chair Livingston called the meeting to order at 6:00 p.m.

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

Chair Livingston called for approval of the minutes from previous meetings; May 24, 2011 and May 31, 2011. Vice Chair Lemont motioned, seconded by Mr. Dawson, for approval of minutes from meeting. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were none

4. **STAFF REPORTS**

Mr. Fugate updated the Council on a public workshop held in which a presentation was given by BOEMRE on their status of the area of mutual interest and stating that they are in the process of going out for call to see if there is any interest in this area. Mr. Fugate also updated the Council in regards to a joint Rhode Island/Massachusetts work group that was put together to look at fishery issues and wind energy. Mr. Fugate stated that the work group consisted on representatives from MA Secretary's office, RIDEM, and RICRMC. Mr. Fugate informed the Council members that the next CRMC Semimonthly meeting would be held at the URI Bay Campus in Hazards Room A&B in Narragansett, RI.

Chair Livingston stated that the Educational Series which would be Brian Goldman giving a briefing on the CRMC Legal Process would be at the end of the meeting.

Chair Livingston inquired as to applicant's attendance and read the opening statement.

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

2011-04-004 BRETT STILL – Research Aquaculture Permit – studying the effects of subaqueous soil type and oyster growth in Wickford Harbor. Project located in Wickford Harbor, North Kingstown, RI.

2011-04-005 BRETT STILL -- Research Aquaculture Permit – studying the effects of subaqueous soil type and oyster growth in Greenwich Bay. Project located in Greenwich Bay, Warwick, RI.

Brett Still, applicant, was present. Mr. Beutel gave a brief overview of the project to the Council stating that the application was a research application which is normally reviewed administratively but that this application had received a comment letter from the Division of Enforcement with the RIDEM. Mr. Beutel stated that Mr. Still had chosen three different locations per study to determine the types of sediment that are most conducive for oyster growth. Mr. Beutel stated that the information gained from the project will be very valuable to CRMC as the lead aquaculture agency. Mr. Beutel stated that the reason for the comment from RIDEM Enforcement Division was that the Wickford Harbor location is closed seasonally which occurs annually from the Saturday before Memorial Day until the day after Columbus Day as there is a lot of boating activity in this area and RIDEM Enforcement finds that it is very difficult to enforce the closure and have an ongoing project in the area. Mr. Beutel stated that CRMC staff is very supportive of the application because when the oysters are harvested they will be given to the RIDEM to be put on the nearest oyster restoration project. Mr. Beutel stated that the timeframe of the project is Spring of this year to Fall of 2012. Ms. Coit stated that one other concern from RIDEM was to make sure no product from a closed area ever ended up in the market as it would be disastrous for aquaculture and our shellfish industry. Ms. Coit suggested an arrangement between applicant and RIDEM enforcement where RIDEM would receive notice before work will be done on the site. Ms. Coit stated that RIDEM did not have any objections with the conditions that had been agreed upon. Mr. Gomez agreed with the promotion of the project as Rhode Island's aquaculture industry had a good reputation and was growing steadily. Mr. Beutel stated that the research paper would be submitted to CRMC to be placed on file for future use. Dr. Affigne asked the applicant questions regarding the research paper. Mr. Beutel stated that the different kinds of soils in these areas were naturally occurring at the sites which is why he chose each location. Mr. Fugate explained that even though oysters will be growing in closed area, oysters usually deplete within a matter of days thereby alleviating any health issue. Mr. Still was sworn in stating that he is a graduate student at URI in the Natural Resources Sciences Department and that measurements would be taken of oysters in the initial phase and then measured at each subsequent growing season. Mr. Dawson motioned approval of CRMC File 2011-04-004 with stipulations. Motion was seconded by Mr. Gomez. Motion carried on unanimous voice vote. Mr. Dawson motioned to approve CRMC File 2011-04-005 with stipulations. Mr. Lemont seconded the motion. Motion carried on unanimous voice vote. The Council wished Mr. Still success in his endeavor.

2011-01-014 GREGORY MATARONAS & MICHAEL MARCHETTI – Create a 6.0 acre aquaculture farm to grow blue mussels. Located in Rhode Island Sound, Newport, RI.

Greg Mataronas and Mike Marchetti were present. Mr. Beutel gave a brief overview of the application stating that the project had been through a preliminary determination process with no objections on a 10 acre project. Mr. Beutel stated that the applicants decided to apply for permit for only six acres. Mr. Beutel stated that each of the applicants was very experienced in the aquaculture field. Mr. Beutel stated that the location off of Newport was a less busy site with more protection. Mr. Beutel stated that the suspended long line method of aquaculture was a proven method. Mr. Beutel stated that there were some questions of large whale interactions but that ACOE had already issued their permit. Mr. Fugate clarified that ACOE involves all of the Federal regulators in their permitting process and explains the process. Mr. Mataronas and Mr. Marchetti are put under oath. Mr. Gomez questioned applicants on encounters with whale and sea turtles in their previous commercial viability project. Mr. Mataronas stated that they had not encountered any whales, sea turtles, or recreational traffic in the Newport site. Mr. Beutel clarified some of the ACOE stipulations and stated that they will be referenced in the CRMC permit. Mr. Gomez motioned approval of application; seconded by Mr. Hudner. Dr. Affigne asked procedural question regarding staff stipulations. Motion carried on unanimous voice vote.

2011-02-049 MARK GOERNER – Construct and maintain a 4.8 acre aquaculture farm. Located in the West Passage of Narragansett Bay, Jamestown, RI.

Mark Goerner was present. Mr. Beutel gave a brief overview of project stating that the project was to grow oysters in suspended culture in an area on the west side of Conanicut Island. Mr. Beutel stated that Mr. Goerner was very experienced with this technique, which floats on the surface and the oysters are suspended underneath it. Mr. Beutel stated that the Town had no objection to the project nor did the Shellfish Advisory Panel, the Industry Advisory Committee, RI Marine Fisheries Council. Dr. Affigne complimented the applicant on his thorough application. Mr. Dawson motioned, seconded by Mr. Gomez and Mr. Hudner, for the approval of the application. Motion carried on unanimous voice vote.

2008-08-063 DAVID CUTTS, et al – Re-subdivide 7 existing lots into a total of 9 lots. Work involves widening road, road construction, installation of a fire protection cistern, drainage improvements and incidental work. Located at Quaker Hill Farm Road; plat 14, lots 128, 142, 143, 144, 151, 152, 153; Little Compton, RI.

The applicant, David Cutts, was present along with Jeremiah J. Leary, Esq representing Mr. Cutts, William Smith, PE and Chris Mason, wetlands scientist and coastal geologist. Ms. Robin Main, Esq. present representing the objectors and Karen Beck, RLA, with Commonwealth Engineering and Consulting, Inc.

Mr. Reis gave a brief overview of the application to the Council stating that the applicant was requesting to expand a seven lot subdivision to a nine lot subdivision with improvements to an existing road. Mr. Reis stated that the project had been appropriately designed in accordance with the 1993 Stormwater Manual. Mr. Reis stated that the application had received a number of objections; that the application required one variance for work within 50 feet of a coastal wetland for the entrance road; and, that staff had no objection to the variance or the application.

Mr. Leary made opening statement regarding the application informing the Council that the subdivision had received master plan approval from the Little Compton Planning Board. Mr. Leary pointed out that the subdivision was being requested by the land owners so that the ownership of the land can be distributed through the family. Mr. Leary stated that the land will remain at nine lots with no more

attempts at subdividing. Mr. Cutts is sworn in and, through direct examination, explained the history of the ownership of the land and that the land owners were trying to preserve the land without development. Mr. Cutts stated that the family had donated other family owned land to the Sakonnet Conservation Association and that other land in the area was owned by the Nature Conservancy. Mr. Cutts stated that the family agreed to no further subdivision of the land and were willing to agree to stipulation in the assent. Ms. Main cross examined Mr. Cutts. Mr. Cutts through cross examination clarified that there were 13 dwelling on Quaker Hill Farm at present and that with the subdividing of the lots there was a possibility that nine more houses could be built but that he could not enter into an agreement that stipulated only 22 houses in Quaker Hill Farm. Ms. Main asked Mr. Cutts about the road to be maintained and expanded. Mr. Cutts explained that the road would provide a much safer access to the new nine lots and the existing lots.

Mr. Leary called Chris Mason who was sworn in and identified himself as president and principle scientist with Mason & Associates, Inc, an environmental consulting firm. A list of Mr. Mason's credentials was put into the record as Cutts Exhibit 1 (full exhibit) and Mr. Mason was qualified as an expert. Through direct examination Mr. Cutts stated that he had been working on the project for ten years and working with CRMC staff on this project for the past six years. Two maps and typed proposal depicting the proposed Quaker Hill Farms subdivision were marked as Cutts Exhibit 2 (full exhibit). Mr. Mason explained that Figure 2 depicted existing conditions and Figure 3 depicted the proposed project. Mr. Mason explained the portion of the project involving the widening of the existing road stating that there were two wetlands on either side of the road and explained that the widening would allow for the passage of two cars and provide more safety for residents. Mr. Mason explained that the asphalt section of the road would be widened with gravel on either side of the road using a process called Gravelpave. Mr. Mason further explained that the project would not cause any impact to shoreline access, use, water quality, habitat, historical or archaeological resources. Mr. Mason clarified boundary line for Mr. Gomez. Mr. Lemont asked if the widening of the road could have been scaled back a bit. Mr. Mason answered that the Fire Chief would have liked the road to be wider than 20 feet but that was not possible and that in some areas the road is 14 and 16 feet.

Mr. Leary called William Smith, PE who was sworn and identified himself as the President of Civil Engineering Concepts. Mr. Smith's document of qualifications was marked as Cutts' 3 full and Mr. Smith is qualified as an expert witness. Reduced copies of plans prepared by Mr. Smith were distributed to Council and marked at Cutts' 4 full. Mr. Smith confirmed that there would be no increase in stormwater drainage at the site. Mr. Leary went through the road widening proposal with Mr. Smith wherein Mr. Smith explained the Gravelpave geogrid system that will be used to widen the roadway, which areas will be repaved with asphalt and which areas will remain gravel. Mr. Smith explained that the three existing culverts would be replaced in kind. Mr. Leary introduced a letter from the Little Compton Fire Chief Harry Aldridge to the Little Compton Town Council together with a decision of the Fire Safety Code Board and was marked as Cutts' 5 full. Ms. Main cross examined Mr. Smith asking him questions mainly on the widening/maintenance of the roadway. Mr. Smith explained the areas to be widened and materials to be used for the Gravelpave system which will be used from the property entrance passed the pond. Mr. Smith stated that the Gravelpave system was being used to give the ground more stability for larger vehicles such as emergency vehicles. Mr. Leary and Mr. Smith discussed that a requirement of the Fire Department is the installation of a 30,000 gallon cistern (concrete tank) on the site to be located on the southern portion of the site, outside of any wetland areas. Mr. Lemont asked for clarification on the requirements of the Little Compton Fire Department. Mr. Leary referenced the State Fire Code which stated that the road was required to be not less than 20 feet unless the Fire Chief elected to vary that requirement. Dr. Affigne questioned Mr. Smith on the house sizes. Mr. Smith stated that the only site that there was only one site with constraints and that he tried to show on the plans a comparable size home as to what is already in the area and also for estimates on water discharge. Mr. Gomez asked Mr. Smith about the vegetation in the curve of the road and view

obstruction. Mr. Smith stated that he had requested vegetation cutting but was told by CRMC staff that could not be granted. Mr. Reis stated that the narrative in the application indicated that the standard line of site cutting that occurs presently would continue in the developed conditions, and CRMC could say that it was approvable because it's necessary and consistent with existing use. Mr. Dawson asked staff about mitigation of wetland in other area. Mr. Reis stated that because of the difficult in meeting variance criteria required to alter wetlands bordering Type 1 waters, the applicant has worked very hard to not alter the wetland. Mr. Reis explained that the other side of the road was considered freshwater wetlands.

Mr. Leary finished with witnesses and asked for opportunity to make final argument at appropriate time.

Ms. Main stated that she represented abutters and other land owners in the area and that they objected to the application. Ms. Main stated that clarifications needed to be addressed regarding the road width; the Fire Official's letter and the RIDEM Water Quality certificate. Ms. Main stated that she believed a subcommittee process was necessary due to the fact that only a superficial explanation of the application was being presented and objected to the fact that it had not been sent to subcommittee. Ms. Main stated that the area was an intensely developed area for this particular spot in RI that the applicant required many local variances and that Briggs Marsh was noted as a site of particular interest in the Little Compton comprehensive plan. Ms. Beck was sworn in and identified herself as a registered landscape architect and wetland scientist with many years of experience with projects that fall under CRMC jurisdiction and had testified before the Council as an expert witness. Ms. Beck's resume was marked as Objector's 1 full. Ms. Beck stated that she was retained in 2004 by the immediate abutters to review the applications materials submitted to the Town of Little Compton and had made two separate reviews of the project through CRMC submission process and also RIDEM Water Quality Certification program. Ms. Beck stated that she had submitted two sets of comments to CRMC on the project. Mr. Goldman stated that both objections were part of the CRMC administrative record. Ms. Beck used aerial to describe overall development as proposed in the application stating that 21 acres of the 46 are wetland leaving 25 acres of upland. Ms. Beck demonstrated on map where the properties were located and the differences in size of the proposed nine lots, some small and some large. Ms. Beck informed the Council that advanced septic systems were proposed in the project but only for the lots which wouldn't be able to fit a standard septic system. Ms. Beck talked about the treatment of water quality and quantity in regards to the 1993 Stormwater Management Regulations and the gravel to be used in the roadway becoming an impervious surface over time. Ms. Beck stated that even though Applied Biosystems had reported that there were no rare or endangered species on the subject site, the site is in proximity to the Briggs Marsh which is considered to be an SPRW. Ms. Beck explained in detail the objections to the proposed changes for the roadway using plans with cross-section of the roadways located in Council record (larger copies were distributed). Ms. Beck explained that the roadway is the only access for all of the residences, that when two cars try to pass they have to move over onto grassed area and that a portion of the road floods during the winter and spring seasons. Ms. Beck talked about the cons of using Gravelpave in this area stating that it is a minimal method to be used on a long term basis. Ms. Beck stated that the roadway needed a variance and that, in her opinion, variance criteria could not be met; Objectors Exhibit 2 full, enlarged portion of sheet 13 of 16 of plans. Ms. Beck states that construction practices are not detailed in the proposal such as installation of culvert systems, stockpiling of roadway material, dewatering practices, or construction routes. Ms. Beck talked of concerns of the maintenance of Gravelpave roadway in terms of weed growth and snow removal which are not detailed in the proposal. Ms. Main expressed concerns regarding the water quality swale and its function believing that it would not work as it is likely to intercept the groundwater. Ms. Main stated that the applicant did respond to her inquiry stating that the swale would be vegetated with permanent vegetative buffer in accordance with Chapter 4 of the Soil Erosion and Sediment Control Handbook.

Mr. Leary cross examines Ms. Beck. Mr. Leary questioned Ms. Beck regarding her comments to the CRMC and their responses asking if CRMC staff had the opportunity to review all of her concerns as expressed that evening. Ms. Beck stated that they had but that she had elaborated on the concerns to make sure all aspects of the objector's concerns were understood. Mr. Leary asked Ms. Beck about the RIDEM Water Quality concern clarifying for the Council that RIDEM held a Water Quality hearing the previous week and that the CRMC Council could make the receipt of the Water Quality Certification a condition of the permit. Mr. Leary questioned Ms. Beck regarding the objectors concerns over the maintenance of the roadway. Ms. Beck agreed that there was no reason that CRMC could not require a maintenance agreement with the applicant but still objected to using the Gravelpave method. Ms. Leary questioned Ms. Beck on her understanding of safety of the widening of the roadway. Ms. Beck agreed that a wider roadway surface can be a safer roadway surface.

Dr. Affigne asked questions of Ms. Beck regarding her testimony and remarking that it seemed to go beyond the bounds of a wetlands scientist and asked her to address specifically the wetland biology regarding their objections to the roadway construction. Ms. Beck stated that not only did she have a background as a wetland scientist but also as a registered landscape architect and I use them both. Dr. Affigne asked, in her opinion, what the impact would be of this type of construction project on an adjacent wetland. Ms. Beck expresses concern about the use of large construction equipment, stock pile of materials, and use of sedimentation controls.

Mr. Reis clarified staff's position of having the opportunity for staff to address the objections when submitted and also to be addressed by the applicant and that the staff reports reflect that information. Mr. Reis explained that staff did review the variance criteria responses submitted by the applicant and found them to be quite extensive and acceptable. Mr. Reis also explained that the Stormwater rules governing the roadway were from the previous regulations and that the application needed to be reviewed by those regulations due to the application acceptance date. Dr. Affigne asked if staff had had the opportunity to review the Gravelpave system during the application process. Mr. Reis stated that they had not had the benefit of reviewing the system in the manner as presented by that staff had researched it and it has been used in similar circumstances where there has been a high ground water. Mr. Reis explained that the Gravelpave system was being considered as a way of minimizing the generation of runoff because it is more pervious than a paved roadway. Mr. Reis added that the staff had coordinated on the local level and found the solution to be satisfactory to both the Town and the State. Dr. Affigne stated that he would like to see samples of the Gravelpave system. Mr. Lucia confirmed his research of the Gravelpave system. Mr. Gomez asked if staff flagged the wetlands. Mr. Reis answered that the wetlands were flagged by the applicant's consultant and confirmed by CRMC staff. Mr. Reis also explained in regards to the size of the lots that there is no requirement for density. Local Zoning requirements were discussed. Mr. Gomez asked Ms. Beck about the impact of development on the water sources. Ms. Beck stated that in prior summer seasons wells have run dry on certain lots.

Mr. Ron Bogle was sworn in and identified himself as an abutter living at 98 Shore Road, representing family members. Mr. Bogle expressed concerns as it applies to the drinking water quality, water runoff which runs through the parking lot into Briggs Marsh, and topography changes over the years. Mr. Bogle also expressed their concern for the widening of the roadway and the flooding of such in the winter months.

Mr. Jim Crawford was sworn in and identified himself as a resident of Quaker Hill Farm. Mr. Crawford expressed his concern regarding the development and possible increase in the population of the area and its effect on the environment. Mr. Crawford urged the Council to visit the property.

Ms. Susan Hutson was sworn in and identified herself as a resident of 47 Grange Avenue, the entrance to Quaker Hill Farm. Ms. Hutson expressed concerns about the roadway and also the dividing of the land amongst family members which she felt needed to be worked out on the family level.

Mr. William Hutson was sworn in and identified himself as a resident of 47 Grange Avenue also. Mr. Hutson had questions regarding the wellhead protection area and the ability to refill wells. Mr. Hutson stated that in prior years wells had run dry in summer months. Mr. Hutson also expressed concerns regarding the everyday use of the roadway and the effects of cars normal wear and tear on the roadway. Mr. Hutson talked about the ecotone of the area where two different ecology area intersect.

Dr. Affigne brought up for discussion the top of flooding. Mr. Lucia stated that all the houses are outside of the velocity zone as well as the road.

Ms. Main introduced and, through direct examination, authenticated photographs submitted by Mr. Crawford of the flooding and dry out periods in the proposed project area. Mr. Goldman marked the photos as Objectors 4A and B for identification only.

Mr. Leary made closing statement summarizing that the project although a subdivision was only reconfiguring seven lots into nine lots. Mr. Leary stated that the RIDEM was required to hold a water quality hearing only because of the request of the objectors. Mr. Leary stated that the applicant had worked for many years with the Town on the project and the Council staff was recommending that the Council grant the approval. Mr. Leary spoke of the improvements of the road and requested that the Council grant their approval to the project.

Ms. Main made closing statement summarizing that the project was reconfiguring from seven lots to nine lots and that if approved there should be a deed restriction entered into that would run with the properties and be recorded in the land evidence records. Ms. Main reiterated that the roadway portion of the project did not meet programmatic requirements. Ms. Main concluded asking that the Council deny the application.

Chair Livingston thanked everyone for their testimony and stated that with the lateness of the hour, the Council was going to continue the application until the July 26, 2011 meeting where the Council would deliberate and make a decision.

Dr. Affigne asked for additional information and for that information to be available to objectors as well. Dr. Affigne asked to have more information sent on the paving technology and its application. Dr. Affigne asked for more information on the construction plans regarding the kinds of equipment, schedule of work, impact on coastal environment of the possible nine house projects this subdivision would create. Dr. Affigne also talked about the deed restrictions and stipulations in the assent. Mr. Fugate stated that the office does two things; the first is the assent with stipulations that is entered into the land evidence records of the Town and become title record of that property and the CRMC also requires applicants to agree to deed restrictions which are prepared and presented to the Council for their approval at the same meeting the Council is considering the application.

Mr. Goldman instructed the Council regarding their visiting the site and his concerns regarding the ex parte communication issue. Mr. Goldman instructed the Council members that if they go to the site they need to disclose that information at the next meeting and if they take into consideration something from that site visit, they need to disclose that as well on the record. Council for both the applicant and the objectors had no objections to this.

Mr. Goldman talked to the Council members briefly about the issue of ex parte communication and the parameters thereof stating that at the next meeting he will talk extensively with them about this subject. There was also discussion amongst the Council on the parameters to which they needed to follow in making a decision on applications brought before them. Mr. Gomez requested that a copy of the transcript for this meeting be in the agenda package for the July 26th meeting. Ms. Coit asked if staff would speak about the expectation that fields be restored to shrub habitat. Mr. Reis stated he would do that at the July 26th meeting.

6. **CATEGORY “A” LIST**

None were held.

7. **ADJOURN**

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

Respectfully submitted,

Lisa A. Turner
Recording Secretary