

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, July 26, 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
Ray Coia
Tony Affigne
Mike Hudner
Guillaume de Ramel
Janet Coit, RIDEM

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David Reis
Tim Motte
Rich Lucia
Amy Silva
Laura Miguel
Brian Harrington

Brian A. Goldman, Esq.

Members Excused

Dave Abedon

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 the previous meeting. Mr. Coia motioned, seconded by Chair Lemont, for approval of minutes from June 28, 2011 meeting. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were none.

4. **STAFF REPORTS**

Mr. Fugate informed the Council that the Ocean Special Area Management Plan (OSAMP) had been approved as part of the federal plan explaining that now CRMC has Federal Consistency authority in State waters and in Federal waters on a case by case basis which will increase when Geographic location description is acquired as well.

Mr. Fugate informed the Council of a press conference held at the Johnson and Wales University for their Urban Coastal Greenway project.

Mr. Fugate reminded the Council of a scheduled boat trip with Save The Bay on Wednesday, July 27, 2011 at 4:30; stating that the boat trip will include a staff presentation of regulations and issues affecting the urban areas. Mr. Fugate stated that a similar trip will be planned for the south shore of Rhode Island.

Mr. Fugate ended with an announcement of the updated Subcommittee List.

Mr. Goldman informed the Council that the case of Robert Frost vs CRMC received its Superior court decision last Thursday with the court affirming the CRMC decision. Mr. Goldman stated that he will meet with the Judge for precise clarification on court decision.

5. **EDUCATIONAL SERIES** – Jason Grammitt, Esq. of the RI Ethics Commission

Mr. Grammitt, staff attorney and education coordinator with the RI Ethics Commission, made a presentation to the Council regarding the members ethical obligation.

6. Chair Livingston made an opening statement and did a roll call to see if applicants were present.

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

1983-07-057 MARK AND KATHERINE VINCENT – Modification of assent to construct a residential boating facility to replace an existing structure that is not compliant with the authorizing Assent. The proposed facility is to consist of a 4’ wide by 118’ long fixed timber pier that leads to a ramp that leads to a 4’ by 20’ access float which leads to a 150 sf terminal float. Two tie-off piles are proposed 16’ outboard (ie west) of the terminal float. The most seaward element of the dock, the tie-off piles, lie 139 ft seaward of the cited MLW mark and the applicant seeks a variance to RICRMP dock length standard 300.4.E.3.1. Located at plat 69-2, lot 33; 311 Winchester Road, South Kingstown, RI.

GJF discloses that Mark Vincent is a staff member of CRMC.

Mark and Katherine Vincent present for application. Mr. Reis gave brief overview of application to Council stating 89’ length variance. Mr. Reis stated that there were no objection to application and the CRMC staff recommended no objection. There were no questions from the Council. Mr. Coia motioned, seconded by Vice Chair Lemont, for approval of application based on staff recommendation. Motion carried on unanimous voice vote.

2011-03-031 NORTHERN WATERFRONT ASSOCIATES – Construct and maintain an access driveway and bridge for Weyerhouser Equestrian Center; bridge will span a contiguous coastal wetland. Located at plat 22, lot 2; plat 26, lot 10; Terminal Road, Portsmouth, RI.

Mr. Edward T. Lopes, Sr. Vice President of O’Neill Properties Group was present as applicant; as well as Attorney Dennis Esposito, environmental consultant Scott Rabideau, engineer Lynne Small and traffic expert Eric Offenberg.

Mr. Reis gave brief statement regarding application explaining that the applicant is requesting to construct an access driveway and bridge over a coastal wetland which spans a contiguous wetland and stream. Mr. Reis explained that the access-way was to provide passage to the Carnegie Beach Equestrian Center. Mr. Reis stated that the staff recommendation was to defer to the Council.

Mr. Esposito introduced Ms. Sherri Carrera of the RIEDC Office of Regulatory Reform who was present to express RIEDC’s support of the application explaining that the infrastructure improvements and job growth were vital to creating a stable business climate and stronger economy. Mr. Esposito also introduced Mr. Robert Driscoll, (Mr. Fugate disclosed that Mr. Driscoll was a former member of the Coastal Council) Portsmouth Town Administrator, who spoke of the support of the application on behalf of the Town of Portsmouth. Mr. Driscoll stated that the Town was in favor of due to the economic benefit to the Town and the West Side Master Plan. Mr. Driscoll explained that the project would alleviate adding more traffic on the area roads in Portsmouth.

Mr. Esposito made an opening statement explaining the configuration of development and access of roadway stating that there was a need for the access road to connect the two areas of the development and allowing the patrons of the golf course and the residents of Carnegie Abbey Village to have the ability to stay off town roads. Mr. Esposito stated that the Town fire official was in need of redundant access to entire property and at the moment there was only access by Terminal Road. Mr. Esposito explained that the roadway would be 24' in width as is necessary in the Fire Code but that it would not be a town road. Mr. Esposito stated that the roadway would be used by golf carts, residents walking and riding horses; with the use from emergency vehicles as well if necessary.

Mr. Lopes was sworn in and introduced himself as the Sr. Vice President of O'Neill Properties Group which is the parent company of Northern Waterfront Associates. Mr. Lopes gave brief background explanation of the site, the project and his history with both. Mr. Lopes explained that the Carnegie site was formerly the site of industrial factory (Kaiser aluminum plant) which was taken down and the site restored creating housing sites; a golf course and club; and Carnegie Village and Heights which provide taxes to town but takes care of infrastructure with little cost to town. Mr. Lopes stated that their hope is to have 400 acres of linked property once project is completed with very little traffic which would benefit the West Side Master plan on Aquidneck Island. Mr. Lopes stated that the Group had invested over 250 million dollars in the area; that they employ over 200 people; and that although there are very few full time residents, the average stay in the community is 21 days. Mr. Lopes stated that they contribute over 1 million dollars in property taxes to Portsmouth and that the residents are good community partners as they do all their own maintenance, security, snow plowing which does not drain on the Town budget. Mr. Lopes stated that the project had already received Master Plan approval from the Town. Mr. Lopes finished by stating that the connection between the two sites is imperative for the community. Mr. Esposito pointed out to Council members that the CRMC recognizes and encourages the linkage of the two properties which is captured in Aquidneck Island SAMP section 170.1.

Mr. Rabideau was sworn in and the Council accepted his qualifications as expert witness. Mr. Rabideau explained the linked path system using large scale aerial photo. Mr. Rabideau gave brief history of development of project explaining the process of Preliminary Determination and CRMC staff involvement. Mr. Rabideau stated that they bridge would span the narrowest point of wetland which is 20 feet and then another 5 ft over a small riverine system. Mr. Rabideau refers to staff report which speaks of the question of necessity. Mr. Rabideau stated that in a resort-like community the linked parcels are necessary for the community and that site conditions cause a hardship in this instance. Mr. Esposito asked Scott if an entrance from the south was possible without going over wetland. Mr. Rabideau stated that they chose this area due to minimum impact and that the abutments would be out of the wetland. Mr. Rabideau submitted photographs of the area to show that there is existing disturbance in the area; the photos were authenticated and marked as Northern Waterfront 1-5. Mr. Rabideau stated the existing cart path would be the entrance of the accessway. Mr. Rabideau explained his environmental studies of the area stating that there is very little vegetation in that area and that there was an active railway on property. Ms. Coit asked why the Strawberry Lane option was discounted. Mr. Rabideau stated that the Strawberry Lane option was evaluated in terms of project goals and that although access would be fine for vehicular traffic but not for horses, golf carts and pedestrians; this access-way keeps alternate forms of transportation away from roadway and keeps traffic on private roads within the development. Mr. Affigne asked Mr. Rabideau to expand his explanation regarding public necessity as opposed to reasonable convenience. Mr. Rabideau stated that although the project is not a public project the proposed linkage will bring together five pieces of the property to create a self-sufficient community which provides for jobs and presents taxes to the local community which is the project goal. Chair Livingston asked about the material used to create accessway. Mr. Rabideau stated that originally they intended to create the accessway using gravel but through discussions with CRMC staff a decision was made to submit the complete project which changed from a 20' gravel path to a 24' paved pathway.

Mr. Esposito distributed 12 copies of the large aerial photo to the Council which is marked as Northern Waterfront #6 for identification and a RIDOT approval was marked at Northern Waterfront #7.

Mr. Esposito introduces witness Eric Offenber, licensed professional engineer and traffic expert. Mr. Offenber is sworn in and explains the traffic patterns of the surrounding areas and the traffic needs for a resort-like community.

Mr. Affigne asks necessity questions and prior action question of staff. Mr. Reis introduces Amy Silva, CRMC Sr. Environmental Scientist and Rich Lucia, CRMC Principal Civil Engineer. Mr. Reis also explained that the one of the challenges that CRMC staff continues to face is that the piece-meal submittals are part of an overall larger project that is in the process of being submitted to CRMC. Mr. Reis stated that when they received more information regarding the overall larger project there appeared to be other areas of access one of which is Strawberry Lane.

Ms. Silva explained the process by which staff reviewed the determination of necessity explaining that the necessity question was in reference to variance criteria. Ms. Silva explained as staff they could not make the determination of necessity but that staff reports questioned the issue of necessity.

Dr. Affigne asked Mr. Offenber for further explanation of the main accesses to the community and whether access will be expanded in the future. Mr. Offenber stated that there were no future plans of expansion of any other Town roads as the Town would like the surrounding roads preserved. Mr. Offenber clarified that the proposed roadway would be the access road to the Equestrian Center and future developments.

Mr. Lucia stated that the preliminary plan is that there will be work on Strawberry Lane by O'Neill Group for future development. Mr. Lopes explains that the Strawberry Lane is limited for emergency access only.

Ms. Coit asked for clarification of the bigger plan. Mr. Esposito explained that the bigger plan calls for 150 plus high end residential homes and a marina.

Dr. Affigne asked for clarification of the on-going enforcement issue. Mr. Esposito stated that it was an illegally constructed bulkhead by the prior land owner, that a Consent Agreement had been entered into the CRMC and that the demolition of the pier had been completed two week prior to meeting.

Discussion on the project being submitted in phases and the allowance for that by the Aquidneck Island SAMP as long as the full project ideas are disclosed at the first submittal.

Chair Livingston asked why it was necessary for the roadway to be voted on that night. Mr. Lopes stated that due to the change in the economy over the last five years there is a need to generate sales and need to open the project up in order to do that; the possibility of linking the different development areas is a very attractive selling point.

Brief recess.

Chair Livingston opens the floor for comments:

Eugenia Marks, Policy Director of the Audubon Society was sworn in and explained that the Audubon Society opposed the project based on their opinion that it does not meet the standard for necessary development required by the Freshwater Wetlands act with an unnecessary impact to the freshwater wetlands.

Claudette Weisner was sworn in and stated objections to roadway development out of concern for preservation of the natural habitat.

Mr. Charles Beckers was sworn in. Mr. Becker was representing two organizations that have interest in the Newport secondary rail line. Mr. Beckers stated concern for the encroachment of the railway. Mr. Fugate stated that the railroad issue remained in DOT purview.

Mr. Esposito made a closing statement saying that the applicant was willing to revert back to the original project with the smaller gravel roadway but that the important aspect of the project was to have the linkage between the sites.

Mr. Fugate stated that staff was understand full scope of entire project. Mr. Lucia stated that the reason staff wanted to see the bigger picture is because when a paved roadway project is submitted, there are stormwater requirements with the necessity of basins and the possibility of buffer zones. Mr. Fugate stated that understanding the entire project helps staff to be able to review with the appropriate regulations and not be bound to any previous decisions.

Mr. Gomez states that he is cautious about the project but does certain aspects of it and recognizes that the town approved the project as did other local, state and federal agencies. Mr. Gomez stated that a pervious surface may be better.

Ms. Coit asked for clarification on the gravel road to make sure that linkage would still be possible and if they would be willing to agree to gravel at the time knowing that they may not receive approval for a paved wider road in the future. Mr. Esposito agreed stating that the linkage between the sites was very important.

Mr. Affigne stated his concerns of the pave roadway project citing insufficient water treatment proposal and undue hardship for developers to route traffic along Terminal Road and Willow Road for primary access to site while keeping smaller gravel road for low intensity roadway to connect the two ends of the development to the Equestrian Center.

Mr. Hudner asked if a stipulation could be put in the Assent to tie into DOT requirements on railroad track crossing. Mr. Fugate stated that applicants are required to show all other required approvals necessary for the project, but staff can stipulate in that regard. Mr. Fugate stated that staff would like to see stipulation that states that approval of project as originally submitted does not guarantee that it would lead to a full road approval as well as stipulating the justification that the road is for emergency vehicle access. Mr. Reis stated that staff had spoken with the Town Fire Department and that they indicated that there would be multiple access point for fire fighting purposes and it did not necessarily need to be this access road.

Vice Chair Lemont talked about wanting to make sure that the project did not have an adverse effect on the environment and motioned for approval with staff stipulations of the project as originally submitted with the gravel roadway. Mr. Dawson seconded the motion. Mr. Goldman clarified that the approval would not be a judgment on any subsequent litigation. Motion approved on voice vote with Mr. Affigne abstaining.

8. ENFORCEMENT ACTION FOR REMOVAL OF UNPERMITTED DOCKS:

11-0056 VALARIE KOOLEN – Located at plat 13C, lot 156; 1 Libby Lane, Warren, RI

Ms. Miguel and Mr. Harrington, CRMC Enforcement staff, was sworn in. Ms. Miguel explained that staff had been in contact with Mr. Koolen, and that he was aware of the meeting. Mr. Fugate stated that Mr. Koolen had requested a continuance but that he was informed by office staff that the continuance was not granted due to the magnitude of the violation which had gone beyond the scale of a minor infraction. Mr. Fugate explained that a storm surge could potentially cause damage to public property and could become a safety hazard. Mr. Fugate informed the Council that the floats were placed in the water haphazardly without an engineering plan. Mr. Harrington stated that he had taken the photos that were part of the package and that they were fair and accurate representation of the site. Ms. Miguel and Mr. Harrington stated that they

were asking council to issue a removal order for floats. Anne Morrill of the Kickemuit River Council was sworn in and explained that they objected to the situation as the docks were interfering with the use of the river. Ms. Miguel stated that Mr. Koolen had been given an extension for the removal of the structures and was supposed to have floats out by June 24th and in light of that asked that the Order to Remove go into effect right away. Mr. Gomez asked if it was within CRMC power to have the floats removed. Mr. Goldman explained the procedure to the Council stating that first an order of removal would be issued and then if the floats are not removed, CRMC will go to Superior Court for an enforcement order; if the owner does not comply with the Superior court order, CRMC can ask the Court to let us remove the floats and then Clean the Bay can be called to remove them. Mr. Gomez asked if the administrative fine incorporated the entire violation or could the Council look at the violation in terms of multiple infractions. Mr. Goldman stated that the Administrative Fine procedure goes along a separate route with hearing officer. Ms. Miguel stated that the Notice of Administrative Fine and a Lien on the property had been sent to Mr. Koolen. Mr. Affigne motioned to order removal of the floats until such time as he receives permit to have floats. Vice Chair Lemont seconded the motion and asked about the time frame for removal. Mr. Goldman stated that the Decision would be mailed the next day giving him 30 days to appeal with Superior Court. Motion carried on unanimous voice vote.

7. Continued

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

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.

Chair Livingston explained that this was a continuation of the hearing held on June 14, 2011. Attorney Jerry Leary explained that he had additional materials which were not revisions, but clarifications for the Council and asked that it be made part of the record. Mr. Leary asked William Smith, PE to explain his supplemental drawing. Mr. Goldman marked drawing at Cutts #6 Full. Mr. Smith was sworn in and identified himself for the record. Mr. Smith explained that the plan depicted the proposed roadway and shows more clearly where the GravelPave widening system would be. Mr. Smith explained that culverts were added to the plan as well as dewatering areas, soil stockpiles areas and construction staging areas. Mr. Smith stated that they expanded notes on the second sheet of plans to include a stormwater maintenance plan, erosion and sedimentation control plan, and dewatering plan. Mr. Smith stated that he contacted the GravelPave manufacturer and provided the additional detail received from them clarifying that the proposed project would be an appropriate application of the product. Mr. Leary explained that language for a Homeowner's Association was submitted which would enable maintenance work to be done according to a budget. Mr. Goldman stated that once a decision was made, if the Council chose to approve the application, he would work with Mr. Leary to fine tune the language. Mr. Leary stated that they owner would agree to a stipulation that there would never be more than nine building lots on this subdivision. Dr. Cutts was sworn in and explains the ownership of the surrounding area land. Mr. Cutts explained that his intention with subdividing the land is to be able to divide the property amongst family members. Ms. Coit suggested a clarification of what Council would be considering. Chair Livingston stated that the Council was considering the widening of the road, changing the bend in the road and the creation of the lots. Mr. Affigne stated that he had visited the site and asked how the road will be constructed to a 16 or 20 foot roadway in area that looks to be no more than 13-14 feet with a drop on either side of the road. Mr. Smith stated that they would try to widen the road to the extent that they were able to using the 18" shoulder. Chris Mason was sworn in. Mr. Mason explained that the placement of the pond on the plans was from the time the photogrammetric plans were made from aerial photos. Mr. Mason stated that they realize the pond level goes up and down and that the pond elevation was factored into the calculations for flooding and culvert size. Mr. Mason stated that much of the work on the narrowest part of the roadway would be done by hand

but reiterated that there would be no widening in the wetland areas. Mr. Gomez stated his concerns on the safety of the road regarding sight distances. Mr. Gomez asked about local approval. Mr. Leary stated that they had Master plan approval from the town of Little Compton Planning Commission. Mr. Leary stated that the road would benefit all property owners in area. Mr. Affigne expressed his concerns regarding construction vehicles using the new road and whether it would be sufficient enough to withstand that form of use. Mr. Smith stated that there would be provisions made by the Homeowners association for the maintenance of the road and that it will be a better situation after the project is completed and he felt it could withstand the tonnage of construction vehicles. Mr. Gomez asked if there were other ways of entrance into subdivision. Mr. Leary stated that the roadway was the only way into the subdivision. Mr. Leary stated that they considered putting in a new road in a different location but that due to environmental constraints there was no place to put the new road. Ms. Main cross examined Mr. Smith asking about his experience using gravelpave to in this scenario. Mr. Smith stated that he had never used gravelpave in this scenario before. Mr. Smith stated that he was unaware of any projects such as this in the New England area using gravelpave but that he had contact the manufacturer and they gave them two examples of gravelpave use in the area. Ms. Main questions Mr. Smith on the manufacturer's use of gravelpave. Mr. Leary questions Nicole Hayes. Ms. Hayes is sworn in and identifies herself as an environmental scientist testifying as a lay witness. Ms. Hayes testified that she had taken pictures of the boat ramp at Long Lake in Littleton Massachusetts on July 21, 2011. The photographs are marked for identification as Cutts Exhibit 7. Ms. Main objects to photos. Ms. Hayes answers questions regarding the photos she took which depicted the use of Gravelpave material in parking area. Ms. Main questioned Mrs. Hayes regarding her knowledge of Gravelpave. Mrs. Hayes stated that she went to the Massachusetts site and took pictures with no intent on putting information on installation. Mr. Leary questions Mr. Smith regarding the effect of the proposal on rare species and critical habitats. Mr. Smith stated that the site is well away from Briggs Marsh area and that botanical and wildlife surveys have been done on the site and have not found any species listed that are considered rare. Mr. Smith expanded on the wildlife saying that endangered species were identified closer to the barrier beach and on the north side of the Briggs Marsh.

Ms. Main called witness Thomas Cunningham, PE from Commonwealth Engineers. Mr. Cunningham was sworn in and was qualified with his resume being submitted as Objector's 5 for identification. Mr. Cunningham stated that he did not feel that the gravelpave material was appropriate for use on a shoulder or sloped area based on his research of the product. Mr. Leary questioned Mr. Cunningham regarding his concerns. Mr. Cunningham stated that his concerns were about maintenance, durability and longevity of the material. Mr. Affigne questioned Mr. Cunningham regarding vehicular speed on the gravelpave product. Mr. Cunningham stated that his research showed that the gravelpave product was intended for parking overflow. Ms. Main called Karen Beck for questioning. Ms. Beck is sworn in. Ms. Beck comments on the additional information received for the proposed project stating that she finds the plans lacking in detail. Ms. Beck states concerns for the water table in the wetland area. Ms. Beck states concerns for the construction of only one dewatering basin. Mr. Leary cross-examined Ms. Main regarding the RIDEM water quality certification which is issued should take care of the questions regarding pollutant loading into the wetland. Mr. Leary recalled Mr. Smith to testify regarding the water table testing. Mr. Smith stated that he was satisfied that the watertable was low enough to put subbase for construction. Ms. Main cross examines Mr. Smith regarding the manufacturers stated separation for the material in the groundwater table for the Gravelpave. Mr. Smith stated that he was unaware of any separation. Ms. Main expresses concerns regarding the depuration and restriction stating that both documents are deficient. Ms. Main stated that there should be a restriction against an additional subdivision and a prohibition of having no more than one unit on each lot. Ms. Main also stated that area residents should not be made to be part of a Homeowner's Association. Ms. Main stated that her client should not have to bear the additional expense and maintenance of this road which they highly object to. Mr. Leary answered Ms. Mains concerns by stating that the Homeowners Association document was a draft and that other language could be inserted and it was not suggested that neighbor would be compelled to be members. Mr. Leary respectfully requested that the Council approve the project. Mr. Gomez motioned, seconded by Mr. Affigne and Mr. deRamel, for denial of the project. Mr. Goldman did a roll call vote stating that a yes vote is for a denial.

Mr. Hudner:	No	Mr. de Ramel:	Yes
Mr. Affigne:	Yes	Dir. Coit:	No
Mr. Dawson:	Yes	Mr. Gomez	Yes
Mr. Coia:	No	VC Lemont:	No
Chair Livingston:	No		

Mr. Goldman stated that the motion to deny failed with a vote of 5 to 4.

Mr. Coia motioned, seconded by Vice Chair Lemont, to approve project. Mr. Goldman stated that a yes vote is to approve application.

Mr. Hudner:	Yes	Mr. de Ramel:	No
Mr. Affigne:	No	Dir Coit:	Yes
Mr. Dawson	No	Mr. Gomez	No
Mr. Coia	Yes	VC Lemont	Yes
Chair Livingston	Yes		

Mr. Goldman stated that the motion to approve carried with a vote of 5 to 4. Application is approved.

9. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM:

RICRMP Section 300.4

Recreational Boating Facilities; C.2 Residential Boating Prerequisites

Ocean Special Area Management Plan

Section 800 - Renewable Energy and Other Offshore Development

860.2.5 Application Requirements

Section 1100 - The Policies of the Ocean SAMP

1160.5 Application Requirements

Chair Livingston opened the public hearing on all program changes. Mr. Fugate gave brief description of proposed changes. Vice Chair Lemont motioned, seconded by Mr. Hudner, to close the public hearing. Vice Chair Lemont motioned, seconded by Mr. Coia, to approve change. Motion carried on unanimous voice vote.

7. CATEGORY "A" LIST

None were held.

8. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 10:40 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary