

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, January 10, 2012 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
Dave Abedon
Donald Gomez
Bruce Dawson
Ronald Gagnon, RIDEM
Tony Affigne
Guillaume de Ramel
Raymond Coia

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
Kenneth Anderson, Spv Engineer
Sean Feeley, Environmental Scientist

Brian A. Goldman, Esq.

Members Excused

Michael Hudner

1. **CALL TO ORDER**

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

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

Chair Livingston called for approval of the minutes from the previous meeting. Vice Chair Lemont motioned, seconded by Mr. Coia, for approval of minutes from December 13, 2012 meeting. Vice Chair Lemont motioned for approval of minutes; seconded by Mr. Coia. Motion carried on unanimous voice vote.

3. **STAFF REPORTS**

Mr. Goldman informed Council that he had been in court that day on the Koolen enforcement matter. Mr. Goldman explained that Mr. Koolen had been in contempt of a Court order to remove all the docks and floats. Mr. Goldman stated that subsequent to the contempt order, Mr. Koolen had filed for bankruptcy. Mr. Goldman stated that he had filed a memorandum regarding whether or not the automatic stay provisions of the Bankruptcy Code could apply to an ongoing enforcement matter. Mr. Goldman stated that he had worked in conjunction with the Attorney General's office on this matter. Mr. Goldman stated the court ruled that the Bankruptcy Code did not give Mr. Koolen protection from the Superior Court and continued to enforce its judgment but also that CRMC should file a similar motion with the Bankruptcy Court to get a ruling that environmental enforcement actions are not subject to the automatic stay provisions of the Bankruptcy Code. Mr. Goldman stated that the Town of Warren was also in court asking to intervene due to action taken by them for clean up after the storm.

Mr. Fugate updated the Council on the Habitat Advisory Board and the Fisherman's Advisory Board and the status of their pre-application review procedures with the impending application of Deepwater wind's turbine project off Block Island.

Mr. Fugate stated that the segment of "This Old House" which involves CRMC permitting process will air on February 2, 2012 and that another taping session by a nationally syndicated radio show that's associated with home improvements called "The Money Pit" will be on Thursday, January 12, 2012.

Mr. Fugate also stated that CRMC submitted program changes to NOAA regarding the Metro Bay SAMP and the Freshwater Wetland Program and that they were approved, advertised and will become binding under the Federal program.

Mr. Fugate stated that the budget had been submitted to the Governor's office and put forward as part of the package that the Governor should be bringing forward to the General Assembly.

4. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont reported out that at the Policy and Planning meeting on December 20, 2011 changes to the RICRMC Management Procedures Section 4.3.1 and to the RICRMP Section 100, Table 1 were discussed and agreed to report out to the Council for concurrence and public notification. Vice Chair Lemont also informed the Council of a petition for regulation change received from the Town of South Kingstown to reclassify a portion of the Matunuck shoreline to "manmade shoreline." Vice Chair Lemont specified that the Town of South Kingstown requested a "reclassification of shoreline" not a "water type reclassification" as the press had been reporting. All three changes will go out to Public Notice for comment and public hearing scheduling.

Chair Livingston confirmed applicant attendance and Mr. Fugate made an opening statement.

Chair Livingston announced that the next CRMC Semimonthly Meeting would be in Jamestown.

5. **Applications Which Have Been Out-to-Notice for 30 days and are Before the Full Council for Decision:**

2011-10-102 RHODE ISLAND FAST FERRY, INC. -- Remove the existing barge facility which consists of two barges and a short gangway which provides access from shore to the barges and the existing "Millennium Ferry". In place, RI Fast Ferry will build a 12' x 132' approach pier to an 18' x 20' landing pier. An 8' x 50' aluminum gangway will extend from the approach pier to a 20' x 104' barge with mooring piles. The Millennium Ferry and a new fast ferry will berth at the barge. Seven timber 3-pile dolphins will also be placed within the vicinity of the breakwall to provide protection to the vessels while docking during high wind conditions. Located at plat 186, lot 12; 1347 Roger Williams Way, North Kingstown, RI.

Mr. Anderson gave the Council a brief overview of the application stating that the applicant wished to replace the approved temporary facility with a permanent facility for their terminal operation. Mr. Anderson stated that there were no staff objections to the application but there are recommended conditions for the Assent. Mr. Anderson explained that the recommended conditions would require a resubmittal of the plan with the structural perimeter limit revised and also CRMC staff biologist recommended that the operation enter into a pumpout contract for one of the vessels that is to operate in the bay and not outside state waters. Mr. Anderson also explained that the remnant pier that exists at the site be removed in its entirety which is part of the prior assent which was assented in 2004 and would be superseded with the revised updated facility.

Vice Chair Lemont expressed his disapproval of dumping of sewage beyond the three-mile limit and asked if the applicant intended on pursuing a permanent alternative to ocean dumping. Mr. Anderson stated that the applicant noted that they were pursuing a long-term solution involving a landside pump-out.

Charles DoNadio, President and CEO of RI Fast Ferry; Ted Spinard, Director of Development Service for the QDC, and Russell Timless from Vaughan Consulting & Engineering were sworn in.

Chair Livingston asked Mr. DoNadio if he was willing to have the staff stipulations attached to his assent. Mr. DoNadio stated that he agreed but asked to clarify points in the staff biologist report. One point Mr. DoNadio wanted to make was that the Millennium would still be running to the Vineyard during busier times thereby leaving the bay and going out of the three mile limit. Mr. DoNadio stated that he agreed to enter into a contract with a sewage company and that they are pursuing a permanent solution with EDC to have an on-land system to pump out the vessels. Mr. DoNadio also clarified at the request of Vice Chair Lemont that the vessels that run to the Vineyard, offshore three miles, will dump outside the three-mile limit but that they are moving towards the building of a permanent solution to pump out the boats and hope that they will have something in place before the season starts. Mr. DoNadio and Mr. Spinard explained that they have to tie into the sewer system and that the sewer system needed to be upgraded prior to being able to be tied into and that was costly. Mr. DoNadio agreed that if the Millennium was staying within Narragansett Bay it would not leave the bay specifically to dump but would use the pump out company. Mr. DoNadio stated that with the boat that goes back and forth to Martha's Vineyard, it would disrupt the schedule of the boat if they had to use a land pump out so they would continue its current practices until a more permanent pump out situation was available to them. Mr. Dawson asked Mr. Spinard to clarify QDC's position regarding a permanent pump-out solution for RI Fast Ferry. Mr. Spinard stated that there is not a disagreement on building it but that the discussions have been on the best way for both to get the project done. There was discussion on timeframe of sewer tie in project. There was discussion between the Council and the applicant regarding the size of both of the vessels' tanks. Mr. Affigne asked for clarification on Mr. DoNadio's position on minimization of ocean dumping. Mr. DoNadio stated that he would contract with a company for the Millennium when it's in the bay and that they are working on eliminating dumping all together in the future. Mr. DoNadio stated that they have a 25-year lease in Quonset and long term investing goals which include eliminating off-shore dumping. Mr. Dawson motioned approval of the application, seconded by Mr. Coia. Vice Chair Lemont asked to add a condition to the assent by way of stipulating that the matter be remanded back to the Council by September 30, 2012 so the Council can review what has been accomplished with regard to pumpout; an approval with a status report on the pumpout. Mr. Goldman stated that if the Council was not satisfied with the progress of the pumpout improvement plan, there would be the possibility of effecting any future applications. Mr. DoNadio stated that they had federal funds for the improvement of the facility; and they are trying to look at the best possible solution for both QDC and the Ferry business. Chair Livingston stated that they would make the timeframe October 30, 2012. The Council also requested that a report of location and frequency of dumping be part of the status report in October. Chair Livingston called for a vote on the motion with eight stipulations. Motion carried on a unanimous voice vote.

6. Applications requiring a Public Hearing on Special Exception and are Before the Full Council for determination:

2008-11-013 SCOTT HALLBERG and ROBERT CORSINI -- Construct a two bedroom single family dwelling, served by municipal sewer and water, pervious driveway, site grading, stormwater management (drywell), and landscaping. The proposal includes two "Mitigation" areas of wetland to compensate for altered/filled wetlands. The proposed project requires a Special Exception pursuant to RICRMP Narrow River Special Area Management Plan, Section 940.C.1. This project is located at Black Alder Trail, Narragansett, RI; plat N-F, lots 261 & 280.

Mr. Goldman explained to the Council that the item before them was a recommendation based on the consensus of the staff that the project requires a special exception. Mr. Goldman clarified that the applicant did not apply for a special exception and believes that they do not meet the special exception requirement. Mr. Goldman stated that if the Council determined that a special exception was not necessary, then the application could be reviewed on its merits; however, if the application did require a special exception, then the applicant would decide if they want to apply for the special exception or seek some other review. Mr. Goldman stated that he spoke with Mr. Anderson who had consulted with CRMC policy staff, Mr. Fugate, Mr. Feeley and Mr. Willis, and they all agree that their recommendation is that a special exception is required.

Mr. Anderson explained to the Council that the applicant requested to build a single-family dwelling serviced by Town sewers and water and in the Town of Narragansett, the property is located in the watershed of the Narrow River making it under the jurisdiction of the RICRMP and the Narrow River SAMP (NRSAMP) as well as the CRMC's Freshwater Wetlands in the Vicinity of the Coast rules and regulations. Mr. Anderson went on to explain that the NRSAMP prohibited filling of any wetlands in the watershed with the exception of allowing fill, if it meets the criteria, to access buildable portions of the lot. Mr. Anderson further explained that one of the criteria for a buildable lot was that it requires the site support a DEM OWTS. Mr. Anderson stated that the lot was not buildable as it could not support a DEM OWTS; explaining that they do not need one because they will be tied into the sewer system. Mr. Anderson stated that the interpretation of the regulations requires it support and OWTS in order to remove the prohibition of filling wetlands to access the lot. Mr. Anderson stated that staff concluded that the lot is not buildable, therefore the filling of the wetland to access the lot is prohibited and that they do not meet the special exception, and, therefore, Staff recommends denial of the application. Mr. Anderson stated that there were other requirements in the FWW rules and regulations dealing with the mitigations of impacts to the freshwater wetlands and have concluded that several of those are not met as well. Mr. Anderson stated that the application revised the plans in order to alleviate some of staff concerns but that staff recommendations have not changed. Mr. Dawson asked about sewer tie in on the Narrow River and Mr. Anderson stated that he did not know if it was 100% but that there was a massive expansion of the sewer system to go into many unsewered portions of the watershed. Mr. Anderson explained that in order to demonstrate that a lot is buildable the applicant would have to secure a DEM certification that the lot could support a septic system but then the lot could be tied into the sewer system. Mr. Anderson demonstrated on the plans where the wetlands were on the lot. Vice Chair Lemont asked if the matter could be brought back before the Policy and Planning Subcommittee to straighten out the ambiguity of the regulations. Mr. Willis agreed that it would be good for the P & P Subcommittee to look at the regulation and would schedule for February. Mr. Affigne asked for timeframe of the Subcommittee review and hearing process. Mr. Don Packer, applicant's attorney stated that they did not object to sending the question to P & P. Vice Chair Lemont motioned, seconded by Mr. Coia, to defer the application situation to P & P. Mr. Goldman clarified that there are other aspects of the application other than the special exception that needed

to be reviewed as to whether or not it complies. Motion to defer to P & P Subcommittee carried on a unanimous voice vote.

Brief pause

7. **Public Hearing on Program Changes to the RI CRMC Ocean SAMP:**

Ocean SAMP

Revise Section 860.2.5.3.i as follows:

q. The Executive Director on behalf of the Council will be responsible for reviewing and approving the SAP, and may seek the advice of the FAB and HAB in setting out the studies to be completed for the SAP. Once approved the Executive Director will report to the Council at the first available meeting the studies to be conducted and the approximate schedule of the studies and to what degree these have been coordinated with other agencies.

The purpose of this proposed change is to allow for site assessment plans to be vetted and decided upon at the administrative level.

Revise Section 1160.5.3.i.i. as follows:

xvii. The Executive Director on behalf of the Council will be responsible for reviewing and approving the SAP, and may seek the advice of the FAB and HAB in setting out the studies to be completed for the SAP. Once approved the Executive Director will report to the Council at the first available meeting the studies to be conducted and the approximate schedule of the studies and to what degree these have been coordinated with other agencies.

The purpose of this proposed change is to allow for site assessment plans to be vetted and decided upon at the administrative level.

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Mr. Fugate gave a brief explanation to the Council stating the proposed changes will help to manage and clarify the process for setting out the studies for the Ocean SAMP and rather than using an inner-agency meeting, allowing the Executive Director to determine during these processes. Mr. Fugate stated that it was suggested a briefing process to the OSAMP Subcommittee and that was added to the regulations as well as a few changes based on comments received from both Save the Bay and CLF. Chair Livingston opened the public hearing. Tricia Jedele of Conservation Law Foundation gave comment regarding the process for review of site assessment activities through the SAMP and CLF’s concerns of having the Executive Director review and approve the site assessment plan (SAP) without input from the HAB, FAB, Council, Stakeholders or the opportunity for public comment. Eugenia Marks of Audubon Society gave comment that the Audubon Society would like the Executive Director to work with the HAB and FAB on the SAP. Jane Austin of Save the Bay gave comment asking for more public input and continued input from the HAB and FAB. Ms. Austin asked that future SAP’s be given an opportunity for public comment. Mr. Fugate agreed to work with CLF, Save the Bay and Audubon Society in developing language to satisfy their concerns but asked that the regulation be passed to address any forthcoming applications. Mr. Coia motioned, seconded by Mr. Dawson, to close the public

hearing. Motion carried on unanimous voice vote. Mr. Coia motioned to approve the OSAMP changes with recommended alterations. Mr. Dawson seconded the motion. Motion carried on unanimous voice vote.

8. **ENFORCEMENT REPORT** – December 2011

None were held.

9. **CATEGORY “A” LIST**

None were held.

10. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. deRamel, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 8:10 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary