

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 24, 2012 at 6:00 p.m. in South Kingstown High School Auditorium, 215 Columbia Street, South Kingstown, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Raymond Coia
Donald Gomez
Ronald Gagnon, RIDEM
Mike Hudner
Tony Affigne
David Abedon
Bruce Dawson

Staff Present

Grover J. Fugate, Executive Director
Jeffrey M. Willis, Deputy Director
David Reis, Spv Env Sci
Danni Goulet, Marine Infrastructure Coordinator
Tracy Silvia, Environmental Sci
Jim Boyd, Coastal Policy Analyst
Janet Freedman, Coastal Geologist
Laura Dwyer, Information Coordinator

Brian Goldman, Esq.

Members Excused

Raymond Coia
Guillaume deRamel

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. Goldman asked that a correction to the minutes be made to reflect that Council member Ray Coia reported out the Subcommittee Recommendation to the Full Council for Downing Corporation and copies will be supplied to the members. Vice Chair Lemont motioned, seconded by Mr. Abeond, for approval of minutes from April 10, 2012 meeting with the corrections requested. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

There were none.

4. **STAFF REPORTS**

Mr. Goldman updated the Council on the Koolen Enforcement matter stating that Mr. Koolen has been incarcerated again and was released with strict orders of the court to removal all the floats in the Kickemuit which he has done and that they were down to 19 floats from 120 floats. Mr. Goldman stated that the judge continued the matter until Friday, April 27th where she expected all the floats would be removed.

Mr. Fugate informed the Council of the following:

- A national webinar that was held on April 16th on marine spatial planning for wind energy and that the Council had made a presentation on the Ocean SAMP and its impacts on wind energy planning in the Rhode Island area.

- A panel that CRMC was on for the Premiere Ocean Frontiers that was held down at URI on the Ocean SAMP relating to marine spatial planning.
- An international program that's being presented May 13th – 16th where participants from all over the world are coming to Rhode Island to discuss marine spatial planning with CRMC being a co-sponsor of that program along with URI, BOEM and NOAA.
- An Environmental Leader's Day on May 1st that Senator Whitehouse is sponsoring featuring the segment on wind energy that the Council has been invited to participate on the panel.

5. PETITION FOR MOTION TO RECONSIDER:

2011-09-005 TOWN OF SOUTH KINGSTOWN – Construct and maintain a sheet pile wall within the Town's Right-of-Way to protect the road against future undermining of Matunuck Beach Road. The proposal includes a sidewalk over the top of the wall for public access. The wall will be constructed in phases as needed. Located on Matunuck Beach Road, South Kingstown, RI.

Mr. Fugate gave a brief overview of the request to the Council stating that a petition was received from the Town of South Kingstown for a reconsideration of the Council's previous vote on the sheet pile wall. Mr. Fugate stated that the Town had made the request with an offer to look at a return on the western end of the seawall to deflect some of the wave forces. Mr. Fugate spoke in favor of the petition to reconsider as he explained that Matunuck Beach Road provided the sole access for 250 homes and the waterline for 1600 homes along the fire suppression system. Mr. Fugate stated that with the road within feet of being compromised, he would be in the position where he would have to issue an imminent peril assent. Mr. Fugate urged the Council to look at the issue once again as the Town and local residents are willing to look at long term alternatives but the road needs stabilization now. Vice Chair Lemont expressed that he and many of the other Council members as well had thought that the two South Kingstown items were tied up together and that one would work if the other did not. Vice Chair Lemont stated that based on what he thought was a misunderstanding, he motioned for reconsideration of the matter to the next available meeting. Vice Chair Lemont's motion was seconded by Mr. Dawson who stated that while he was not fully behind what was proposed at the previous meeting, he was willing to listen to additional testimony and perhaps new ideas. Mr. Gomez agreed with Vice Chair Lemont's thoughts and was concerned that the solution was being done in a piecemeal manner but wanted to listen to the second part of the solution before he made his ultimate decision. Mr. Affigne explained his reasoning for voting against the Sheet pile wall proposal expressing his frustration at the 11th hour situation and stated that he had visited the area before the meeting and was concerned that the road is very close to a compromising situation and would be interested in hearing new testimony and comments from abutters' attorneys. Motion carried with one abstention from Mr. Affigne. Chair Livingston stated that the reconsideration would be at the May 8th meeting.

7. PETITION FOR REGULATORY INTERPRETATION BEFORE THE FULL COUNCIL:

2011-12-017 TOWN OF SOUTH KINGSTOWN – Regulatory interpretation to characterize the coastal feature between and inclusive of parcels 92-2:46 through 92-3:99 located in the Town of South Kingstown.

Mr. Fugate gave brief overview to the Council on the policy consideration explaining that a revetment requires a special exception according to the RICRMP section on barrier beaches and according to the Type 1 water matrix. Mr. Fugate also explained the physiographic features of the surrounding beach area and regulations that pertain to it, such as man-made shoreline which allows for a Category B review and removes the requirement for a special exception. Mr. Fugate stated that they are not looking for a regulatory change but an interpretation of the regulations by the council. Mr. Boyd, CRMC Coastal Policy Analyst, gave a brief overview as one of the authors of the staff report, stating that the when staff looked at the characteristics of the shoreline and the factors involved and stated that in their view the petitioned segment only could be characterized as a manmade shoreline. Mr. Boyd stated that a series of conditions had been laid out by staff that they felt were imperative for the Council to adopt in the event the Council decided to determine the characterization as a manmade shoreline.

Andrew Teitz, Esq., representing the Town of South Kingstown, introduces a Map as an exhibit for demonstrative purposes explaining that the map was a compilation items previously discussed. Mr. Goldman marked the exhibit as Town Exhibit 1 in full. Mr. Teitz stated that several staff members from the Town were available to address any questions of the Council. Mr. Teitz stated that the request for reclassification was the result of a collaborative process between CRMC and the Town. Mr. Teitz reminded the Council that 70% of the shoreline in this area is armored and has been for over 50 years. Mr. Stephen Alfred, South Kingstown Town Manager, was called as witness, was sworn in and identified himself for the record giving a brief history of his 35-year career as the Town Manager and Public Safety Director. Mr. Alfred stated that the Town was requesting to recognize and define the shoreline segments as manmade, which is consistent with its long-term and current characteristics as characterized in Section 210.6 as concentrations of shoreline protection structures and other alterations to the extent that natural shoreline features are no longer dominant and quoted from the CRMC staff report which talked about the armoring of the different lots in the area. Mr. Alfred stated that because many of the structures preceded CRMC existence, CRMC has issued maintenance permits to maintain the structures which seemed to be in the area of 65 assent issued since 1987. Mr. Alfred stated that the regulatory interpretation of this area as being a manmade shoreline would enable the Town and private residents of the area the administrative vehicle to potentially allow greater flexibility in the design of protective measures in response to the recently accelerated coastal erosion. Mr. Alfred stated that a possible collaboration on design and construction could be integrated into the existing structures on the end points and shoreline segments hopefully helping the erosion situation for the seven lots between the four lots that have armoring. Mr. Alfred stated that Town does not object to and is willing work cooperatively with CRMC staff on the creation of the Matunuck headland coastal natural area as suggested in the CRMC staff interoffice memo of April 20th, 2011. Mr. Alfred stated that the area to the east would be the natural resource area as recommended in the staff report as the shoreline contains cobble in the water acting as a way of reducing some of the wave energy in this area. Short discussion on future responsibility for shoreline protection along RI's coast through comprehensive study. Mr. Alfred talked about the studies and research done over the years to look for solutions that would benefit everyone and the CRMC approval of the manmade shoreline classification would enable the property owners to pursue engineering proposals and design they were unable to look at in the past. Mr. Affigne expressed concern that the solutions for protection of the seven parcels could possibly put the property to the east in further erosional jeopardy. Mr. Alfred asked for help from Council and staff to give guidance to the Town and the property owners to know what avenues are acceptable to pursue to save the shoreline without permanent ramifications. Mr. Affigne pointed out that some of the hardened solutions that were not permitted may be being used as justification to allow for further armoring. Mr. Affigne suggested that some

solutions might call for replenishment, retreat or in extreme cases abandonment of properties so save the area. Mr. Alfred made it clear that the town did not support any effort on the part of property owners who built reinforcement structure without the Council's approval. Mr. Alfred stated that no applications were sought for the 18 month duration as they were not seen as viable solutions because they could not be tied into an existing headland and that justification is in the four property owners that make up the 70% of armoring along the shoreline. Mr. Affigne asked for an estimate of cost that would need to be incurred by the property owners. Mr. Alfred stated that it would depend on standards set forth by the CRMC, perhaps in the area of \$2 million dollars but the project would require an engineer design which is in possible without the reclassification. Mr. Teitz asked to submit a copy of the 1895 street map for the record showing the existing street and village there at that time. Mr. Goldman marked the map Town Exhibit #2 A-G in full. A sign in sheet was made available for people that want to speak.

S. Paul Ryan, Esq. representing Save The Bay spoke stating that the proposal could only be looked at as spot zoning of a coastal area and not a regulatory ruling. Mr. Ryan stated such a ruling could set a precedent for other areas of the state in the future. Mr. Ryan read the CRMC definition of a man-made shoreline. Mr. Ryan disagreed with the 70% of armoring saying that in STB estimation is was only 40% armored as described in the CRMC regulations using bulkheads, revetments and seawalls. Mr. Ryan maintained that the headland bluff in this segment of Matunuck was still the dominant feature and therefore does not meet the requirements of a man-made shoreline designation. Mr. Ryan stated that the proper solution would be to create a Special Area Management Plan to be able to look at the big picture and be able to apply it to the Matunuck area. Mr. Ryan expressed concern regarding the Staff report suggesting that the size wall that would be needed in this area could be likened to the Chinese wall and that a hard wall in this section is not a solution.

Mr. Goldman stated that the other attorneys had indicated that they did not have other witnesses.

Jane Kenney Austin, Senior Policy Analyst for Save The Bay was sworn in and identified herself for the record. Ms. Austin stated that Save The Bay opposed the Town's petition for a shoreline designation change as it would open the door to hardening of the coast line in areas where beaches have long been maintained as beaches with their shoreline in their natural state. Ms. Austin stated that a redesignation would be a shift in coastal policy of the CRMC as it would change the rules for a small area/group of property owners with implications for Rhode Island's coastline. Ms. Austin agreed with Mr. Ryan stating that the shoreline in this area did not meet the description of man-made shoreline as defined in the redbook. Ms. Austin expressed concern regarding the legal issues involved if private property owners attempt to claim ownership over coastal property lost to erosion. Ms. Austin raised many questions asking for parameters such as length of segment, existing shoreline protection structures which is implied in the CRMC staff report but not regulated in the CRMP. Ms. Austin asks the Council to look at the big picture and take the time to develop a long-term strategy for addressing coastal erosion using the expert information and resources available to it such as FEMA mapping, lidar data and sea level change modeling as well as transportation and infrastructure vulnerability studies. Ms. Austin expressed that Save The Bay urges CRMC to work with the towns and local property owners to consider alternative, nonstructural methods for protecting property in the short term and to develop a long-term strategy for keeping residents out of harms way, while preserving both the natural resources and the connection to the shoreline of Matunuck.

Tricia Jedele, Vice President and Treasurer of the Conservation Law Foundation spoke. Ms. Jedele expressed that the Conservation Law Foundation was opposed to the petition by the Town of South Kingstown to reclassify the segment of the shoreline as manmade. Ms. Jedele asked the question as to whether the plan allows for the interpretation that the Council decides it wants to reach and to be able to defend its interpretation. Ms. Jedele talked about how the RICRMP is interpreted through cross-referencing Sections and that even if a justification can be made by in one section it cannot be supported in another section; using the Section 300.7 as an example. Ms. Jedele expressed concern that the reclassification of the shoreline in this instance will set a precedent for other applicant's who are not happy with the shoreline designation preventing them from being able to have their proposal approved. Ms. Jedele expresses concern that there is no explanation or criteria in the RICRMP that explains this type of redesignation process. Ms. Jedele expresses concern regarding the unforeseen consequences with respect to the coastal saltwater ponds and lagoons protected by the Salt Pond SAMP. Ms. Jedele also stated that using pre-existing armament as justification to reclassify this area as man-made shoreline, the argument could stand that when CRMC did come into existence it created the classification based on what was present at the time of their inception.

Brief Recess

Brian Wagner, Esq. was present to represent the Rhode Island Chapter of the Surfrider Foundation. Mr. Wagner stated that a statement and CV had been submitted to the Council from Dr. Young as an expert who wanted to speak but was out of the country and that they be accepted as exhibits; Mr. Goldman clarified that it will be taken in as a written statement and marked it as Surfrider A full and recognized it as hearsay. Mr. Wagner began by stating that the Surfrider Foundation does not oppose efforts to protect the shoreline along with the road, businesses and residents of the area, but what they do oppose is the manner in which the Town is proposing to protect the area. Mr. Wagner stated that the Surfrider Foundation felt there were other ways of accomplishing this task without compromising the CRMC's regulations by attempting to make an end run around CRMC's longstanding prohibition against hardening shorelines. Mr. Wagner reminded the Council that when the classification was put in place there were structures present but also there were significant amounts of beach out in front of the hardened structures. Mr. Wagner pointed out that the dire straits the Town and residents have found themselves in was due to the fact that they refused to act in an appropriate time and manner to solve the problem before it became an emergent situation. Mr. Wagner spoke about the future economics of the area and the benefits of beach replenishment to ensure continued financial support of the area during the tourist seasons and the possible increase in property value. Mr. Wagner expressed concern that a precedent may be set for future Council members when in 10-20 years other situations of the sort arise. Mr. Affigne asked if a cost estimate was researched for beach replenishment. Mr. Wagner stated that a project in Hawaii to add 40 feet of beach width over 1700 feet in length with a cost of 2.5 millions dollars.

William Landry, Esq. of Blish & Cavanagh was present representing the owners of the Ocean Mist and Tara's Pub both of which have been key features of the Matunuck landscape and culture for decades. Mr. Landry pointed out that they recognize the situation involves three distinct competing interests – pre-existing property owners, the Town and the State environmental preservation concerns. Mr. Landry stated that his clients advocated an interpretation change in the characterization of the beach that would permit a flexible approach to protecting the beach, the properties and the road, but that they do not support the building of a 15-foot wall as written in the CRMC staff report. Mr. Landry stated that in reviewing CRMC staff reports over the last 20

years, one theme came through clearly and that theme was beach nourishment and replenishment which was the most feasible, efficient way to address the issue. Mr. Landry spoke of Jeff Willis' report to the Council advocating beach replenishment using examples of nearby states that have had success stories. Mr. Landry stated that his clients were asking to be able to present an appropriate solution within the next year that involves everybody at the table involving beach replenishment as the first line of prevention with the introduction of minor structural reinforcement. Mr. Landry stated that his clients are not asking for financial support or a pass from enforcement action but that if something is not done within in the year, enforcement action should be considered. Mr. Affigne asked the Chair if this approach was consistent with Type 1 waters. Mr. Fugate stated that without a manmade shoreline classification, structural shoreline protection is prohibited. Mr. Affigne and Mr. Fugate discussed the recommended stipulations in the staff report as a means of ensuring beach nourishment and replenishment. Mr. Fugate explained that the wall written in the staff report, done to an ACOE design, is what would be necessary in that environment in order to withstand the wave attack to survive. Mr. Fugate also made it very clear that CRMC staff did not advocate the building of such a wall but used it as an example to what would be necessary in this area.

Sean O. Coffey, Esq. with Burns & Levinson was present representing property owners along the stretch of the beach located west of the Ocean Mist and other businesses. Mr. Coffey stated that his clients were asking for leadership and cooperation of the Council in helping his clients save their property with the development of a plan. Mr. Coffey stated that his clients supported the redesignation of the area as manmade shoreline but do not support the construction of the seawall. Mr. Coffey agreed that if the property owners would like to take a step back and review the alternatives available to them such as a mixture of structural and nonstructural beach nourishment. Mr. Coffey introduced the subject of sand savers as a potential solution which would allow the beach to rebuild. Mr. Coffey suggested the development of a program by engaging experts such as URI and the ACOE to attract homeowners by offering a meaningful and effective way to protect the beach. Mr. Coffey stated that part of the program effort should be to identify sources of available funding and gave examples of projects from other states that have some kind of government sponsorship. Mr. Affigne asked if Mr. Coffey had discussed funding options with the Town or the State. Mr. Coffey stated that he had but he had only been engaged professionally on this issue for a very short time. Mr. Affigne asked Mr. Coffey what his clients would think about stipulations that would tie reclassification exclusively focusing on replenishment with minimal reinforcement. Mr. Coffey stated that he would shy away from limiting one option over another. Mr. Affigne asked Mr. Coffey if he would be okay with the Council deferring action until some hybrid solutions were submitted. Mr. Coffey stated that they would prefer to have the reclassification made so that the property owners could do what they feel they need to in order to protect their interests.

Mr. Dawson asked Mr. Fugate for a status of temporary structural applications from residents as discussed in meeting of May 2011. Mr. Fugate stated that because CRMC was limiting the type of structure and not allowing tiebacks as it would trigger the need for an ACOE permit, no applications were received.

Donald J. Packer, Esq., was present representing M.C. Homeowners Association for Carpenter's Beach Meadow commonly known as Mary Carpenter's Beach. Mr. Packer stated that the Homeowner's Association have an interest in the matter as they are across the street and have rights to use the beach on the ocean side of the road. Mr. Packer stated that his clients strongly supported the Town's application for reclassification and also for the sheet pile wall and will

support the request for reconsideration of the sheet pile wall application. Mr. Packer stated that his clients also supported the short-term solution as part of the long-term solution.

Mr. Bedell spoke representing Rhode Island Shore Access Coalition regarding the importance of securing lateral access along the shore.

Robert Cavanagh, Member of the Board of Directors of the Matunuck Point Beach Association spoke against the Providence Journal article which spoke out about spending tax money on the rich. Mr. Cavanagh spoke positively about the residents of the area and how the loss of the road would impact those people greatly.

John DiDonato, member of the MCO Homeowner's Association Board spoke reminding the Council that the decisions they were making would affect the people of the Matunuck community.

Jennifer Farmer, year round resident of the Matunuck area, spoke regarding her opposition to the seawall solution but in favor of the idea of conservation to protect and preserve the beach and the importance of knowing the ecosystem of the barrier beach area. Ms. Farmer stated that she was in favor of the discussion of soft solutions such as beach nourishment.

Jim O'Neill, South Kingstown Town Councilmember, spoke stating that the Town Council was in full support of both of the applications submitted to the CRMC. Mr. O'Neill stated that the Town would support beach replenishment over the construction of the seawall. Mr. O'Neill asked for cooperation from all environmental interests to come up with the best solution for this situation.

Fran O'Brien, partner of Tara's Pub, asked the Council to allow the homeowners to consider using alternatives as opposed to the building of a seawall. Mr. O'Brien did not agree that what is happening at Matunuck Beach is mother-nature taking its course but a result of changes to other areas of the coast such as the harbor of refuge or the seawall at Galilee. Mr. O'Brien spoke about an alternative that tries to restore the natural underwater profile. Mr. O'Brien ended asking the Council to support and approve the reclassification of the area.

Mr. Teitz briefly remarked in closing with a few rebuttals. Mr. Teitz stated that the request for reclassification was a collaborative process suggested by the CRMC staff and that clearly the Town of South Kingstown had the right to request it. Mr. Teitz asked that experts be brought in and science define the area and that any application that is submitted in response to the reclassification will be a Category B application and need the Council approval. Mr. Teitz also remarked that the Town was not in favor of the seawall and the stipulations as suggested in the staff report. Mr. Teitz suggested keeping staff stipulation number 1, 10 and 11. Mr. Teitz agreed that there needed to be some sort of incentive for property owners with enforcement situations going on. Mr. Teitz agreed that the Town supported the idea of soft solutions as a part of the overall solution.

Ms. Jedele pointed out that the CRMC classification of this area did not need to change in order for beach nourishment or replenishment to be approved.

Mr. Fugate reminded the Council that he had agreed before the Town Council and members in the meeting that he would have written a permit for burritos and beach nourishment. Mr. Fugate emphatically stated that beach nourishment was always on the table as an option. Mr. Fugate clarified that the CRMC staff is not in favor of the seawall but that if a wall was going to be constructed that would be the size and type that would be needed. Mr. Fugate clarified that they

were not talking about water type changing. Mr. Gomez and Mr. Affigne briefly discussed all of the staff stipulations with the Town.

James Boyd, CRMC Coastal Policy Analyst, emphatically clarified for the Council and the audience that in no way did CRMC staff advocate the building of a revetment. Mr. Boyd stated that the staff's position has been very clear from the beginning that the best way to address the erosion situation would be beach replenishment. Mr. Boyd stated that the only reason the staff stipulations were submitted was to address the implications of the Town's petition for reclassification of the particular segment of the Matunuck shoreline. Mr. Boyd stated that for the first time, staff was hearing that the property owners would like to see beach replenishment and that staff wholeheartedly supported that idea.

Vice Chair Lemont motioned to approve the request to reclassify with all staff stipulations based on the fact that any application for erosion control that was submitted for this area would be vetted through the Council for their approval. Mr. Hudner seconded the motion.

Chair Livingston expressed that her feeling was that the beach should remain as is. Mr. Dawson stated that he also felt that reclassifying would be a mistake and that he would be in favor of any beach replenishment applications that come forward. Mr. Gomez stated that he was in agreement with Mr. Dawson and they were both looking for acknowledgement from the application for the big picture solution. Mr. Gomez stated that in knowing that Mr. Fugate had the authority to cut a permit in an imminent peril situation, he did not want to see the beach reclassified. Mr. Affigne stated that he was encouraged by all parties' willingness to explore a comprehensive solution which would protect public access, existence of the beach and recognize the needs of the Town and residents. Mr. Affigne felt that they needed to wait on the vote until such a solution was submitted. Mr. Hudner expressed his support for the approval of reclassification based on the enormous progress he had seen for people's addressing the issues constructively.

Mr. Goldman did a roll call vote:

Mr. Adedon	No
Mr. Gomez	No
Mr. Dawson	No
Mr. Hudner	Yes
Mr. Affigne	No
Mr. Gagnon	No
V Chair Lemont	Yes
Chair Livingston	No

Mr. Goldman tallied two in the affirmative and six in the negative – the motion failed.

8. ADJOURN

Vice Chair Lemont motioned, seconded by Mr. Dawson, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 9:55 p.m.

Respectfully submitted,
Lisa A. Turner
Recording Secretary