

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, May 8, 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  
Guillaume deRamel

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.

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. Vice Chair Lemont motioned, seconded by Mr. Coia, for approval of minutes from April 24, 2012 meeting. 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 in Warren stating that Superior Court has purged Mr. Koolen and he is now in compliance with the Court Order. Mr. Goldman asked the Council to recognize the efforts of CRMC Enforcement Staff member Laura Miguel for all efforts regarding this case.

Mr. Fugate reminded the Council of the International Symposium of Marine Spatial Planning which begins on May 13<sup>th</sup> and going through the 16<sup>th</sup> where participants from all over the world would be coming to Rhode Island to discuss marine spatial planning with CRMC being a co-sponsor of that program along with URI, BOEM and NOAA. Mr. Fugate clarified that on Sunday there was a reception at the State House for international members, Monday and Tuesday will be at the Renaissance Hotel and Wednesday would be at the University of Rhode Island.

**5. RECONSIDERATION OF APPLICATION:**

**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.**

Chair Livingston stated that the matter was before the Council as a continuation and that all information on the record from the previous meeting of April 10, 2012 is still on the record and asked that there be no repeat testimony. Chair Livingston asked for attorneys to identify themselves and who they were presenting: Andrew Teitz present as the Assistant Town Solicitor for the Town of South Kingstown; Donald Packer was present to represent M. C. Homeowners Association, Inc.; Sean Coffey was present to represent a number of homeowners along the beach; Brian Wagner was present to represent Surfrider Foundation; Bill Landry was present to represent Hang 10, LLC and Tipperary Tavern, LLC; Tricia Jedele was present as representative of the Conservation Law Foundation and Environment Council of Rhode Island. Mr. Fugate stated that there were sign up sheets available for other members of the public who wished to speak.

Mr. Fugate gave a brief overview of the matter to the Council stating that the application had been reviewed by CRMC staff and had been before the Council previously and was back for a reconsideration of the previous decision. Mr. Fugate stated that he had sent a memo to the Council regarding his thoughts on this issue based on testimony and the current situation. Mr. Fugate explained his four pronged approach which was done by working with the University of Rhode Island. Mr. Fugate proposed a study for the entire shoreline of Rhode Island as the state is faced with a growing problem with sea level rise and intensifying storms. Mr. Fugate stated that the seawall was a stop gap only and not long term solution. Mr. Fugate stated that CRMC staff was not in opposition of the granting of permission for 200 foot segment for sheet pile wall and that the road needed to be protected. Mr. Fugate explained his ideas on the development of a Special Area Management Plan for the entire shoreline of Rhode Island which would be done in phases – such as Napatree Point to Point Judith; the Island of Block Island due to their very severe erosion issue. Mr. Fugate suggested that the agency bring coastal towns and other state agencies together to go through process. Mr. Fugate stated that sediment sources needed and their location needed to be documented as well as critical erosion sources of the State. Mr. Fugate stated that this was necessary as we do not want to end up with a walled state. Mr. Fugate also suggested that there could be techniques not as detrimental as walls and the use of bonding may be required to remove experimental structures if they fail. Mr. Fugate stated that once the new program is in place, CRMC would need to move forward with full enforcement of the program and start back on the illegal structures in place.

Mr. Teitz stating the he had presented arguments previously on the “why” of the project but added that the Town was committed to continue to be at the table as a move forward for the big picture solution as other Towns will be. Mr. Teitz stated that the Town will work with private land owner’s including the Ocean Mist and Mary Carpenters to deal with the short area near the Ocean Mist on the short term basis. Mr. Teitz reiterated that the wall was only meant to be a back up and not the primary line of defense and did not mean any untoward damage to their properties. Mr.

Teitz stated that the Town was concerned with the stipulation in the staff report regarding perpendicular access as it may be difficult to guarantee as they do not own all of the land in the area.

Mr. Landry of Blish and Cavanagh representing the Ocean Mist and Tara's Pub stated that the business owners continued their objection to sheet pile wall stated on the record a few weeks ago as reasonable changes had not been made such as alternatives to hard structural barriers and that no one was advocating hard structural barriers with nothing seaward as a first line of defense. Mr. Landry stated that his clients hoped a solution could be found that had all three interests protected - the road, the property owners and the beach. Mr. Landry stated that this wall was not high enough to stop water from flooding the road. Mr. Landry stated that his clients felt that the town's emergency needs could be met with an alternative use such as soft solutions, sand bags, sabers, burritos, which have been used for years. Mr. Landry stated that an emergency assent requiring adherence to CRMC policy could be granted to all the creation of a barrier to protect the road along with stones, without the need to adopt a permanent 200 ft solution. Mr. Landry stated that the CRMP says that steel bulkhead was not considered to be permanent but the wall would be built by driving pilings 40' into ground the full length of wall, supported from collapse by riprap, with a cement cap on top of the sheet metal and sidewalk constructed as part of this; all of which would exist as long as most of us are alive. Mr. Landry reminded the Council that Mr. Fugate could issue emergency assent in the event one was required to save the road but that policies would have to be followed, with hard structures just in the most vulnerable areas. Mr. Landry indicated that his clients we would cooperate for soft solutions, the town would not need eminent domain if the Ocean Mist purchased small piece of land from Mary Carpenter. Mr. Landry reminded everyone that the CRMC staff found that this structure redirected amplified wave energy creating greater erosion; that his client was concerned that the applicant had not exhausted other alternatives; and that they were concerned that the steel sheetpile wall design did not protect abutting properties. Mr. Landry argued that such a dramatic approach should not be approved when an immediate threat can be addressed as emergencies are addressed until a more long term solution can be presented.

Donald Packer representing the MC Homeowners Assoc. expressed that his clients were advocating approval of both of applications and that they were prepared to participate and assist in any solution to protect the road. Mr. Packer stated that the Ocean Mist's temporary fix could be the reason for erosion on area properties and his clients were prepared to participate in the solution. There was discussion on ownership of the adjacent parcels.

Brian Wagner representing Surfrider Association RI Chapter stated that their position and the Surfrider National Chapter will not support the installation of any hardened structure on the coast of Rhode Island but acknowledged that there was a need to protect the road for a couple of years so a longer term plan could be able to be developed by the Council in coordination with the Town and URI. Mr. Wagner stated that there is a level of frustration that other solutions were not adequately considered for the short term other than long term ideas such as relocation of road and utilities. Mr. Wagner stated that this project is going to have negative affects on area such as the acceleration of erosion and shortening the time horizon for any solution other than long term solutions. Mr. Wagner stated that the Associations asked that the wall be constructed in such a way as to be temporary and removable until longer term soft solution can be implemented. Mr. Wagner proposed that any permanent solution include actual management of beach front and erosion rather than throwing up a road or organized process of planned retreat. Mr. Wagner suggested that an

owner's association/cooperative be formed between all interested parties to plan, implement, and fund a long term solution for erosion problems in area.

Mr. Kinder of Save the Bay stated that STB was in support of the grant but do so with great concern. Mr. Kinder stated that STB was happy the process was going through as a special exception process rather than other process. Mr. Kinder stated that Staff conditions needed to have teeth, strict schedules, and reporting requirements and that the Council should have the Town's agreement to those requirements to take the next step forward.

Ms. Jedele of Conservation Law Foundation acknowledged that nothing about issue has been simple or easy and complimented the Council for their patience and careful deliberation with respect for this issue and demonstrating great leadership that will benefit the State allowing the dedicated and talented staff to develop an approach that if pursued, as a state, we can be leaders beyond our borders, as this issue does not just affect RI. Ms. Jedele stated that the CLF looks forward to working as a stakeholder on a Special Area Management Plan and in the search for long term solutions and experimental designation. Ms. Jedele stated that the challenge is that CLF cannot support the granting of the special exception for the proposal before the Council as she feels it does not satisfy special exception criteria such as alternative analysis, minimizing environmental impact, cost effectiveness for tax payers if road washes out or wall does not work. Ms. Jedele expresses that CLF believes the situation needs to be called imminent peril which is provided for in the coastal plan. Ms. Jedele expresses that inaction/delay/lack of planning put the Town in the current situation and that the Council has authority to use imminent peril and use soft solutions until long term solutions can be sought. Ms. Jedele requests that the Council deny the special exception.

Mr. Fugate stated that his recommendation may not be the perfect solution but that it is coming into hurricane season and with the road being threatened a soft solution is no guarantee that the road will exist after storm, so the road needs to be protected and the Town needs to go forward. Mr. Fugate talked about allowing additional soft solutions in this area also. Mr. Fugate stated that the shoreline needed to be studied to figure out what the pressure points were in the area. Mr. Fugate stated that as far as CRMC's regulations went, retreat should be the first option but that is not a viable solution in this case. Mr. Fugate talked of long term research on sediment dynamics and the shoreface to see where the sediment supplies are and a realistic approach to the shoreline. Mr. Fugate agreed that it was not a good situation to build a reflective surface that will exacerbate the erosion situation – but for the public good it is consistent with the program.

Mike Hudner stated that he could support the idea as Mr. Fugate believes that it is the least worst alternative if it is taken in combination with all other approaches. Mr. Hudner stated he was not convinced that soft structures would guarantee security of road and he supported Mr. Fugate stating that the sheetpile is the proper solution given time and danger involved. Mr. Hudner expressed concern that the implementation lag posed a threat making an imminent peril emergency permit necessary.

Mr. Gomez asked about CRMC's liability if they approve a project that may damage abutting properties. Mr. Goldman answered that the CRMC would not be liable but that the abutting property owner's recourse would be against the town.

Vice Chair Lemont stated that the Town was in support of stipulations accept one regarding perpendicular access to the beach and asked what the purpose of the stip was. Mr. Fugate stated

that the beach will exist for some time but that the Town does not own the property for stairway access.

Mr. Fugate stated that there would be an immediate need to begin on long term process for fund raising, purchasing of equipment, coordination team help, budget request to delegation for financial help. Mr. Fugate stated that NOAA and FEMA would like to see this research along the entire east coast and that being a national example would be a positive thing for CRMC. Vice Chair Lemont suggested brainstorming at the next Policy & Planning Subcommittee as they should have role in seeking the funding.

Mr. Abedon asked for clarification regarding Mr. Fugate's plan. Mr. Fugate stated that if the Council did not approve the special exception, an imminent peril permit could be granted.

Mr. Affigne stated that he was encouraged by the support for a comprehensive plan that protects public access to beach, protects needs of residents in area, and protects property at risk. Mr. Affigne stated that he was encouraged by the Director's four part proposal to begin comprehensive and proactive response. However, Mr. Affigne, expressed concern regarding the intimation that there was inaction, delay and lack of planning by CRMC as he recalls that one of the very first CRMC meetings he attended was with the South Kingstown Town Council where they were told that Matunuck was facing an emergency but 12 months later, CRMC was still being told that the situation was an emergency condition. Mr. Affigne stated that the softer solution suggest by CRMC at the time such as burritos and sand bags were not acted upon nor were any other solutions sought in the eight months it took to have wall drawn. Mr. Affigne expresses concern that the road can be repaired by the eroded beach area can not be recovered. Mr. Affigne suggested that the Director's Four Points are appropriate with a substitution for number one which should be changed to reinforcing the most vulnerable section of the stone seawall in order to buy some time to engage in other three aspects of the proposal. Mr. Affigne stated that he could support the approval of an imminent peril emergency permit with the addition of soft solutions.

Mr. Dawson expresses concern that even if the special exception was granted it would still take a long time (18-36 mos) before work gets started. Mr. Fugate stated that the area is a V19 velocity zone meaning that in a 100 yr storm event, the water will overtop all structures which are not meant to stop flooding and would potentially take road out in which case they will have to drive sheet steel anyway to repair the road. Mr. Fugate stated that he is not in support of hard structural shoreline protection but in certain limited situations, it has to be considered. Mr. Fugate reminds that Council that if the road washes away it cuts off the fire suppression system, road access for emergency vehicles, nor will there be any water system.

Mr. Dawson asked about the imminent peril permit and the timeframe. Mr. Fugate stated they may be able to start by September 2012 if an imminent peril permit issued. Mr. Fugate also explained that hurricane season was fast approaching. Mr. Dawson asked about soft solutions being used before then. Mr. Fugate stated that soft solutions could be used but that they are not guaranteed to work (could slump) and that using soft solutions adds an additional cost to the Town and that the Town does not own all the property in the area which would be required to work on.

Michael Gardner was sworn in and identified himself for the record. Mr. Gardner stated that he had listened to testimony and that he knew an engineer who worked with a hybrid barrier that is more porous than sheet pile wall which has been shown to reduce scour in other locations and asked that the product be considered as an alternative.

Guillaume deRamel asked for clarification on the imminent peril permit and the limitations of the Director as to issuance. Mr. Fugate stated that he would be able to grant an imminent peril emergency permit for the sheet wall. Mr. Fugate explained that any soft solution, such as burritos, could be issued through staff administratively.

Kate Gilloogly was sworn in and identified herself for the record. Ms. Gilloogly urged the Council to vote to change classification and she felt it was an emergent situation. Ms. Gilloogly also expressed her support for hybrid solutions.

Brief recess.

Jim O'Neill, South Kingstown Town Council member was sworn in and identified himself for the record. Mr. O'Neill stated that the Town Council was behind the Town to protect the public in the Matunuck area and that they strongly support the Executive Director's plan of approving the sheetpile wall and working towards a more permanent long term solution.

Kevin Finnegan, owner of the Ocean Mist, was sworn in and identified himself for the record. Mr. Finnegan expresses encouragement for the use of soft structures as a short term solution as he had had great success with using sand bags and this would give the Town and the State time to come up with a long-term solution.

Mr. Teitz made a brief closing statement thanking the Council for their patience and willingness to reconsider. Mr. Teitz stated that the Council would be left with making the decision to grant the special exception or grant an imminent peril or emergency assent and that the best way to do it is with the full council, transparent and out in the open as a full body. Mr. Teitz urged the council to grant the special exception.

Vice Chair Lemont motioned, seconded by Mr. Coia, to grant the special exception with staff stipulations.

Chair Livingston stated that she felt it was imperative to save homes and utilities and that it was crucial that town be committed to the development of a long term solution; and that with this plan, everyone can move forward on issue. Chair Livingston stated that she hoped the Council votes to approve the Special Exception rather than put the burden of determination of the imminent peril emergency permit on the Executive Director.

Mr. Dawson stated that he was concerned about granting the special exception as a solution like a sheetpile wall has never been a top solution. Mr. Dawson expressed his trust in Mr. Fugate that he would do what he thinks is best as the Executive Director. Mr. Dawson stated that he would have to vote against the approval of the special exception.

Mr. Goldman conducted a roll call vote stating that a yes was to approve the granting of the special exception.

Mr. deRamel	Yes
Mr. Hudner	Yes
Mr. Affigne	No
Mr. Gagnon	Yes

Mr. Gomez	No
Mr. Dawson	No
Mr. Abedon	No
Mr. Coia	Yes
Vice Chair Lemont	Yes
Chair Livingston	Yes

Mr. Goldman stated that the Special Exception passed with an 6 to 4 vote.

Mr. Lemont motioned, seconded by Mr. Coia, to approve the application with stipulations except for the stipulation for perpendicular access as town does not own the property, as long as the town works with staff to provide access. Mr. Lemont amends his motion, seconded by Mr. Coia, for the adoption of all three points, and the fourth allowing the Executive Director to work with Town.

Motion carried on unanimous voice vote with Mr. Affigne abstaining from the vote.

## 8. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 7:30 p.m.

Respectfully submitted,  
Lisa A. Turner  
Recording Secretary