

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, January 13, 2015 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  
Raymond Coia  
Don Gomez  
Tony Affigne  
Joy Montanaro  
Ron Gagnon  
Paul Beaudette

Staff Present

Grover J. Fugate, Executive Director  
Jeff Willis, Deputy Director  
David Reis, Spv Environmental Scientist  
James Boyd, Coastal Policy Analyst  
Laura Miguel, Enforcement  
Brian Harrington, Enforcement  
  
Brian Goldman, Esq.

Members Excused

Mike Hudner

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 for approval of minutes from November 12, 2014; seconded by Mr. Coia. Motion carried on unanimous voice vote.

Mr. Coia requested to honor formal Legal Counsel and Brian Goldman's father, with a moment of Silence.

3. **STAFF REPORTS**

Mr. Fugate reported to the Council on the following items:

- January 20<sup>th</sup> Beach SAMP Stakeholder Meeting which will include presentation of Storm Tools – an online mapper/viewer developed by URI which shows storm surge events.
- January 21<sup>st</sup> and 22<sup>nd</sup> – Curt Spaulding Regional Director of EPA Region 1 meeting and field trips to go over what Council is doing for coastal adaptation efforts.
- The Council's attention was called to an MOU in Council packet regarding the shellfish management plan signed by the Chair Livingston and Director Coit of RIDEM
- A job listing for an Environmental Liaison required by the OSAMP being posted by Deepwater who will be responsible for the payment of the position but the employee's responsibility will be to the Council. Another job advertisement will be posted soon for an Environmental Monitor for the Deepwater project.

- February 10<sup>th</sup> the CVA is going to meet with the Council staff to discuss the design elements of the Deepwater Wind project.
- Cape Wind let both their Power Purchase Agreements go. Mr. Fugate explained that the power companies pulled their agreements back

Mr. Goldman reported to the Council on the following items:

- The decision on the Deepwater litigation in the case of Shields v. CRMC was denied by Judge Silverstein and the appeal was dismissed of Mr. Shields appealing our decision.

#### 4. SUBCOMMITTEE REPORTS

There were none.

#### 5. PETITION FOR RULE CHANGE: 2013-10-026 Kevin Delane & Suzanne Frost

Chair Livingston explained that the Agenda Items – Procedural Rule Change by Delane and the RIDEM Division of Fish and Wildlife application had been postponed due to procedural reasons.

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

**2014-08-008 SAM MENCOFF -- Construct and maintain a shoreline protection structure. The structure will consist of approximately 440 linear foot combination earthen slope reinforced by large buried stone covered by geo-reinforced soil and planting. A variance to RICRMP Section 300.7.F.4 “the use of grout or concrete within, behind or over revetment is not permitted.” The Cliff Walk trail will be restored at the toe of the slope by placing large stone grouted in place to provide a relatively flat surface for public access. Located at plat 38, lots 11 and 24; 662 and 670 Bellevue Avenue, Newport, RI.**

Mr. Reis gave a brief overview of the application to the Council stating that the application was located near the cliff walk which was deemed a manmade shoreline protection. Mr. Reis explained to the Council that although the applicant applied for a special exception, staff asks the Council for a ruling that it not be deemed a special exception. Mr. Reis stated that a variance was required for grouting of the toe of the slope but that the grouting was eliminated so the variance is no longer required. Mr. Reis stated that Staff recommended approval with stipulations. Mr. Reis stated that the City of Newport was in support of the project. Also, a letter of no objection from the Historical Preservation and Heritage Commission was submitted. Mr. Gomez asked about staff stipulations especially suggesting the accommodation for sea level rise which he was in favor of. Mr. Reis stated that he forwarded the staff report and stipulations to the project engineer and the applicant had no objections to the stipulations. Mr. Sahagian motioned, seconded by Vice Chair Lemont, for the approval of the application and stipulations. Motion carried on unanimous voice vote.

**2012-10-036 ROBERT KRAUSE -- Construct and maintain: a residential boating facility consisting of a 2' x 3' access ramp, a 4' x 15' fixed pier, a 3.5' x 10' ramp and two 5' x 15' floats. A variance to RICRMP 300.4.E.3.K is required (facility is within 25' of extension of abutting property lines). The facility will extend 44' beyond Mean Low Water. The facility will be utilized by property owner at 32A Fort Ninigret Road (Map 12, Lot 70) where the owner resides. For the purposes of this assent the two lots will have to be tied together (Map 12, Lot 75 and Map 12, Lot 70). Located at plat 12, lot 75, Fort Ninigret Road, Charlestown, RI.**

Jennifer Cervenka, Esq. of Partridge Snow & Hahn was present for the applicant.

Mr. Goldman gave a brief explanation to the Council in regards to the issue at hand which pertained to the location of the subject property in terms of his residence. Mr. Goldman stated that the Council needed to determine whether the parcel of land owned by Mr. Krause is contiguous to the location of the proposed dock. Mr. Goldman stated that if the Council agrees with the CRMC staff that the dock location is not contiguous then the applicant feels they can ask for a variance from the policy which variances are usually only granted for standards.

Mr. Reis gave a brief explanation of the project to construct a 2'x3' access ramp, a 4' x 15' fixed pier, and a 3.5' x 10' ramp and two 5' x 15' floats to extend 44' beyond MLW. Mr. Reis explained that two objections were received, one from Save The Bay and one from the neighbor to the east. Mr. Reis explained that the property is a small triangular-shaped undeveloped property bordering Ninigret Pond which is accessed by footpath through Fort Ninigret State Park. Mr. Reis stated that the property does not meet the 25' setback required from the properties on either side. Mr. Reis explained that a letter of no objection was received from RIDEM at Fort Ninigret Park. Mr. Reis reiterated what Mr. Goldman stated regarding the facility not being contiguous to the private residence. Mr. Reis explained that in cases where dock locations were not contiguous to private residences the agency will bind the two properties together legally. Mr. Reis stated that with this case, the distance involved is too great, approximately a quarter of a mile. Mr. Reis stated that there was not definition of contiguous in the program and that is something the Council needs to discuss. Mr. Reis stated that for reasons set forth, the staff concluded that the project did not meet the definition of a residential boating facility and recommended denial of the application. Mr. Reis stated that staff also provided three stipulations in the staff report in the event the Council determined it warrants granting.

Mr. Fugate stated that in most cases where the agency binds the properties together to allow a residential boating facility, the properties are across the street from each other and the bindings are tied together and cannot be separated. Mr. Fugate expressed his concern for a situation of setting precedence. Mr. Sahagian asked if the agency would allow within the same assessor's plat. Mr. Fugate stated that there have been instances where they were in the same assessor's plan but the furthest that has ever been granted was across the street from the residence. Mr. Fugate stated that the issue is that if it is not contiguous the structure cannot be considered a residential dock and then it becomes a commercial facility in Type 2 waters. Mr. Fugate stated the only other option we've allowed is within a homeowner's association.

Mr. Reis explained that there is an existing dock in this location that the applicant leases from DEM and RIDEM allows the applicant access to that dock. Mr. Reis explained that the dock lease would be expiring in April.

Ms. Cervenka stated that the lease between the applicant and RIDEM was terminated. Ms. Cervenka stated that DEM expressed that they would be removing the commercial dock that Mr. Krause accessed by water only. Ms. Cervenka stated that the dock was grandfathered by CRMC in 1996. Ms. Cervenka stated that the applicant was not advocating for the lot to be considered contiguous. The applicant is before the Council for the determination to be allowed to request a variance.

Mr. Goldman explained that a motion was required by the Council to adopt the staff's recommendation that the parcel is not contiguous to lot 70. (lots 70 and 75 are not contiguous) Motion made by Vice Chair Lemont and Mr. Beaudette. Mr. Affigne seconded the motion.

Motion carried on a unanimous voice vote.

Chair Livingston turned the Council's attention to the variance possibility.

Ms. Cervenka stated that a Section 120 variance application was submitted which she believed the Council had the authority to proceed on under the Section 300.4 subpart C, C.2e of the CRMP. Ms. Cervenka stated that a variance request can be made to relevant sections of the CRMP and does not limit to variances from standards. Ms. Cervenka also stated that the term "standards" is not defined under the CRMP. Ms. Cervenka read the definition of "standards" from the dictionary. Ms. Cervenka argued that there is broad language allowing the Council to proceed or grant a variance application and "standard" is not a defined term so taken in its meaning, the Council should be able to consider the contiguous requirement to be a standard.

Both Mr. Reis and Mr. Fugate stated that usually docks of this nature are treated as special exceptions because they do not meet the definition of residential boating facility.

Mr. Fugate then stated that another option would be that the applicant could propose a commercial boating facility, but unfortunately in this case, a commercial dock in Type 2 waters is a special exception. So, both routes would require a special exception.

Mr. Goldman stated that the next step for the applicant would be to make their argument for special exception if the Council agrees with that regulatory interpretation.

Mr. Sahagian inquired as to whether or not the applicant could apply for an association dock. Mr. Fugate stated that the requirement would still have to meet the same burden of proof.

Discussion amongst the Council on their next step and the applicant's next step.

Jim Donnelly, Esq was present representing an abutter to the property, Brian Mahoney. Mr. Donnelly expressed concern and objected to the argument of a variance request which was never requested by the applicant. Mr. Donnelly addressed the Council stating that the Council regulations would not allow them to grant a variance to a definition or a policy.

Kendra Beaver, Esq., from Save The Bay, offered their objection to the project and their support for staff reports.

Mr. Affigne motioned, seconded by Mr. Beaudette, that the Council did not apply variances to definitions in the coastal plan.

Motion carried on a unanimous voice vote.

Mr. Fugate asked the Council to recognize former Council member Donald Brown.

7. **ENFORCEMENT HEARING SEEKING RESTORATION ORDERS FOR VIOLATION OF CRMC CONSENT AGREEMENTS DATED JULY 8, 2003 AND AUGUST 2, 2008 AND CEASE AND DESIST ORDERS 2003-3458 AND 2007-0038**

**PAUL OLIVIERI**, 100 Carder Road, Warwick; plat 358, lot 371 and 372

Mr. Olivieri was present.

Mr. Fugate explained that the violation was extensive and included wetland filling as well as dock construction beyond its originally permitted boundaries. Mr. Fugate stated that they had many meetings with Mr. Olivieri to try to work with his situation with several Consent Orders signed and violated. Restoration plans have been submitted but not quite what CRMC is looking for. Mr. Fugate expressed the staff's frustration with the length of time this has been going on.

Ms. Miguel stated that CRMC staff would like to see the wetland restored in accordance with the plan dated February 23, 2013 and the terminal float on the dock removed.

Mr. Olivieri was put on oath and identified himself for the record as Paul W. Olivieri. Mr. Olivieri explained that the process had been going on since 1999 when he purchased the property. Mr. Olivieri gave a lengthy personal history of the property stating that after the house fire he hired a company to clean up the property and they filled in the wetland. Mr. Olivieri confirmed that the house was demolished. He finished by saying he does not know what to do with the situation.

Chair Livingston instructed that he needed to restore the wetland and remove the dock.

Mr. Fugate stated that Mr. Olivieri had removed some fill from the wetland and relocated a wall. Mr. Fugate stated that Mr. Olivieri could apply for the terminal float but not for the filling of the wetland.

Mr. Sahagian questioned Mr. Olivieri on timeframe and Mr. Olivieri's financial hardship. Mr. Sahagian suggested giving him an extra 30-60 days from the date stated in the CRMC documents. Mr. Fugate and Ms. Miguel stated that it would be better for the growing season to have the restoration completed before June.

David Durango was sworn in and identified himself for the record as a soil scientist biologist with Ocean State Planners. Mr. Durango explained that he, Mr. Olivieri and Donald Packer, Esq. had met with CRMC staff to go over the restoration expectations. Mr. Durango stated that they had contacted Ernie George to look at the dock situation for submittal.

Mr. Olivieri expressed his concern at removing the dock because he wants to be able to swap and permitted section for the unpermitted portion.

Mr. Affigne expressed his concern for the situation in which there was a violation that the property owner refused to address. Chair Livingston stated that she wanted the dock to be removed by May 31<sup>st</sup>, 2015.

Kendra Beaver of Save the Bay spoke to the position of Save The Bay stating that they support CRMC staff whole heartedly.

Mr. Affigne asked Mr. Olivieri, under oath, if he would have the wetland restored and the dock removed by May 31<sup>st</sup>. Mr. Olivieri would not give a definitive answer, just that he would try.

Mr. Sahagian made a motion that the staff's recommendation of restoration and removal by April 15<sup>th</sup>, 2015 be changed to May 31<sup>st</sup>, 2015 and then add the matter will be scheduled for the June 9<sup>th</sup>, 2015 Council meeting. Motion seconded by Mr. Gomez.

Mr. Goldman explained the penalties if Mr. Olivieri were to not follow the Council's order; and gave the Koolen case and the Harris case as examples. Mr. Goldman explained that Chair Livingston had the authority to authorize Legal Counsel to go into Superior Court for noncompliance.

Mr. Sahagian withdrew the portion of the motion that required him to return to the Council on June 9<sup>th</sup>.

The motion carried with a 4 to three vote; opposed were Vice Chair Lemont, Mr. Affigne, and Mr. Beaudette for reasons that they did not want to give extra time.

Brief Recess

**8. PUBLIC HEARING ON CHANGES TO THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT PROGRAM: Table 1 - Water Type 6 Matrix; Section 110; and Section 210.3**

**Summary of Proposed Amendment to Table 1 – Water Type 6 Matrix: The purpose of this proposed amendment is to prohibit recreational mooring fields within industrial waterfronts and commercial navigation channels to avoid user conflicts and maintain the Council's designated priority industrial and commercial uses within Type 6 waters.**

Mr. Boyd gave a brief explanation of the change and that initially the City of East Providence sent of letter of objection stating that the City is opposed to changing an application that could get a formal review to an activity that is prohibited for recreational mooring fields in Type 6 waters. Mr. Boyd explained that it was only one small section where there were two oil terminals. Mr. Boyd explained that larger commercial boats were not comfortable being in the vicinity of recreational boats.

Vice Chair Lemont recused himself but stated that Mr. Boyd's explanation of the situation satisfied him.

**Summary of Proposed Amendments to Section 110: The purpose of this proposed amendment is to provide for additional application activities within existing Section 110.C that will be eligible for administrative review and approval by the Executive Director or Deputy Director. These eligible activities will still require a minimum of 30-days public notice, but will not be required to be considered by the Council at a public hearing unless substantive objections as defined in CRMP Section 110.3 are received during the 30-day public notice period.**

Mr. Boyd gave a brief explanation of this change stating that the change would amend the application activities that could be reviewed administratively and approved by the Executive Director and the Deputy Director at a Section 110 meeting. Mr. Affigne expressed concern regarding the beach nourishment projects and asking that they still be brought before the Council. Mr. Boyd stated that they were trying to get the regulations in line with the dredging regulations.

**Summary of Proposed Amendments to Section 210.3: The purpose of this proposed amendment is to adopt Sea Levels Affecting Marshes Model (SLAMM) maps for all 21 Rhode Island coastal communities into the Coastal Resources Management Program for coastal wetland restoration and adaptation planning purposes.**

Mr. Boyd explained that this change was for the adoption of the Sea Levels Affecting Marshes Model maps. Mr. Fugate stated that approval of the maps are part of the EC4 recommendations as part of the State’s overall comprehensive look at adaptation.

Chair Livingston opened the public hearing.

Kendra Beaver, Save the Bay, spoke on all three amendments stating that STB objected to the change to the prohibition of recreational mooring fields in Type 6 waters. Ms. Beaver stated that STB supported the adoption of the SLAMM maps. Ms. Beaver expressed STB concern regarding the clarity of what will go out to public notice.

Chair Livingston closed the public hearing.

Mr. Boyd explained that there was a provision in Section 110 that states that all public notice requirements remain in full force and effect.

Mr. Affigne motioned to approve the amendment to make recreational mooring areas in Type 6 waters be prohibited. Ms. Montanaro seconded the motion. Motion carried on a voice vote with Mr. Beaudette and Mr. Gagnon opposing and Vice Chair Lemont recusing himself.

Mr. Affigne proposed an amendment to the change making the threshold 50,000 cy. Mr. Affigne clarified his motion to say: the beach nourishment line be amended to beach nourishment of less than 50,000 cubic yards. Mr. Coia seconded the motion. Discussion on approval process. Chair Livingston asked for a vote. Mr. Goldman did a roll call vote in which an affirmative vote would support Mr. Affigne’s motion.

Mr. Beaudette	Nay
Mr. Gagnon	Nay
Mr. Affigne	Yes
Ms. Montanaro	Nay
Mr. Sahagian	Nay
Mr. Gomez	Nay
Mr. Coia	Yes
Vice Chair Lemont	Yes
Chair Livingston	Nay

Motion to amend proposed program change to beach nourishment portion of Section 110 failed.

Mr. Sahagian motioned to amend the program changes to Section 110 as proposed. Mr. Beaudette seconded the motion. Discussion on 100,000 limit leading to Mr. Beaudette withdrawing his second. Mr. Sahagian amended his motion to limit the dredging to 100,000 cu yards approved by Section 110. Mr. Beaudette seconded the motion. Motion carried on a voice vote with one in opposition – Mr. Affigne.

Mr. Gomez motioned to adopt the Section 110 change as amended. Vice Chair Lemont seconded. Motion carried on a voice vote with one in opposition – Mr. Affigne.

Mr. Beaudette motioned to accept the changes as written regarding Section 210.3 SLAMM amendment. Vice Chair Lemont seconded. Motion carried on a unanimous voice vote.

9. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Coia, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 8:15 p.m.

Respectfully submitted,

Lisa A. Turner  
Recording Secretary