

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, April 26, 2016 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
Ron Gagnon, DEM Rep
Raymond Coia
Don Gomez
Tony Affigne
Paul Beaudette
Mike Hudner
Jerry Sahagian
Joy Montanaro

Staff Present

Grover J. Fugate, Executive Director
Jeffrey Willis, Deputy Director
Jim Boyd, Coastal Policy Analyst
Dave Beutel, Aquaculture Coordinator
Dave Reis, Spv Environmental Scientist

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 for the approval of the minutes from the March 8, 2016 Semimonthly meeting; seconded by Vice Chair Lemont. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

None were heard.

4. **STAFF REPORTS**

Mr. Fugate reported on the following items:

- CRMC co-sponsored an Erosion conference on Thursday, April 2. It was well attended and a number of presentations were made relative to CRMC works in the area of erosion control.
- On May 3rd at 5:30 p.m., Dr. Michael Oppenheimer, one of the lead authors of the international panel for climate change, will be making a presentation at the Graduate School of Oceanography in the Corless Auditorium on Sea Level Rise Around the World and how it relates to RI. At 5:30 p.m.
- Chair Livingston reminded the Council members about the aquaculture trip for the Council on June 2nd at 9:30, 11:30, 1:30 on June 2nd, entreats council members to attend.

5. **REPORT – Deepwater Wind, LLC -- update from Ted Hofbauer, CVA presentation on the FIR 2015 and FDR 2016**

Ted Hofbauer gave his April DWW update to the Council regarding the 2016 FDR and FIR along with manufacturing and installation status.

- Mr. Hofbauer stated that they continue to receive documents for the wind turbine export cable and substructure.

- The Deepwater has chosen to delay the cable installation from Block Island to the Turbine Array until May.
- Regarding the FIR, they continue to work with getting reviews completed and getting information prior to the start of the activities.
- Mr. Hofbauer explained the progress from GE/Alstom facility in France on the rotary navelle assembly and the generator testing.
- Wind turbines pre-assembly is ongoing at the ProvPort location and will begin to move in July, 2016. All this work is well organized and conducted in safe manner
- Finishing up work from the last year that was not completed.

Mr. VanBeek gave status on service vessels:

- Two vessels working to supply the crew vessels and will far below the noise limit. Blount boat will be used for crew transfer.

Dave Beutel updated the Counsel on fisheries issues regarding the concern of fishermen with the scheduling and delays as they are significantly impacted financially.

6. **Applications requiring Public Hearing for Special Exception before the Full Council for Council Decision:**

2016-02-090 TOWN OF NEW SHOREHAM -- A riprap revetment to protect the shoreline-side slope of the Town's closed landfill to help protect the landfill from shoreline erosion. A public access pathway will be provided up and over the landfill to provide/maintain lateral public access along the shoreline. The project requires a Special Exception pursuant to RICRMP Section 300.7.D.1 which prohibits the construction of structural shoreline protection bordering Type 1 waters. The project is located at plat 2, lots 39, 40, and 48-1; West Beach Road (seaward terminus), New Shoreham, RI.

Mr. Reis gave brief overview of the application stating that the applicant proposed to construct/maintain a riprap revetment on the shoreline side slope of the Town's now closed landfill to help protect the landfill from shoreline erosion. Mr. Reis stated that a public access pathway would be provided over the landfill to maintain lateral access along the shore. Mr. Reis stated that there was an unstable base of the landfill directly on the shoreline. Mr. Reis explained that the applicant had applied to receive Community Development Block Grant funds to help construct the revetment. Mr. Reis explained that because the project is prohibited along Type 1 waters, the applicant was seeking a Special Exception. Mr. Reis stated that different options were vetted between the Town and CRMC and it is felt that this is the best option currently. Mr. Reis stated that the project meets all requirements for granting a special exception. Mr. Reis stated that the landfill did not have a closure plan from DEM which is an outstanding matter that needed to be addressed. Mr. Reis explained that the annual rate of erosion is 1.8 to 3 feet per year and that in 15 years it could have eroded back 45 feet on either side of the landfill. Mr. Reis stated that an agreement had been made that the town will move the landfill back if it reaches 45 feet of erosion; however, the Town cannot afford to move landfill at the present time. Mr. Reis stated that CRMC Staff recommended approval with staff stipulations. Mr. Reis stated that there was a comment received from The Nature Conservancy asking for the inclusion of beach nourishment. CRMC will work with ACOE on an alternative drop point of dredged sand so it will feed back into the system without impacting the sea grass.

Chair Livingston asked Mr. Reis to explain the alternatives discussed.

Mr. Reis explained three alternatives.

- Geological containers (large sandbags), which would still require a special exception, had been researched, and the outcome was that it would be more expensive.
- Hybrid revetment using geological containers for the base of the revetment and then planting above. The issue with both of these options is that there is no sand pit on the island and all sand would need to be hauled from the mainland to the island
- Removal of the landfill was the third option. The cost estimate of this option was 20 million dollars.

Bob Fairbanks was sworn in and identified himself for the record to answer that the depth revetment would be 21’.

Mr. Beaudette asked about experimental options. Mr. Reis stated that CRMC was moving in the direction of geological sandbags hoping they will replace solid revetment.

Mr. Reis explained that the revetment and size of the rocks to be used will be moveable by equipment in the event that they need to move them back. Geo sand containers are not reusable. Mr. Reis stated that the town is going to start stockpiling sand to be able to use geo containers in future erosion projects if needed.

Mr. Sahagian motioned to approve Special Exception. Mr. Goldman did a roll call vote.

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

Unanimous on the Special Exception

Mr. Sahagian, seconded by Mr. Coia, motioned approval of the application. Motion carried on an unanimous voice vote.

2016-03-020 RI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT -- Construct and maintain a new public access pathway/steps utilizing existing shoreline boulders at the base (seaward terminus) of the existing Mohegan Bluffs timber stairway owned by the State of Rhode Island. Equipment access will be provided along the East side of the stream channel which flows from Mohegan Trail to the coastal beach at the base of the existing timber stairway. The project requires a Special Exception pursuant to the RICRMP Section 300.2.C.1 & 3 which prohibit filling, removing, and grading on coastal beaches and bluffs bordering Type 1 waters and prohibits the use of on-site beach materials for construction materials. The project is located at plat 8, lot 183; Mohegan Trail (Mohegan Bluffs), New Shoreham, RI.

Mr. Gagnon recused himself.

Mr. Reis gave a brief overview of the application explaining that the RIDEM was asking to build new steps utilizing existing shoreline stone that's at the base of Mohegan Bluffs to provide access to the bottom of the bluff. Mr. Reis explained that it was Type 1 waters and required a special exception. Mr. Reis stated that staff recommended approval with staff stipulations. Mr. Reis explained that RIDEM would like to have the project completed for the 2016 beach season. Mr. Reis explained that any repairs of the approved constructed project would require administrative approvals.

Mr. Hudner motioned, seconded by Vice Chair Lemont, to approve the Special Exception. Mr. Goldman did a roll call vote.

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

Unanimous on the Special Exception.

Vice Chair Lemont motioned, seconded by Mr. Coia, approval of the application.

Motion carried on a unanimous voice vote.

7. **Applications before the Council for Review:**

2015-11-007 TOWN OF SOUTH KINGSTOWN – Reconstruction of revetment. Located at plat 92-2, lot 4 and 92-3, lot 1; 855 and 883 Matunuck Beach Road, South Kingstown, RI.

Madam Chair clarified that the item is a staff discussion and update for the Council. No decision would be made and there would not be input from audience at this time.

Using a large scale drawing of Matunuck beach area, Mr. Fugate updated the Council on the progress of the Town of South Kingstown's Matunuck revetment application (co-applied for with Kevin Finnegan, owner of the Ocean Mist).

Mr. Fugate explained that the property was owned by the Town of South Kingstown and that the proposal received thus far exceeds the scope of a CRMC maintenance activity meaning that the plan submitted to the Council exceeds the current design. Mr. Fugate stated that if the scope of the application was to be brought back to maintenance confines, the application would be considered. Another option is for the Council to review the application and decide if they consider the project within the confines of a maintenance activity which the CRMC staff does not feel it falls within that scope. The 3rd option would be to call the wall a manmade shoreline and that would require a Category B review. The 4th option is to call it a Special Exception.

Mr. Fugate explained that the application is different than the previous application as the applicants are applying for an area that has a previous assent and a revetment is present.

Mr. Fugate stated that the other issue is that he was questioned on the record to see if the wall will protect the road. Mr. Fugate again stated that the wall will not protect the road as it would be subject to overtopping by waves during storm event and the area behind the wall would be subject to erosion exposing the road to further erosion. This wall would need to be a secondary structure to the sheet pile wall.

Vice Chair Lemont asked for clarification on scoping back the revetment and the impact and concern of the property owners. Mr. Fugate stated that the slope and the base of the structure are very expansive, and, the applicant's would need to reduce the amount of new stone being brought in as part of the project. Mr. Fugate stated that the applicant's engineer was advised of this and that if they brought the project scope back to the maintenance qualifications, it could be brought before the Council for their review and decision fairly quickly as it is the quickest solution. Mr. Fugate stated that it is unlikely that the walls proposed would provide protection to the structures during a significant storm event. Mr. Fugate stated that the Town is interested in protecting their road which is where the Council approved sheetpile was comes in. Mr. Fugate confirmed that the maintenance wall proposal would not harm the road but it would not serve to protect the buildings, especially in the event of a 100-year storm with waves in the area of about 20-feet or so.

Mr. Affigne asked what the benefit of maintaining the existing revetment would be if not to protect the road or the buildings. Mr. Fugate stated that they simply have the right to maintain the structure.

Mr. Fugate explained that Mr. Finnegan (the co-applicant) also had submitted an application to elevate his structure on a concrete pile supported foundation and elevate the structure three feet above base flood elevation; essentially getting the structure out of the wave envelope.

Mr. Fugate clarified that the applicant would like the Council to determine if the application, as submitted, would qualify as a maintenance application; again stating that it does not in staff's opinion.

Mr. Fugate again clarified that the maintained revetment would only serve as a secondary level of protection for the sheetpile wall that is already permitted and the Town could start construction on whenever they wanted.

Tony – if revetment was overtopped during a storm. Could it be repaired prior to sheetpile wall and road damage? GJF – depends on significance of storm. If the feature jumps, and leaves it in offshore area – wall cannot be rebuilt.

Mr. Fugate informed the Council that there were people who would object to any application that was submitted.

Chair Livingston reiterated that no action would be taken at this meeting.

Mr. Fugate explained that if the applicant wanted to proceed with the application as is, an evidentiary hearing would be scheduled and a subcommittee would be formed to start the hearing process.

Members of the audience voiced their opinion that they wanted the deliberation to start that evening.

Mr. Fugate explained that the other technologies being considered by other property owners down the strip would have to be able to tie into the existing revetment if built.

Lateral access was discussed and Mr. Fugate confirmed that the applicant was proposing ideas on how to increase lateral access in this area.

Mr. Coia asked that in future hearings, introductions and identification of applicants and their attorneys be made.

Mr. Fugate introduced the Town representatives and their attorneys, as well as the objectors from Save The Bay, Conservation Law Foundation and The Surfrider Foundation.

Chair Livingston thanked everyone and asked to move the meeting forward to the next application.

There was an interruption from the large quantity of audience members who wanted to be heard.

Chair Livingston called a brief recess.

8. **Rhode Island Superior Court Remand:**

The Court has ordered the CRMC to provide additional Findings of Fact on the record regarding its previous decision in the matter of:

A2009-09-100 PAUL and CAROL MERCURIO – Construct and maintain a 20’ x 32’ residential dwelling and permeable driveway with municipal water and sewer connections. Located at Plat L, Lot 178; Glenwood Avenue, Narragansett, RI.

Mr. Sahagian removed himself from the proceedings on this matter.

Mr. Goldman explained the process of what would be done stating that the four members of the Council that voted to approve the application would be clarifying and adding to the record the basis for their approval.

Joseph DeAngelis, Esq. was present for the applicants, Paul and Carol Mercurio
S. Paul Ryan, Esq. and Alexandre Graskemper, Esq. were present for Rodney Labreque.

Mr. Gomez spoke first stating that the judge had requested that the Council members go back over the record and the transcript and that he did just that to reacquaint himself with the project so that he could clarify his agreement to Variance criteria 1, 3, 5 and 6. In doing this, Mr. Gomez stated he came to his decision based on the applicant’s civil engineer and geologist’s expert testimony and their description of best practices for this project, such as the location, size and quality of the house that was designed as well as the function of the existing revetment. Mr. Gomez stated that the CRMC allowed existing properties that also had revetments to build. Mr. Gomez felt that there was no possibility of negative effects on surrounding property. Mr. Gomez stated that he did not want to deny the applicant the use of their property.

Mr. Coia spoke next going through his reasoning for the Section 120 elements that must be met under standard of review. Mr. Coia discussed numbers 1, 3, 5, and 6 as the judge had stated that he was satisfied that #2 and #4 were supported in their decision. Mr. Coia expounded on each element one at a time.

Mr. Coia stated that it was his understanding that one of the most important goals and policies was to protect the shoreline and the use of land to which its purpose is created and that his decision was made

through the evidence of applicant, as well as that of staff. Mr. Coia stated that Dr. Rosen, Geologist (Dr. Rosen) as well as Dr. Cachete (sp) gave evidence that reflected that the CRMC goals and policies were met. Mr. Coia stated that the testimony indicated that the Mercurio home would comply much more stringently to the building code requirements which would ensure the integrity of the structure, thus, protecting the coast line and making sure that the structure can withstand storm erosion and the like. Mr. Coia stated that evidence supported #1 being met.

Mr. Coia stated that he felt that #3 was met as the lot was very small and the Mercurios did everything they could to design the smallest house possible to build. Mr. Coia stated that if they met the buffer and setback requirements, it would result in 0 dimension home. Mr. Coia stated that the evidence presented on behalf of the applicant supported the findings that #3 had been met.

Mr. Coia stated that he felt that in regards to #5 through no prior action of applicant and no evidence put forth that the Mercurios did anything themselves to cause the problem. Mr. Coia stated that the record supported the finding that #5 was met on behalf of the applicant.

Mr. Coia stated that he felt that in regards to #6, due to the conditions of the site, it would cause an undue hardship and looking at evidence presented by everyone, he felt that #6 was met. Applying the requisite setbacks and buffers would create a hardship for them to such a degree they would not be able to build on the property. Full setback would not allow for any house on the property and would deprive them the use of their property. The applicant's intent was to build a house there and evidence put forth made it clear to him that there would be undue hardship for not being able to build a house.

Mr. Coia stated that for those reasons he was of the opinion that criteria numbers 1 through 6 were met by totality of all the evidence, lay testimony, scientific evidence and demonstrative evidence, and for those reasons he was of the opinion that the application should be granted and he made the motion and voted in favor of it.

Mr. Gagnon stated that he agreed with Mr. Gomez and that there was testimony that the lot was decreased by 50% due to erosion which he felt supported variance request criteria #5 as it was not due to any action of the applicant.

Mr. Gagnon stated that there was also a condition of the maintenance application for the revetment required that a house be built on the property and the required the continued maintenance of the revetment to maintain the size of the lot. Mr. Gagnon stated he felt that was a unique standard for that site and supported the variance request #6.

Ms. Montanaro stated that the Mercurio's expert geologist, Dr. Rosen testified that the CRMP does not require a house to be built for a 100 year storm event but rather meet applicable building code requirements specifically designed to ensure the safety and stability of the structure. Ms. Montanaro stated that she felt that the design put forth would be superior to the normal design standards.

Ms. Montanaro stated that the staff posed no objection to the criteria of #3 and that evidence was presented that the lot dimensions made it impossible for the applicant to comply with the CRMC's buffer and setbacks.

Ms. Montanaro stated that with respect to #5 that nothing was noted or recorded on the record that the Mercurios or their predecessors modified the property or created the unique characteristics of the property. The need for the variance in questions is not due to any prior action by the applicant.

Ms. Montanaro stated that with respect to #6, evidence from the Carrigan engineer report II was presented and stated that due to the condition of the site, the standards would cause an undue hardship, specifically the ability to build a home.

Ms. Montanaro stated that for those reasons she stated she was still in favor of granting the approval.

Mr. Goldman stated that he would put together factual findings and will recirculate it to them to make sure it was consistent with what was said. After that Mr. Goldman would recertify that decision to the Superior Court and continue with the litigation.

9. **Public Hearing on Program Changes:**

Summary of Proposed Amendment to CRMC Shoreline Change Maps

The CRMC intends to adopt revised Shoreline Change Maps for the Washington County communities of Westerly, Charlestown, South Kingstown, Narragansett and North Kingstown. The purpose of the amendment is to replace older 2003 and 2004 maps that were adopted by the CRMC in 2008 with 45 newly updated maps based on 2014 orthophoto aerial images that have been prepared as part of the CRMC Shoreline Change Special Area Management Plan, also referred to as the Beach SAMP. Due to the very high image resolution and extremely large files sizes (294MB in total) the individual maps are not being uploaded to the Secretary of State's website. The 45 new maps are publically accessible on the CRMC website at: http://www.crmc.ri.gov/maps/maps_shorechange.html as PDF files and are listed under Washington County (2016).

Mr. Fugate gave brief overview of program change and Mr. Boyd added that part of the public notice was a direction to the CRMC website for the images, which is ok with the Secretary of State regulations. Mr. Boyd added that during the 30 day comment period no objections or comments were received.

Chair Livingston opened public hearing for comments, and hearing none, closed the public hearing.

Vice Chair Lemont motioned, seconded by Mr. Beaudette, for approval of the program changes.

Motion carried on a unanimous voice vote.

10. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Beaudette, to adjourn.

Motion carried on unanimous voice vote. Meeting adjourned at 8:00 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary