

Chairman Michael Tikoian
Members of the Coastal Resources Management Council
Executive Director Grover Fugate
Brian Goldman, Esq., Legal Counsel
Stedman Government Center, Suite 116
4808 Tower Hill Road
Wakefield, RI 02879 -1900

May 3, 2011

Re: Status, staff briefing and ratification of Matunuck Erosion Temporary Permit and process

Dear Chairman Tikoian, Members of the Council, Executive Director Fugate and Counselor Goldman:

I am writing in regard to the above item on the May 4, 2011 Coastal Resources Management Council. We have reviewed the April 20, 2011 CRMC Staff Report on the Matunuck Erosion and the Temporary Assent outlining the proposed permitting.

One of the most dangerous aspects of the action being contemplated is that it is taking place completely outside the established procedures for either revising the state's coastal policies or granting variances from those policies. As a result, the perspective of the general public and the long-term interests of the State have not and are not being weighed against the local interests. Work sessions in local communities are important and valuable, but no substitute for the Council's regular procedures – from a due process or a deliberative point of view.

The requirements of CRMP Section 180 have not been met; therefore, the proposed “ratification” by the Council and issuance of “temporary” assents would be improper. The issues raised in the Matunuck case have huge ramifications for the public and the RI coastal management program. **They should be considered through the Council's formal rulemaking or Red Book revision process which provides clear mechanisms for public comment and input.** This allows for input from outside experts, such as structural engineers and marine biologists with competing views, as well as a full economic analysis of the long-term costs and benefits. In this way a more informed decision can be made.

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Authorization by Chairman, pursuant to RICRMP Section 180 (Emergency Assents)

The temporary measures being considered are prohibited adjacent to Type I waters and the situation does not fit the requirements for issuance of an emergency assent under Section 180 under either the Catastrophic Storms or Imminent Peril category.

Catastrophic Storms Assent

A. The Executive Director may grant an Emergency Assent when catastrophic storms, flooding, and or erosion has occurred at a site under Council jurisdiction, and where, if immediate action is not taken, the existing conditions may cause one or more of the following:

- (1) Immediate threat to public health and safety; and
- (2) Immediate and significant adverse environmental impacts.

These Emergency Assents may permit only such action at the site that will correct conditions (1) and (2) above in a manner consistent with the policies of the Program. (Red Book Section 180)

The Matunuck cases do not qualify for a catastrophic storms assent. The conditions in Matunuck were not caused by catastrophic storms, flooding and/or erosion. Both the Town of South Kingstown and CRMC staff reports document the gradual and long-term nature of the problem. While from the perspective of the individual property owner the end result of this long-term process is in some sense “catastrophic,” the situation at the site is not the result of a catastrophic event and so this type of assent is not appropriate. Even more significant for the property owners, even the temporary solutions proposed will not protect them from a catastrophic event in the future. In addition, the temporary wooden structures proposed for Matunuck do not address an “immediate threat to public health and safety”. They are designed to protect private property and it is highly questionable where is any beneficial, indirect impact on the public roads and utilities mentioned in the assent.

The proposed plan will not avert immediate and significant adverse environmental impacts. **The “temporary timber walls” under consideration are likely to exacerbate the problems of scouring and beach erosion in the immediate area with impacts on adjacent shoreline.** The proposed hardening carries with it numerous adverse environment impacts.

Finally, the actions proposed are explicitly prohibited by the policies of the Program.

Imminent Peril Assent

A. The Chairman, Vice Chairman, or in their absence he Executive Director, may grant an Emergency Assent in circumstances where they determine that there is imminent peril and where, if immediate action is not taken, the existing conditions may cause one or more of the following:

- (1) Bodily harm or a threat to public health;
- (2) Significant Adverse environmental impacts; or

(3) Significant economic loss to the State.

B. The reasons for these findings shall be stated on the record. (Red Book Section 180)

The situation in Matunuck does not fulfill the criteria for an Imminent Peril Assent either. Property damage is not synonymous with bodily harm, and there is no imminent danger to public health that is averted by the temporary walls. While the loss of access to other local areas and potential water supply disruptions are real considerations for the town in hazard mitigation planning and in devising strategies to address sea level rise, any potential and indirect contribution resulting from the proposed temporary hardening would be limited – and fleeting.

As noted above, the temporary hardening carries with it adverse environmental impacts, not benefits.

Finally, the third factor, **the economic interest of the state, argues against the proposed guidelines.** The foundation of the RI Coastal Program is the designation of six different water types, which determine what activities are permitted where along the RI shoreline. The different water types and the prohibitions associated with them are based on an explicit balancing of the State's varied economic interests. For example, Section 200.1 notes that "The qualities that make Rhode Island's coast beautiful and an unparalleled recreational resource are fully as important as the more readily quantifiable commercial and industrial water-dependent activities." The section goes on to enumerate the relative benefits and importance of the balance of the different uses established for each water type. (See, section 200.1 and section 200.2 of the Red Book.)

Staff recommendation

The temporary assent suggests that the action being considered is based upon the recommendation of the Executive Director and staff. However, **the April 20 staff memo does not contain a recommendation for temporary structures and contains substantial evidence of the negative impacts and the ineffectiveness of the approach outlined.** In addition, there are significant procedural difficulties associated with the "potential guidelines" included in the report with regard to the permissibility of "temporary" structural shoreline protection measures adjacent to Type I waters

The 4/20/2011 CRMC staff memo states that there must be a determination by the Council that temporary structures are permissible in the Matunuck area in order to avoid normal permitting procedures. However **there is no support or "Red Book reference provided: 1) for the assertion that the Council is empowered to "temporarily" override policies in this way, or 2) to guide the Council on the basis for making such a determination.**

[Excerpt, Staff memo 4/20/2011] Because the tidal waters along this shoreline are classified by the RICRMP as Type 1, and therefore new structural shoreline protection is

prohibited (see RICRMP Section 300.7.D.1), the Coastal Council must find that the proposed temporary structural shoreline protection measures are indeed “temporary.” And, should the Council authorize the proposed temporary structures, they must stipulate that said structures can only be installed for a limited period of time. Absent this Council determination, the normal permitting procedures must be followed. (p. 4-5)

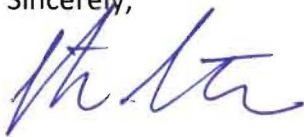
In addition, even if the Council finds a legal basis to permit prohibited structures on a “temporary” basis, **it does not appear that hardening would be “temporary.”**

- The first guideline for consideration by the **Council anticipates a permanent shoreline protection solution.** (*Temporary shoreline protection facilities shall be designed as temporary measures and shall be removed once a permanent shoreline protection solution is installed, or in accordance with a Council order.)
- The South Kingstown Planning Matunuck Coastal Area Report of April 2010 makes it clear that **the Town’s objective is that “the preferred hard armor shoreline protection options might be permitted** within a modified regulatory framework (i.e. special exception, shoreline feature category change).
- The **“temporary timber walls” under consideration are likely to exacerbate the problems** of scouring and beach erosion in the immediate area with impacts on adjacent shoreline. In the process, **coastal resources are damaged, public and private resources are expended, and long-term, non-hardening options are undermined or lost.**

Save The Bay believes that the actions contemplated by the Council fall outside its authority and argues even more strongly that the broad public must be fully involved in weighing the costs and benefits of abandoning Rhode Island’s protection of its natural coastline. For that reason, we repeat our call for a formal rule-making process and will consider an appeal of any final agency action undertaken in connection with a “temporary assent.” In addition, because it appears that the staff report will result in administrative action, we question whether the notice itself for the May 4 meeting is deficient. Finally, Save The Bay requests the opportunity to address the full Council at the meeting on Wednesday on these subjects.

Thank you for your attention to these issues. Sea level rise and long-term coastal erosion present tremendous long-term challenges to communities all along the nation’s coasts. If we are to identify the strategies and mobilize the resources necessary meet these challenges, the public must have its say.

Sincerely,



Jonathan Stone
Executive Director

Cc:

Governor Lincoln Chafee

Attorney General Peter Kilmartin

Stephan Alfred, Town Manager, South Kingstown