



Planning and Procedures Subcommittee

Piccerelli Gilstein & Company
144 Westminster Street
Providence, RI

June 20, 2006
5:00 pm

AGENDA

1. Call to Order
2. Approval of previous meeting minutes
3. **OLD BUSINESS/WORKS IN PROGRESS**
4. **PROPOSED PROGRAMMATIC REVISIONS**
MANAGEMENT PROCEDURES

REDBOOK/SAMPS
 - A. Section 300.4.B.13 Policies/Outhauls attached
 - B. Section 300.4.E.3.s Recreational Boating Facilities/Standards attached
 - C. Section 300.14.B.9 Maintenance of Structures attached
 - D. Salt Pond/Narrow River SAMPS:
 - Sections 920.1.A and 920.1.B – Open Space Requirements discussion (attached)
5. **OTHER BUSINESS**
6. **NEW BUSINESS**
7. **STAFF REPORTS**
8. **ADJOURN**

REDBOOK

ITEM 4.A

Revise Section 300.4.B.13. Policies

13. Outhauls are subject to the regulatory jurisdiction of the Council. The Council may authorize a municipality to administer an annual permit for such provided said municipality has a Council approved and active harbor management plan and ordinance which contains the following:

- a. municipal documentation that demonstrates that
 - i. except as provided below, an outhaul(s) is/are to be permitted to the contiguous waterfront property owner; and,
 - ii. up to two (2) outhauls may be allowed per waterfront property; and,
 - iii. outhauls are not permitted on properties which contain a recreational boating facility; and,
 - iv. procedures have been adopted to ensure that permits are issued only consistent with the RICRMP, including the provisions of 300.18; and,
 - v. their procedures acknowledge that the CRMC retains the authority to revoke any permits issued by the municipality if it finds that such permit conflicts with the RICRMP; and,
 - vi. from November 15 to April 15, when a boat is not being secured by the device on an annual basis, the outhaul cabling system shall be removed; and,
 - vii. outhauls may be “grandfathered” in their current location upon annual harbormaster documentation that such outhauls have been in continuous use at such location since 19xx, and, the contiguous property owner(s) agree in writing to such, however, such “grandfathering” is extinguished whenever a recreational boating facility is approved at the location.

ITEM 4.B

REDBOOK

Revise Section 300.4.E.3. Standards

(s): A minimum depth of 18 inches of water (MLW) and, except when provided for as per Section 300.18, a maximum depth of three (3) feet (MLW) shall be obtained at the terminus (seaward end) of the dock, floating dock or pier. Any variance to this standard shall be addressed in writing and pursuant to Section 120.

ITEM 4.C

REDBOOK

Add New Section 300.14.B.9. Standards

9. See Table 4a for maintenance provisions for dwelling additions and rebuilds within the 50 foot setback zone on developed, moderately developed, and undeveloped barriers.

ITEM 4.D

Salt Pond Region/Narrow River SAMP

(see additional background material at end of this packet)

Revise Section 920.1.A.2(c) to both programs:

(c) Any major land development project or any major subdivision of land (as defined in RIGL 45-23 et. seq.) within Self-Sustaining Lands, occurring after November 27, 1984, must meet the minimum density requirement of one residential unit per 80,000 square feet. Relief from this regulation requires a Special Exception as defined in Section 130 of the RICRMP. Lands which were subdivided prior to November 27, 1984, and do not meet the CRMC density requirement as defined in Section 920.A.1, require a Variance as defined in Section 120 of the RICRMP. Within this land use classification, at least 25 percent of the developable land area within a major land development project or any major subdivision of land shall be defined as open space. Additionally, the applicant must grant a permanent conservation easement to the municipality or the Council for all open space within the subdivision pursuant to RIGL 34-39. Such lots that constitute the major land development project's or the major subdivision of land's open space requirement, and are put in said easement, shall not be counted toward calculating minimum density requirements.

Revise Section 920.1.B.2(c) to both programs:

(c) Any major land development project or any major subdivision of land (as defined in RIGL 45-23 et. seq.) within Lands of Critical Concern, occurring after April 12, 1999, must meet the minimum density requirement of one residential unit per 120,000 square feet. Relief from this regulation requires a Special Exception as defined in Section 130 of the RICRMP. Lands which were subdivided prior to April 12, 1999, and do not meet the CRMC density requirement as defined in Section 920.A.1, require a Variance as defined in Section 120 of the RICRMP. Within this land use classification, at least 25 percent of the developable land area within a major land development project or any major subdivision of land shall be defined as open space. Additionally, the applicant must grant a permanent conservation easement to the municipality or the Council for all open space within the subdivision pursuant to RIGL 34-39. Such lots that constitute the major land development project's or the major subdivision of land's open space requirement, and are put in said easement, shall not be counted toward calculating minimum density requirements.

Table 4a.

Dwelling Rebuilds and Additions for Maintenance Activities under Section 300.14

Section 210.7 (Dunes): Within the 50 Foot Dune Setback Zone			
DEVELOPED BARRIERS			MODERATELY DEVELOPED AND UNDEVELOPED BARRIERS*
All Structural Alterations <u>Beyond Maintenance</u> Will be Required to: Move Beyond the 50 foot Setback Area and Meet Flood Plain Elevation Requirements			
Additions (On Ground)	Prohibited		
	Allowed: 25 sq.ft. Cantilever Decks at a minimum of 8 feet above grade (in 50 foot setback area only)		
If Foundation is NOT FEMA Compliant and: 1. Rebuild In-kind 2. Anything Else	Not Allowed Not Allowed	Note: Before any work can be done, structure's foundation must be made FEMA-compliant (i.e.: move up) and meet Section 140 (move back) & other applicable RICRMP sections.	Not Allowed* Not Allowed
If Foundation IS FEMA Compliant and: 1. Rebuild In-kind 2. Anything Else (Add 2 nd Floor (Demolition/ Add 2 nd Floor	Allowed (as Maintenance) Not Allowed Allowed only if Activity is built beyond 50 foot Setback and meets Flood Plain Elevation) Allowed only if Activity is built beyond 50 foot Setback and meets Flood Plain Elevation)	Note: If structure is within the 50 foot setback area, and cannot relocate beyond 50 foot setback area, application will be determined to be a Maintenance activity and the structure will be allowed to be rebuilt in-kind with same number of floors and same footprint.	Allowed* Not Allowed Not Allowed Not Allowed

These are for typical maintenance activity reviews. In unusual circumstances, the Executive Director may invoke the maintenance provision allowances of Section 300.14.

*On Moderately Developed and Undeveloped Barriers, only in-kind maintenance is allowed. If a lot can support it, the structure may be moved back and up (FEMA-compliant). However, in-kind rebuild is still only allowance.

Background: Staff Discussions on

Agenda Item D:

Salt Pond/Narrow River SAMP Section 920. – Subdivisions and open space

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Memorandum

To: Policy & Planning Subcommittee
From: James Boyd, Coastal Policy Analyst
Date: March 15, 2006
Re: Open space lots and subdivisions

CRMC Policy staff were requested to review the issue of open space lots in subdivisions that are proposed within the Salt Pond Region and Narrow River Special Area Management Plans (SAMP). Apparently in an effort to circumvent CRMC jurisdiction and the application of housing unit density requirements within these SAMPs, developers have been creating subdivisions with five (5) or fewer house lots even though local zoning may allow a greater number. In many cases, at the request of the municipality, an additional lot or lots are created and designated as open space within the subdivision. Thus, the subdivision now contains six (6) or more lots. In this instance, however, developers make the argument that they are only creating a five lot subdivision, as there are only five lots intended for residential development. Nevertheless, the subdivision project contains six or more lots and now meets the threshold established under the CRMP and Rhode Island General Law as a major subdivision (See R.I.G.L. § 45-23-32(22)). Once a subdivision project meets the regulatory threshold (i.e., 6 lots), it must adhere to the applicable density requirements of the SAMP in which the project is located.

Apparently, developers are annoyed with the town required open space lot requirement when it forces their project into the CRMC 6-lot jurisdictional threshold. Moreover, developers apparently feel that they are being penalized for creating open space under this circumstance, especially because they may be subject to density requirements that result in a reduced number of housing units than originally proposed.

Let's examine an example of a small subdivision as noted above. If an 8-acre parcel is located in an area designated as Self-sustaining Lands within the Narrow River SAMP, the maximum permissible number of residential units on that parcel would be four (4) units, since the density requirement within this zone is 80,000 square feet per residential unit. In accordance with Section 920.1.A.2(c) of the SAMP, any major subdivision (6 or more units) must conform to a density requirement of one residential unit per 80,000 square feet. Now, let's assume a developer proposes a five-lot subdivision on the 8-acre, which is less than the six-lot threshold by which the density requirement takes effect. Nevertheless, in many cases such a subdivision will necessitate a CRMC Assent because of public roadway construction or extension of a public waterline. Both of these are "watershed activities" as defined under Section 900.A.B.3(b) and require a permit. Under long standing CRMC practice, all applicable policies and standards (including the density requirements) have been applied to residential projects, regardless of the number of units, whenever CRMC jurisdiction is triggered.

Policy & Planning Subcommittee, as follows.

Question 1: Can open-space lots be excluded for jurisdictional purposes when considering the number of lots within a subdivision?

Under current statute, there is no distinction between open space lots and buildable lots as they pertain to subdivisions (See R.I.G.L. §§ 45-23-32(25) and (51)). Additionally, the CRMP does not presently distinguish between these lots, and for all intents and purposes a lot is a lot. Therefore, when a parcel of land is subdivided, all created lots are counted when considering lot numbers for CRMC jurisdictional purposes. Accordingly, if a developer were to create five (5) residential lots and one (1) open space lot, under CRMC rules the project would consist of six lots and be subject to applicable density requirements in accordance with RICRMP Sections 320, 325, and applicable SAMP provisions. In summary, open space lots must be counted for jurisdictional purposes under present rules.

Question 2: If a minor subdivision (i.e., five lots or less) is proposed within the SAMP watersheds and CRMC jurisdiction applies because a watershed activity is proposed (e.g., roadway construction or water supply line), should applicable density standards be applied to the project?

As stated above, it has been long standing CRMC policy to apply all applicable standards (including density standards) for any residential subdivision project, regardless of the number of units, when a CRMC Assent is required. CRMC permit staff has relied on Section 920.1.A.2 (a) of the SAMPs which states “Subdivisions (as defined by Section 325 of the RICRMP) shall not exceed an average density of one residential unit per...” (density standard depends on zone). The language here specifically states “subdivisions” (defined as two or more lots), not 6 or more unit subdivisions, are required to meet the applicable density standards. Based on the existing regulatory language, one could argue that the density standards apply to any residential subdivision activity.

It is important to note that information concerning nitrogen loading and cumulative impacts from residential development is replete throughout both the Salt Pond Region and Narrow River SAMPs. Chapter 3 addresses the deleterious water quality impacts on both potable groundwater supplies and surface waters, while Chapter 8 details the cumulative and secondary impacts from residential development. The current density standards were established to reduce nitrogen loading, even with the application of advanced technology ISDS, to effectively manage the cumulative and secondary impacts from residential development. The fact is that the exact rate of tolerable nitrogen loading to groundwater without having impacts on the Narrow River or the Salt Ponds has not been established. Consequently, the development density standards are a conservative method, based on the best available knowledge, to reduce impacts.

Applicable statute and rules

R.I.G.L. § 45-23-32(51) defines a **Subdivision** as “The division or re-division, of a lot, tract or parcel of land into two or more lots, tracts, or parcels. Any adjustment to existing lot lines of a recorded lot by any means is considered a subdivision. All re-subdivision activity is considered a subdivision. The division of property for purposes of financing constitutes a subdivision.”

R I G I. § 45-23-32(2) defines an **Administrative subdivision** as “Re-subdivision of existing lots

The re-subdivision only involves divisions, mergers, mergers and division, or adjustments of boundaries of existing lots.”

R.I.G.L. § 45-23-32(25) defines a *Minor subdivision* as “A plan for a subdivision of land consisting of five (5) or fewer units or lots, provided that the subdivision does not require waivers or modifications as specified in this chapter.”

R.I.G.L. § 45-23-32(22) defines a *Major subdivision* as “Any subdivision not classified as either an administrative subdivision or a minor subdivision.”

RICRMP Sections 320.A.2 and 325.A.2 define **subdivision** to mean “the division of a lot, tract, or parcel of land into two (2) or more lots, tracts, parcels or other divisions of land for sale, lease or other conveyance or for development simultaneously or at separate times. It also includes re-subdivision and when appropriate to the context, shall relate to the process of subdividing or to land subdivided. In computing six units or more the units shall be a total cumulative number of units on the property proposed after March 11, 1990, irrespective of ownership of the property or when the units are proposed.”

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Clarification regarding CRMC policy for subdivisions located within the Salt Pond Region and Narrow River SAMPs

Jurisdictional Issue

The Council has established a jurisdictional threshold for subdivisions with six (6) lots or more as specified in Sections 100.3, 320, and 325. Additionally, there are several activities identified in Section 325.C.1 that must apply for an assent when they are located within the watershed of a poorly flushed estuary. Subdivisions of 6 units or more are one of these activities listed; however, subdivisions of less than 6 units are not included. Therefore, based on the Council’s rules, only those subdivisions with 6 or more lots are required to apply for a Council assent when located within inland areas or the watershed of a poorly flushed estuary (i.e., Salt Pond Region and Narrow River SAMPs). The regulatory language clearly establishes the threshold for jurisdiction at 6 units or more, and accordingly, subdivisions of less than 6 units are not required to apply for an assent. Nevertheless, when a subdivision of 6 or more lots is proposed, all applicable CRMP and SAMP requirements, including density standards, are applied for such projects (See 325.C.2).

In cases where subdivisions of less than 6 units are located within the Salt Pond Region and Narrow River SAMPs, those subdivisions are not required to apply for a permit unless: (1) they are located within 200 feet of a coastal feature; or (2) they trigger review because the project involves a watershed activity as specified in Section 900.B.3(b). This section also specifies (following the intent and language of CRMP sections 100.3, 320, and 325) that only subdivisions of 6 units or more are required to apply for a permit.

900.B.3(b)(i)

New subdivisions of 6 units or more, or re-subdivision for a sum total of 6 units or more on the property proposed after March 11, 1990 irrespective of ownership of the property or the length of time between when units are

While subdivision is defined in Sections 320 and 325 to mean the division of a lot, tract or parcel of land into two (2) or more lots, the language clearly points to the computation method for determining 6 lots as of a date certain (i.e., March 11, 1990). The importance of defining subdivision is for when a parcel is further subdivided after March 11, 1990. All lots on the parcel, including re-subdivided lots are included when counting towards the 6 lot jurisdictional threshold. Section 325 specifies that only subdivisions of 6 units or more are required to apply for a Council Assent because of the reasonable probability of conflicting with the Council's management goals and objectives.

Application of SAMP Density Requirements

With respect to the density requirements imposed on subdivisions within the Salt Pond Region and Narrow River SAMPs, the Council again has clearly specified that the density requirement applies only to major subdivisions (i.e., 6 or more units). The intent of the language is clear and unambiguous, it applies only to subdivisions with 6 or more lots.

920.1.A.2(c)

Any major land development project or any **major subdivision** of land (as defined in RIGL 45-23 et. seq.) within Self-Sustaining Lands, occurring after November 27, 1984, must meet the minimum density requirement of one residential unit per 80,000 square feet. Relief from this regulation requires a Special Exception as defined in Section 130 of the RICRMP. Lands which were subdivided prior to November 27, 1984, and do not meet the CRMC density requirement as defined in Section 920.A.1, require a Variance as defined in Section 120 of the RICRMP. (emphasis added)

A major subdivision is defined in state law as “[a]ny subdivision not classified as either an administrative subdivision or a minor subdivision.” (See RIGL § 45-23-32). A minor subdivision is defined as “[a] plan for a subdivision of land consisting of five (5) or fewer units or lots...” *Ibid.* Nevertheless, it is important to note that the SAMP policy in Section 920.1.A.2(a) refers to density standards applying to subdivisions.

920.1.A.2(a)

Subdivisions (as defined in Section 325 of the RICRMP) shall not exceed an average density of one residential unit per 80,000 square feet for Self-Sustaining Lands. For the purposes of this section, the allowable number of units in conformance with this standard shall be calculated on the basis of available land suitable for development. Land suitable for development shall be defined as the net total acreage of the parcel, lot or tract remaining after exclusion of the areas containing, or on which occur the following protected resources: coastal features as defined within Chapter 46-23 GLRI and/or the CRMP Section 210; freshwater wetlands, as defined in the RIDEM Freshwater Wetlands Rules and Regulations, including the 50' Perimeter Wetland. The division of a tract, lot or parcel not subject to municipal regulation under the provisions of Chapter 45-23 *et seq.*, for the reasons set forth therein, shall remain subject to the jurisdiction of the requirements of Chapter 46-23 *et seq.*, the RICRMP and this section.

As noted above, the intent of Section 325 is that only subdivisions of 6 or more units are required to obtain an assent and that all applicable CRMP and SAMP requirements including density

a parcel into two or more lots, its purpose is to ensure that any future subdivision of land (beyond the control date of March 11, 1990) shall be counted towards meeting the 6 lot jurisdictional threshold.