STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COASTAL RESOURCES MANAGEMENT COUNCIL

IN RE: WORKSHOP
SALT POND SAMP/
NARROW RIVER SAMP CHANGES

Wednesday, June 14, 2006
4:00 p.m.
Charlestown Town Hall
Council Chambers
540 South County Trail
Charlestown, Rhode Island

PRESENT
Bruce Dawson
Grover Fugate, Executive Director
Jeffrey Willis, Deputy Director
James Boyd
Laura Ricketson

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(Commencing at 7:00 P.M.)

MR. FUGATE: We are here for a regulation that is pending before the Council at this moment. This workshop is to solicit public input on that regulation change which will become part of the hearing record. There will be a transcript produced from today's workshop, which
will go to all of the Council members for their reading and become part of the hearing record itself on the regulation change.

At today’s workshop I have to ask that you confine your comments to the regulation change only. Please, no pending applications or applications that might be before the local level. We cannot hear any of that evidence today or any comments regarding those applications. The Council does not have any pending applications before it at this time which this change would effect, but if there are any before the locals or whatever, I, again, would ask that you not mention those during today’s testimony or comment.

If you do start to stray in that area, I’m going to have to ask that you stop, because by law we cannot accept that comment, so that’s why I’m being very specific about this. There is a sign-up sheet being passed around, so we’ll take you in order. I would ask that you use the mics that are available because this is going into a tape system which will then be turned over to the stenographer to produce the written transcript.

Anybody that wishes a copy of the transcript may come to the Council office, and you can either purchase those directly from the stenographer or you can take out a copy of the transcript for 24 hours and produce your own copy, if you wish.
Once the testimony is complete, what the Chairman has asked me to do is to review all of the testimony in the record today and come up with a revised staff recommendation to give to the Council, and based on that and the testimony that the Council receives, they will make a decision on this proposed reg change, whether it should go forward or not. So, that is essentially the process. Does anybody have any questions on that?

UNIDENTIFIED SPEAKER: Can you state your name?

MR. FUGATE: Yes. Sure. I’m sorry.

My name is Grover Fugate. I’m the Executive Director. I have Jeff Willis, who is the Deputy Director at the agency, to my right. To my left I have Bruce Dawson, who is a new member of the Council. And, Laura Ricketson and Jim Boyd. Laura Ricketson is a public education person, and Jim Boyd is a policy analyst, whose specific duty is to work on Special Area Management Plans. Yes.

UNIDENTIFIED SPEAKER: I have a question. Are you guys appointed? Are you guys elected? How do you get to be on this board you guys are on?

MR. FUGATE: The members you see before us, except for Mr. Dawson, are staff, in other words, myself, Mr. Willis and the two members.

UNIDENTIFIED SPEAKER: Hired?
MR. FUGATE: We are hired staff.

Mr. Dawson and the other Council members are, at this point, given the fact that the legislative members have all resigned and taken themselves off the Council, the only appointments to the Council are by the speaker and the Governor. Mr. Dawson, for example, is a Governor’s appointment that required Senate confirmation. He is just recently appointed. The other members of the Council are either the Speaker’s appointments or the Governor’s appointments. The Governor’s appointments, there are four that are either elected or appointed officials, two from communities under 25,000, two from communities over 25. There are three members from the general public that are appointed with advice and consent of the Senate. Thank you. Yes.

UNIDENTIFIED SPEAKER: My understanding is that what we will be discussing tonight is a process; is that correct?

MR. FUGATE: And the regulation change. If you think there are problems with the regulation change or there are positive aspects of it, that could be discussed.

UNIDENTIFIED SPEAKER: Will we be discussing the staff process, present process, Speaker process, correct?

MR. FUGATE: In terms of the processing of applications?
UNIDENTIFIED SPEAKER: Yes.

MR. FUGATE: Yes, you can.

UNIDENTIFIED SPEAKER: Now, we're prohibited from talking about this one particular application, even though it's well known, it has been discussed that this particular proposed change would effect only that one application?

MR. FUGATE: Right. We are not here to hear any evidence on any application.

UNIDENTIFIED SPEAKER: Will we be able to talk about the appropriateness of any change in the process, or for one application, not the application itself, but just the procedural issues?

MR. FUGATE: I think, as long as it does not touch upon a particular application, if you have an issue with the Council changing the application, the process for what you feel may be one application, then, yes, it can state that.

UNIDENTIFIED SPEAKER: Okay. Thank you.

MR. FUGATE: Are the ground rules clear? Okay. Yes. Okay. Is just about everybody signed up? Well, while that's going around, I know that Representative McHugh is here, and while it's still going around, I'll let Representative McHugh make a few remarks.

MR. McHUGH: Yes. Thank you, Director. I appreciate your hearing me first,
because I came up from Providence while we're in session and we have committee meetings. I would like to thank the members of the Council here and staff.

I rise here this afternoon to say that I'm opposed to the proposed revisions to the Salt Pond and Narrow River Special Area Management Plan, the rules and regulations that you wish to lax the density standards.

I represent District 36 which actually pretty much mirrors the Salt Pond SAM Plan, so it's very important to me that we take a real hard look at whether or not these density standards should or should not be laxed. Like I said, I oppose the fact that you wish to now relax those standards.

The point I want to make from a public policy point of view, this rule change is very, very problematic. To change rules and procedures for just one project, which has clearly been demonstrated by the evidence applies to one project, has lots of problems from a legislative point of view. Generally speaking, you don't want to legislate for just one particular project. That's not what the rules and regulations are for.
these rules changes are retrospect rather than
prospective. Most of the court challenges that I've
seen deal with going back to try to make something
apply to something that happened in the past while
from this point on. So there's two very important
problematic points of view of this regulation change
that I have a problem with.

One of the things that I want to talk about,
and I know a lot of people will talk about the
environment, I want to focus on the affordable
housing law because this is what prompted you and
the Coastal Resources Management Council to think
that you needed to change the rules.

I sat on the House Corporation Committee for a
year-and-a-half while we listened to countless hours
of testimony about affordable housing, and I can
tell you that the minimal housing law does not, doe
not require a rule change. It only applies to
local zoning ordinances. The law specifically
addresses local laws and separate State and Federal
laws still apply. If you read the law, it says,
quote, "All required State and Federal permits must
be obtained prior to the final approval or issuance
of a building permit."

There is really no need to have a conflict
between what the affordable housing is trying to do
and what the environments are. You're charged as
environment. There needs not be any type of a conflict. I think that's important to distinguish.

The environmental concerns specifically were addressed in the new law. The local review board must, quote, "That there will be no significant negative environmental impact from the proposed development," close quotes.

Further on in the law, "In reviewing the comprehensive commitment request, the local review board may deny the request for any of the following reasons." It goes on to say at Subsection 8, "Concerns for the environment and the health and safety of the current residents have not been adequately addressed."

Lastly, I would like to point out that the some members of the Coastal Resource Council seem to be of the opinion that the legislature wanted Coastal Resource Management to relax its density requirements for projects that were deemed substantially complete and fall under the old rules prior to December of 2004.

I can tell you, again, I attended all those meetings, it was never discussed, it was never brought up, it was never assumed at all that we expected of any state agency to change their rules and regulations in conformance with the new affordable housing laws. They stand by themselves, and the state agency, as far as we're concerned, as
legislators are concerned, that it was never the
intention of the legislators by the state agency to
change their rules and regulations to try to conform
to the affordable housing law.

I, in fact, in conclusion, I have talked to a
number of my colleagues up at the State House and
legislators, in terms of we always feel that
legislation is much stronger than rules and
regulations promulgated by an agency, and we feel
very strongly, the people I've talked to, that this
rule should not be changed.

Thank you for your time.

MR. FUGATE: Thank you,
Representative.

MR. McHUGH: Any questions?

(NO RESPONSE)

MR. FUGATE: Do we have a list?

Maybe if you can give me the first page. If you can
give me the first page, okay. I realize that some
people may have signed up to be on the mailing list
but not want to speak. So if you don't, you can
just acknowledge that. Yes.

UNIDENTIFIED SPEAKER: Do we raise
our hand to speak now?

MR. FUGATE: Well, that's what this
sign-up sheet was for.

UNIDENTIFIED SPEAKER: We have a
sheet that was supposed to go up on this side, which
is not the applicant.

MR. FUGATE: I will tell you what,

why don't we start another one over here.

UNIDENTIFIED SPEAKER: Can we have a
general statement in the record?

MR. FUGATE: Why don't we start with

Kate Waterman.

MS. WATERMAN: Okay. My name is

Kate Waterman. I have witnessed the Planning Board

try to determine whether or not something were
to have -- a project would have, within the SAM

Plan, would have an environmental impact on the

pond. It was virtually impossible for them to
determine through hydrologists, geo information,
they could not tell whether this project, whether
the water would actually get any effluent, or any
effluent from this project would actually reach the
pond, and because they had to determine within a
certain area, they simply did not have the
scientific information they needed to make this
determination. It has always been my impression
that we rely on CRMC, your scientific staff, to let
us know at what point density impacts our salt
ponds. So, I am -- because I know, what three,
anything within the SAM plan area is one house per
three acres?

MR. FUGATE: Of critical concern,
yes.
MS. WATERMAN: When you make a density determination that triples this, it is hard for me to believe that it does not eventually impact the pond. In Charlestown, salt ponds are really our responsibility. We have Kuoni Pond, Ninigret Pond, and they lie pretty much within our -- and Green Hill Pond. We're trying to restore Green Hill Pond with an enormous amount of money spent on retrograding septic systems. We had very little impact on it, and the degradation of Ninigret Pond has begun in the eastern end of it.

I think it is very, very important for us to have all of the scientific information we can lay our hands on to protect these ponds, and with your help we're really looking forward to you giving us very specific direction in that regard.

So, that is my plea to you, is we need you for this information.

MR. FUGATE: Thank you. Okay. I have Wendy Waller from Save the Bay.

MS. WALLER: Thank you. I'm Wendy Waller from Save the Bay. We routinely submit formal written comments as well where we emphasize our position that the more protective standards that are currently in the SAMPs should be the baseline for any proposed projects, and after thoroughly reviewing both the SAM plan and affordable housing law, we were unable to find any compelling
requirements necessitating an action, and, therefore, we respectfully request this not be granted.

MR. FUGATE: Okay. Linda Arnold.

MS. ARNOLD: I have submitted a formal letter to Mr. Fugate on March 20th, so I'm going to summarize what I've written to you.

As chair of the Charlestown Conservation Commission and a biologist with a master's degree in Natural Resources Science, I disagree with the proposed regulation change to the Rhode Island Salt Pond Region Special Area Management Plan and the Narrow River Special Area Management Plan posted on February 15th. It appears that this change is being proposed to allow for one particular developer who is proposing a development in Charlestown to skirt the rules of the Rhode Island CRMC adopted in 2004 that limits the density of housing.

Many current and former commissioners of various Charlestown commissions, including Planning, Zoning, Conservation, as well as Town councilors, have expressed concerns during public hearings about the negative consequences of high density housing in our SAMP area.

As noted in Charlestown's Comprehensive Plan, the broadest area of excessively drained soils found in Charlestown is the recessional marine located
north of Route 1N, and that's the area we are talking about with this development. This area includes the area of the proposed development. The comprehensive plan --

MR. FUGATE: Please, no reference to it.

MS. ARNOLD: Okay. The Comprehensive plan further notes, groundwater, as well as surface water flows from this region appears to flow towards the coastal pond. High density development in this area potentially effects that. The comprehensive plan was based on several years of studies conducted by Federal and State agencies, such as URI School of Oceanography, EPA, NOAA and NRCS.

These same studies formed the scientific basis of the Rhode Island CRMC Salt Pond Region Special Area Management Plan, which currently protects the salt ponds using minimum density restrictions of warm dwellings for two to three acres. Those rules were intended to protect coastal waterways that are already overloaded with pollution from the effects of overly-dense residential development. The SAM Plan acknowledges that even though the flow of density restrictions are not enough to protect the...
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ponds, it is logical to wonder why CRMC is now offering to amend their regulations and increase housing density and habitat that has clearly been identified as gradual.

The current Rhode Island CRMC regulations were developed with the support of local towns, the local scientific community, as well as State and Federal environmental agencies that I just mentioned.

The Conservation Commission is concerned that the Rhode Island CRMC no longer recognizes the environmental impacts of high density housing on the salt ponds, some of Rhode Island's most precious and economically important resources.

In addition, I am concerned that if the newly proposed regulations are approved, Rhode Island CRMC will make additional changes to the Rhode Island CRMC Coastal regulations based on developers' needs and not based on scientific findings.

Charlestown, like other coastal communities in Rhode Island, relies on the Rhode Island CRMC to implement regulations based on sound scientific findings, so court cases do not occur. The State Housing Appeals Board has a list of all comprehensive permits that they deem substantially complete before the one-year moratorium imposed by the legislation.

The Ninigret handbook is the only development on this list. I ask that CRMC take the time to
review potential development and the proposed site location, the plethora of data related to high residential density impacts on the Rhode Island salts ponds prior to making any regulation changes to the SAMP. Thank you.

MR. FUGATE: Thank you. Is it Sandy Arnold?

MS. ARNOLD: No.

MR. FUGATE: Mr. Arnold, would you like to make a comment?

MR. ARNOLD: Good day. I'm Pete Arnold. I am a local resident. I've been on the pond for all the years of my life, and I've looked to CRMC as an organization that's dedicated to taking care of that pond and taking care of the breachway and taking care of any coastal feature. All of us, most of us know how difficult it is to get an application approved for any small project that's within the bounds of the CRMC, and I'm just appalled that you would take one of the rules that you have promulgated as wives in the coastal plane and turn it around retroactively to suit your needs. I think it's wrong. I think it's terrible. And, I thank you for the time.

MR. FUGATE: Robert Rohm.

MR. ROHM: I didn't intend to speak. I submitted a letter. I thought that was a sign-up sheet for attendance. So, I'll stand on my letter.
MR. FUGATE: That's fine. That's fine. Lawrence LeBlanc, do you wish to speak?

MR. LeBLANC: No.


MR. LANDRY: Good afternoon, Mr. Fugate. I happen to be the attorney for the project that nobody can talk about, and I am going to do my best not to talk about it, but, obviously, we're interested in the regulation change and would receive a benefit from that regulation change, but I would like to really be quite sincere, that I think would lend a little more perspective to this process because I think there are a lot of misassumptions out there. One of them has to do with the underlying policy considerations for the regulation change in the first place. It's been suggested that this is somehow a retroactive change to benefit one project and to go backwards to benefit the project. I think the record will show just the opposite.

The CRMC began to look at this policy issue back in 2003, before any particular project got significantly underway. There was a symposium at URI to discuss this issue of density in the SAMP areas and how to reconcile pretty hard and fast density requirements with the statewide need for affordable housing and what was going on with affordable housing in the State, which was looking at local zoning and other density requirements and...
saying, do we really need that density constraint or
is there another way to measure impacts that might
permit affordable housing to occur in more areas.
And, that was a very spirited discussion. People
from NOAA were there. I think their comments at the
end of the conference were that they were happy that
the Council was going to be careful and deliberative
in trying to reconcile these various policy
interests. At the time no change was made in the
regulations to constrain these types of projects.
If they proceeded in the condominium form of

ownership, there was no change at that time, and
over the next two-and-a-half years, a number of
projects went forward at tremendous expense over
dozens and dozens of hearings and were certified at
the State level as being substantially complete, not
that the CRMC was somehow required to jump as soon
as the State did that, but as a policy matter it was
relevant that there was this trend that was
occurring before the regulation was changed that
doesn't just go away, and that has some legal
implications that the CRMC attorney has acknowledged
on the record were very credible. So, I think what
the Council was doing in this regulation change,
which went through a very regular process, was to
recognize that there has to be a balance here, that
there are certain legal issues involved with
changing rules after a situation has been
identified, somebody moves in reliance on no change and on existing law and then you change it. So, that was an important consideration, and there was also a desire to try to reconcile zoning policy or CRMC zoning policy with statewide housing policy in other areas. The Charlestown housing plan, for example, called for higher density housing in more restricted areas than the one that the unnamed project is in, and those housing plans of all the South County communities had to be reviewed by CRMC and other state agencies and there had to be some way of trying to reconcile that state consideration with the CRMC cost. There's more to this than just one project.

The second point I wanted to make is that the last thing, the last thing we want to do is to avoid a review of the environmental impacts of any project. In fact, I would suggest that it's the people opposing this rule change that want to avert any real examination of environmental impact. There's nothing in this rule change that says that a project doesn't require a CRMC assent. All it says is that the rule change just would say, you've got to have three acres, no matter what, no matter where you are, and I would suggest to you that the current situation without this rule change or without something like it, that creates some opportunity to look at actual impacts is flawed in many respects.
You have a situation, for example, very relevant here, where a school was approved on the same site, with much greater impacts clearcut in the site. That's fine because it's not a subdivision. There could be an apartment building or a nursing home in the SAM Plan area, that would be fine, but not a four-unit affordable housing project. So there's an arbitrariness, not intentional, but there that I think needs to be examined.

Another example is that this policy covers self-sustaining lands, like the unnamed project, but also much more sensitive areas, much closer to the coastal ponds, areas developed beyond carrying capacity. In those areas there's no three-acre density requirement, and there are projects now about to hit CRMC that don't have that density requirement that are right at the Salt Pond.

Now, for those projects not to be reviewed by that standard, and for one miles away from the ponds to have an arbitrary limit seems unreasonable. There needs to be some more picking. Both of those situations should be evaluated based on those impacts without hard and fast rules. It shouldn't be easier to have a different kind of project in a more sensitive area than it is to have a benign project in a less sensitive area, and we are ready, willing and able to demonstrate the impacts of any
A project that goes forward under this regulation, nitrogen loading, and compare it very favorably to what has been approved already on the same sites, so --

UNIDENTIFIED SPEAKER: Are we talking about specific here?

MR. FUGATE: No. We're not talking about that.

MR. LANDRY: My point is that we want a regulation that tests the impacts of projects and makes sure that they don't effect the Salt Pond, and nothing in this regulation would preclude that type of examination.

My last point is that, there was nothing untoward, improper, behind-the-scenes, nothing untoward about how this particular regulation change was proposed, considered by the Policy & Planning Committee, presented to the CRMC full Council, heard by the CRMC full Council, adopted by the CRMC full Council. It was all done above board, all on the record, all for compelling policy reasons, and it's an unwarranted criticism of staff and the Council to suggest that this was somehow something that nobody was aware of.
enacted. It wasn't until weeks later when people
apparently associated with a particular project
decided they had a problem with it. But for all of
the good reasons why this regulation change was
debated for over several years, agreed upon by
Policy & Planning, recommended to the full Council
and adopted by the full Council, those policy
reasons don't change because some people may be
screaming louder than others and there may be more
people favoring one particular outcome than another.
Those are the only points I had to say. Thank
you.

MR. FUGATE: Thank you. I have,
excuse me if I mispronounce your names, but anyway,
Thomas DePatie, is that, is he here? Thomas
DePatie.

MR. DEPATIE: I didn't come prepared
on any specific subject. I, frankly, thought that
was an attendance list.

MR. FUGATE: Okay. Peter Ogle.

MR. OGLE: Peter Ogle. I live in
Charlestown. I guess I would have to say that I'm

opposed to any change in the allowable zoning, the
lot size in the SAM Plan area, until it clearly
defines a means of controlling the nitrogen from any
sort of development like that. I've seen other
projects start down that -- go down that path, and
there isn't a means of guaranteeing an
accountability that there will be no increase to the nitrogen and that will effect our ponds, can effect our ponds perhaps. Thank you.

MR. FUGATE: Thank you. I have a Mr. and Mrs. Trissler, is that right?

MR. TRISSLER: We don't have anything.

MR. FUGATE: Lori Urso.

MS. URSO: Thank you, Mr. Fugate. My name is Lori Urso. I am the Executive Director of Wood Pawcatuck Watershed Association, which is the state designated board to the Council for the Pawcatuck Watershed and whose jurisdiction includes the Town of Charlestown.

I'm here to express on behalf of the Board of Trustees the organization of opposition to the rule change relative to the density in the SAM Plan for Salt Pond.

I did have an opportunity to review the public comment file, and I saw Director Sullivan's comments from the Department of Environmental Management, and in his comments, which are similar to ours, it is not our intent to establish roadblocks to affordable housing, but the affordable housing advocates need to understand that there are legitimate environmental issues that need to be carefully considered before areas can be designated for greater density, and we would hope this would be the
similar position that the Coastal Resources Management Council would take on this issue.

There is the one proposal in our watershed that I won't refer to, only to say that any marginal site, and that's how we view the site that's in our watershed, should certainly be protected and reviewed under the more restrictive rules that were put in place in December of '04.

I don't have an argument that the rule change is unnecessary. I think a law maker from the State House, Matt McHugh, just said that very clearly, that the rule change from the General Assembly's point and from the Statewide Planning is not necessary to be in conformance. And I think he represented, and legally, that the General Assembly did not intend to jeopardize the Coastal ponds in addressing affordable housing nor to weaken the role of this Council, Coastal Resources Management Council.

We would ask you to represent on the side of the coastal environment and not on the side of assisting development in the area, particularly in highly sensitive areas, and if it were such that the State were asking the Council to lighten its regulations, we would hope that you would fight such a request and not go along with it.

Again, it is not our intent to establish roadblocks either, but to stand up for the integrity
of State policy intended to protect sensitive areas, and as such the Wood Pawcatuck Watershed Association urges the Council to reject any motion to change this rule. Thank you.

MR. FUGATE: Thank you. I have an L. Anderson next.

MR. ANDERSON: I thought it was a sign up list.


MS. ALLEN: I think, since we're talking about process here, that it would behoove us to look at how CRMC has handled similar applications in the past and compare it to the process in the past to what you want to change in the future.

There are two misconceptions I think out there about the low and moderate housing income laws, housing law, and that is, one, that the law is new and that there has never -- you had never had affordable housing applications under your jurisdiction before. Both are untrue. The law was started in 1991. They had a very minor change a couple of years ago that simply led him for profits rather than just the nonprofits. Other than that, it's the same law, the same regulations and the same process has been on the books for over 10 years.

There have been already two applications under your jurisdiction. I won't talk about any pending applications, but there are historical public record
applications that are now finalized and finished and have already been ruled upon by CRMC. They are very similar applications. They were applied under the affordable housing legislation. Both of them were ruled upon by CRMC. They were nonprofit organizations. And, I believe the process was perfectly appropriate, and CRMC did a fine job in reviewing those applications, which are now public record.

The first application that the Council, CRMC, has already ruled upon was the Robin Woods development proposal. That is your File 95-37. That was in 1996. Women's Development Corporation, which was a minority, and still is, a minority owned nonprofit organization which has a great deal of experience in developing affordable housing, made application to CRMC and they wanted to provide some affordable housing in the Town of Narragansett. They went through the process, and I'm going to give an extract from your own files to you, and I would like to make sure that all your present Council members have that to review, how they have handled this in the past. They went through a lengthy process with CRMC, and CRMC, despite the fact that there was public good and affordable housing, denied that application on environmental reasons, and in their final determination, full Council decision, one of the reasons was that it didn't meet the
density requirements. So I think CRMC acted appropriately there. I commend them for their decision there, and they certainly would want to handle any future applications, whether they would be minority-owned or for profits or nonprofits in the same manner. I will submit that to you.

The second application, which has a longer history, and I have a summary of documents available in your own files and in the files of the Town of Charlestown, was the affordable housing applications from the Narragansett Indian Tribe’s Nonprofit Housing Authority. That, again, was handled very appropriately by CRMC. It is very appropriate because it is exactly next to a development that I can’t talk about, but I could if I stood in the development I couldn’t talk about and put the other leg over the line, which we were told. That application had a long history, it has already been ruled upon by CRMC, and in that particular nonpending finalized public record development application, the Narragansett Indian Tribe did ask for a density bonus and that was denied. CRMC said, please comply with our regulations, you absolutely must comply with our regulations, and the tribe did what was appropriate and they complied with CRMC’s regulations. Then, I think I commend CRMC for
approving that application. The Town of Charlestown also approved that application. So that was the appropriate thing to do.

There were some problems in finalizing that housing development, but it had nothing to do with the CRMC process or the Town of Charlestown's review of that affordable housing application in our Town.

CRMC, in the application for affordable housing done by the Narragansett -- proposed by the Narragansett Indian Tribe was, however, very rigorous in their assent when they granted permission to go ahead, and I give to you for evidence, and I hope that all of the Council members, and particularly the new Council members of CRMC, review the approval for the affordable housing in Charlestown granted to the Narragansett Indian Tribe and the assent. I am assuming that your assents are usually as rigorous as this one is written. It is very tightly written. We give as a matter of process 30 days for the applicant to -- for the assent modification and the land evidence records. You required that particular applicant, there were all sorts of requirements on the sewage disposal system, the earth work and ISDS regulations, so it was a rigorous assent, and I think the Council did a very good job and they were
very fair to both applicants, they were both minority applicants, and one got the assent and one didn't, and they were very impartial in the way that they reviewed those applications, and they simply applied their environmental standards to them, and I hope that would happen in the future.

So, there have been a history of applications for affordable housing within the CRMC SAM Plan. One was from a minority-owned company that had a lot of experience, but it was denied because it didn't meet the environmental criteria. The other was from another, I guess minority nonprofit organization. It was approved. It didn't meet the environmental requirements. So, CRMC in those instances proved they can be very impartial and do the right thing.

I know that you either will have or have already received correspondence from the Conservation Law Foundation, and I'll leave my copy here in case you haven't got it, I'm sure someone will perhaps talk about it later, but I do agree with what they said, Attorney Giles said, the main argument that we heard from CRMC for exempting what they perceive from this one housing project for density rules is the exception is needed to bring CRMC in line with Rhode Island State Housing laws. They say that this is bad policy, and I agree with them, and from a legal prospective, or a procedural prospective, I know your lawyer is not here, but I
would like them to think about this and maybe talk to the Council about it, if, indeed, the argument to make this change is to bring CRMC in line with the State Housing laws, I would ask that you ask your attorney to review the decision of Judge Torres in NIT vs. Narragansett Electric. I believe that is a decision, Judge Torres' decision has recently been upheld on appeal, and I'll read to you, and this is I believe from your files, or from the Town of Charlestown's files, just a quick summary of that rather than going through the whole decision from John Kalloy, who is the lawyer for the tribe. "Enclosed is a decision of Judge Torres." And this has to do with low and moderate housing income proposal within CRMC's jurisdiction. I have not fully analyzed the ruling, but in general terms he found that, "Because the site constitutes Indian country as a dependent community, that State and local regulatory laws do not apply. However, he did rule..." this is from the tribe's attorney, so I think it's on target, "....he did rule that the project was subject to Coastal Resources Management Commission regulations because they apply and administer Federal standards law under the Coastal Zone Management Act."

What does that mean? It means that if any application coming before you in the future, including one I can't talk about, even if it were to
constitute a sovereign nation, CRMC rules would apply. And, in fact, any argument that Ms. Giles referred to, Attorney Giles, refers to that CRMC has to be brought in light with State Housing laws, I would think would be awfully irrelevant, and my knowledge of Federal law always trumps a state law, and CRMC, at least according to this interpretation, and perhaps also according to a Federal judge by the name of Judge Torres, whose ruling has just been upheld, Federal law always trumps State law. So I would ask you to take that into consideration, or ask your lawyer to review that, and I will leave that Conservation Law Foundation correspondence and the correspondence from Mr. Malloy on the Torres decision, and I'm sure your lawyer has the Torres decision.

I think if you do as a matter of public policy exempt future applications, which may be this one application, Rhode Island residents would be asked why. I do think that it's a bad policy decision to change rules as a result of lobbying efforts. Without talking about any particular application, I would like to bring at least to this audience's attention the very general document which was used in March of 2003 as a lobbying effort to change the law. This document, "The Geography of Housing Opportunity in Rhode Island," quote, "The current assessment of the extraordinary depth of the
affordable housing crisis in Rhode Island has proved causes and solutions and beneath the balance of the necessary role of the private sector in affordable housing, the preservation of other important local planning and land use prerogatives."

This, I believe, was presented to the State legislators, because it was all up there, and to other state agencies as an official state sanctions document. It looks like any other state sanctions document, and it's easy to see how legislators and other decision makers could have gotten confused about that. But, the author, if people read what the lawyer who is here, who happens to represent an application we can't talk about, who is also the head lobbyist for Rhode Island Builders Association, and in the back of that is pictures of one particular application which we can't talk about. So, clearly, some lobbying efforts have been used to, substantial lobbying efforts and expensive lobbying efforts to change the law, and it appears to me that it was done for a few projects, and I think as a matter of public policy you don't want to have a perception that CRMC changes the rules for lobbying money because of lobbying efforts. I think that's a bad policy decision. I would ask you not to do that.

As far as the process goes, in terms of determining how and when CRMC is involved in
affordable housing proposals within the CRMC plan, I
as a Charlestown taxpayer, and certainly as a Rhode
Island taxpayer, I am very frustrated with the
changing position that CRMC has given the public on
how this process works. A general letter was
written to, not about any applications, was written
and distributed to every single town in Rhode Island
from Coastal Resources Management Council. That was
on March 10th, 2003. It was written by a fellow
by the name of Grover Fugate, the Executive
Director. "Your Town administrator. It has come to
the attention of CRMC that land development projects
located in various communities and subject to your
jurisdiction and municipal approvals prior to
receiving their review," and then the law is stated.
"CRMC requires developers of land development
projects submit an application, even if they're a
land development project, have a municipal master
plan approval. Should you have any such
applications, whether they be affordable housing or
not..." and at that time it was all of affordable
housing ones. Mr. Fugate, "...please advise the
applicant of a review process." So that was
submitted from CRMC to every Town in Rhode Island.
And I would like the Council, the new Council, to
get a copy of that so they can review the process
that has been talked about by the CRMC and your
communication to every Town, all 39 towns in the
I will, though, say that as a Charlestown resident and taxpayer, it was very frustrating, and as a councilor at that time, for me to realize that the Town of Charlestown wanted CRMC to clarify further again in writing if any applicant coming before them, that happened to be before them in the Town, if in those situations the applicant had to go before CRMC. In order to get an answer from CRMC, the Town of Charlestown and the taxpayers of Charlestown had to hire their attorney and pay good money not to sue CRMC, but to file a declaratory judgment petition on April 23rd, 2003 addressed to Mr. Tikoian, Chairman of the Coastal Resources Management Council, asking them, at great expense to Charlestown taxpayers, "Please tell us if any applicant before us does or does not have to come before you."

Three years ago, after all that money was spent by the taxpayers we got no answer, and I'm a little upset about that as a taxpayer, especially after Mr. Fugate basically said, if anybody comes before you, please send them over to CRMC, we can hire a lawyer, basically, almost, you know, through CRMC, and saying, could you help us out and just put
it in writing in the form of a declaratory judgment, and we got no response, and I don't think that's right.

Everyone who has an application within CRMC's jurisdiction under the Low & Moderate Housing Act has come to you before, under the law, for a determination, and I think you should continue -- you should ask the Council to review the record of how they handled this in the past and continue to handle it appropriately based on environmental concerns only, whether they would be a lack of minority on process, whether they be the Narragansett Indian Tribe, whether they would be a for profit. No matter who the applicant is, I would ask CRMC to review what they've done in the past and to be consistent with it in the future. I think that is the best policy decision and it's the best environmental decision, it's what the people now, and the people of Charlestown with the approval of Rhode Island want to hear, and I hope the CRMC makes decisions, two decisions; one, that they're going to do their job, they don't have to wait for a Town to sit on it or ask for a declaratory judgment to do their job; and, two, when they do their job, they are going to treat each and every applicant the same, in the same process, which has worked very well in the past. Thank you.
MR. FUGATE: Thank you. Next I have a Ruth Platnar. Is Ruth here?

MS. PLATNAR: I wrote you a letter which was part of the public record. Does that go along with this transcript?

MR. FUGATE: Yes.

MS. PLATNAR: So that will all be read. So I don't need to repeat that.

I also had a letter to the editor that I would hope the Council would get.

One thing I would like to share with you are your own words. This is a letter from Jeff Willis to Mr. Tikoian and also to Grover Fugate, with a date of June 30, 2003. This was about the proposed rule changes that you were discussing in the Summer of 2003.

By way of promulgating a Special Area Management Plan, the Council has found that the Salt Pond Watershed Region, the geographic area is of particular concern. These areas are a concern because of their coastal-related value and characteristics, and because they face pressures which require detailed extension beyond the general planning on the regulatory process which is part of the management program.

The ecology of the salt pond is at a critical state. Water quality continues to be degraded due to existing residential sources of nitrogen and...
bacteria. Although research conducted at the University of Rhode Island suggests that correlation between housing density and eutrophication of the salt pond, there is no clear nitrogen loading threshold which CRMC can apply to each individual activity and development. Accordingly, CRMC addresses nitrogen loading through conservative land use regulations, such as density control and nitrogen-reducing technology.

In addition to the impacts of nitrogen, other nonpoint sources of pollutions or sediments of erosion and road runoff, the totalling biproducts which result in road runoff are of concern. As the impervious characters increase in Salt Pond watershed these pollutants have a greater potential to reach coastal waters. So, I think it was clear that your staff was not supporting the rule changes that were proposed in the Summer of 2003. I know you have it in your records somewhere, but just to make it part of this as well.

I attended that July 2003 meeting, of which was the coastal housing work group meeting. The minutes of that meeting are on line at the Coastal Institute’s website. I don’t think I wrote down URI for that, but I’ll give you a copy of it, and if you went to the Coastal Institute, you could find that.

There was no consent at that meeting to change the regulations in a way that increased density. In
fact, the Coastal Housing Meeting attendee suggestions for action were that CRMC should immediately revised the Narrow River and Salt Pond Special Area Management Plan, the SAMP, regulations, closing the loophole that had been there for nonsubdivisions, to ensure that the applicable density standards are required for multi-unit projects of six or more units that may be updated on the web or a parcel that has not undergone subdivision. CRMC and other State regulatory agencies should work with Statewide Planning to standardize the definition of subdivision. CRMC should continue to work with URI scientists to further model groundwater flow and nitrogen loading to the Salt Pond. As science further develops, establish total maximum daily loading levels of nitrogen for each watershed. Until appropriate nitrogen, TMDL, total maximum daily loading, are established, regardless of the project type, CRMC should continue to rely on density, meaning units per acre restrictions, within the SAMPs to maintain groundwater pollution of nitrogen throughout the watershed.

So, the outcome of that meeting was that that density should not be increased, and, in fact, we should close the loophole to make sure that there are all types of development with housing density standards, and I understand as well, although you
could get it over the line, okay. Just because, I think what happened at that meeting, I don't want to misrepresent to you, we had a very -- a little bit of time to make public comments. We had about a month. I forget exactly when that ended. I think that ended on March 20th. You received a lot of correspondence, I believe, and it was all in opposition to the rule change. You received only one letter in support of the rule change written by the attorney -- gee, I can't say that. That would receive vesting as a result of your rule change. That letter was written well after the deadline, but Mr. Landry so totally misrepresented Charlestown Zoning Ordinance affordable housing plan and history in general that I have to respond.

I do have a question. This is the letter that I'm referring to. It's on Blish & Cavanagh letterhead. It says, to CRMC members and staff, from William R. Landry, dated April 4, 2006, and, let's see, it deals with the proposed revisions to the Salt Pond SAMP and Narrow River SAMP affordable housing implications. You received that letter. Did you read it? Did the members read it?

MR. FUGATE: The members have not read any of the record yet because it has not been presented to them.

MS. PLATNAR: This has been sent to their home.
MR. FUGATE: It comes into the office and it is held there to become part of the record.

MS. PLATNAR: It is part of the record?

MR. FUGATE: Yes.

MS. PLATNAR: It does deal with specific application, how do you, like, avert your eyes when you get to this part?

MR. FUGATE: The Council will be told that they cannot consider any specific application, and most of the Council members know that.

MS. PLATNAR: Okay. But they did receive a letter. It does deal with a specific, but it also deals with some other things. I wrote a response to that letter. I'll read you the parts that don't deal specifically with the application, but it will make sense anyway. So, you received only one letter in opposition.

My name is Ruth Platnar. I am a member of the Charlestown Planning Commission. I am not representing the Planning Commission, but at the April 11th meeting there were five members of the Planning Commission there, and you received correspondence from a lot of them.

In Charlestown that's an elected position. I served in that position since 1997. In other
Charlestown since 1984. I worked on the Charlestown Comprehensive Plan, our zoning ordinance, our subdivision and land development regulations, and I served on the Affordable Housing Task Force that wrote Charlestown's Affordable Housing Plan.

In his letter Mr. Landry claims that the SAM Plan rule change is needed to block Charlestown's Affordable Housing Plan and mixed use district. These are the 121 articles you referred to on Pages 1, 2, 3, 4 and 5 of his April 4th letter.

The mixed use district is part of our affordable housing plan. To implement our affordable housing plan, you have incorporated mixed use into our zoning ordinance.

Mr. Landry correctly states that the mixed use village contains about 200 acres and 121 lots. What he fails to tell you is that these lots are all zoned commercial, that most are already built, that have some have been built for centuries and that the zoning ordinance only allows residential in its districts as an accessory use. These would be small apartments above a business. He failed to mention that the State only projects 30 affordable units in this district, and essentially requires that
59 percent of the units are affordable. That would be about 50 to 60 total units. We may get more than that, but we may not. But, that would be a reasonable estimate that they thought optimistically you could only get 40. They only let us count 30 towards our affordable housing.

Most importantly, he failed to mention that our ordinances put each project firmly under CRMC jurisdiction. This is in the Charlestown business district, the area where the General Stanton is and the Washington Trust Bank. This district is totally independent of the Low and Moderate Income Housing Act. Development on these lots is reviewed as all other commercial development within the plats have been reviewed, in the same way a doctor's office or a restaurant or a hotel would be reviewed. There is no requirement for the residential, only with that high percentage of affordable units.

Our ordinance is very different than a comprehensive permit on the Low and Moderate Income Housing Act. Mixed use is entirely within the zoning ordinance and subject to CRMC in the same way as any other commercial development in the SAMP.

Here are a few excerpts from our ordinance.

2-18-37.1, which is the mixed used zoning overlay district. These regulations are also intended to be consistent with the Rhode Island Coastal Resources
Management Council Special Area Management Plan.
And then below that there's an explanation of
density, that all required Federal, State and/or
local approvals permits must be obtained.

Even if these were contemplated under the
Affordable Housing Law, they would still be required
to apply to CRMC. The affordable housing section of
our zoning ordinance is written to comply with State
law and required that the applicants file
comprehensive permits, show proof of the application
for all normally required State and Federal permits
before their application will be deemed to be
complete and they cannot receive final approval
until they have obtained those permits.

Our regulations, including our affordable
housing section, require all applicants in the SAM
Plan to apply to CRMC.

Mr. Landry writes in his letter, that without
this rule change, affordable housing projects filed
under the State Low and Moderate Income Housing Act
will not be regulated by the CRMC or that the

December 2004 clarification will not apply then.
Nothing could be further from the truth because we
are already reviewing another comprehensive permit
filed under the low/mod law and it is clearly under
CRMC jurisdiction.

Before this new applicant -- well. Oh, yes.
That's another one. Okay. They had to show proof
of notice to the CRMC, and that proof came in the form of a February 1, 2006 letter to Grover Fugate, explaining that the project was in the SAM Plan and then there's the CRMC jurisdiction.

Those of us who worked on Charlestown Affordable Housing Plan always believed that the December 2004 CRMC rule change closes the opportunity for density increases for housing on residential self-sustaining land and land of critical concern. However, in the July 2003 meeting on this topic at the Coastal Institute, in those minutes we did hear the opinion from CRMC staff that parcel in the designation, lands built beyond carrying capacity might be appropriate for affordable housing development. We have been attempting to get CRMC staff to a workshop in Charlestown to tell us what would be allowed in land filled beyond carrying capacity and on commercial land, which your attorney has advised your scientific staff not to do.

Our ordinances have always complied with CRMC regulations for density, and I want them to continue to comply and be consistent with the supporting science of those regulations.

All applications in the SAM Plan, whether a low, mod, comp permit or a regular application, are fully within CRMC jurisdiction. Nothing in our zoning or under State law has changed that.
Mr. Landry’s letter also mentions other topics relating to Charlestown. He has the time line, starting on page five of his letter, his history is distorted and has lots of omissions. I would like to offer an alternative time line, unfortunately, in order to do that, I would have to mention a specific application. So, I’ll just tell you the dates here.

In August 2002, I could repeat that, but you won’t let me. March, 2003. A lot of dates I can’t say the specific. But, you did get the letter from Grover Fugate saying that CRMC requires the developers of land development projects to submit an application to CRMC for review of applicable agency regulations ahead of the municipal master plan approval. April 2003. I have a July, 2003. CRMC proposes rule changes to close the land developments that are not subject to. Mr. Landry proposes his own rule change that will allow projects filed under the low-mod law to use performance zoning rather than density. Coastal has working meeting convened at Coastal Institute and at the conclusion of its meeting the CRMC should close the loophole. This was done in the regulation change of December 2004. The recommendations that working with the regulations should be made to clarify them and make sure densities were not exceeded. There was no recommendation to provide an exemption for any specific project.
Well, from August 2003 to December of 2004, any applications that were before the Town were urged to apply to CRMC for a preliminary determination and it seemed they declined to do so. September of 2004, voters rejected use of a site for a school. Mr. Landry claims that as something else, but the fact remains that the people of the Town soundly rejected that use.

In a referendum, the Town is represented by the majority of voters, not by advocates, and a lot of people voted against it because they thought a site in the SAMP was not appropriate. December 2004 CRMC closes the SAMP loophole dealing with condominiums, such as some specific development.

From January 2005 until May 2005 any applicants were urged to go to CRMC and didn't. June 2005, again, any applications that might have been before the Zoning Board were urged to go to CRMC but didn't.

From July 2005 until February of 2006, eight months, I watched the CRMC web page looking to see if anything was posted on your application page. Then we got an announcement from the Conservation Law Foundation, which I read in the newspaper, that they were challenging the reg because you would need to exempt one development from the density requirements from the SAM Plan.
Finally, we knew what Mr. Landry had been waiting for. Now advocates speaking on oral change to that development to regulations that existed before December 2004. Those advocates were well aware of the requirements to apply to CRMC and failed to make application. They still have not made application.

From July 2003 until the present Mr. Landry has lobbied to change CRMC regulations. This is easily apparent from the changes that are proposed in July of 2003 and those to now. He has chosen to change the regulations rather than make application under existing regulations. He is not vested under the regulations, and he has specifically refused to apply under them. He needs to make changes to the regulations in order to be vested under the old regulations, and he never was vested, and anyone who changes the regulations is only done to make vesting when it wasn't vested.

I'm happy to answer any questions that you might have about the Charlestown Comprehensive Plan or Affordable Housing Plan and our zoning ordinance and I don't think they are a threat to the Salt Pond. I think Mr. Landry said that it was.

MR. FUGATE: Thank you. Next is Cliff Vanover.

MR. VANOVER: Thank you. That's Cliff Vanover, and I will be brief. Up until the
February CRMC hearing, when Director Sullivan suggested to you that you rescind the change and go through the process again, which led to this hearing, what happened that led up to that rule change was completely opaque to practically everybody who was interested in this process, and I'm very troubled by that. It's the kind of actions, whatever took place, and now it's still not clear what happened that led to that rule change. It seems obvious that a lot of lobbying occurred in private with CRMC. I don't understand how it could have happened otherwise, that you would come up with this rule change that people discovered after the fact. It's very disturbing to me. It's the kind of special interest efforts and lobbying and rule changes that make people very cynical and distrust government, and I think that's the last thing we need these days. We need to -- we need an open process so that this kind of activity, this kind of change, which, as far as I can tell, it is worth millions of dollars to an applicant that I can't say, I can't mention or talk about.

And, let's be clear, if this applicant we can't talk about is not able to get this change and you did not change the regulations, he can still
make... Well, you know what I mean. But, I just
want you to do the right thing, which I think you
know what that is, and that is to follow the rules
that you have now, which are designed to protect the
environment.

So, thank you. And, I have one item to submit
to you.

MR. FUGATE: I have a Robert
Schiedler.

MR. SCHIEDLER: This is just what
you need. I know, I recognize that.

MR. FUGATE: Before you get started,
just state your name.

MR. SCHIEDLER: However, I'll keep
my speech shorter, okay. No objectors to that?
Okay.

MR. FUGATE: Could you just state
your name.

MR. SCHIEDLER: Yes, Robert
Schiedler, 68 Sanctuary Road in Charlestown.
Citizen. Actually, I was going to give this to the
Council members when we were in a hearing, which
wasn't held due to the lack of a quorum, and I
thought maybe I would just bring those along. You
can share that with them. And, it's really trying
to cover several points only. I have, in case you
want my original letter, which I'm sure you have it,
to you, which was submitted on time originally, with
a number of points as to why I believe your current rule, which was revisited, and changed back to the original should be retained. I think you probably are getting all kinds of good reasons for doing this, but I'll have here a copy of that letter. One point I wanted to -- two points I wanted to make.

In the reviewing the SAM Plan for the Salt Pond, I was particularly impressed with the exercise that CRMC went through after time as far as participation, which for many qualified people to give you the good advice as to what should be included in those plans. I know you gentlemen probably helped write the plan and are quite aware of that process, to which led up to the '99 rather important revision of the plan, which was demented I think in 2004, and we'll get to that in a second. But, what really impressed me was the contributors that you received on formulating what I think is a very excellent plan, which should be retained. I'm not going to read all the plans. I'm going to give you a couple of headlines here as to where these people came from. Your partners, your participants, for example, from the Rhode Island C Grant and URI Coastal Resources, URI Department of Geology, URI Division of Fish & Wildlife. You gentlemen here are busy. Storm hazards, URI Department of Zoology, Rhode Island Historical Preservation. And you had
some partners in community participation in that
e exercise as well. For example, the Rhode Island C
Grant, Coastal Resources Center, Geology, Natural
Resources Science, Oceanography, and it goes on and
on down the list.

As far as the Federal Fish & Wildlife,
National Marine Fisheries, Federal Environmental
Protection Administration, four municipalities in
our salt ponds here, Charlestown being one,
Westerly, South Kingstown and Narragansett, all
participated, and I happened to be a little bit
involved in that angle at the time because the Town
Planner that I was working with at the time,
actually several by the time you started and
finished the process, was very much involved, and
you gave quite a nice accolade to the contribution

that the Town's planner gave. So going on to the
Indian tribe, Salt Pond Coalition in March, welcome
to the extension, and I'm going to stop there, but
that's not the whole list. I am sure the Council
members, your Council members would like to read
that, and that's the reason I brought this to sort
of bring it up to speed, as to the past and why that
plan is so good, because of the extensive
participation by so many qualified people. The plan
really was meant to do two things, major things.
One, was to designate the areas within the coastal
pond areas that should be considered as sensitive
environmentally, and it has special rules and regulations governing it, and the second one was to determine the appropriate density for all of the residential developments that would be in the future allowed in those areas. I think you really captured what was good, and you did it in a collaborative way that should be recognized and not have any changes to what was methodic at that time without similar types of participation.

I've had the opportunity, having seen a number of names in there I recognized, to inquire as to what some of your partners felt about the change being considered, and I've yet to find anyone who thinks it's a good idea. I did not survey them all, all the people, but I would welcome you to do that, if you so choose to do so and feel it was necessary to do it. I'm not sure that it is necessary, but I think the objectives of that study were met, and I think it would be unfortunate to change the result at that particular time.

I give you a number of other little points here as to why I believe the continuity of rules in this area would be the wise, the right way to go.

The final and second point is, to think about changing the rule seems, to run just counter what everyone else is doing who is interested in the environment in those areas. I know there's three major areas of interest. You're going to have here
another little submission to use, which is the Department of Environmental Management’s Water Quality restoration project known as the twelve matching daily load, which I think we are all are aware of our concerns, Green Hill Pond and Ninigret, and the fact that it needs help, and it’s been getting help, it’s going to get more help, and it’s going to need a lot more, and to think that we would in any way make a change in your rule that would counter that, I need not say is unbelievable, but I just did.

The other thing I think Salt Pond Coalition has just -- which is a fantastic citizen who you’re familiar with. I have a little brochure right here that says, “20 years of citizen participation in trying to improve the pond’s environment.” I think it’s useful, rewarding and trying to grow even into better situations in upcoming years, and it will go counter to that, where it will make a great deal of sense. And, personally, I was involved a little bit with introducing an ordinance in Charlestown Wastewater Management Program, which has grown and grown into a very effective program. I think you’re familiar with that, as to where the Town is expecting and improving, upgrading wastewater, individual wastewater systems throughout the entire Town, and the main thrust or purpose of that was in the efforts of the Salt Pond. So, those are just
three of the reasons why I think to change the rules
generated to the good that these programs
and others are doing for the environment would not
make a great deal of sense, and I would hope that

doesn't occur. I think you probably have heard
or read sufficiently, for all good reason beyond
that, as to why the vast majority of citizens of
this community are on my side, on your side, and I
think you have to be congratulated for the good job
you've been doing and not just giving up. Thank
you.

MR. FUGATE: Thank you. James
O'Brien.

MR. O'BRIEN: I'll pass.

MR. FUGATE: Okay. Is it Edward
Callenda, is that it?

MR. CALLENDIA: Callenda. I'll
defere.

MR. FUGATE: Okay. Is it Lou or
Len?

MR. JOHNSON: I sent a letter and
faxed a letter to you folks in March and my
opinion hadn't changed.

MR. FUGATE: Okay. Is there a
Shane? No. Thirty-five Surfside Avenue. Yes? No?
Okay. Art Ganz.

MR. GANZ: You'll have to excuse my
cough. My name is Art Ganz. I'm the President of
the Salt Pond Coalition, which is the State designated watershed council for the coastal pond's region.

Before my retirement, I was a marine biologist for the Department of Environmental Management for 32 years, an adjunct professor at the University of Rhode Island College of Environment and Life Sciences.

At the time of retirement I was the supervising marine biologist. I've testified before the Coastal Resources Management Council many times.

I would also like to add that I was a significant contributor to the preparation and development of the Coastal Resources SAM Plan for the Salt Pond areas. And, actually, I had participated in the creation of all of the SAM Plans that you now have.

Many of the sitting Council members were probably not present when we conducted a lot of the work in the SAM Plan, and I would certainly urge all of them to really take a look at this, read it and really understand what this project was and how it works, its contents, how it works, what the findings
were, recommendations and the regulations that have been in place for a while now.

The Salt Pond SAM Plan was the first major multi-agency cooperative effort to plan and regulate the development of our coastal salt ponds, many, many folks that were involved in this project, and the emphasis was to protect both the groundwater and the estuarine resources of South County. Significant work was done to reduce both the bacterial and nutrient contaminations of the pond, and it was based on good science. It was science at the time, and that science has been upgraded and developed as we all know at this point.

One of the many components of the Special Area Management Plan was the classification of land use areas. Through research it was determined that the areas classified as self-sustaining to support no more than one residential unit per 80,000 square feet, and the areas classified as lands of critical concern could support no more than one residential unit per 120,000 square feet. Charlestown zoning reflects this, and I emphasize the term that is used, which is your term, as residential units, not necessarily condominium ownership, subdivision or whatnot. Residential unit.

I don’t think anybody can dispute the critical need that we have here in Rhode Island for affordable housing, but it should not be the
responsibility of the Coastal Resources to do this with reducing the density specified in the SAM Plan.

It just does not -- you know, we can have affordable housing without the compromise of our environment. This is very important.

I would like to add a few things. I will mention, of course, our written statement is submitted and part of the record, so I will summarize some of these other important facts.

First of all, the population of the Town of Charlestown is increasing at a rate greater than 20 percent for the period from 1990 until the present. That's huge. After 2004, 35 percent of the land area in the Salt Pond SAM Plan region is occupied by residential housing. Because the 1999 Salt Pond region SAM Plan stipulates the regulations to reduce its extent of development and pollution in these watersheds. However, environmental water quality data that we have, of course, we have a 20-year, into our 21st year history, of Salt Pond monitors, called The Pond Watchers that have kept track of nutrient bacteria information, was the basis for this. It shows that the accumulative impact of the non-point sources of bacteria and nitrogen continued to result in the closed shellfish beds and eutrophic conditions of the pond. I don't think anybody can dispute that either.

Water quality concerns. Nitrogen is a major
factor that impairs the water quality in Rhode Island coastal salt ponds.

Human activities, such as septic systems and lawn fertilizers, contribute most of the nitrogen to the groundwater, which eventually infiltrates into the pond.

For example, Ninigret Pond, 60 percent of the nitrogen is coming from septic systems and 14 percent from fertilized lawns.

In Ninigret Pond, impaired water quality is indicated by, that we have exceeded our shellfish standards in the eastern part of the pond in the Greenville pond for 13 over the last 18 years. And our monitoring for dissolved oxygen in the pond is also showing, particularly in the later part of the summer, in the warm weather, oxygen levels which are hypoxic, under four milligrams per liter. We have oxygen problems as well.

Some numbers to back this up. Dissolved nitrogen concentrations in Ninigret Pond. There is an increase of 310 micrograms per liter in 2001, and its current level is measured in 2005 is over 800 micrograms per liter.

Massachusetts estuary product, which has done a significant amount of work on nitrogen loading and nutrient material, indicates that they have found that 400 micrograms per liter of dissolved oxygen represents the threshold between suitable and
impacted waters.

The summer algal blooms and subsequent stressed oxygen levels indicate that Ninigret Pond is evolving from a relatively healthy environment to a eutrophic state. Most pond dissolved oxygen concentrations are at least 10 times the value of the sea water that comes through the breachway.

Studies at the URI Marine Ecosystem Research Lab, we call it the MERL lab, has showed that small increases in dissolved oxygen in the sea water has caused an adverse effect on eelgrass help. Between 1960 and 1992 we lost about 30 percent of our eelgrass, and I would guess, I am pretty sure now that we've lost about 80 percent of our eelgrass population in Ninigret Pond.

We also have submitted for you in the record a correlation that has been done showing the Charlestown Housing increase versus the nitrate concentration in the pond, and it's got almost a limited increase with the amount of development along the shores.

What's predicted. Most of the dissolved nitrogen inputs into Ninigret Pond comes from the groundwater. Under our existing scenario right now, one resident in two acres means that about 70 percent of the nitrate in Ninigret Pond will come from the groundwater and 65 percent of the groundwater dissolved nitrogen comes from the septic
If the Council were to change their rules, there would be 2.5 residences per acre that would increase to 80 percent of the nitrate coming from the groundwater and 80 percent of the groundwater dissolved nitrogen would come from the septic systems eventually reaching the pond.

Now, with regard to the nitrate concentrations, what is considered the background level is .2 milligrams per liter. With the model that is produced by the University of Rhode Island off of Extension Service, the current zoning's loading rate would be 2.2 milligrams per liter.

Now, if the density change were to take place, which would make it essentially five times that, we would expect to have 10.8 milligrams per liter of nitrogen going into the pond from that. Again, that is not my information. That is information that comes from the managed model from Cooperative Extension.

To summarize, our Salt Pond SAMP is intended to regulate the residential growth to improve the water quality. Over the past decades there have been some improvements, but we still have deteriorated conditions in Green Hill Pond and deteriorating conditions in Ninigret Pond. From these observations and the material that we are...
submitting, we would recommend that the Coastal Resources Management Council keep the density requirements as it now exists in the SAM Plan.

Thank you.


MS. McClung: No.


MS. BRUSH: Thank you very much. My name is Sheila Brush. I'm the Director of Programs for Growth Smart Rhode Island, and I'm here today to speak on behalf of my organization.

Growth Smart Rhode Island urges the CRMC not to make changes to the Salt Plan SAMP and the Narrow River SAMP that would enable any substantially complete low-mod housing comprehensive permit application filed at the local zoning board before December 14th, 2004 to avoid the CRMC density standards for self-sustaining lands and lands of critical concern.

Growth Smart Rhode Island has been a strong advocate for increased production for affordable housing, particularly in those parts of the state that have not yet reached the goal of having 10 percent of their housing stocked in the low and moderate income category. However, we have always emphasized that increased production should not come
at the expense of the environment. I repeat, not at the expense of the environment.

On the contrary, we believe that the compact development required to accommodate affordable housing must be carefully located, and that good and serious consideration must be given to environmental impacts.

We would note that the same principle is contained in the Rhode Island Strategic Zoning Plan that was recently adopted by the State Planning Council. That plan states, and I’ll quote, “Increased density is not appropriate in all area. Rather, growth should be concentrated and restricted to the areas best suited to accommodate it in terms of site conditions and available facilities. The key consideration is for communities to identify, through the comprehensive planning process, appropriate areas where increased densities can be supported by site parameters and existing and planned public services. In doing so, they should ensure that the effects of increased density, such as increased runoff and pollutant loading, can be effectively managed without creating serious impact which would exceed applicable laws or standards.

This requires both careful planning and close
coordination, involving local government, their citizens, potential private sector partners and state agencies. The Coastal Resources Management Council is one of the key state agencies responsible for ensuring that potential environmental impacts are carefully studied. It was established, and I quote, to preserve, protect, develop, and, where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long-range planning and management designed to produce the maximum benefit for society in such coastal resources.

We fully believe that Growth Smart and the CRMC adopted density standards for sensitive coastal areas and areas of critical concern, it is intended that those standards should apply to all parts of residential development, in other words, to both subdivisions and land development projects, and that the omission of a reference to land development projects created an inadvertent loophole. The rule change made on December 14th, 2004 carried out the original intent of the law.

Over the past two-and-a-half years, Growth Smart has promoted careful planning for affordable housing. With 29 municipal housing plans completed, Rhode Island is well positioned as a state to site affordable housing units in areas that can accommodate such development. We don't need to
develop affordable housing in fragile environmental areas in order to achieve our affordable housing goals. That would be an abdication of our responsibility to be good stewards of our natural resources and to do the hard thinking and methodical planning that can enable us to simultaneously achieve our affordable housing and resource conservation goals. Making the changes under discussion in the Salt Pond and Narrow River SAMP plans would eliminate the CRMC's ability in at least one instance to exercise its mandated responsibilities to protect our fragile coastal areas. We urge the CRMC not to pass these changes. Thank you.

MR. FUGATE: Thank you. Anna Prager.

MS. PRAGER: I'm going to be very brief because of what I was going to say has been said, but I just have a couple of points that I wanted quickly to raise.

For those who don't know me, I am Anna Prager and I am a professional land use planner, have been so in the State of Rhode Island for the last 35 years. I'm also a member of the State Planning Council. And, Sheila, thank you for reading that section from our recently adopted affordable housing plan. But, in addition, I want to say that in that very same plan, in its development guideline, in the
appendix, specifically says under the heading of
"Where not to develop affordable housing," it
states, "Not to develop affordable housing in
sensitive environmental areas." So, any argument
that has been made that this amendment is needed to
conform with any state laws, that just doesn't make
any sense to me, because the state laws, as I know
them, there has been plans by the State Planning
Council, the act does not require for a state that
affordable housing and environmental protection are
mutually exclusive concepts. They were all in
accord.

The second brief point that I want to make is
that any proposal which was in the approval process
prior to your December ‘04 amendment may have had

some vested rights, and, therefore, should proceed
under those amending regulations to protect those
vested rights. I have never considered in my 35
years of experience of planning, either there has
vested rights, it either concurs with the existing
laws or it doesn't. So I urge you to continue to
work the good work you've been doing and protect
these fragile coastal areas and not act under this
proposed amendment. Thank you.

MR. FUGATE: Robert Frost. No.
MR. FROST: Yes, I didn't.
MR. FUGATE: Okay. That's the end
of my list, unless there's anybody else that would
like to speak. Yes.

MR. WALKER: I missed the list.

MR. FUGATE: Okay.

MR. WALKER: Hello. I am Gus Walker. I am Chairman of the Wastewater Management Commission. I am speaking for myself.

When you increase density, housing density, the only logical thing to do to counteract that is to increase the capacity of septic systems to remove excess nitrogen and other contaminants. I would argue that the IA systems, Innovative Advanced systems, that are available on the market do not remove nearly enough nitrogen to compensate for those factors. An average of 15 commercially available IA systems gives an average of nitrogen and the effluent, 22 milligrams per liter. An unnamed, unmentionable project predicted that their system would reduce it to 2.68 milligrams per liter. That's less than one-tenth of the actual amount. The average of all of the systems that I've looked at is 22 milligrams per liter. The State limit on nitrogen was 19 milligrams per liter.

With all of these arguments, I suggest that it's foolish to proceed like this. The technology is not available to compensate for the increased density. Thank you.

MR. FUGATE: Thank you. Okay. Is there anybody else that would like to make public
comment? Okay.

On behalf of the Coastal Resources Management Council, I would like to thank everybody that made comment tonight and thank all of you for coming tonight. It's obvious it's a very important issue to, particularly to Charlestown on this regulation change.

As I indicated, we will compile all of this material. The Deputy Director and I have a pleasant job of reviewing all the material and then making a recommendation to the Council based on our analysis, and then whatever the Council will do at that point it will do, but it will be advertised. You will have an opportunity to attend that hearing, if you wish, and make further comment, I'm sure. But, that's the process that it's supposed to take. Yes.

UNIDENTIFIED SPEAKER: Before you were handing out a sheet for people to be put on to get on the mailing list?

MR. FUGATE: Yes.

UNIDENTIFIED SPEAKER: And then it became clear that they will be speaking, so people stopped signing it.

MR. FUGATE: Okay. If anybody that wants to put their name on a mailing list for any hearings on this particular issue, we will continue to take names. Yes.

UNIDENTIFIED SPEAKER: Before I
thought that you said there would be a transcript written of the tape recording of this meeting?

MR. FUGATE: Yes.

UNIDENTIFIED SPEAKER: But the Council will never get that transcript?

MR. FUGATE: Yes, they will.

UNIDENTIFIED SPEAKER: They will get the entire transcript?

MR. FUGATE: They will get the entire transcript.

UNIDENTIFIED SPEAKER: Does that transcript become a public record after they receive it, is that how that works, or where might that be available?

MR. FUGATE: Once the transcript is received by the agency, it's usually reviewed by the agency for a period of three days before it becomes public record. Then it will be available to any party. As I indicated, you can either purchase the transcript directly from the vendor, or we do have copies available in house that somebody can sign out for a 24-hour period.

UNIDENTIFIED SPEAKER: Would that be of the CRMC offices right here?

MR. FUGATE: Yes, that's at the Stedman Center.

UNIDENTIFIED SPEAKER: We'll call
and see when that's available.

MR. FUGATE:  Right.

UNIDENTIFIED SPEAKER:  Can I have a final question?

MR. FUGATE:  Sure.

UNIDENTIFIED SPEAKER:  I believe I read in the newspaper that there was a possibility that the Council and yourself and your staff, after consideration of all of the comments that you received, would make a determination that this matter would be draft, no longer considered, never again to appear on a future agenda.  It would seem to me it's not mandatory that that be placed back on a future agenda, and I am just wondering if that observation is accurate and what's the odds of that happening, so we don't all have to go to Providence?

MR. FUGATE:  For the process to be complete, we have to go through, and, as I said, we've been asked by the Chairman to review the material and formulate any staff recommendation based upon all the input that we have now.  We will present that at a full Council meeting, advertise, at that point the Council can either deny the regulation change, approve the regulation change or

remand it back to Policy & Planning for further
review and study.

UNIDENTIFIED SPEAKER: You're saying that there will be considered, one way or the other, there's no chance of it just going away?

MR. FUGATE: No. The full Council has to take that action.

UNIDENTIFIED SPEAKER: Who makes that determination?

MR. FUGATE: The full Council will.

UNIDENTIFIED SPEAKER: The full Council. They set the full agenda?

MR. FUGATE: The Council will --

UNIDENTIFIED SPEAKER: The Chairman makes that decision?

MR. FUGATE: No. The full Council will make the decision as to what the fate of the regulation is.

UNIDENTIFIED SPEAKER: And whether it's on the agenda.

MR. FUGATE: Whether it's on the agenda or not usually is a scheduling issue between myself and the Chairman.

UNIDENTIFIED SPEAKER: Okay. If you decide to go in the right direction, would you advise us? By the way, thank you, gentlemen.

UNIDENTIFIED SPEAKER: Can we have a time line, when staff goes over this? I mean, is there a certain period of time, a week, two weeks,
10 days, anything before the Council that the
Council will go over it, is there anything in the
rules that you feel that we choose, initial language
or something else?

Mr. Fugate: There's nothing in the
law that sets any timeframe. The Deputy Director
and myself will probably take several weeks at least
to go through the material and review it and try to
formulate as the recommendation. We will draft that
as a written recommendation to the Council, which
will become a staff report then, that would be
available to anybody, and once that is scheduled
before the Council hearing, certainly anybody that
wants to get the package, the agenda package or the
regulation package, it is available for public
review, the agenda package would be available for
public review, the staff reports are available for
public review. So, none of this is -- it's full and
open public disclosure on all of this, so.

Unidentified Speaker: The question
is, once you finish, who determines when it goes to
the full Council?

Mr. Fugate: Typically, it's
usually, as I said, a scheduling matter. The
Council, in the summer period of June, July and
August, usually has one meeting a month. Depending
on the issues that are coming before the Council and
what they need to get absolutely done and whatnot

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usually determines it. But, where this is, we would probably, at a minimum, put a notice out on this. We would have to schedule according to each certain by probably 20 days in advance, and put out a notice to everybody to that effect, that it would be heard at the next meeting, so that there would be an opportunity for anybody to be aware of that meeting and comment.

UNIDENTIFIED SPEAKER: So, are you saying the earliest would be September?

MR. FUGATE: I think that would be an appropriate timeframe.

UNIDENTIFIED SPEAKER: How could we get the staff report?

MR. FUGATE: Once the staff report gets done and is finalized and is signed off by me, it becomes a public document.

UNIDENTIFIED SPEAKER: How do we know that?

MR. FUGATE: Pardon me?

UNIDENTIFIED SPEAKER: I mean, do I call you every day, or?

MR. FUGATE: It will probably take the Deputy Director and I several weeks to go through the material. I don't know if you have seen the file, but it is a fairly big file.

UNIDENTIFIED SPEAKER: I'm going to call you on July 15th and say are you finished yet.
MR. FUGATE: And the written work would be available, I would imagine, within a week after that.

UNIDENTIFIED SPEAKER: Do you have a website that you can put it on?

MR. FUGATE: Yes, we do have a website. I will check with the Chairman to see.

UNIDENTIFIED SPEAKER: That will be easier for us --

MR. FUGATE: I agree.

UNIDENTIFIED SPEAKER: -- if you can put it on the website.

MR. FUGATE: Yes.

UNIDENTIFIED SPEAKER: When this comes before the full Council, is there a possibility that it will be held in Charlestown?

MR. FUGATE: I will make a request to the Chairman, but usually the full Council meets in the Providence area. There are usually other matters they are considering that night, and we do have a standard meeting place that's available to us that we utilize on a regular basis, so.

UNIDENTIFIED SPEAKER: That is not at the Stedman Center?

MR. FUGATE: No, it's not in the Stedman Center. It's in the Narragansett Bay Commission headquarters at Fields Point in Providence.
UNIDENTIFIED SPEAKER: Is there a possibility to consider that?

MR. FUGATE: I will pass the request onto the Chairman.

THE WITNESS: Thank you.

MR. FUGATE: Okay. Thank you very much for coming tonight.

(HEARING ADJOURNED AT 6:00 P.M.)

CERTIFICATE

I, Rebecca J. Forte, a Notary Public in and for the State of Rhode Island, hereby certify that the foregoing pages are a true and accurate record of my stenographic notes that were reduced to print through computer-aided transcription.

In witness whereof, I hereunto set my hand this 25th day of June, 2006.

REBECCA J. FORTE, NOTARY PUBLIC

My Commission (RI) Expires on 7/15/09
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