

Appendix Section 6
CRMC Inter-Office Memo
February 25, 2011



Rhode Island Coastal Resources Management Council

Inter-Office Memorandum

Date: February 25, 2011

To: Stephen Alfred, Town Manager
South Kingstown

From: Grover J. Fugate, Executive Director
Coastal Resources Management Council

CC: Michael M. Tikoian, Chairman, CRMC
CRMC Members
Donna Walsh, State House of Representative
Sue Sosnowski, State Senate
Ella M. Whaley, South Kingstown Town Council
Ray Nickerson, Town of South Kingstown
Linda George, Senate Policy
Jon Boothroyd, RI State Geologist/URI
Dan Goulet, CRMC
Janet Freedman, CRMC
Laura Dwyer, CRMC
Brian Goldman, CRMC

Subject: Matunuck Erosion Meeting of February 18, 2011

Options that were discussed for the Matunuck area erosion issue were:

- 1) That the Town petition the Coastal Resources Management Council to classify the section of shoreline as a manmade shoreline;
- 2) That the Town petition the Coastal Resources Management Council to reclassify the abutting tidal waters from Type 1 to Type 2;
- 3) That the Town apply for a Special Exception for a shoreline protection structure in tidal waters along with public access; and,
- 4) That the Town apply for an Emergency Assent for a sheet pile structure along the road now so that they will have the permit in place in the event that it is needed.

Option #1: Manmade shoreline:

The manmade shoreline classification will be difficult since there are only two existing shoreline structures; a continuous structure approximately 900 linear feet long on lots 92-2 46, 92-2 47, 92-3 1 and a small shoreline structure, approximately 60 feet long on lot 92-3 9. The distance between structures is greater than 450 feet across seven properties.

This shoreline does not appear to meet the definition of a man made shoreline in the CRMP, Section 210.6:

Manmade shorelines are those characterized by concentrations of shoreline protection structures and other alterations, to the extent that natural shoreline features are no longer dominant. They most commonly abut Type 3, 5, and 6 waters. The presence of isolated seawalls, bulkheads, and similar structures does not constitute a manmade shoreline, as the term is used in this Program.

Section 300.7 requires that:

When structural shoreline protection is proposed the owner exhaust all reasonable and practical alternatives including, but not limited to, the relocation of the structure and nonstructural shoreline protection methods. Structural shoreline protection facilities are prohibited when proposed to be used to regain property lost through historical erosion or storm events.

In addition Section 300.2 states that:

Filling, removing, or grading is prohibited on beaches, dunes, undeveloped barrier beaches, coastal wetlands, cliffs and banks, and rocky shores adjacent to Type 1 and 2 waters unless the primary purpose of the alteration is to preserve or enhance the feature as a conservation area or natural buffer against storms and cutting into rather than filling out over a coastal bank is the preferred method of changing upland slopes.

Option #2: Water Type Change

Type 1 waters include water areas that are particularly unsuitable for structures due to their exposure to severe wave action, flooding, and erosion (CRMP 200.1). Type 2 waters include waters in areas with high scenic value that support low-intensity recreational and residential uses. Shoreline protection structures are prohibited on coastal features adjacent to Type 1 waters unless the area is classified as a man made shoreline or is an historic property listed on the National Register of Historic Places. Shoreline protection structures are allowed as a Category B activity on beaches and headlands adjacent to Type 2 waters. With the water type change the private property owners could apply for shoreline protection structures as Category B activities. Applications would be sent out for public notice. Substantive objections would be heard by the Council. Piecemeal structures along this section of shoreline could harm adjacent properties if that owner opts to not apply.

Option #3: Section 130 Special Exception

The Town could apply for a Special Exception to construct a shoreline protection structure below the mean high tide line. This is a better alternative for protection of the existing buildings, some of which are already on the beach and possibly in tidal waters. This option would require a public access component. Any work done below the mean high tide line requires a federal review (USACE, NMFS, USFW, EPA), a water quality certification (DEM) and full Council review. CRMC staff can bring the project concept to the PGP for comment before they submit an official application.

The Special Exception must serve a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests. In addition, all reasonable steps shall be taken to minimize environmental impacts and/or use conflict. The Town will need to show that there are no reasonable alternative means of, or location for, serving the compelling public purpose cited. This would require a narrative on why alternate routes for the road and water line are not feasible. The Town should also address use conflicts, if any, with the recreational users of tidal waters.

The Council can apply conditions to the Special Exception such as controlling the duration of use or development and the time within which any temporary structure must be removed. This might allow the town to include the use of temporary structures on private property as part of the permit request. Structures need to be temporary and removable.

Section 130 Special Exceptions states:

A. Special exceptions may be granted to prohibited activities to permit alterations and activities that do not conform with a Council goal for the areas affected or which would otherwise be prohibited by the requirements of this document only if and when the applicant has demonstrated that:

1) The proposed activity serves a **compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests**. The activity must be one or more of the following:

(a) an **activity associated with public infrastructure** such as utility, energy, communications, transportation facilities, however, this exception shall not apply to activities proposed on all classes of barriers, barrier islands or spits except as provided in 210.2.D.9;

(b) a water-dependent activity that generates substantial economic gain to the state; and/or

(c) an **activity that provides access to the shore for broad segments of the public**.

2) All reasonable steps shall be taken to minimize environmental impacts and/or use conflict.

3) There is no reasonable alternative means of, or location for, serving the compelling public purpose cited.

B. Special exceptions may be granted only after proper notice in accordance with the Rhode Island Administrative Procedures Act, a public hearing has been held, and the record of that hearing has been considered by the full Council. The Council shall make public the findings and conclusions upon which a decision to issue a Special Exception are based.

C. In granting a Special Exception, the Council shall apply conditions as necessary to promote the objectives of the Program. Such conditions may include, but are not limited to, provisions for:

- 1) Minimizing adverse impacts of the alteration upon other areas and activities by stipulating the type, intensity, and performance of activities, and the hours of use and operation;
- 2) Controlling the sequence of development, including when it must be commenced and completed;
- 3) Controlling the duration of use or development and the time within which any temporary structure must be removed;
- 4) Assuring satisfactory installation and maintenance of required public improvements;
- 5) Designating the exact location and nature of development; and
- 6) Establishing detailed records by submission of drawings, maps, plots, or specifications.

Option #4: Pre-Emergency Assent

The Town can apply for a pre-emergency assent for sheet piling along the road right-of-way so that if erosion threatens the road and water line, they will be ready to begin mitigation immediately.

The CRMC staff can meet with the Town on how to prepare a viable application for a Special Exception or Emergency Assent.

Additional Options that could be considered

Temporary Measures

The property owners in conjunction with the town could apply for measures that would be temporary in nature pending a more permanent solution, such as a town constructed sea wall. These measures would by their nature have to be temporary such as wooden pile walls which could be later removed if the council denied a more permanent solution or a permanent solution is approved and enters into the construction phase. Applicant would have to acknowledge that this is temporary and would have to agree to abide by council decision.

Violations

Violations for unauthorized shoreline structures will be held in abeyance until the Town works out a course of action. This does not apply to violations for decks and public access plans.