

# CRMC DECISION WORKSHEET

1990-10-040

Leslie Gurski

Hearing Date:			
Approved as Recommended			
Approved w/additional Stipulations			
Approved but Modified			
Denied		Vote	

APPLICATION INFORMATION						
File Number	Town	Project Location		Category	Special Exception	Variance
1990-10-040	Portsmouth	Water Street/Johnny Cake Lane		<b>A</b>	<input type="checkbox"/>	<input type="checkbox"/>
		Plat	31			
		Owner Name and Address				
Date Accepted	4/4/2024	Leslie Gurski		Work at or Below MHW		<input type="checkbox"/>
Date Completed	7/8/2024	91 Johnnycake Road Portsmouth, RI 02871		Lease Required		<input type="checkbox"/>

## PROJECT DESCRIPTION

Vacate reference to Lot "H" in Assent Stipulation "H" (i.e.: disallowing individual access pathways for Lot H, now identified as AP 31, Lot 166) to allow under separate application for a request to construct a stairway over the bluff to access the shore.

## KEY PROGRAMMATIC ISSUES

**Coastal Feature:** Vegetated Coastal Bluff

**Water Type:** Type 2, Low Intensity Use

**Red Book:** 1.2.1(C); 1.2.2(D)

**SAMP:** N/A

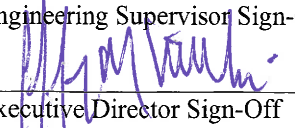
Variances and/or Special Exception Details:

Additional Comments and/or Council Requirements: Request is to vacate a restrictive stipulation from the original Subdivision Assent for the subject lot, which was part of the subdivision and subject to the restriction.

Specific Staff Stipulations (beyond Standard stipulations): See staff report

## STAFF RECOMMENDATION(S)

Engineer	_____	Recommendation:	_____
Biologist	<u>ALS</u>	Recommendation:	<u>No Objections to Approval</u>
Other Staff	_____	Recommendation:	_____

Engineering Supervisor Sign-Off \_\_\_\_\_ date \_\_\_\_\_  
 7/10/24  
Executive Director Sign-Off \_\_\_\_\_ date \_\_\_\_\_

Supervising Biologist Sign-off \_\_\_\_\_ date \_\_\_\_\_  
Staff Sign off on Hearing Packet (Eng/Bio) \_\_\_\_\_ date \_\_\_\_\_

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STATE OF RHODE ISLAND  
**COASTAL RESOURCES MANAGEMENT COUNCIL**  
STAFF REPORT TO THE COUNCIL

DATE: July 8, 2024  
TO: Jeffrey M. Willis, Executive Director  
FROM: Amy Silva

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Applicant's Name:	Leslie Gurski
CRMC File Number:	1990-10-040
Project:	Vacate reference to Lot "H" in Assent Stipulation "H" (i.e.: disallowing individual access pathways for Lot H, now identified as AP 31, Lot 166) to allow under separate application for a request to construct a stairway over the bluff to access the shore.
Location:	Water Street/Johnny Cake Lane; Portsmouth: Plat(s): 31; Lot(s): 166
Water Type/Name:	2, Sakonnet River
Coastal Feature:	Vegetated Coastal Bluff
Plans Reviewed:	"Site Plans for Coastal Stairs...Gurski Residence..." 4 sheets, dated 9/22/2022 and all sheets last revised 12/21/2023

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**INTRODUCTION:**

This application to Modify Assent 1990-10-040 requests that the Council Vacate reference to Lot "H" in Assent Stipulation "H" (i.e.: disallowing individual access pathways for Lot H, now identified as AP 31, Lot 166) to allow under separate application for a request to construct a stairway over the bluff to access the shore.

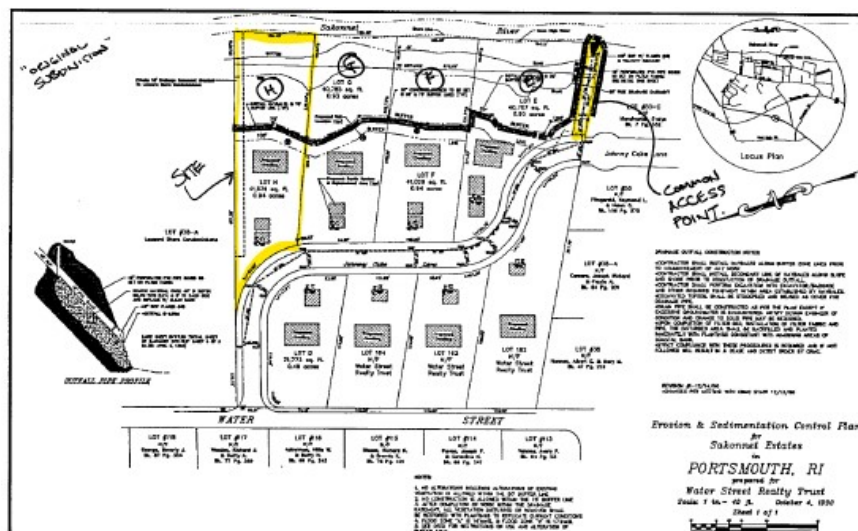
The stipulation referenced disallows individual pathways to the shore and is as follows: *"No individual access paths to the shore shall be allowed for shorefront lot "H", "G", "F" and "E". Shorefront access shall only be allowed through a community access path in the vicinity of the drainage easement. A separate CRMC Assent shall be required for this access (as required)."* The access path referenced was granted as part of this file under an access Easement and is currently in place in the southernmost limit of the subdivision.

The construction of the dwelling on Lot 166 (the subject property) was approved under CRMC Assent 2016-04-016 and maintains the 75-foot Buffer Zone required by the subdivision Assent. CRMC Assent 2022-12-028 granted Buffer Zone Management consisting of a path terminating at the Feature, recreational area and View Corridor. This file originally requested the staircase, but the applicant was again informed that the original subdivision stipulation would need to be vacated first. The stairs were removed from the Buffer Zone application.

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The applicant contacted CRMC to request guidance on applying for a staircase over the bluff. After conferring with CRMC Legal Counsel, staff informed the applicant that the request could not be made until the original subdivision Assent was changed to allow for individual pathways and that the applicant could either apply to vacate the stipulation for only her lot or join with the other waterfront property owners and request the stipulation be vacated for all four waterfront lots.

The request to modify the original subdivision Assent for the subject lot was submitted on April 4, 2024, and includes a plan set depicting the staircase requested as well as the request to vacate the stipulation. The staircase design has been included for illustrative purposes, to explain why the applicant is making the request to vacate the stipulation on her lot and must be applied for separately if the Council approves the modification.



**Above:** Portion of subdivision plan highlighted/annotated by the applicant, depicting the four waterfront lots as well as access easement for the 4 shoreline lots. Subject Lot and Access easement highlighted.



**Above:** DEM Aerial Imagery (Spring 2024, highlighted by staff) Showing the 4 shoreline lots. Gurski Lot to the left in yellow box, common access to the right in yellow circle.

**COMMENTS ON APPLICATION/APPLICABLE POLICIES, STANDARDS & ETC:**

<b>1.2.1(C)</b>	Type 2 Water	
<b>1.2.2(D)</b>	Coastal Headlands, Bluffs, and Cliffs	

The shoreline adjacent to this subdivision is classified as Type 2 Waters (Sakonnet River). The CRMC Staff reports for the subdivision Assent suggest that a 75 foot “structure setback” and an additional 25 foot “construction setback” be implemented due to “long term erosion concerns” (Ref Engineer Preliminary Review dated 5/3/1990). The Assent for the subdivision was issued declaring the 75 foot “structure setback” as a Buffer Zone. (note: the standardized Buffer Zone Table was not yet implemented in the RICRMP at this time and Buffer Zones were determined on a case-by-case basis.)

Also, due to the cited “long term erosion concerns”, a stipulation disallowing individual pathways over the Bluff was included within the staff recommendations, adopted by the Council and included within the Assent that was issued. After issuance of the Assent, an access easement created the common access point that is currently in existence. This access easement is located in the flattest portion of the subdivision and required the least disturbance to the Feature.

“Red Book” Section 1.2.2(D)(1)(b) states:

*“That it is the Council’s goal to:*

- (1) Protect coastal cliffs and bluffs from activities and alterations that may damage the value of these features as sources of sediment to beaches and as a buffer against storm waves and flooding;*
- (2) Prevent any construction in contiguous areas that may weaken the feature and has the potential of creating a hazard; and*
- (3) Preserve the scenic and ecological values of these features.”*

The CRMC regularly approves the construction of open-riser timber staircases over Coastal Bluffs where the slope is too steep to traverse safely on foot, but is not too steep to accommodate a set of stairs. Stairs are most typically a straight line over the bluff, and may or may not contain a small landing, depending on the slope, length, and building requirements. In general, staircases over Coastal Bluffs are not considered to damage the value of the feature. In areas where it is deemed too sensitive or too hazardous, stairs are not permitted. This is determined on a case-by-case basis.

**COMMENTS ON REQUEST:**

The application includes a narrative which puts forth the reasoning for the request to vacate stipulation “H” and allow an individual pathway over the bluff for this lot.

The submitted narrative notes that access to the shore on the subject lot is unsafe due to the steep nature without a set of stairs, and goes on to assert that the community path, located south of Lot “E” is not suitable *“To port a kayak, paddleboard, or other type of recreational equipment”* to the access as the common access path is located approximately 760 feet from the subject driveway (ref illustration in application narrative).

The proposed staircase will be 4 feet wide and extend nearly 60 feet in length down the bluff (58.3’ based on the cross-sectional plan submitted). The existing access is located in a relatively flat area, with few steps over the feature. Porting a kayak, paddleboard or other recreational equipment may prove more difficult down the proposed stairs. Storing recreational equipment is not permitted on beaches, coastal bluffs or within Buffer Zones. Any storage of recreational equipment would be limited to the previously approved recreational area.

Please note that the location and design of the staircase were not reviewed. The plans were reviewed in a cursory manner as an illustrative part of the determination of whether a staircase could be permittable at this lot. Should the Council approve this request, a separate application, to be recorded on the subject lot will be required. However, it does appear to be a design that can be approved by staff.

The narrative goes on to compare the subject lot to the adjacent lot, lot "G" on the subdivision plan and currently identified as Plat 31 Lot 167. The narrative notes that this lot maintains an individual staircase to the shore, despite the lack of evidence of either a Permit from CRMC, or evidence that the stipulation was vacated for this lot. The narrative opines that allowing this staircase to remain "*in essence voids Stipulation "H"*". It should be noted that the CRMC does not adjudicate an application based on circumstances of a nearby or adjacent lot, and staff cannot comment on the opinion that an existing un-assented structure voids a particular Assent stipulation. The lot in question has been the subject of ongoing enforcement action for several years and remains unresolved to date. Vacating the stipulation for the subject lot offers a route for the long-standing enforcement matter to be resolved in a similar manner.

As the originally submitted narrative did not address the restriction placed on the lot, staff contacted the applicant's design engineer and requested that additional information be submitted that directly addresses the restriction against individual pathways and the Red Book Regulations rather than the argument for wanting an individual pathway.

On May 7, 2024 an addendum was submitted by Narragansett Engineering, to specifically address the 1990 Assent conditions and concerns. This addendum notes that Narragansett Engineering has "*..conducted detailed surveys and investigations of the bluff, along the owners land, and where feasible, those of the abutters.....No evidence of erosion is present, including areas to the south where the abuttor has constructed a staircase.*" The addendum goes on to note that there is an area of erosion to the north of the subject lot, which is affecting a small area of the subject lot. This erosion is due to an outfall associated with the condominium complex to the north and according to the narrative, the applicant has notified the condo association so that they may take steps to rectify the matter.

Staff agrees that there does not appear to be any significant erosive events since the issuance of the original Subdivision Assent. The adjacent lot is subject to enforcement action and the staircase located on that lot does not have CRMC Approval, and the CRMC does not adjudicate an application based on circumstances of a nearby or adjacent lot. However, it is worth noting that this staircase has been in place for several years and has not caused any erosion issues.

While staff does not agree with the assertion that the individual staircase on this lot would be easier to utilize for porting a kayak, paddleboard or other recreational equipment as noted in the request, staff concurs that the placement of an appropriately designed and permitted staircase on this Bluff would not go against the policies set forth in Section 1.2.2(D).

## **CONCLUSION & RECOMMENDATION:**

The applicant has demonstrated that the Coastal Feature in question is a densely vegetated bluff that is not subject to erosive events currently or since the issuance of the subdivision Assent, and that the only erosion

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concern stems from a nearby outfall. Staff concurs with this and has no objection to the Council vacating stipulation "H" for the subject lot (now referred to as Plat 31, Lot 166).

Should the Council approve this request, staff offers the following stipulation to be added to Subdivision Assent 1990-10-040:

Stipulation H(a): The construction of an individual pathway may be allowed on Lot H lot (now referred to as Plat 31, Lot 166). The placement of an individual path shall require review and separate approval by the CRMC.

Signed \_\_\_\_\_ CRMC Biologist