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June 25, 2024

Via email only

Jeffrey Willis, Executive Director
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

Re: The Watch Hill Fire District's Maintenance Application
File No. 2024-04-008 to reinstall and level the Coastal Resources Management Council ("CRMC") previously approved split rail fencing at Napatree Point, Westerly, RI (the "Maintenance Application")

Dear Mr. Willis:

This firm represents the Watch Hill Fire District (the "Fire District") and The Watch Hill Conservancy (the "Conservancy"). The purpose of this letter is to implore CRMC staff to approve immediately the Fire District's Maintenance Application to reinstall 240 feet of split rail fence and level an additional 940' of split rail fence – all previously approved by CRMC – to protect important dunes and vegetation at Napatree Point. To delay this Maintenance Application for a full Council hearing over the objection of one person about an alleged 20' wide right of way ("ROW") is damaging to the very environment CRMC is supposed to protect and is nonsensical. In the event the alleged 20' ROW at Napatree Point is ever established in court – which seems highly unlikely -- the Fire District and the Conservancy will comply with whatever final judgment a court enters. That said, it is urgent that that the fence be reinstalled and maintained now.

By way of background, the Fire District owns in fee simple most of Napatree Point in Westerly, Rhode Island. The Conservancy is the Grantee under a conservation easement conveyed by the Fire District (the "Conservation Easement") that covers most of Napatree Point ("Conservation Area"). The goal of the Conservation Easement is to preserve Napatree Point in its natural condition and its status as a Rhode Island scenic site for the enjoyment of the public. The Fire District and the Conservancy also have maintained paths for public access that encourage and promote public accessibility consistent with ecological preservation.

On March 20, 2024, the Fire District filed with CRMC the Maintenance Application to deal with damage to the previously-approved split rail fence from the severe coastal storms this past winter. This work is time-sensitive because the Napatree Point Conservation Area receives heavy visitor traffic from May through the October. On a warm summer weekend or holiday about 1,000 plus visitors will line the 1 mile long conservation area. The purpose of the split rail fencing is to protect the sensitive dunes by



discouraging visitors from leaving the marked paths and traversing those dunes. Indeed, in April 2019, CRMC approved the installation of this split rail fence in Assent No. M2019-05-007 to keep visitors from entering a fragile habitat on the dunes where plant restoration occurred. This is all part of stewardship that began over 50 years ago with support from CRMC, U.S. Fish and Wildlife and the National Oceanic and Atmospheric Administration. The work proposed in the Maintenance Application would be overseen by the Napatree Point Conservation Manager. Split rail fencing is used because it does not impede the natural movement of sand.

CRMC should and could have handled the Maintenance Application administratively – as it did with the previous assent for the fence --without the need and resulting additional time for a Council hearing. Instead, CRMC has said it may present the Maintenance Application to the Council based on a single objection. CRMC is letting this objection over an alleged 20' ROW halt an important and time-sensitive project to protect the dunes, plant life and wildlife that CRMC has fully supported through three Coastal and Estuarine Habitat Trust Fund grants awarded to the Conservancy and Fire District in the past ten years. The Conservancy has a legal obligation to preserve the Napatree Point Conservation Area, and CRMC is precluding it from meeting that obligation right now.

CRMC's own "Redbook" addresses the important goals of enhancing the ability of dunes to serve as natural storm buffers and to protect the scenic and ecologic value of the area. See Section 1.2.2(G) of the Redbook. In fact, CRMC recognizes the importance of limiting pedestrian traffic over dunes by permitting in some cases only walk over structures to protect the foredune area. *Id.* Protecting the dunes while allowing public access are efforts on which the Fire District and the Watch Hill Conservancy spend significant time and effort. Both entities seek to protect the significant natural habitat, scenic and open space at Napatree Point and ensure public access to the area. To be clear, CRMC's continued refusal to approve the Maintenance Application now exposes a large swath of Napatree Point to damage and destruction.

Any CRMC staff decision to submit the Maintenance Application to the full Council some time from now raises significant questions. For example:

- Does CRMC agree that it is important to protect Napatree Point?
- Does CRMC agree that it remains important to protect dunes, uncommon plants like sand false heather (*Hudsonia tomentosa*) and wildlife by replacing the previously approved split rail fence destroyed by storms?
- Does CRMC agree that until and unless a court finds that the alleged ROW runs through Napatree Point CRMC will and should continue to support the efforts of the Fire District and the Conservancy to protect the Conservation Area through reasonable measures, including measures previously approved by CRMC?
- Is it now CRMC's position that an allegation by an objector (about an area that is less than 1% of the area in the Maintenance Application) without any evidence to support the objection is sufficient to block measures previously approved by CRMC to protect land under the Conservation Easement?
- Does CRMC support the contention that the Town can build a 20' wide ROW through about one mile of sensitive coastal dunes on Napatree Point?

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As CRMC knows, the Fire District is currently challenging in state court the preposterous contention that the Town owns and can build a 20' ROW across Napatree Point, destroying 2.5 acres across one mile of pristine Maritime Herbaceous Dune vegetation, the most threatened habitat in Rhode Island. The Fire District and all of the other parties will of course comply with any final judgment eventually entered in that case. In the meantime, the Fire District, The Conservancy, and the CRMC must continue their joint mission to preserve the sensitive ecological features of Napatree Point.

The Fire District respectfully asks that you reconsider your position immediately and issue a maintenance assent administratively for the reinstallation and leveling of the split rail fence as soon as possible.

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robin L. Main".

Robin Main

cc: Laura Miguel, CRMC Deputy Director

RLM/eh