

CRMC DECISION WORKSHEET

2022-11-010

Watch Hill Yacht Club

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
2022-11-010	Westerly	1 Fort Road/151 Bay Street		B	<input type="checkbox"/>	<input type="checkbox"/>
		Plat	185			
		Owner Name and Address				
Date Accepted	12/06/2022	Watch Hill Yacht Club		Work at or Below MHW	<input checked="" type="checkbox"/>	
Date Completed	8/20/2024	1 Fort Road Westerly, RI 02891		Lease Required	<input type="checkbox"/>	

PROJECT DESCRIPTION
Dredge approx. 765 cubic yard

KEY PROGRAMMATIC ISSUES
Coastal Feature: the manmade shoreline; and the inland edge of the coastal feature shall be coastal beach (disposal).
Water Type: Type 5, Comm/Recreational Harbors
Red Book: Section 1.2.1(F), 1.3.1(D), 1.3.1(I)
SAMP: N/A

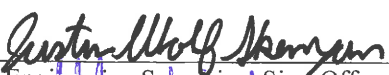
Variances and/or Special Exception Details:
N/A

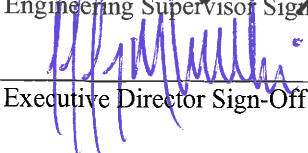
Additional Comments and/or Council Requirements:
N/A

Specific Staff Stipulations (beyond Standard stipulations):
N/A

STAFF RECOMMENDATION(S)

Engineer	<u>JWS</u>	Recommendation:	<u>Approval</u>
Biologist	<u></u>	Recommendation:	<u></u>
Other Staff	<u></u>	Recommendation:	<u></u>

 8/20/2024
Engineering Supervisor Sign-Off date

 8/20/24
Executive Director Sign-Off date

date
Supervising Biologist Sign-off

date
Staff Sign off on Hearing Packet (Eng/Bio)

Name: Watch Hill Yacht Club
CRMC File No.: 2022-11-010
Staff Report



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

DATE: August 16, 2024

TO: Jeffrey M. Willis, Executive Director

FROM: Justin Wolf Skenyon *Justin Wolf Skenyon*

Applicant's Name:	Watch Hill Yacht Club
CRMC File Number:	2022-11-010
Project:	For dredging of the Watch Hill Yacht Club and beneficial reuse disposal on the Watch Hill Beach
Location:	1 Fort Road/151 Bay Street; Westerly: Plat(s): 185; Lot(s): 31-1
Water Type/Name:	Type 5, Little Narragansett Bay
Coastal Feature:	Manmade shoreline and coastal beach (disposal)
Plans Reviewed:	"Maintenance Dredge at the Watch Hill Yacht Club" For: Watch Hill Fire District 151 Bay Street Westerly RI A.P. 185 Lot 31-1, By: Anthony A. Nenna, Sheets 1- 11 Dated: October 20,2022, Stamped: Anthony A. Nenna No. 7240, July 7, 2023.

INTRODUCTION: This project proposes removal of approximately 765 cubic yards (cy) of sediment from Watch Hill Cove inside the Watch Hill Yacht Club's marina perimeter limit. The dredging activity will occur in tidal waters on the west side of the Watch Hill Yacht Club building in an area of approximately 12,200 square feet and on the east side in an area of approximately 4,200 square feet. The material to be dredged has been tested and has been determined to be acceptable for reuse on the nearby Watch Hill Beach.

PREVIOUS ASSENTS:

2007-10-055: The project includes maintenance dredging by mechanical means of approximately 150 CY of material with dewatering of the material at the disposal area beach. The disposal location had been previously approved for the Watch Hill Fire District under Assent 2007-01-062.

2007-1-062: Maintenance dredging by mechanical means of approximately 1,000 CY of material with dewatering of the material in an adjacent parking area; the dewatered sand was then trucked to a nearby beach owned by the Fire District and beneficially reused for beach nourishment.

1998-04-029: Maintenance dredging by mechanical means of 850 CY of clean sand within Watch Hill Cove and placement of material upland of mean high water on Napatree barrier.

In the staff's opinion these past applications show a history of similar work that was successfully completed and that also provided suitable material for reuse on the adjacent beach owned by Watch Hill Fire District.

COMMENTS ON APPLICATION/APPLICABLE POLICIES, STANDARDS & ETC:

1. **Section 1.2.1(F) Type 5 Commercial and Recreational Harbor:** Type 5 waters are those which support a mix of commercial and recreational waterfront activities. The council's goal for Type 5 waters and adjoining land are to maintain a balance among diverse port related activities, including recreational boating, commercial fishing, restaurants, and other water enhanced businesses; to promote the efficient use of space; and to protect the scenic characteristics that make these areas valuable to tourism. Priority uses of Type 5 waters and adjoining land include berthing, mooring, and servicing of recreational craft, commercial fishing vessels, and ferries, as well as maintenance of navigational channels and berths. Based on the current and historic use of the site, the proposed project is consistent with the Council's policies, goal and priorities for Type 5 waters.
2. **Section 1.3.1(D) Recreational Boating Facilities:** It is the opinion of Staff that the proposed maintenance dredging proposal meets the requirements of this section and is the restoration of previous depths at the facility to continue the existing use at the facility.
3. **Section 1.3.1(I) Dredging and Dredged Material Disposal:** The applicant proposes to dredge 765 CY of sandy material mechanically, dewatering the material in place to be beneficially reused as beach nourishment material. The applicant has worked with staff and met all programmatic requirements for this project. The proposed beach nourishment is the preferred use for the material.

COMMENTS ON VARIANCE REQUEST:

There are no requests for variances for this project.

COMMENTS ON OBJECTIONS:

1. **Potential impacts to the fisheries and ecosystems:**

- a. **Horseshoe Crabs:** The objection raises particular concern about impacts to Horseshoe Crabs spawning.

Staff Response: *Spawning occurs in late spring and early summer with the peak season being in May and June. Adhering to the dredge window will place the dredging activity outside this time frame. It is staff opinion that the dredge window will obviate this impact.*

- b. **Habit Reduction:** The Watch Hill Yacht Club marina area is noted by the objection to be habit for a wide variety of species including but not limited to Menhaden, Striped Bass, Horseshoe Crab, Finger Mullet, Summer Flounder (Fluke) and Atlantic Silversides.

Staff Response: *The dredge area is small in comparison to the whole of Watch Hill Cove and is adjacent to similar habitat, therefore impacts on diet and habitat preferences should be minimal and temporary due to the availability of similar habitat. The area after dredging will provide similar habitat to that of the surrounding area. There are a few square cubic yards of*

area that are surfacing at low tide, which will be changed to match the depth of the surrounding area. This area is extremely marginal and in a state of constant shifting. Its full removal is not expected to cause impacts to these species. There is no prediction that this dredge material will be contaminated, or its removal will cause environmental impacts such as anoxic zone judging from past experiences. The scope of the project has limited dredging both in depth and footprint to meet the maintenance needs of the site to continue its current and historic uses. It is in staff opinion that this project is unlikely to have environmental impacts.

- c. **Pollution and Toxic Release:** The objection raises particular concern about impacts to the marine environment by displacing the toxics that have imbued within the sediment.

The material has undergone sufficient testing and hasn't found anything that would raise these concerns regarding pollution from toxic release. This area has been dredged before and given past experiences staff do not expect there to be pollution in the area. The sand likely comes from the adjacent dune which is deposited on the parking lot before reaching the marina. It's the staff's opinion that this material is safe for reuse on the Watch Hill Beach.

2. **Fort Road:** The exact location, ownership, and use of Fort Road is being actively litigated, and CRMC is not a party in the litigation. Per RIGL § 8-2-14: "the superior court shall have original jurisdiction of all actions at law where title to real estate or some right or interest therein is at issue."

- a. **Incomplete Public Notice:** Multiple objections were received in relation to Fort Road not being included on the plans accompanying the public notice. Concerns were raised that this lack of information would undermine the public understanding of the potential impact of the project upon Fort Road. Many objectors requested a reissuance of the Public Notice that included the relevant information about potential impacts to the Fort Road Right-of-Way. This was a Joint Public Notice between DEM and CRMC issued on January 18, 2023.

Staff Response: *After reviewing these objections Staff agree that a reissuance of the Public Notice would be necessary in addressing these objections. Staff also agree that the Town of Westerly has designated Fort Road as a Town Right-of-Way. A new 30-day Public Notice was issued on August 8, 2023, which includes updated plans demonstrating pedestrian access around the temporary construction fencing. During the comment period three additional objections/comments were received, none of which requested a third reissuance of the Public Notice. These objections were regarding inaccuracy in depicting the Fort Road Right-of-Way. Staff did reach out by phone to the Town of Westerly about their comment letter received from the Town Manager Shawn M. Lacey on August 24, 2023, and confirm that it was not a request for a third Public Notice. Its staff's opinion that the updated plans were sufficient to address the objections.*

- b. **Failure to Describe Fully Fort Road:** The objectors raised concerns that the letter and updated plans received from the applicant to address the public concerns about the potential impacts to the Fort Road that came up during the initial round of public comment, does not include specific phrasing within the second Public Notice issued on August 8, 2023 and Fort

Road outlined the plans. The objectors claim that a general path for pedestrians' access is carefully chosen wording to obfuscate that there is a public right of access to Napatree Point. This is coupled with plans that just show pedestrian access and not a fully outlined Fort Road Right-of-Way.

Staff Response: *The applicant's engineer Anthony Nenna explained to staff that they could not locate the exact location of the Fort Road as the Tax Assessor plats provided in the 2008 resolution were insufficient for that level of detail. Anthony Nenna told staff that he reached out to the Town of Westerly for more information and did not receive adequate information. At staff request Anthony Nenna provided updated plans that include sufficient description for continual public access through the area during the project to address concerns over loss of access. Staff does not find that this potential obfuscation is within the purview of this application. Its staff's opinion that the updated plans were sufficient to address objections.*

- c. **Legality of the Fort Road Right-of-Way:** Objections have been raised that this application for dredge work for the Watch Hill Yacht Club will have impact on the legality of the Fort Road Right-of-Way.

Staff Response: *Staff reviewed this application with the understanding that the Fort Road Right-of-Way was a Town of Westerly designated Right-of-Way which may experience temporary impacts from the project. Staff also deemed that public access around the work area was relevant for this application and reissued a public notice with updated plans by the applicant to demonstrate continual public access to Napatree Point. This application does not have the ability to modify, invalidate, or transform any Town designated Right-of-Ways. It's staff opinion that any question, concerns, complaints, and so on regarding any legality of the Fort Road Right-of-Way is outside the purview and jurisdiction of this application.*

- d. **No Proof of Ownership:** The Watch Hill Yacht Club has not demonstrated ownership over the work area, which includes the Fort Road Right-of-Way.

Staff Response: *The Watch Hill Yacht Club does not own the land of the work down area. The land is owned by the Watch Hill Fire District which has given a letter of permission for use of that land. This permission letter along with the Westerly Town Tax Assessor's letter was included with the application submission to CRMC. It's staff understanding that letters of ownership from the Town's Tax Assessor Office are sufficient to demonstrate ownership of the land.*

- e. **Removal of a section of Sandy Beach:** The objection to the removal of a section of Sandy Beach that is used by the public. This area can and is used by the public as a kayak or similar small vessel launch site.

Staff Response: *These objections refer to the area at the entrance of the Watch Hill Yacht Club which contains a few cubic yards of constantly shifting sand that may become exposed at low tide. This is not consistent with the definition of Coastal Beaches as stated within the regulations (Redbook § 1.2.2(A)). There will remain a public boat ramp nearby that is still*

available for launching kayaks and other small vessels. This area is of critical importance to the project as it interferes with boating, utilities which are buried by this sand, and clogs the parking lot's storm drains. It's the staff's opinion that this does not constitute the removal of a public beach and is critical to the needs of the project. The removal of the area will not eliminate the public ability to launch kayaks or similar small vessels in the Watch Hill Cove.

- f. **Impacts on the use of Fort Road:** Objections to the project blocking access along for the Fort Road. These impacts include blocking complete access for a long duration of several months.

Staff Response: *The applicant has stated that the work's duration is expected to be around four weeks. Given past experiences this is a reasonable timeframe for this project. As demonstrated in the updated plans received there will remain an open path around the temporary construction fencing, which is necessary for this project to protect public safety and will be taken down when finished. The detour is as direct and close by as reasonably considered possible. This project will also take place during the offseason where traffic in the area is minimized. It's the staff's opinion that there are minimum impacts to the Fort Road that have been mitigated to the most reasonable extent possible.*

- g. **Increased Vessel Traffic:** The Watch Hill Yacht Club will be bringing more and larger vessels into their marina.

Staff Response: *The number of slips and vessels stipulated in the Watch Hill Yacht Club application will not change due to this project. The slips most affected by this project are traditionally smaller vessels. It's the staff's opinion that this project is unlikely to result in any significant changes to the traditional uses by the Watch Hill Yacht Club.*

- h. **Submerging of the Fort Road:** According to the complaint the Fort Road extends into the water in front of the Watch Hill Yacht Club. This makes the dredge material near the of the entrance Watch Hill Yacht Club part of the Fort Road. Therefore, the objectors view that the removal of the dredge material would count as destroying the Fort Road.

Staff Response: *It's the staff's opinion, after a brief review of material made publicly available by the Town, that there is insufficient reason to believe that Fort Road ends in the water. The Town of Westerly has demonstrated and maintained that Fort Road is currently a well-travelled way to reach Napatree Point on foot over dry land. The Town has not shown that Fort Road is in major disrepair or is incomplete or has been destroyed. The Town of Westerly 2008 resolution about the Fort Road Right-of-Way uses Tax Assessor Plats 177, 178, 184 and 185 which do not extend into the water.*

- i. **Beach Closed:** This objection is based on the grounds that the Watch Hill Yacht Club believes that public access at Napatree Point is closed for the winter.

Staff Response: *This is in reference to a misunderstanding of the Watch Hill Yacht Club letter submitted with the updated plans, which was talking about the closing of the beach*

season not the beach itself. Staff confirmed this with the letter author by phone when the letter was received.

COMMENTS ON LETTERS RECEIVED:

Town of Westerly submitted a letter on August 24th, 2023. The letter was regarding five inaccuracies within the application. Summarize these are referring to the location in relation to Bay Street where Fort Road would be the correct address. Also, the Watch Hill Fire District is incorrectly identified as the owner of 151 Bay Street Parcel 185-31-1.

Staff Response: *The application submitted identifies the address of the Watch Hill Yacht Club as 1 Fort Road. In the submission, there was a letter from the Tax Assessor Office showing the owner of 151 Bay Street Parcel 185-31-1 as the Watch Hill Fire District. The letter also raised concern about the description of the project location being off Bay Street. In the staff's opinion, in the context of the application this was an accurate description. Both Public Notice also list the location as 1 Fort Road and the language of the applicant matches previous applications. Its staff's opinion that even with these inaccuracies the application is complete enough for public comment and to be brought before the Council as this letter was provided as comment not as objection.*

COMMENTS ON APPLICANT'S OBJECTION RESPONSE:

1. Potential impacts to the fisheries and ecosystems:

Applicant Response: The applicant responds to staff inquiry about these concerns by reaffirming commitments to the dredge window.

2. Fort Road:

Applicant Response: The applicant responds to staff inquiry about these concerns by submitting updated plans. It is the applicant's opinion that they have provided sufficient information on public access to this application. The applicant has also commented that the CRMC dredge permitting process isn't an appropriate avenue to address all concerns legally or otherwise about Fort Road.

RECOMMENDATION:

For the reasons articulated herein, and that similar projects have been applied for, assented and completed in the past, it is the staff opinion that the applicant has adequately addressed the requirements of the RICRMP and staff has no objection to the issuance of an Assent for this project. Standard assent stipulations will be prepared should the Council decide to approve the application.