

CRMC DECISION WORKSHEET

2023-04-094

Department of Transportation

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
2023-04-094	Barrington	East Bay Bike Path Bridges		B	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
		Plat	Lot			
Date Accepted		2/07/2024		Work at or Below MHW		<input checked="" type="checkbox"/>
Date Completed		5/13/2024		Lease Required		<input type="checkbox"/>
Owner Name and Address						
Department of Transportation Attn: Alisa Richardson 360 Lincoln Avenue Warwick, RI 02888						

PROJECT DESCRIPTION

ADDENDUM/REVISIONS: Reconstruction of East Bay Bike Path Bridges

KEY PROGRAMMATIC ISSUES

Coastal Feature: Coastal Wetland, Coastal Bluff with Rip Rap

Water Type: Types 1, 2, 3

Red Book: 1.8.8, 1.2.1, 1.3.1, 1.3.6

SAMP: N/A

Variations and/or Special Exception Details:


Special Exceptions: CRMP § 1.3.1(L)(3)(c); § 1.3.1(M)(2)(a); § 1.3.1(G)(3)(c); and § 1.3.1(J)(3)(a) – filling in Type 2 waters.


Variations: CRMP § 1.3.1(B)(3)(a)(6); and § 1.3.1(B)(3)(e)(1)(AA)

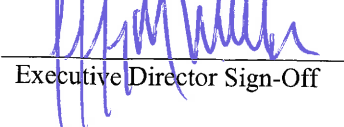
Additional Comments and/or Council Requirements: **This report is an addendum - please refer to the full Council report for the previous relevant “Red Book” Sections etc. (attached). This report will focus on review/comment of the new revisions and comments received in the new public notice Specific Staff Stipulations (beyond Standard stipulations):**

STAFF RECOMMENDATION(S)

Engineer RAS Recommendation: Defer to Council
 Biologist ALS Recommendation: Defer to Council
 Other Staff _____ Recommendation: _____

 5/15/24
 Engineering Supervisor Sign-Off _____ date

 5/15/24
 Supervising Biologist Sign-off _____ date

 5/15/24
 Executive Director Sign-Off _____ date

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

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

DATE: May 13, 2024
TO: Jeffrey M. Willis, Executive Director
FROM: Amy Silva, Ross Singer

Applicant's Name:	Department of Transportation
CRMC File Number:	2023-04-094
Project:	Reconstruct "East Bay Bike Path Bridges" over the Barrington and Warren (Palmer) Rivers
Location:	Barrington/Warren East Bay Bike Path Bridges
Water Type/Name:	Type 1, 2, & 3; Barrington & Warren Rivers
Coastal Feature:	Coastal Wetland, Coastal Bluff with Rip Rap
Plans Reviewed:	<u>"East Bay Bike Path Bridge Replacements; Bike Path and Bridge Approach Plans; Reconstruction Plans, Environmental Permitting Set.."</u> Permit Plan Revisions February 2024 (Revised April 2024)... 26 sheets including cover sheet by RIDOT & VHB. Sheets 2-4 Last revised 12/22; Sheets 5-6, 11, 13-16, 20 & 24 Last revised 2/1/24; Sheet 19 last revised 4/17/24; sheets 7, 9, 10 & 18 last revised 4/18/24 and sheets 8, 12, 17, 21-23, 25-26 No date, no revision <u>"Reconstruction Plans, Environmental Permitting Set.."</u> Permit Plan Revisions February 2024 Revised April 2024.... 38 Sheets including cover sheet by DOT & VHB. Sheets 1-6, 8, 15, 17, 18, 23, 25-31, 33 and 35-38 no date, no revision; Sheets 9, 21, 22, 24,32 and 34 last revised 2/1/24; Sheets 13 and 20 last revised 4/17/24 and Sheets 7, 10-12, 14, 16 and 19 last revised 4/18/24

This report is an addendum - please refer to the full Council report for the previous relevant "Red Book" Sections etc. (attached) This report will focus on review/comment of the new revisions and comments received in the new public notice.

The revised submission includes plans for fishing access and additional rip rap fill for scour protection. This report addresses the new submission only.

INTRODUCTION:

The application was initially heard at the October 24, 2023 Council Hearing. At that time, issues were raised and discussed, and the Council sent the application back to the applicant to address the issues. The primary issues at hand were:

- Impacts to existing recreational fishing
- Impacts to the nearby marina due to flow/volume changes

Following the hearing, a meeting was held with DOT and CRMC review staff to discuss the issues identified (Nov. 29, 2023). At that time DOT was notified that any revised submission would need additional public notice, and likely would again receive objections/letters of concern.

Since the hearing, the owners of Atlantic Marina have been vocal about their concerns. At least one meeting was held between DOT and the marina to discuss and review their concerns regarding the flow of the river.

On February 7, 2024, the DOT submitted revised plans and a cover letter addressing the issues raised at the hearing. **The revised submission includes plans for fishing access and additional rip rap fill for scour protection.** Fishing access consists of a permanent bulkhead on the western side of the Palmer/Warren River and a new public fishing pier on the western side of the Barrington River. The fishing pier is a public recreational facility consisting of a 20’x7’ and 40’x11’4” fixed pier and a 24’x11’4” terminal T. This project requires special exceptions to CRMP § 1.3.1(L)(3)(c) – alterations to coastal wetlands not designated for preservation adjacent to Type3 Waters; § 1.3.1(M)(2)(a) – the construction of new public transportation facilities in tidal waters; § 1.3.1(G)(3)(c) – the filling on a coastal feature or tidal waters; and, § 1.3.1(J)(3)(a) – filling in Type 2 waters. Variances are required for (CRMP § 1.3.1(B)(3)(a)(6)), filling rather than cutting on causeway slopes and §1.3.1(B)(3)(e)(1)(AA)) filling on slopes steeper than 15 percent.

**COMMENTS ON APPLICATION/APPLICABLE POLICIES, STANDARDS, ETC:
"Red Book" 650-RICR-20-00-**

1.1.8	Special Exceptions	The retention and modification of the bulkhead for fishing access requires a special exception
1.2.1(C)	Type 2 Water	The bridges themselves fall within Type 2 water, as does the new timber fishing pier
1.2.2(C)	Coastal Headlands, Bluffs	The proposed timber fishing facility and the filled fishing bulkhead abut this shoreline
1.3.1(J)	Filling of Tidal Water	The bulkhead for fishing access will require 668 cubic yards of permanent fill in tidal waters
1.3.6	Protection and Enhancement of Public Access to the Shore	See Below

The revised submission now includes two public fishing areas, which were not part of the original design. These fishing areas are located within Type 2 Waters on the northwest side of each bike path span. The bulkhead fishing area proposes the permanent fill of tidal waters, as the area will not be removed and restored as originally planned. The timber pier falls within Type 2 waters.

COMMENTS ON RESUBMISSION:

The resubmission package was received by CRMC on February 7, 2024. The submission consisted of a cover letter/short narrative written by the applicant's consultant (VHB) and revised plans.

Staff sent the revisions to public notice and contacted DOT/VHB and requested them to provide additional details on the revisions, including details on the newly proposed rip rap scour protection, which was not part of the remand issues, and addressing the concerns of the marina, which were part of the remanded issues and were not included in the revised submission. This information was received on March 15, 2024.

Following public notice of the revisions, several objections were received, and DOT requested a meeting to discuss the objections and possible responses to them. A meeting between CRMC staff and the DOT Design team was held on April 16, 2024. At that meeting the DOT proposed relocating the timber fishing pier from the east shore of the Warren/Palmer River to the west, in response to the objection of the homeowner on the east shore. Revision to that portion of the design plan was submitted and a revised 30 Day Public Notice specifying this change was issued April 23, 2024. Additional narrative/documentation to support this change, as well as preliminary hydrologic study results were received on May 6, 2024.

Staff offers the following comments on the three revision issues:

- new scour protection,
- fishing, and
- marina impacts:

Scour Protection- DOT has stated that after additional investigation of the hydrologic conditions at the site, it was determined that the installation of stone riprap in the location of the bridge piers was necessary.

The proposed scour protection will consist of 698cy of riprap placed at the interface of Type 2/3 waters and may be considered incidental to the construction of the bridge piles and is generally not considered fill in tidal waters. It is Staff's opinion that the riprap scour protection is necessary and fill in tidal waters is minimized to the greatest extent practical.

Fishing Impacts- Fishing and the impacts to the existing fishing along both bike path spans has been a topic of discussion for multiple years, as the subject came up in several pre-application meetings with CRMC. The design for both the bike path spans remains 14 feet wide, with a 10

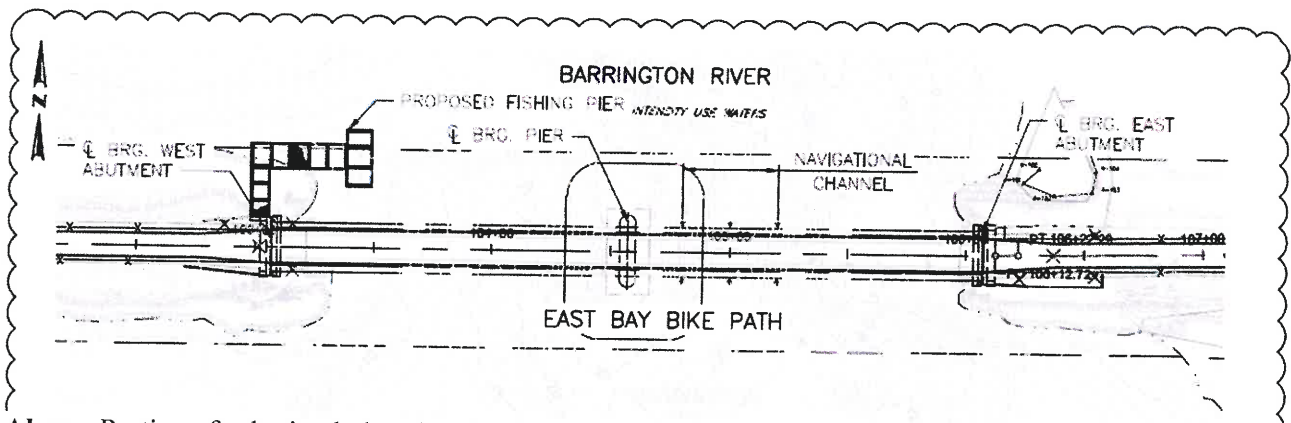
foot wide bike path and two (2) foot width on either side. It remains unclear if that two (2) foot area would be utilized for the truss support systems. Regardless, the design likely will not safely provide access for fishing along the spans of the bridges.

The DOT has stated that the width is driven by the limitations of the pre-fabricated structures as well as the existing overhead wires and challenges involved with installation. The application narrative states “Additional widening would require a substantial volume of fills in tidal waters, particularly given the increased bridge heights, and would introduce fills to coastal wetland previously. The added weight of a widened bridge would necessitate an additional pier in the river and preliminary cost estimates to widen the bridges would far exceed the project budget” [sic].

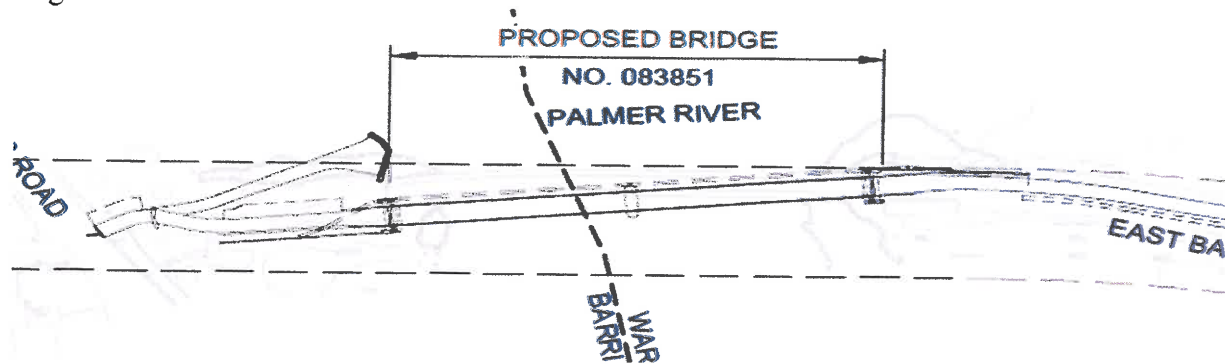
The narrative goes on to state “...RIDOT is proposing independent public fishing structures that will not jeopardize the bridge designs and loadings... {and} ... provide casting reach to the deepest waters within each channel and would enable fishing in both tide swings”.

On the Barrington River, a pile supported timber fishing pier is proposed, located on the western bank, north of the bike path. On the Palmer/Warren River, the temporary bulkhead on the western side of the River, also north of the bike path, is proposed to remain permanently with minor improvements for long term viability.

The retention and modification of the bulkhead for fishing access will require 668 cubic yards of permanent fill in tidal waters. Filling in Type 2 waters is prohibited under § 1.3.1(J)(3)(a) and this proposed fishing access requires a special exception.



Above: Portion of submitted plan showing the proposed timber pier on the Barrington River



Above: Portion of submitted plan showing the abutment on the Palmer/Warren River

“Red Book” Section 1.3.6(A)(3) states: *“It is the Council’s policy to require applicants to provide, where appropriate, on-site access of a similar type and level to that which is being impacted as the result of a proposed activity or development project”*. Staff is unable to determine if the two proposed fishing access structures will indeed allow access to the deepest portions of the rivers or provide commensurate access on both incoming and outgoing tides.

In addition to construction constraints listed in previous submission, the May 3 narrative notes that anglers utilize the nearby shoreline as well as the Rt 114 bridge, which has sidewalks on both the north and south sides, and indicates that the elevation of the replacement bike path brings anglers’ lines closer to existing utility lines currently in place across the bike path spans – a safety concern. The proposed timber pier will remain at an elevation similar to the original bike path.

The DOT offers the following in answer to providing public access of a similar type and level (Ref Section 1.3.6(A)(3)): *“...similar types of fishing access will be accommodated on site in the proposed Project design. The proposed fishing structures will be constructed within the Project area adjacent to each bridge, will provide a fair length of edge from which to fish, are expected to maintain dropline, drift, and casting fishing methods, and built to a similar elevation as the historic bridges. Similarly, the added riprap required as scour protection along the....(s)horeline of the bridge abutments may increase shoreline fishing opportunities. Consistent with CRMP §§ 1.3.6(A)(2 and 3), the level of public access for fishing opportunities will be enhanced by the Project via the provision of accessible, ADA-compliant fishing accommodations, where none existed previously.”*(emphasis original)

Marina Impacts- The initial submission on February 7, 2024 did not address the concerns raised by Ms. Jane Mainella of Atlantic Marine, located south of the Bike Path abutment on the eastern side of the Barrington River, as the Council directed at the November meeting. The additional information, received on March 18, 2024 noted that the DOT has been in discussions with the marina owners, tide ranges have been higher than typical of late, and the DOT is in the process of studying the hydrology of the river and marina area. The narrative goes on to state *“It has*

been noted in discussions with the Barrington Harbormaster that navigation through the River in the location of the former bridge is safer now with the elimination of the many pile bents.....” and “...it is our understanding that mariner travel through the waters at this location was a challenge prior to the bridge removal and will remain subjective to the boater’s experience”.

On May 3, the applicant submitted a second letter titled “Hydraulic Analysis of Barrington River adjacent to Atlantic Marine” which details results to date. The narrative summarizes that the removal of the original bike path has resulted in increased velocity within the navigational channel, but does not reveal increased velocities at the Marina Perimeter Limit (MPL) of Atlantic Marine. It further reiterates that the Barrington Harbormaster has noted that navigation within the channel is safer with the removal of the many piles associated with the original bridge.

The May 3 letter states: *“RIDOT has stated that they are committed to mitigate issues identified as it relates to the Marina, however, at this time, mitigation within the Marina does not appear warranted. RIDOT has stated that they are committed to mitigate issues identified as it relates to the Marina, however, at this time, mitigation within the Marina does not appear warranted.”* DOT has indicated that upon completion of the span, any impacts identified will be addressed by Assent modification, or a new Assent as required by Regulations.

COMMENTS ON SPECIAL EXCEPTION:

Special exceptions are required for:

- 1.3.1J.3.l(M)(2)(a)- the construction of new public transportation facilities in tidal waters*
- 1.3.J(G)(3)(c)- the filling on a coastal feature or tidal waters.*
- 1.3.1.J.3.l(L)(3)(c)-alterations to coastal wetlands not designated for preservation adjacent to Type3 Waters*

As the three Special Exceptions are all part of one Red Book Section, the Criteria are reviewed as one, with additional comments/discussion below.

1.1.8 Special Exception Requirements

1.1.8(A)(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 proposed fishing piers will be open to the public.
1.1.8(A)(2)	All reasonable steps shall be taken to minimize environmental impacts and/or use conflict.	The applicant has minimized to the greatest extent practicable, see below
1.1.8(A)(3)	There is no reasonable alternative means of, or location for, serving the compelling public purpose cited.	See discussion below

1.1.8(A)(2): All reasonable steps shall be taken to minimize environmental impacts and/or use conflict- As discussed below, an objection has been received from the neighbor abutting the original proposed timber fishing pier which states that the public fishing pier presents a use conflict with their use of the shoreline abutting their property.

1.1.8(A)(3): There is no reasonable alternative means of, or location for, serving the compelling public purpose cited- There is an alternative to provide fishing access without requiring the fill in tidal waters and the public structure in Type 2 Waters. This alternative is to match the width of the previous bridge, which allows for fishing along the entire span and would not require the construction and continued maintenance of two additional structures. Utilizing a wider span would also allow public access use that is the same type and level of that which is being lost by the removal of the previous spans (Ref Section 1.3.6).

The applicant has detailed how providing spans equal to the width of the previous spans is not possible (ref page 4 comments on fishing impacts). Staff defers to the Council on the merits of that discussion.

COMMENTS ON OBJECTIONS RECEIVED:

Three new objections were received during the second notice period (Feb 2024):

1.) A letter of objection to the proposed pier (in its original eastern shoreline location), signed by several members of the public was received during the public notice period. The objection notes that fishing will be directed into Atlantic Marine, causing adverse impacts and that there is no parking provided.

At the time of this objection, the proposed fishing pier was located on the northeast side of the Bike Path abutment, and the marina is located on the southeast side of the abutment. Fishing from that location would not affect the Marina. Further, there has never been parking provided at either span of the Bike Path until the development of Police Cove Park on the opposite side of the River which remains accessible. The relocation of the pier from the east to the west shore of the river puts the pier in closer proximity to the Police Cove Parking area and eliminates any concern for impact to the marina.

Staff does not believe that this letter of objection rises to a “substantive objection” in accordance with Section 1.1.6(G).

2.) A letter of objection to the fishing pier (original location) from the New England Chapter of the Backcountry Hunters and Anglers (BHA) was received, detailing their concern that the fishing access proposed is not of a “similar type and level” to that which is being impacted, as required by the RICRMP. In addition to noting that two fishing areas on the shoreline will not allow access to the center of the channel, the BHA also notes that not having linear access along

2023-04-094

Page 8

the span is likely to result in user conflict and fewer able to utilize the fishing area. The BHA also contends that these areas would not be accessible at both tides, differing with the DOT statement.

In accordance with Section 1.1.6(G)(1)(b), the BHA have opined that the proposal does not meet all of the policies, prerequisites, and standards, as it does not provide public access in accordance with 1.3.6(A)(3): *“It is the Council's policy to require applicants to provide, where appropriate, on-site access of a similar type and level to that which is being impacted as the result of a proposed activity or development project”*.

While this objection has accurately noted that the proposal does not meet a “Red Book” Standard, relief from Standards is given through the Variance process. The DOT has offered alternative fishing access and noted why access along the bridge spans is not feasible. It appears that the applicant has met the burdens of proof required for the granting of a Variance and therefore meets the Policies and Standards of the RICRMP.

Should the Council agree that the applicant has met the burdens of proof for a Variance, this objection would not rise to a Substantive Objection.

3). A letter of objection was submitted by attorney Chris D’Ovidio, representing the owner of Plat 27 Lot 21, 14 New Meadow Rd Barrington. Attorney D’Ovidio’s client directly abuts the bike path on the northeast side Barrington River and is immediately adjacent to the original location of the proposed timber fishing pier. As the pier has been relocated to the opposite shore, all concerns noted within this objection have been rectified.

Staff does not believe that this letter of objection rises to a “substantive objection” in accordance with Section 1.1.6(G).

3). The remaining comments that were received during the notice period are all from Ms. Mainella regarding the impacts to Atlantic Marine marina. She has requested that the DOT extend the embankment on the west side of the river to protect the marina.

In accordance with Section 1.6.1(G)(1), Ms. Mainella has asserted that the change in flow and velocity threatens both the structures within her marina as well as the safety of people utilizing the marina and the waters surrounding the marina.

Section 1.6.1(G) contains several criteria that raise an objection to “substantive”. Relative to Ms. Mainella’s multiple letters of concern, it appears that the concerns raised meet at least two of the criteria:

1.6.1(G)(1)(a): threat of direct loss of property of the objector(s) at the site in question;

1.6.1(G)(1)(c): evidence is presented which demonstrates that the proposed activity or alteration has a potential for significant adverse impacts on one or more of the following descriptors of the coastal environment:

- (1): Circulation and/or flushing patterns

The DOT's May 3 letter titled "Hydraulic Analysis of Barrington River adjacent to Atlantic Marine", answers both these concerns. First, by noting that the data does not show an increase in velocity at the MPL, and second by noting that the removal of the multiple pilings and the increased flushing is a positive for the aquatic environment as well as an increase in safety for boaters traveling under the bridge. In accordance with Section 1.1.6(G), it appears that the applicant has adequately demonstrated that these concerns are not substantive.

CONCLUSION AND RECOMMENDATIONS:

Staff have reviewed the revised materials, and considered the objections submitted as detailed in this Addendum.

The complexity of this application and the multiple objections makes rendering a recommendation challenging, as there are several variables.

Substantive Objection:

The BHA objection correctly points out that the application does not meet all the Policies and Standards of the Red Book. However, as noted above, the regulation that is not met can be remedied by a Variance, and staff has noted that the applicant appears to have met the burdens of proof to obtain a Variance.

As noted above, the remedy for not meeting a Standard is a Variance. Should the Council agree that the applicant has met the burdens of proof for a Variance, this objection would not rise to a Substantive Objection.

The concerns of Atlantic Marine as described in multiple pieces of correspondence meet the criteria for Substantive Objection. The applicant directly responded to these concerns in the May 3 letter titled "Hydraulic Analysis of Barrington River adjacent to Atlantic Marine". Based on the information provided by the application, it appears that the concerns of Atlantic Marine are no longer substantive.

Should the Council approve this application: Specific stipulations will be written, subject to the conditions set by the Council, in addition to the standard Assent stipulation package.

Signed  _____ Staff Biologist

Signed  _____ Staff Engineer



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

DATE: October 13, 2023
 TO: Jeffrey M. Willis, Executive Director
 FROM: Amy Silva, Ross Singer

Applicant's Name:	Department of Transportation (State of RI)Department of Transportation
CRMC File Number:	2023-04-094
Project:	Reconstruct "East Bay Bike Path Bridges" over the Barrington and Warren (Palmer) Rivers
Location:	Barrington/Warren East Bay Bike Path Bridges
Water Type/Name:	Type 1, 2, & 3; Barrington & Warren Rivers
Coastal Feature:	Coastal Wetland, Coastal Bluff with Rip Rap
Plans Reviewed:	"East Bay Bike Path Bridge Replacements...Reconstruction Plans Environmental Permitting Set Volume 1"; 28 sheets total; cover dated April 2023 by RIDOT

INTRODUCTION:

This application requests Assent to construct new bridges for the "East Bay Bike Path" over the Barrington and Warren (Palmer) Rivers. The demolition of the previous structures was approved under CRMC Assent 2023-05-055, which included Assent to construct Temporary bulkheads in coastal waters for access purposes. Those bulkheads will be utilized as part of the construction as well.

The application went to public notice and no comments were received. A Water Quality Certification from DEM has been issued, and a PCN request with the Army Corps of Engineers has been submitted.

During the course of review, CRMC staff contacted the applicant for additional information regarding the fishing access, which was provided by the applicant along with a revised application narrative.

The two new bike path bridges will be limited to one pier in the center of each river channel, such that each bridge will comprise two spans. The use of fewer in-water pilings, combined with its height increase, is expected to result in an increase in both vessel traffic and aquatic flushing with tidal changes, particularly in the Warren/Palmer River.

Signed: _____ Staff Biologist

Signed: _____ Staff Engineer

As part of the construction, all four of the bridge abutments will be rebuilt, utilizing coffer-dams. A small area of coastal wetland will be disturbed on the west side of the Warren/Palmer River, necessitating Variances for Setback and Filling of Coastal Feature, as well as Special Exceptions for the construction of new public transportation facilities in tidal waters, filling on a coastal feature or tidal waters and alterations to coastal wetlands

COMMENTS ON APPLICATION/APPLICABLE POLICIES, STANDARDS & ETC:
“Red Book” 650-RICR-20-00-

1.1.7	Variances	The work on the abutments does not meet CRMP §1.1.9 50’ Setback. Additionally, variances are required for (CRMP §1.3.1(B)(3)(a)(6)), filling rather than cutting on causeway slopes and §1.3.1(B)(3)(e)(1)(AA))filling on slopes steeper than 15 percent. CRMC staff supports a Variance for this work.
1.1.8	Special Exceptions	See discussion below
1.1.9	Setbacks	The work on the abutments does not meet the 50’ Setback. CRMC staff supports a Variance for this work.
1.1.10	Climate Change and Sea Level Rise (SLR)	The structures have been elevated 3’. At 5’ of SLR, the bike path south of the Warren bridge is inundated.
1.2.1(B)	Type 1 Water (see image below)	A small area of Type 1 Coastal Wetland will be altered and mitigated. See discussion below.
1.2.1(C)	Type 2 Water (see image below)	The bridges themselves fall within Type 2 water
1.2.1(D)	Type 3 Water (see image below)	The areas to the south of the bridges are Type 3
1.2.2(C)	Coastal Wetlands	A small area of Type 1 Coastal Wetland will be altered and mitigated. See discussion below.
1.3.1(A)	Category B Requirements	The applicant has submitted an appropriate Category B application and narrative.
1.3.1(B)	Filling Removing and Grading of Shoreline Features	The work on the bridge abutments requires alteration of the shoreline features. Variances are required for (CRMP § 1.3.1(B)(3)(a)(6)), filling rather than cutting on causeway slopes and §1.3.1(B)(3)(e)(1)(AA)) filling on slopes steeper than 15 percent. Due to existing site conditions steep slopes, limited fill, and a retaining wall are required. A soil erosion and sediment control plan has been provided.
1.3.1(C)	Residential, Commercial, Industrial and Recreational Structures	The applicant has provided documentation that the structures will meet building code and flood hazard requirements.
1.3.1(F)	Treatment of Sewage and Stormwater	Stormwater management has been designed in accordance with RI Stormwater Management, Design, and Installation Rules 250-RICR-150-10-8 using infiltration trenches and Qualified Pervious Area (QPA). A Stormwater Management Plan and Long-Term Operation and Maintenance Plan have been provided
1.3.1(G)	Shoreline Protection	Existing rip rap protection is present on the coastal bluff. Additional shoreline protection is necessary for adequate scour protection. A special exception is required for § 1.3.1(G)(3)(c) – the filling on a coastal feature or tidal waters

Signed: _____

Staff Biologist

Signed: _____

Staff Engineer

1.3.1(L)	Coastal Wetland Mitigation	A Special Exception is required for CRMP § 1.3.1(L)(3)(c) alterations to coastal wetlands not designated for preservation adjacent to Type 3 Water. The applicant has provided appropriate wetland mitigation for the Coastal Wetland that will be impacted by construction.
1.3.1(M)	Public Roadways, Bridges, Parking lots, Railroad Lines and Airports	The proposed project consists of replacing an existing portion of the bike path and bridges. A special exception may be required for §1.3.1(M)(2)(a) – the construction of new public transportation facilities in tidal waters. The applicant has demonstrated that policies and standards have been satisfied

Water Type Imagery:

Barrington:

Warren:



Blue: Type 2; Green: Type 3; Yellow: Type 1 (DEM Aerial Imagery)

COMMENTS ON VARIANCE REQUEST:

There are two Variances associated with this application. Setback and Filling of Shoreline Feature. Staff offers the following comments for each Variance-

1.1.9: Setbacks:

1.1.7 Variance Criteria	Staff Analysis of Applicant's Response
1.1.7(A)(1) <i>The proposed alteration conforms with applicable goals and policies of the Coastal Resources Management Program.</i>	All applicable policies and standards for the CRMP have been addressed by the applicant and are balanced with engineering feasibility and site constraints.
1.1.7(A)(2) <i>The proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts.</i>	Impacts have been minimized by situating the bridge within the general existing footprint of the bike path corridor. The proposed fill is situated over existing structural shoreline protection. Additional stone remains consistent in function. The proposed alterations do not create conflicts with navigation or other existing use.
1.1.7(A)(3) <i>Due to conditions at the site in question,</i>	Due to existing site constraints, the proposed infrastructure cannot be situated outside the 50 foot setback.

Signed: _____

Staff Biologist

Signed: _____

Staff Engineer

<i>the applicable standard(s) cannot be met.</i>	
1.1.7(A)(4) <i>The modification requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable alteration or use of the site.</i>	The proposed project minimized to the greatest extent feasible.
1.1.7(A)(5) <i>The requested variance to the applicable standard(s) is not due to any prior action of the applicant or the applicant's predecessors in title...</i>	The requested variance is not due to prior action of the applicant.
1.1.7(A)(6) <i>Due to the conditions of the site in question, the standard(s) will cause the applicant an undue hardship.</i>	The project would be unfeasible without the requested variances due to site constraints and engineering requirements.

1.3.1(B)(3) Filling of Shoreline Features

1.1.7 Variance Criteria	Staff Analysis of Applicant's Response
1.1.7(A)(1) <i>The proposed alteration conforms with applicable goals and policies of the Coastal Resources Management Program.</i>	All applicable policies and standards for the CRMP have been addressed by the applicant and are balanced with engineering feasibility and site constraints.
1.1.7(A)(2) <i>The proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts.</i>	The proposed fill is situated over existing structural shoreline protection. Additional stone remains consistent in function. The proposed alterations do not create conflicts with navigation or other existing use.
1.1.7(A)(3) <i>Due to conditions at the site in question, the applicable standard(s) cannot be met.</i>	Existing conditions of the causeway have steep embankments exceeding 15% slope. The proposed fill, steep slopes and retaining wall are necessary due to site constraints and required realignment of the path.
1.1.7(A)(4) <i>The modification requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable alteration or use of the site.</i>	The proposed project minimized to the greatest extent feasible.
1.1.7(A)(5) <i>The requested variance to the applicable standard(s) is not due to any prior action of the applicant or the applicant's predecessors in title...</i>	The requested variance is not due to prior action of the applicant.
1.1.7(A)(6) <i>Due to the conditions of the site in question, the standard(s) will cause the applicant an undue hardship.</i>	The project would be unfeasible without the requested variances due to site constraints and engineering requirements.

Signed: _____ Staff Biologist

Signed: _____ Staff Engineer

COMMENTS ON SPECIAL EXCEPTION:

Special exceptions are required for:

§ 1.3.1(M)(2)(a) – the construction of new public transportation facilities in tidal waters

§ 1.3.1(G)(3)(c) – the filling on a coastal feature or tidal waters.

§ 1.3.1(L)(3)(c) – alterations to coastal wetlands not designated for preservation adjacent to Type3 Waters

As the three Special Exceptions are all part of one Red Book Section, the Criteria are reviewed as one, with additional comments/discussion below.

1.1.8 Special Exception Requirements

<p>1.1.8(A)(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.</p>	<p>The proposed project replaces existing bike path bridges. Per Section 1.3.1(M)(2)(a), the bike path is public transportation facility in tidal waters. However, the facility is not “new” – it is a replacement of a historic structure.</p> <p>The bike path serves as vital public infrastructure and provides access to the shore for broad segments of the public. However, staff has concerns regarding the public use of the structure (Section 1.1.8(A)(1)(c). See additional comments below.</p>
<p>1.1.8(A)(2) All reasonable steps shall be taken to minimize environmental impacts and/or use conflict.</p>	<p>The project is confined within the limits of the existing bike path causeway and bridges to the greatest extent practicable. The impacts created from the proposed abutment, retaining wall, and riprap scour protection are necessary due to site conditions and the location of existing utilities. Please see the below for further discussion of environmental and use impacts.</p>
<p>1.1.8(A)(3) There is no reasonable alternative means of, or location for, serving the compelling public purpose cited.</p>	<p>The applicant has demonstrated that the proposed design presents the most practicable alternative while limiting environmental impacts. There are no alternative locations, as the bridges are being located in the same location as the recently demolished, long-standing bike path bridges.</p>

Impact to Coastal Wetland (Section 1.3.1(L)(3)(c)):-

As part of the construction, all four of the bridge abutments will be rebuilt, utilizing coffer-dams. A small area of coastal wetland will be disturbed on the west side of the Warren/Palmer River, necessitating a Special Exception.

Signed: _____ Staff Biologist

Signed: _____ Staff Engineer

Proposed unavoidable permanent salt marsh fill (± 489 sf) will comprise the area to be occupied by the proposed retaining wall and its associated backfill, plus an area of proposed riprap. Temporary salt marsh impacts (± 362 sf) will be the area occupied by the footprint of excavation required to install footings for both the permanent retaining wall and temporary modular block wall. An additional area of temporary salt marsh disturbance (± 126 sf) will be required for foot access within the Project limits depicted on the Project site plans. All temporary disturbance areas in salt marsh will be fully restored.

The proposed mitigation will take the form of salt marsh replication and restoration, totaling $\pm 2,610$ sf on the east side of the Palmer River, in the location of the temporary access crossing approved by the CRMC as part of the bridge closure and detour route creation.

Similar to the "Broken Bridge" bike path in Warren, the area of open water for access and recreation will be increased by this project. While the "trading" of one coastal feature type for another is typically not accepted, due to the small size of the wetland lost, it has been considered as part of mitigation in this case.

Impact to Public Resources (1.1.8(A)(1)(a)-

Section (1.1.8(A)(1)(a) reads: "*An activity that provides access to the shore for broad segments of the public.*"

A continuing concern regarding the Special Exception request was the matter of fishing from the two bridges. Fishing off both of the bike path bridges is a long standing and well-known recreational use of these two bridges (see photo below). During all the pre-application discussions, concerns were raised because the stated intention was to disallow fishing from the bridges after construction. There was discussion of keeping the two temporary bulkheads as alternatives for fishing access. CRMC Staff repeatedly stated concerns of the loss of fishing along the bridge spans.

The application was submitted with a narrative that stated that: "*RIDOT has made the decision not to provide fishing access from the bridges for safety reasons – to avoid the potential for conflicts with Bike Path users. The previous bridges did provide opportunities for fishing, but the proposed replacement bridges will be elevated higher than the previous bridges and incorporate a design that is not conducive to fishing access. It is assumed that fishing opportunities will be available from the manmade shoreline at the bridge abutments.*"

CRMC questioned the applicant about this in an information request on September 6, 2023, stating the concern that the application requests a Special Exception, for which a "compelling public purpose" is required to be demonstrated, while at the same time restricting a well-known and popular public use of the structures: "*Please be reminded that this application is requesting a Special Exception from the Coastal Resources Management Program, and an integral part of meeting the criteria to obtain a Special Exception is demonstrating that the project serves a "compelling public purpose". As currently described within the application, this project reduces the public purpose/use of the structures.*"

COMMENTS ON APPLICANT'S SPECIAL EXCEPTION RESPONSE:

In response to CRMC's written concerns regarding the fishing access, the applicant supplied a response letter and an entirely new application narrative. The cover letter of this response states: "*The Department's intention is not to prohibit, preclude, or otherwise restrict public, recreational fishing access in and around the proposed Bike Path bridges*" and goes on to state: "*Please note that the narrative does not state that fishing would be prohibited, and the Department intends no active role in prohibiting fishing that may in fact occur on the proposed bridges.*"

Signed: _____ Staff Biologist

Signed: _____ Staff Engineer

This response is a direct contradiction of the original application, as noted above which stated that the DOT *“has made the decision not to provide fishing access from the bridges for safety reasons”*. The design of the bridges has not changed. It is unclear how the reversal in this decision is reflected in the design choice of the bridge spans.

The cover letter proceeds to note that the new bridges will not provide “dedicated fishing access”, but fishing will not be prohibited. It should be noted that the previous bridges did not provide dedicated access either. They had “sidewalks” on either side of the dedicated bike path that was utilized. It appears that sidewalks are part of the newly proposed bridges as well, although they appear narrower than previous. CRMC staff further questioned the applicant and DOT officials for clarity about sidewalks on the bridge structures themselves and was told that there is a two-foot wide area on either side of the bike path.

CRMC followed up requesting additional information, as the two-foot area appears to be narrower than what was provided on the previous structures, and it is unclear how that two-foot area will be utilized with the truss/overhead structures. To date, no response has been submitted.



Fishing off the Warren/Palmer River span, clearly showing “sidewalks” (Photo: www.trailink.com)

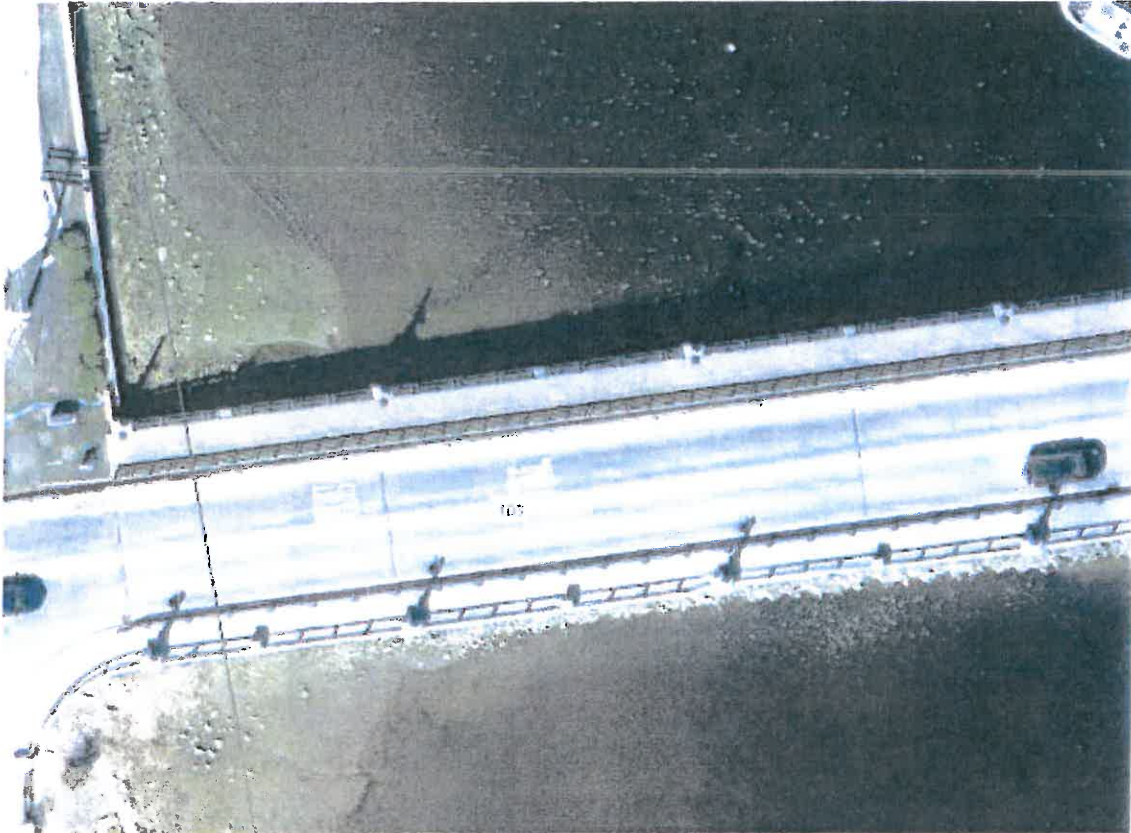
The cover letter summarizes thusly: *“The proposed bridges are first and foremost transportation infrastructure. The ability to re-open the Bike Path mainline to the public after years of closure due to unsafe, deteriorating conditions of the existing trestle-style bridges is the primary project objective. The Department considers the Bike Path to be a vastly important recreational amenity, for multiple modes of recreation, and the project is believed to comfortably meet the litmus test of a compelling public*

Signed: _____ Staff Biologist

Signed: _____ Staff Engineer

purpose.”.... To cite a similar example, the Department did not provide devoted fishing accommodations on the recently constructed County Road (Route 114) bridge, immediately downstream of the Barrington River Bike Path bridge, yet fishing does occur.”

It should be noted that the County Road bridge provides proper sidewalks, which appear to be 7-9 feet in width, clearly separated from the roadway. It remains unclear if the newly constructed bike path bridges will maintain similar area on the sides of the bike path passages as the previous bridges.



County Road, over the Warren/Palmer River, referenced in DOT letter. Note wide sidewalks on either side (Image DEM Aerial Imagery)

CRMC staff remains concerned that a longstanding recreational use – recreational fishing – will be curtailed with the construction of the new bridge spans. Without full detailed bridge plans, including the chosen truss system, CRMC cannot ascertain the impact to recreational fishing. CRMC contacted DOT staff multiple times. The most recent request for clarity went unresponded to. To date, answers regarding fishing have been unclear.

CONCLUSIONS & RECOMMENDATIONS:

CRMC poses no objections to the re-construction of the two bike path bridges, but remains concerns about the lack of clarity regarding access for recreational fishing along the two bridge spans. This has been a concern beginning in the pre-application process, and remains a concern to date. The original submission stated fishing would be prohibited, but DOT changed the statement after CRMC raised concerns and now states that fishing will not be prohibited. However the design plans allow for only a narrow 2 foot wide area on either side of the path proper, and questions regarding the width as well as its use relative to truss systems have gone unanswered.

Signed: _____ Staff Biologist

Signed: _____ Staff Engineer

While staff is of the opinion that the application meets the Variance Criteria for the two Variances required, Staff defers to the Council for decision on the Special Exception, particularly 1.1.8(A)(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”*.

Signed: _____

Staff Biologist

Signed: _____

Staff Engineer