NEW ENGLAND CHAPTER
BACKCOUNTRY HUNTERS & ANGLERS

June 28, 2024

To Jeffrey Willis, Executive Director, RI Coastal Resources Management Council

Re: Advance Notice of Proposed Rulemaking – 650-RICR-10-00-1 – Quidnesset Country Club

Backcountry Hunters & Anglers seeks to ensure North America's outdoor heritage of hunting and fishing in a natural setting. Our members recognize that our participation in, and the perpetuation of, our outdoor traditions relies primarily on two things – access to places to hunt and fish, and abundant populations of fish and wildlife to pursue. As an organization Backcountry Hunters & Anglers works to advance policies that promote access to public lands, waters and wildlife and the conservation of the habitats that fish and wildlife depend upon, and we oppose policies that are at odds with these things.

Recognizing that the purpose of an advance notice of proposed rulemaking is to *"gather information relevant to the subject matter of a potential rulemaking proceeding"* (RIGL § 42-35-2.5), the New England Chapter of Backcountry Hunters & Anglers (BHA) respectfully submits the comments and recommendations included herein. **Should the RI Coastal Resources Management Council (CRMC) decide to initiate formal rulemaking following the advance notice, BHA's intent is to object to the change in water type designation requested by Quidnesset Country Club (QCC).**

While the advance notice relates to a change in water type designation, the reason for the petition is clearly related to a desire by QCC to perpetuate and make legal an unpermitted protection structure that was constructed both on their property and on adjacent public trust property. In their April 12, 2024 petition QCC states that *"If the water type change is approved, the QCC will evaluate all alternatives for shoreline protection allowed by the CRMP in Type 2 Waters and apply for a Category B Assent to address the pending enforcement action for the rock revetment along its northeastern shoreline"*. As a result, consideration at this point cannot be limited to the relatively straightforward question of water type classification - the illegal, unpermitted feature that QCC seeks to legitimize through the petition must also be considered relevant to any potential change in regulations.

BHA's comments related to the advance notice can generally be categorized into three areas of focus – impacts to public access, impacts to wildlife, and regulatory/permitting procedure – and we will expand upon each below.

Impacts to Public Access

Based on data provided through the RI Department of Environmental Management's (DEM) Environmental Resource Map [1] (Figures 1 & 2) there is little doubt about the magnitude of the rock revetment described in QCC's April 2024 petition, which appears to span approximately 600 feet laterally, and at its largest is over 40 feet wide and 20 feet tall. Since the construction of QCC's massive, illegal development lateral access along the shore has been impeded and is likely blocked entirely during certain tides, if not altogether. If allowed to persist, the hardening of the shoreline will hasten erosion in both the immediate area and adjacent to it and will result in the loss of all access that

[1] RIDEM Environmental Resource Map, RI Department of Environmental Management Data & Maps, https://ridemgis.maps.arcgis.com/apps/webappviewer/index.html?id=87e104c8adb449eb9f905e5f18020de5

remains. At that point, the public will be completely deprived of the ability to use the area, and of the rights that are enumerated in RI's Constitution Article 1 Section 17, and further clarified in RIGL § 46-23-26.

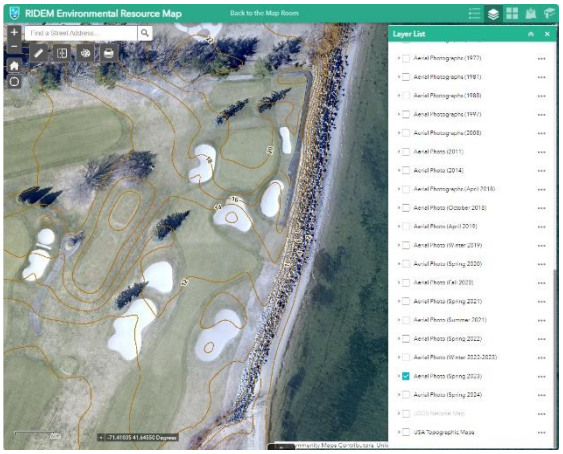

Figure 1 – Aerial & topographical imagery of the QCC shoreline in spring 2023

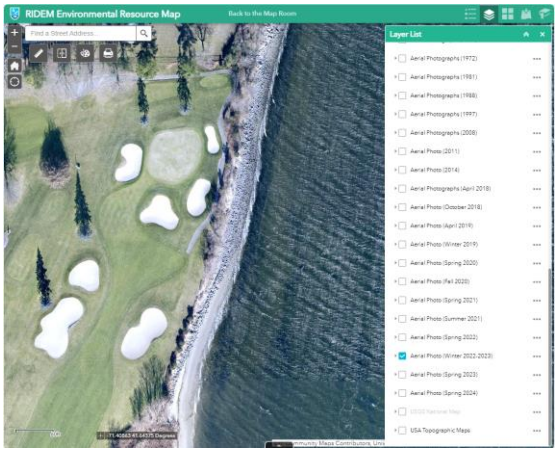

Figure 2 - Aerial imagery of the QCC shoreline in winter 2022-2023

Impacts to Wildlife

Due to the unexpected, unnoticed nature of unpermitted construction no opportunity was afforded either to CRMC, or to interested parties, for scientific or anecdotal study of the vegetated shoreline that was destroyed by the construction of QCC's rock revetment. Nonetheless, there is a reasonable likelihood that the area in question was both visited seasonally and permanently inhabited by a variety of wildlife, ranging from upland, wetland and marine birds to mammals and other creatures. Beyond the habitat that was immediately destroyed when the revetment was constructed and the vegetation buffer above it was removed, impacts to the fragile habitats immediately north and south of the property must also be considered, as each is designated "High Value / High Vulnerability Habitat" on DEM's Environmental Resources Map (Figure 3).

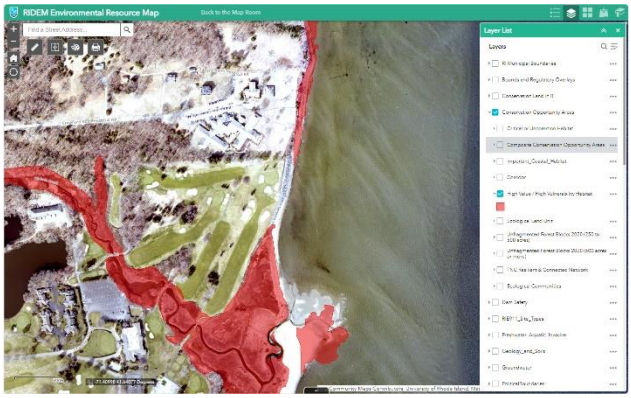

Figure 3 – High Value / High Vulnerability Habitat

In 650-RICR-20-00-1 1.2.1 (B)(1) Type 1 waters are defined as *"(a) water areas that are within or adjacent to the boundaries of designated wildlife refuges and conservation areas; (b) water areas that have retained natural habitat or maintain scenic values of unique or unusual significance; or (c) water areas that are particularly unsuitable for structures due to their exposure to severe wave action, flooding and erosion."* In contrast, 650-RICR-20-00-1 1.2.1 (C)(1) states that Type 2 areas *"include waters in areas with high scenic value that support low intensity recreational and residential uses. These waters include seasonal mooring areas where good water quality and fish and wildlife habitat are maintained."*

While both classifications include references to the maintenance fish and wildlife habitat, we believe that the area proposed for re-designation is most accurately described as Type 1 water and have provided reference from the State's fish & wildlife agency that illustrates its unique and unusual significance to wildlife. Further, given that the express rationale for re-designation is to perpetuate the illegal hardening of the shore, we are concerned that the perpetuation of QCC's illegal revetment, which has already resulted in the acute damage to the area, will result in long-term degradation of wildlife habitat that is at odds with either water type.

Regulatory/Permitting Procedure

There is little question or dispute at this point about the facts of the situation before CRMC – QCC planned and executed a major unpermitted construction project that has had and will continue to have significant impacts on the coastal resources that the Council is responsible for managing on behalf of the people of the state. When served with a notice of violation, QCC petitioned CRMC to promulgate rules that would minimize penalties and legitimize the illegal structure, which was expressly prohibited under regulations at the time of its construction. Evidence has also been made public that removes all doubt that QCC should have reasonably known that a CRMC assent was necessary for this sort of development, because they applied for a similar feature to serve a similar purpose in 2012 and were denied.

To put it simply, CRMC should not entertain the perpetuation of structures that were knowingly constructed in defiance of their regulations. Doing so would essentially broadcast throughout the state that illegal construction is an acceptable strategy towards eventual permitting, and that express regulatory prohibitions intended to protect RI's coastal resources don't amount to much more than recommendations for those with access to sufficient resources. Further, entertaining QCC's request is at odds with one of the main issues that the RI General Assembly sought to address when it established CRMC. RIGL § 46-23-1 (a)(2) states *"that unplanned or poorly planned development of this basic natural environment has already damaged or destroyed, or has the potential of damaging or destroying, the state's coastal resources, and has restricted the most beneficial utilization of these resources."* To address this issue, the General Assembly directs CRMC that *"It shall be the policy of this state to preserve, protect, develop, and, where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long range planning and management designed to produce the maximum benefit for society from these coastal resources."* While we understand the need to address violations based on their facts and circumstances, allowing formal rulemaking to occur in this situation would be extremely troubling, and would cast legitimate doubts over whether CRMC is serious about fulfilling its legislative purpose, and about protecting the coastal resources that are collectively owned by the people of Rhode Island and entrusted to the Council's management.

While we again recognize that the purpose of the advance notice is to solicit information and recommendations relative to a potential future rulemaking process, **the New England Chapter of Backcountry Hunters & Anglers respectfully urges CRMC to reject the QCC's petition and not proceed with rulemaking.** QCC has demonstrated utter disregard for the laws and regulations of the State of Rhode Island by undertaking a major unpermitted development in defiance of CRMC's clear prohibition, and rather than correcting the situation when caught they are now attempting to re-write the rules to legitimize their illegal activity. This behavior should not be entertained or tolerated, and CRMC should pursue all legal avenues to compel the removal of the illegal structure, and the restoration of the area to its natural state.

Thank you for your consideration,

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