

STATE OF RHODE ISLAND
PROVIDENCE, SC.

COASTAL RESOURCES MANAGEMENT COUNCIL
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

DECISION

Petition of: Perry Raso

Docket No.: 2017-12-086

Facts and Travel

Applicant, Perry Raso (hereinafter “Applicant”), filed with the Coastal Resources Management Council (“Council”, “CRMC”) an application to establish a three-acre oyster and bay scallop farm using floating and suspended gear. Applicant proposes locating the proposed project in Segar Cove. Segar Cove is a feature of Potter Pond in South Kingstown, RI. The water type is Type 2, Low Intensity Use.

CRMC formed the Perry Raso Subcommittee (“subcommittee”) to assess Applicant’s proposal. Accordingly, the subcommittee held several hearings over the following days: November 12, 2020; November 13, 2020; November 17, 2020; December 4, 2020; December 16, 2020; December 30, 2020; and, January 29, 2021. Following the hearings, the subcommittee met on March 8, 2021 to discuss the application. The subcommittee, pursuant to the Administrative Procedures Act and the Governor’s executive orders, used the Zoom platform to hold these meetings. At that time, Applicant, other interested parties, CRMC staff, and other state agencies submitted evidence, all of which was incorporated into the record. Kevin Hunt, David Latham, Alicia Cooney, and Steven Quigley, Andrew Wilkes and 454 Beach Road, LLC. (hereinafter collectively “Objectors”) opposed assent. Further, all evidence so submitted to the subcommittee pursuant to this application, whether it be by interested parties or through CRMC staff members or other various state agencies, has been and is available to all interested parties at the Council offices located at the Stedman Government Center, Tower Hill Road, Wakefield, Rhode Island 02879.

The Applicant called several witnesses during the November 2020 subcommittee hearings. During the November 12, 2020 hearing, Applicant testified. Applicant’s attorney, Elizabeth Noonan, Esq., asked Mr. Raso to describe the farm he was proposing. Mr. Raso described the proposed farm as having three sections of twelve rows of scallop gear. He explained that he would use scallop gear for larger scallops, which would include four-tier lantern nets. He explained that the gear is described and pictured in the application. Applicant testified that the scallop gear would span approximately one and a half acres of the farm; it would be the gear closest to the center of the cove and would occupy the western-most part of the farm. The eastern-most gear, closest to the shoreline, would include twelve rows of thirty oyster cages, each divided into three sections, housing juvenile and adult oysters. The proposed project would span approximately three acres in total. The proposed project would not include permanent platforms.

On cross examination, Christian Capizzo Esq. (the attorney representing Mr. Hunt, Mr. Latham, Ms. Cooney, and Mr. Quigley) asked Applicant about what water dependent uses could take place in the proposed project. Applicant testified that it would not be advisable to swim, jet-ski, or use a sailing or motor vessel in the proposed project. He also testified that fishing would be difficult in certain areas of the proposed project; and it would be easier in other portions. Applicant also explained the pictures he, and his colleagues, took of Segar Cove. Applicant testified that these representations only capture a moment in time and acknowledged that there could have been activity before or after the pictures were taken.

On the November 12, 2020 hearing Applicant called Audie Osgood, a professional engineer from DiPrete Engineering, to testify. Mr. Osgood described the dimensions of the proposed farm and indicated that the proposed project met applicable zoning requirements. He explained his interpretation of the South Kingstown Boats and Waterways ordinance that create buffer distances for the operation of personal watercraft and towed water sports, as well as how his interpretation affected his report. Attorney Capizzo cross-examined Mr. Osgood; Attorney Capizzo asked whether the proposed project would cause congestion in Segar Cove. Mr. Osgood agreed with Mr. Capizzo that the proposed project would compress towed water sports, swimming and sailing towards the center of Segar Cove.

On November 13, Dr. Carrie Byron, Dr. Michael Rice testified, and Dr. Robert Rheault testified. The subcommittee qualified Dr. Byron as an expert on environmental science and qualified Dr. Rice and Dr. Rheault as experts on aquaculture. Dr. Carrie Byron testified in regard to carrying capacity as it relates to aquaculture. More specifically, she explained the 5% rule. Her model for Potter Pond analyzed the ecological carrying capacity but did not account for social carrying capacity. Accordingly, she opined that the proposed project would not significantly impact plant and animal life on Potter Pond. She also testified that the proposed project would not significantly affect water quality, erosion, and deposition.

Dr. Rice described the history and law behind aquaculture in Rhode Island. Dr. Rice testified that he did not think that the proposed project would result in degradation of water quality, erosion, deposition or harm plant and animal life. Objectors' attorney questioned Dr. Rice extensively on whether the proposed project would conflict with water dependent uses. During this line of questioning, Dr. Rice conceded that the proposed project would compress certain activities into the center of Segar Cove.

Dr. Robert Rheault testified on November 13 and November 17. He provided additional Rhode Island aquaculture history and the evolution of the 5% rule in Rhode Island. He also explained the impact of shellfish aquaculture on water quality.

The Objectors called several witnesses between the November, December, and January hearings. On the November 17, 2020 hearing the Objectors called Payson Whitney, a professional engineer from EES Group. Mr. Whitney explained when and how he observed the proposed project area and its relation to Segar Cove and was questioned extensively on the location and size of the proposed project. He answered questions regarding his understanding of the South Kingstown Boats and Waterways ordinance and the compression of the water sheet that would

result from the proposed project. Mr. Whitney answered questions regarding water dependent uses around and in the proposed project area.

Between the December, 2020 and January, 2021 hearings, the subcommittee heard the testimony of over 40 witnesses that opposed the application. Many of these witnesses lived near Segar Cove and had extensive experience with recreation on the cove. By The common concern expressed by these witnesses was the conflict in the project use with that of the existing recreational uses in the project area. A related concern was that the impact on the proposed project on the safety of existing public uses because they would be shifted out toward the channel and increase the risk of accident and injury.

During the March 8, 2021 subcommittee meeting, Chair Cervenka thanked everyone present for their time and patience throughout a lengthy process. In an effort to summarize all that had transpired, Chair Cervenka reviewed the applicable legal standards and relevant ordinances supporting this decision, citing several passages from the R.I.G.L § 20-10.

Chair Cervenka opened the meeting for the subcommittee to question CRMC Staff:

Mr. Gomez asked about the relevance and compliance of the Red Book to Rhode Island General Laws. Attorney DeSisto answered that R.I.G.L. § 20-10-3 gives the CRMC authority to grant permits for aquaculture pursuant to the regulations that are promulgated in the Red Book. Several questions followed; all requesting clarification by Chair Cervenka and Attorney DeSisto regarding the details of the Rhode Island General Laws and their applicability to this matter.

Regarding testimony presented by those who live on Segar Cove, as well as those who use the cove and Potter Pond, Chair Cervenka understood that there was evidence proving regular and varying use of the pond. The testimony indicated that regular seasonal use was apparent, particularly recreational use during summer months, and emphasized water skiing. Mr. Gomez noted concern regarding more passive uses of the pond, such as kayaking and small boat sailing, and the impact the farm may have on such uses.

The Board moved to discuss Category B requirements of the Red Book 1.3.1(A):

- **Requirement 1A: Demonstrate the need for the proposed activity or alteration.** The Subcommittee noted that Mr. Raso has maxed out his existing lease, and desires to grow his business. Ms. Reynolds asserted that the need is met due to the CRMC encouraging aquaculture growth in the state.
- **Requirement 1B: Demonstrate that all applicable local zoning ordinances, building codes, flood hazards standards, and all safety codes, fire codes, and environmental requirements have or will be met.** The Subcommittee found that the requirements are actually inapplicable in this instance, since this standard applies to codes concerning upland uses, rather than water uses.
- **Requirement 1C: Describe the boundaries of the coastal waters and land area that is anticipated to be affected.** Applicant appropriately depicted both his initial concept and alternate concepts (i.e. the farm as a polygon or a rectangle, respectively) in the application materials.

- **Requirement 1D: Demonstrate that the alteration or activity will not result in significant impacts on erosion and/or deposition processes along the shore and in tidal waters.** The Board agreed that the proposed project might actually help prevent some erosion by breaking up the waves generated by various activities on the water.
- **Requirement 1E: Demonstrate that the alteration or activity will not result in significant impacts on the abundance and diversity of plant and animal life.** The Board noted that the proposed project would not cause a significant impact on the abundance and diversity of plant and animal life.
- **Requirement 1F: Demonstrate that the alteration will not unreasonably interfere with, impair, or significantly impact existing public access to, or use of, tidal waters and/or the shore.** It was noted that due to the public access points not being located in the area of the proposed farm, public access would not be significantly impacted.
- **Requirement 1G: Demonstrate that the alteration will not result in significant impacts to water circulation, flushing, turbidity, and sedimentation.** There was no evidence of significant impacts to water circulation, flushing, turbidity, and/or sedimentation.
- **Requirement 1H: Demonstrate that there will be no significant deterioration in the quality of the water in the immediate vicinity as defined by DEM.** There was no evidence of deterioration of the water quality occurring as a result of this project. The discussion proposed that the proposed project may even enhance the water quality, as mentioned in K-1-A. A letter put forth by DEM also asserted that the water quality will not be negatively impacted.
- **Requirement 1I: Demonstrate that the alteration or activity will not result in significant impacts to areas of historic and archaeological significance.** A letter from the Rhode Island Historic Preservation and Heritage Commission asserts that there is no historic or archeological significance within the area in which the proposed farm would expand.
- **Requirement 1J: Demonstrate that the alteration or activity will not result in significant conflicts with water dependent uses and activities such as recreational boating, fishing, navigation, and commerce.** Chair Cervenka stated her belief that this project would cause significant conflicts with existing water dependent uses, due to the town's 200-foot buffers, which are measured from either the shore and /or the stationary or moving objects and condense a multitude of activities in the center of the cove. Subcommittee members agreed that these significant conflicts even amounted to safety issues.
- **Requirement 1K: Demonstrate that measures have been taken to minimize any adverse scenic impact.** Applicant took measures to minimize the adverse scenic impact with low profile cages and a portion of the farm being submerged except for buoys.

Chair Cervenka asked Attorney DeSisto if a finding on the five percent rule was necessary, and Attorney DeSisto affirmed. Chair Cervenka stated that there is a rule that the aquaculture in any coastal pond cannot exceed five percent of the total open water surface area below MLW. The Board agreed that the five percent rule was satisfied based on the staff report and all evidence provided.

Findings of Fact

After hearing thereon, and consideration thereof, the Council made the following findings of fact:

1. On December 27, 2017, Applicant submitted a proposed aquaculture project to CRMC.
2. Applicant requested approval to build a three-acre oyster and bay scallop farm using floating and suspended gear.
3. The proposed project location is Segar Cove.
4. Segar Cove is a feature of Potter Pond, South Kingstown, Rhode Island.
5. The coastal feature includes submerged land.
6. The feature's water sheet is 53.5 acres.
7. The proposed project would be located off of the eastern shoreline of Segar Cove.
8. The proposed project, at its closest point to shore, would be ten (10) feet from shore.
9. The proposed project would be in Type 2, Low Intensity Use Waters.
10. Applicant expressed a desire to increase aquaculture production to meet rising demand for shellfish.
11. The proposed project would not include a non-tidal portion.
12. Applicant provided Council with coordinates and sketches depicting the boundaries of the proposed project.
13. The proposed project would have minimal impact on marine fisheries and wildlife.
14. The proposed project would have minimal impact on plant life.
15. If the proposed project were approved, the total area of aquaculture managed by Applicant would equal 3% of the total water surface area of Potter Pond.
16. Public access points to Segar Cove are on the western shoreline of the cove.
17. The proposed project would not significantly interfere with flushing and

sedimentation.

18. The proposed project would not increase water turbidity and would not change water currents.
19. The proposed project would not require a water quality certificate.
20. The proposed project would not negatively impact any historic or cultural resources.
21. Segar Cove is an active location for water dependent uses.
22. Water dependent uses in Segar Cove include, but are not limited to, the following: fishing, crabbing, clamming, swimming, canoeing, kayaking, sculling, paddleboarding, operating motor vessels (including towed water sports), operating personal watercraft and operating sailing vessels.
23. The location of the proposed project is frequently used for water dependent uses.
24. Motor vessels (including vessels engaged in towed water sports and personal watercraft) and sailing vessels would not be able to operate through the proposed project.
25. Swimming in the proposed project would not be advisable.
26. 16.7 acres of Segar Cove are currently available for water skiing.
27. The proposed project, in combination with the South Kingstown Boats and Waterways ordinance, would reduce the area available for water skiing to 12.9 acres.
28. The proposed project would reduce the amount of vessels able to engage in towed water sports simultaneously in Segar Cove.
29. Motor vessels, including personal watercraft and vessels engaged in water sports, tend to operate in the center of Segar Cove.
30. The proposed project is sited on a sector of water where non-motor vessels tend to operate (i.e. the “slow lane”) to avoid conflict with motor vessels operating in the center of the cove (i.e. the “fast lane”).
31. Motor vessels and sailing vessels would not be able to safely operate around the proposed project.

32. Swimmers and paddleboarders would increase risk of injury by operating within area of the proposed project.
33. The proposed project size and location would force water dependent uses (kayaking, paddle boarding, swimming), that use to occur in the slow lane, into the fast lane.
34. Compressing water dependent uses into a small area would increase risk of dangerous conflicts.
35. Residents expressed concern that the size and location of the proposed project would pose significant risk to water dependent users.
36. Residents expressed concern that safety concerns and congestion may limit when and how Segar Cove may be used.
37. Residents demonstrated that they shellfish where the proposed project has been sited.
38. Residents demonstrated that they finfish where the proposed project has been sited.
39. The site of the proposed project is known to be a productive fishing area.
40. Finfishing or shellfishing in the proposed project would prove difficult, if not impossible.
41. The proposed project would include oyster gear with low profile floats and scallop gear that is submerged.
42. The Council staff received 147 letters of objection to this proposed project. Of those rejections, the staff report states that 79 letters were received from non-RI residents, and 68 from RI residents. Objection topics included: noise, tranquility, recreational fishing, clamming, wildlife, visual, navigation, property values, pollution from oysters, timing, Manutuck Oyster Bar, hunting, beach access, and Mr. Raso “ha[ving] enough activity on Potter Pond already.”

Conclusions of Law

After hearing thereon, and consideration thereof, the Council made the following conclusions of law:

1. R.I.G.L. § 46-23-6 (4)(i) authorizes CMRC to “[i]ssue, modify, or deny permits for any work in, above, or beneath the areas under its jurisdiction, including conduct of any form of aquaculture.” R.I.G.L. § 46-23-6 (2)(ii)(A) provides that the “council

shall have exclusive jurisdiction below mean high water for all development, operations, and dredging.” Applicant is requesting to build and operate an aquaculture farm below mean high water. Applicant must apply to CRMC for a permit to do so. Accordingly, the proposed project is properly before the Council for consideration.

2. 650-RICR-20-00-01 Section 1.3.1(A) dictates that applicants applying for assent for a project in Tidal or Coastal Pond Waters are required to demonstrate how the project meets “Category B” requirements. In the exercise of its jurisdiction and authority, Council must consider whether Applicant has demonstrated that the proposed project meets the “Category B” requirements. Applicant submitted such evidence, and CRMC must now consider whether Applicant has met his burden.
3. All persons applying for Category B Assent are required to:
 - a. Demonstrate the need for the proposed activity or alteration;
 - b. Demonstrate that all applicable local zoning ordinances, building codes, flood hazard standards, and all safety codes, fire codes, and environmental requirements have or will be met; local approvals are required for activities as specifically prescribed for non-tidal portions of a project in §§ 1.3.1(B), (C), (F), (H), (I), (K), (M), (O) and (Q) of this Part; for projects on state land, the state building official, for the purposes of this section, is the building official;
 - c. Describe the boundaries of the coastal waters and land area that is anticipated to be affected;
 - d. Demonstrate that the alteration or activity will not result in significant impacts on erosion and/or deposition processes along the shore and in tidal waters;
 - e. Demonstrate that the alteration or activity will not result in significant impacts on the abundance and diversity of plant and animal life;
 - f. Demonstrate that the alteration will not unreasonably interfere with, impair, or significantly impact existing public access to, or use of, tidal waters and/or the shore;
 - g. Demonstrate that the alteration will not result in significant impacts to water circulation, flushing, turbidity, and sedimentation;
 - h. Demonstrate that there will be no significant deterioration in the quality of the water in the immediate vicinity as defined by DEM;

- i. Demonstrate that the alteration or activity will not result in significant impacts to areas of historic and archaeological significance;
 - j. Demonstrate that the alteration or activity will not result in significant conflicts with water dependent uses and activities such as recreational boating, fishing, swimming, navigation, and commerce, and;
 - k. Demonstrate that measures have been taken to minimize any adverse scenic impact (see § 1.3.5 of this Part).
4. 650-RICR-20-00-01 Section 1.3.1(A)(1)(a):
Applicant demonstrated a need for the proposed project by indicating a desire to increase aquaculture production to meet rising demand for shellfish.
 5. 650-RICR-20-00-01 Section 1.3.1(A)(1)(b):
Applicant demonstrated that all applicable zoning ordinances, building codes, flood hazard standards, and all safety codes, fire codes, and environmental requirements have or will be met by affirming that the proposed project will not include non-tidal development, rendering such regulations inapplicable.
 6. 650-RICR-20-00-01 Section 1.3.1(A)(1)(c):
Applicant described the boundaries of the coastal waters and land area that are anticipated to be affected with geographic coordinates and visual depictions overlaid onto satellite maps.
 7. 650-RICR-20-00-01 Section 1.3.1(A)(1)(d):
Applicant demonstrated that the alteration or activity will not result in significant impacts on erosion and/or deposition processes along the shore and in tidal waters through Dr. Carrie Byron's testimony and Dr. Rice's testimony.
 8. 650-RICR-20-00-01 Section 1.3.1(A)(1)(e):
Applicant demonstrated that the alteration or activity will not result in significant impacts on the abundance and diversity of plant and animal life through DEM's determination that the proposed project would have minimal impact to marine fisheries and wildlife. Furthermore, Dr. Carrie Byron's testimony demonstrated that the proposed project's impact on plant life would be minimal.

If approved, the proposed project would not violate CRMC's 5% rule. 650-RICR-20-00-1 Section 1.3.1(K)(4)(f) states "[I]n the coastal salt ponds, the area occupied by commercial aquaculture, shall not exceed five percent (5%) of the total open water surface area of the coastal pond below MLW." Applicant's total aquaculture on Potter Pond, including the proposed project, would amount to 3% of the pond's surface area. Therefore, Applicant's proposed project satisfies the 5% rule. Accordingly, Applicant has demonstrated that the proposed project will not result in significant impacts on the abundance and diversity of plant and animal life.

9. 650-RICR-20-00-01 Section 1.3.1(A)(1)(f):
Applicant demonstrated that the alteration will not unreasonably interfere with, impair, or significantly impact existing public access to, or use of, tidal waters and/or shore. The application for the proposed project describes an aquaculture site on the eastern side of Segar Cove. Public access to Segar Cove exists on the western shoreline of the cove, but not on the eastern shoreline. Thus, the proposed project would not interfere with public access, as there are no public access points near the proposed site.
10. 650-RICR-20-00-01 Section 1.3.1(A)(1)(g):
Applicant demonstrated that the alteration will not result in significant impacts to water circulation, flushing, turbidity, and sedimentation. Dr. Carrie Byron testified that the proposed project will not interfere with flushing and sedimentation. Dr. Michael Rice testified that he had no reason to believe the proposed project would result in an increase in turbidity or change in currents.
11. 650-RICR-20-00-01 Section 1.3.1(A)(1)(h):
Applicant demonstrated that there will be no significant deterioration in the quality of water in the immediate vicinity as the DEM concluded that the proposed project would not require a water quality certificate.
12. 650-RICR-20-00-01 Section 1.3.1(A)(1)(i):
Applicant demonstrated that the alteration or activity will not result in significant impacts to areas of historic and archaeological significance because the RI Historical and Preservation Commission concluded that no historic or cultural resources would be negatively impacted.
13. 650-RICR-20-00-01 Section 1.3.1(A)(1)(j)
Applicant did not demonstrate that the alteration or activity will not result in significant conflicts with water dependent uses and activities such as recreational boating, fishing, navigation, and commerce.

First, the proposed project expands the legal barriers to water skiing and operation of personal water craft. South Kingstown Code of Ordinances Sec. 4-8 addresses “[w]ater skiing, swimming and personal water craft (jet skis, etc.). Sec. 4-8(a) states “[n]o water skier or his/her boat shall approach any stationary or moving object closer than than two hundred (200) feet, except as may be incidental to starting or finishing a run nor shall any water skier ski within any designated channels.” Sec. 4-8(f) states “[n]o person shall operate a personal water craft within two hundred (200) feet of swimmers, divers, shore, or moored vessels, except at headway speed.” These ordinances create a legal barrier to using certain areas of the cove.

The proposed project will necessarily extend the South Kingstown’s legal barrier, as the proposed project increases statutory obstacles. While Segar Cove measures a total of 53.5 acres of watershed, the available area for towed water sports is 16.7

acres. The proposed project will reduce this space (through its own footprint and extension of the town ordinance) to 12.9 acres. This represents a 23 percent reduction in overall space for water sports. This is a significant reduction in space, particularly considering the constrained geography of the area that is available for towed water sports. Granted, while this space may be sufficient for one or two vessels engaged in towed water sports to operate safely, it prevents a third vessel from participating. Moreover, this constriction in space will reduce safety for other motor vessels, including those not engaged in towed water sports, and non-motor vessels, from safely navigating the cove.

Second, the proposed project will conflict with water dependent uses because the proposed project will be a physical obstacle. The proposed project would exist in a segment of Segar Cove that has a demonstrated use as a recreational area. The public uses the area for fishing, swimming, sailing, boating, kayaking, paddle boarding, operating personal water craft and vessels, as well as towed water sports. The proposed project would displace those activities.

In some cases, such displacement poses safety concerns for recreational activities. The site of the proposed project has been referred to as “the slow lane,” the area of the cove that the public can use to traverse the cove when the center, “the fast lane,” is used by a motor vessel and motor vessels engaged in water sports. The users of the “slow lane” will now be forced to compete for space in “the fast lane.” Consequently, dangerous conflict is likely.

The contention that non-motor vessel users will be “less-impacted,” because they can avoid high traffic areas by accessing the proposed farm and surrounding areas is insufficient to demonstrate that the proposed project will not result in significant conflicts. Recreational users may not feel welcome or safe to operate in, through, or around an area used for commercial purposes. As a result, it is likely that these users will either enter the center of the cove, which could prove dangerous, or forgo Segar Cove altogether.

Moreover, motor and sailing vessels will not be able to traverse the farm, and in an effort to avoid the fray in the center of the cove, may attempt to go around the farm. However, if a recreational user decides to go around the farm (to avoid traffic in the center of the cove) they will be forced to traverse a 10 foot narrow (the space between the aquaculture farm and the shore, at the farm’s closest point to shore). This is not a sufficient accommodation for recreational boaters. In fact, it is unclear whether this is an accommodation at all, as depth and structure may present an inhospitable passage for recreational vessels. As a result, it is likely that these users will either enter the center of the cove, which could prove dangerous, or avoid Segar Cove altogether.

Third, the proposed project stands as a physical barrier to those that use the proposed area for finfishing and shellfishing. The area where the proposed project would be sited is known to be a productive finfishing spot. The fishers that fish

there now, will be displaced. Also, residents demonstrated that they use the proposed site for shellfishing. Those users would be displaced.

The contention that the proposed project will not impede fishing is insufficient to demonstrate that the proposed project will not result in significant conflicts. The proposed project will remove three (3) acres of fishing grounds. Those that are bold enough to fish in the aquaculture farm will have to contend with the constant threat of gear entanglement. Consequently, fishers may decide to fish towards the center of the cove, again concentrating water dependent uses into one area, or they may simply fish elsewhere.

Regardless of whether or not there is dangerous conflict, the simple fact that more users will be forced into a smaller area demonstrates that there will be significant conflicts between the proposed project and water dependent uses.

While Applicant has made efforts to accommodate the public's water dependent uses, the accommodations do not go far enough to avoid significant conflicts. There are too many activities, under-taken by too many members of the public, to justify the conclusion that the proposed project will not conflict with water dependent uses.

14. 650-RICR-20-00-01 Section 1.3.1(A)(1)(k)
Applicant demonstrated that measures have been taken to minimize any adverse scenic impact by proposing a project that uses oyster gear with low profile floats and scallop gear that is submerged.
15. The proposed alterations conflict with the management plan approved and adopted by this Council and in effect at the time the application was submitted.
16. The record reflects that the evidentiary burdens of proof as set forth in the Coastal Resources Management Program have not been met for the proposed project.
17. The Subcommittee hereby finds that Applicant has not met its burdens of proof under the applicable sections of the CRMP or SAM Plan and disagrees with the staff recommendations that the variance criteria have been met.
18. Based on the foregoing, there is a reasonable probability of conflict with a plan or program for management of the State's coastal resources as well as damage to the coastal environment of the State of Rhode Island.

WHEREFORE, as a result of these findings of fact, and conclusions of law, it appears that the proposed activity has a reasonable probability of causing a detrimental impact upon the coastal resources of the State of Rhode Island. As a result of these findings of fact and conclusions of law, the Subcommittee hereby recommends that the Council deny the application.

FOR THE SUBCOMMITTEE,

Raymond Coia, Acting Chair

Dated