

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

Oliver H. Stedman Government Center
4808 Tower Hill Road
Wakefield, Rhode Island 02879-1900
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POST- HEARING STATEMENT OF FACTS

Before the Rhode Island Coastal Resources Management Council

IN THE MATTER OF:

FILE NO.

**Perry Raso
629 Succotash Road
Wakefield, RI 02879**

2017-12-086

1. On December 29, 2017, Perry Raso (“Mr. Raso”) submitted an application (the “Application”) for a Category B State Assent to establish a three (3) acre shellfish lease for growing and harvesting scallops and oysters located at the South West of Ram Point and north of the inlet into Segar Cove, Potter Pond (the “Proposed Farm). A copy of Mr. Raso’s Application (the “Raso Application” or the “Application”) is attached as Exhibit 1.

2. The Proposed Farm is located in Type 2 waters. *See* June 2, 2020 Coastal Resources Management Council (“CRMC”) Staff Report (the “CRMC Staff Report,” attached as Exhibit 3) at 1.

3. The total acreage of Segar Cove is 53.5 acres. *See* Audie Osgood Testimony Transcript (“Osgood Tr.,” attached as Exhibit 6) at 145:18-20.

4. The Application initially proposed a rectangle shaped layout of the Proposed Farm (“Configuration A”). *See* Exhibit 1 (Raso Application); Exhibit 3 (CRMC Staff Report) at 3.

5. The dimensions of Configuration A are ten feet at the northeastern corner, thirty feet at the narrowest point along the eastern side of the Proposed Farm, and approximately seventy feet at the southern end. *See* Exhibit 6 (Osgood Tr.) at 137:20-22.

6. In or around late January and early February, Mr. Raso met with CRMC staff to realign the Proposed Farm to minimize the extent of Configuration A's western border extending into Segar Cove. Mr. Raso submitted to CRMC a proposed reconfiguration of the lease area ("Configuration B") on March 15, 2018. *See* Exhibit 1 (Raso Application).

7. The closest private docks from the Proposed Farm are 480 feet to the north, 450 feet to the south, and 720 feet to the west. *See* Proposed Farm Site Plan (attached as Exhibit 15); Exhibit 6 (Osgood Tr.) at 137:4-16.

8. Mr. Raso has an existing 6.9-acre aquaculture lease in Potter Pond (the "Existing Lease"). Mr. Raso has not received any notices of violation from CRMC with respect to the Existing Lease. *See* Perry Raso Testimony Transcript ("Raso Tr.," attached as Exhibit 4) at 45:10-12, 46:17-18.

9. The Existing Lease and Proposed Farm combined would only account for 3% of allowable aquaculture on Potter Pond with 97% remaining for all other users and activities. *See* Exhibit 3 (CRMC Staff Report) at 4.

10. On November 18, 2019, Mr. Raso submitted a collection of photographs of Segar Cove taken at or close to 12:00 p.m. from July 25, 2019 through October 31, 2019 with the exception of three days. A copy of these photographs is attached as Exhibit 16. *See also* Perry Raso Testimony Transcript ("Raso Tr.," attached as Exhibit 4) at 65:7-24; 68:1-24.

11. The Application provides that each of three westernmost sections of the Proposed Farm will include twelve rows of fifty lantern nets consisting of four tiers and the bottom of the

lantern nets will be 1.5 feet above the sea floor at low tide. *See* Exhibit 1 (Raso Application); Exhibit 4 (Raso Tr.) at 47:7-19.

12. Spat bags to hold scallop seed will be attached to the submerged long lines when the scallops are in their juvenile stage. The spat bags are fine mesh soft nylon bags and have a plastic mesh inside the bag for the juvenile scallops to byss (attach). Each line will hold 100 spat bags when they are being used. All lines will not be used for the spat bags when the scallops are in the juvenile stages; as the scallops grow, they will be moved to the lantern nets, a proven method of growing bay scallops. *See* Exhibit 1 (Raso Application).

13. Each of the three easternmost sections of the Proposed Farm will include twelve rows of thirty floating cages, with each section being 107 feet by 206 feet. The cages are thirty inches wide by seventy inches long and twelve inches deep. Fastened to the top of each cage will be two or three (depending on weight) black plastic floats that are twenty-five square inches and extend the width of the cage thirty inches. *See id.*

14. The low-profile floats will protrude out of the water three-to-four inches maximum. Eight plastic mesh oyster growing bags (two inches by three inches) will be inserted into each cage. The twelve rows of thirty cages will be positioned in north to south rows. The cages will be fastened with lines that will be anchored at the end of each section. *See id.*

15. Six-inch cylinder floats will mark the ends of each of the rows. Lobster pot floats of fourteen inches will be used to mark the corners of the Proposed Farm. Five-inch floats may be used to keep the scallop spat bags suspended and six-inch floats may be fixed to the long line to keep it from sinking as gear increases in weight via growth of oysters, scallops, barnacles, algae, and the like. *See id.*

16. As of June 22, 2020, Segar Cove had a shellfish classification of “Approved” on the RIDEM Shellfish Closure Maps (available at: <http://www.dem.ri.gov/programs/water/shellfish/shellfish-closure-maps.php>) (last visited Feb. 3, 2021). A Shellfish Classification of Approved means that shellfish harvesting activities are allowed.

17. When the scallops and oysters have reached market size and have been at the Proposed Farm for at least one year, they will be harvested and sold locally and regionally. The scallops and oysters will be transported to market either directly by boat or a combination of boat and truck. The Application represents that harvesting methods, storage, and transportation of the product will follow all guidelines in accordance with the Interstate Shellfish Sanitation Conference, RIDEM, CRMC, and the Rhode Island Department of Health. All records will be kept at the 629 Succotash Road, South Kingstown. *See* Exhibit 1 (Raso Application).

18. From March 15 to November 15, the Proposed Farm will be in operation Monday through Friday. *See* Exhibit 4 (Raso Tr.) at 87:12-88:1-5.

19. In order to reduce interference with migratory birds in the area, from November 15 to March 15, Mr. Raso agreed that maintenance of the farm will be limited to the hours of 9:00 a.m. and 3:00 p.m. from November 15 to March 15. *See id.* at 48:20-22.

20. There will be no permanent structure or platform on the Proposed Farm. *See* Exhibit 4 (Raso Tr.) at 48:16-17.

21. No new employees will be needed to operate the Proposed Farm. Those employees who are currently operating the Existing Lease will operate the Proposed Farm. *See id.* at 53:3-14.

22. To minimize noise, large machinery will not be used at the Proposed Farm, including tumblers and high pressure power washers. Mr. Raso also agreed to not play any radios. *See id.* at 53:15-19; 54:8-16.

23. The day-to-day operations on the Proposed Farm will generally consist of employees hauling the lantern nets out of the water, emptying the lantern nets and floating cages, then separating the oysters and scallops by hand. *See id.* at 54: 2-7.

24. The Proposed Farm meets applicable zoning ordinances, building codes, flood hazard standards, and environmental requirements. *See Exhibit 6 (Osgood Tr.)* at 141:20- 143:4.

25. On October 4, 2017, during the preliminary determination phase of the Application, the Town of South Kingstown Conservation Commission held a meeting on and recommended denial of the Application. Mr. Raso was not invited to this meeting and therefore did not have the ability to address concerns related to the Proposed Farm. *See Exhibit 4 (Raso Tr.)* at 73:3-15.

26. Public notice of the Application was posted on January 3, 2018. The initial comment period was thirty days. The Town of South Kingstown requested an extension of the comment period. CRMC issued a letter to the Town of South Kingstown granting its request to extend the Public Notice End Date from February 2, 2018 to February 16, 2018. A copy of letter from CRMC to Town of South Kingstown is attached as Exhibit 22.

27. From January 9, 2018 through December 3, 2018, CRMC received public comments, objections and letters of support for the Application. *See Exhibit 3 (CRMC Staff Report)* at 1.

28. On January 26, 2018, the State of Rhode Island Historical Preservation & Heritage Commission (the "RIHPHC") submitted a letter to CRMC stating that it concluded that

the Proposed Farm will have no effect on any significant cultural resources. A copy of the RIHPHC letter is attached as Exhibit 21.

29. On February 1, 2018, Counsel for Kevin Hunt, David Latham, Alicia Cooney and Stephen Quigley filed an entry of appearance with CRMC objecting to the Application. A copy of Counsel's Entry of Appearance is attached as Exhibit 23.

30. On February 2, 2018, the Rhode Island Department of Environmental Management ("RIDEM"), through the Division of Fish and Wildlife ("DFW") and Division of Marine Fisheries ("DMF"), issued an acceptance of the Proposed Farm (the "Acceptance"). A copy of the RIDEM Acceptance Letter is attached as Exhibit 20.

31. On February 7, 2018, the Shellfish Advisory Panel voted (7-2) to recommend no objection to the Application. *See* February 7, 2018 Shellfish Advisory Panel Minutes (attached as Exhibit 24).

32. On February 14, 2018, the Town of South Kingstown Waterfront Advisory Commission passed a motion in objection to the Application for the Proposed Farm noting that it would pose a significant negative impact on public recreational activity. *See* February 15, 2018 Letter from Town of South Kingstown to CRMC (attached as Exhibit 25).

33. On March 14, 2018, the Rhode Island Marine Fisheries Council ("RIMFC") held a hearing on the Application. *See* April 27, 2018 letter from RIMFC to CRMC (attached as Exhibit 26).

34. On April 27, 2018, Mr. Ballou, Chair of the RIMFC notified David Beutel, then-Aquaculture Coordinator for CRMC, that the RIMFC was "unable to reach a consensus on whether the proposed activities are consistent with the competing uses engaged in the exploitation of the marine fisheries." *See id.*

35. On June 2, 2020, Mr. Beutel issued a staff report recommending approval of the Application for the Proposed Farm. *See* Exhibit 3 (CRMC Staff Report) at 4.

36. A CRMC subcommittee (the “Subcommittee”) was convened for this matter.

37. The Subcommittee held seven public meetings from November 12, 2020 to January 29, 2021, which consisted of four days of testimony and three days of public comment.

38. Pursuant to Coastal Resources Management Program (“CRMP”) Regulations, coastal salt ponds in areas occupied by commercial aquaculture shall not exceed five percent of the total water surface of the area of the coastal pond (the “5% Rule”). *See* 650-RICR-20-00-1.3.1(K)(4)(f) and (5)(a)(20).

39. The 5% Rule was based on a calculation intended to reflect the ecological carrying capacity of the system rather than the physical carrying capacity, production carrying capacity, or social carrying capacity. *See* Dr. Byron Testimony Transcript (“Byron Tr.,” attached as Exhibit 9) at 181:1-183:23.

40. The 5% Rule was agreed upon by CRMC staff and stakeholders based on available science at that time. *See id.* at 180:17-181:11.

41. Years later, a more comprehensive study of Potter Pond using a food web model was conducted and it was determined that the ecological carrying capacity of Potter Pond is actually 46% of surface area of the salt pond, which is a magnitude higher than the 5% Rule. *See id.* at 184:7-9; *see also* Dr. Robert Rheault Testimony Transcript (“Rheault Tr.,” attached as Exhibit 11) at 274:23-275:12.

42. The Proposed Farm will not impact the ecological carrying capacity of Potter Pond as the addition of the Proposed Farm will account for 3% of Potter Pond used for

aquaculture — below the 5% Rule established by CRMC and the 46% ecological carrying capacity determined for Potter Pond. *See* Exhibit 9 (Byron Tr.) at 186:7-13.

43. The Proposed Farm will not result in significant impacts to water circulation including flushing, turbidity and sedimentation. *See id.* at 188:16-22; *see also* Dr. Michael Rice Testimony Transcript (“Rice Tr.,” attached as Exhibit 10) at 219:15-17.

44. Scallops and oysters are both filter feeders and remove phytoplankton from the water therefore neither will have an impact on Potter Pond. *See id.* at 190:13-21; *see also* Exhibit 10 (Rice Tr.) at 219:21-220:1.

45. The aquaculture farming industry is a green industry having many environmental benefits including but not limited to the improvement of water turbidity levels and the mitigation of eutrophication impacts from fertilizers. *See* Exhibit 11 (Rheault Tr.) at 280:15-282:1-5.

46. The Proposed Farm will have localized positive benefits such as enhanced water clarity, nutrient cycling, and will provide structure and habitat by increasing diversity for animal and plant species. *See* Exhibit 9 (Byron Tr.) at 187:13-19; 188:6-15.

47. The Proposed Farm will not result in significant impacts on erosion and/or definition processes along the shore and in tidal waters of Potter Pond. *See id.* at 189:1-6; Exhibit 10 (Rice Tr.) at 219:9-20; Exhibit 11 (Rheault Tr.) at 279:16-280:9.

48. The Proposed Farm will not unreasonably interfere with, impair, or significantly impact existing public access to Segar Cove. *See* Exhibit 6 (Osgood Tr.) at 147:12-14; Exhibit 3 (CRMC Staff Report) at 2.

49. The Proposed Farm will not have significant conflicts with water dependent uses and activities, such as recreational boating, fishing, swimming, and navigation in Segar Cove. *See* Exhibit 10 (Rice Tr.) at 222:4-14; Exhibit 11 (Rheault Tr.) at 287:5-16; Exhibit 3 (CRMC

Staff Report) at 2-3; *see also* David Beutel Testimony Transcript (“Beutel Tr.,” attached as Exhibit 2) at 26:8-24.

50. Section 4-8 of the Town of South Kingstown Boats and Waterways Ordinance (the “Ordinance”) requires that water-skiers maintain a 200-foot buffer from stationary or moving objects, and persons operating a personal watercraft maintain a 200-foot buffer from swimmers, divers, the shore, or moored vessels, except at headway speed. The relevant provisions of the Ordinance are attached as Exhibit 7.

51. Presently, 36.8 acres of Segar Cove is restricted by the Ordinance leaving only 16.7 acres available towed water sport. *See* January 22, 2021 letter from DiPrete Engineering (“DiPrete Letter,” attached as 8).

52. 75% of the Proposed Farm would sit within the 200-foot buffer zone from the shoreline. *See* Exhibit 6 (Osgood Tr.) at 138:24-139:4.

53. The Proposed Farm would occupy less than 6% of the surface area of the water of Segar Cove. *See id.* at 154:4-14.

54. With respect to towed-sport recreational uses, Segar Cove can currently accommodate two-to-three vessels engaged in a towed water sport when complying with the Ordinance. *See* Payson Whitney Testimony Transcript (“Whitney Tr.,” attached as EXHIBIT 12) at 463:15-24.

55. With the existence of the Proposed Farm, Segar Cove will be able to accommodate two vessels participating in a towed water sport when complying with the Ordinance. *See id.* at 464:1-2.

56. The Proposed Farm would only have an impact on one user engaged in a towed water sport at any point in time. *See id.* at 464:7-11.

57. The Proposed Farm will have less of an impact on users kayaking, paddle boarding, sail boating, or persons operating any non-motor vessel as such users will be able to access the Proposed Farm and surrounding area. *See id.* at 453:1-15; *see also* Exhibit 2 (Beutel Tr.) at 26:8-20; Exhibit 3 (CRMC Staff Report) at 3-4.

58. Powerboats and sailboats will still be able to operate around Segar Cove with the presence of the Proposed Farm. *See* Exhibit 2 (Beutel Tr.) at 26:18-19; Exhibit 3 (CRMC Staff Report) at 2-3.

59. There is ten feet from the northeast corner of the Proposed Farm to the shoreline allowing most vessels the ability to navigate around the Proposed Farm. *See* Exhibit 6 (Osgood Tr.) at 149:22-23.

60. There are multiple unimpeded lanes through the Proposed Farm allowing non-motor users to navigate through the Proposed Farm. *See* Exhibit 4 (Raso Tr.) at 91:17-92:14.

61. With respect to fishing, CRMC Staff concluded that a three-acre area will not negatively affect the fishing experience in Potter Pond. *See* Exhibit 2 (Beutel Tr.) at 24:16-22; Exhibit 3 (CRMC Staff Report) at 2.

62. CRMC staff conducted a shellfish assessment for Proposed Farm area and determined that there are 0.88 quahogs per square meter within the Proposed Farm area, which CRMC staff considered a low number. *See* Exhibit 2 (Beutel Tr.) at 25:2-4; Exhibit 3 (CRMC Staff Report) at 2.

63. The Rhode Island Department of Environmental Management Division of Marine Fisheries conducted a site assessment of the Proposed Farm area for soft shell clams and found that soft shell clams do not exist in the Proposed Farm area. CRMC staff concluded that the

Proposed Farm area is not a valuable clam habitat. *See* Exhibit 2 (Beutel Tr.) at 25:4-13; Exhibit 3 (CRMC Staff Report) at 2.

64. CRMC Staff concluded that concerns raised about the impact of the Proposed Farm on fox, mink, deer, ospreys, and fish are unwarranted. *See* Exhibit 2 (Beutel Tr.) at 25:14-20; Exhibit 3 (CRMC Staff Report) at 2.

65. The Proposed Farm will not have a significant impact on the abundance and diversity of plant and animal life. *See* Exhibit 9 (Byron Tr.) at 188:6-15; Exhibit 10 (Rice Tr.) at 220: 2-17; Exhibit 3 (CRMC Staff Report) at 2-3.

66. Mr. Raso has taken measures to minimize adverse scenic impact by proposing to install submerged scallop gear and low profile floats for the oysters. *See* Exhibit 4 (Raso Tr.) at 80:22-81:1-4; Exhibit 11 (Rheault Tr.) at 282:6-21.

67. In the western half of the Proposed Farm, there will be no visual or surface obstructions. *See* Exhibit 6 (Osgood Tr.) at 145:13-17.

68. CRMC Staff concluded while some of the floats will be visible, floating gear is safer for navigators. *See* Exhibit 3 (CRMC Staff Report) at 2.

69. The Application has identified a need for the Proposed Farm. *See* Exhibit 10 (Rice Tr.) at 224:1-20; Exhibit 11 (Rheault Tr.) at 277:15-17; 279: 2-15.

70. On January 26, 2021, RIDEM responded to an Access to Public Records Act request providing that no documents existed related to accident data of aquaculture facilities in Point Judith Pond, Potter Pond, Green Hill Pond, Ninigret Pond (Charlestown Pond), and Quonochontaug Pond. On January 26, 2021, RIDEM responded that no requested records exist. A copy of the RIDEM APRA Request Response is attached as Exhibit 27.