

**COASTAL RESOURCES
MANAGEMENT COUNCIL**

**SEMI-MONTHLY
MEETING**

TUESDAY, DECEMBER 10, 2019

6:00 P.M.

AGENDA



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-2069

AGENDA

Semi-Monthly Meeting – Full Council
Tuesday, December 10, 2019; 6:00 p.m.
Administration Building; Conference Room A
One Capitol Hill, Providence, RI 02908

Approval of the minutes of the previous meeting -- Tuesday, November 26, 2019

Subcommittee Reports

Staff Reports

Fishermen’s Advisory Board Member Confirmation:

- Meghan Lapp
- Chris Lee

ADMINISTRATIVE APPLICATIONS BEFORE THE FULL COUNCIL FOR DECISION:

2019-03-064 BOYNTON REED ALLEN -- This application is for a 1,000 square foot aquaculture site in the East Passage of Narragansett Bay near Carr Point. A variety of oyster growing bottom gear is proposed including: SEAPA hanging baskets, growout bags, and bottom cages with a PVC frame. All of the gear proposed would be on or near the bottom with five feet of clearance at mean low water (MLW). Each piece of gear would be attached to the next piece via longline. Only four corner buoys would be visible as the gear would be attached to two of the corner buoys.

PUBLIC HEARING ON PROPOSED RULE MAKING:

Management Procedures (650-RICR-10-00-01) -- The CRMC proposes to amend its Management Procedures to clarify and improve its regulatory procedures, including adding Council member coastal program training, adding specific requirements for staff recommendations and written findings of fact and conclusions of law in contested cases, and consolidation and simplification of determination requests and beach vehicle permit fees, among other proposed changes as summarized below.

Brief summary of proposed amendments to 650-RICR-10-00-01:

1. Amend § 1.2(C) clarify member abstention process;
2. Add new § 1.2(G) for member training requirement and participation on a Council subcommittee;
3. Amend § 1.4.5 to simplify determination requests and fees;
4. Amend § 1.4.6(A)(11) to consolidate and simplify beach vehicle fees;
5. Amend § 1.5.1(A) to add specificity of public notice for variances and special exceptions; and
6. Add new §§ 1.8(B)(1) and (2) to add specificity for recommendations and findings of fact and conclusions of law.

CRMC DECISION WORKSHEET

2019-03-064

Boynton Reed Allen

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
2019-03-064	Portsmouth	Narragansett Bay		A	<input type="checkbox"/>	<input type="checkbox"/>
		Plat	Lot			
		Owner Name and Address				
Date Accepted	3/25/2019	Boynton Reed Allen		Work at or Below MHW		<input checked="" type="checkbox"/>
Date Completed	11/21/2019	30 Wolcott Avenue		Lease Required		<input type="checkbox"/>
		Middletown, RI 02842				

PROJECT DESCRIPTION

Commercial viability: oyster cages on long line

KEY PROGRAMMATIC ISSUES

Coastal Feature: Submerged land

Water Type: Type 4, Multi-Purpose Waters

CRMP: 650-RICR-20-00-1 §§ 1.2.1(B); 1.3.1(A); 1.3.1(K); and 1.3.1(R)

Variations and/or Special Exception Details:

Additional Comments and/or Council Requirements:

Specific Staff Stipulations (beyond Standard stipulations):

STAFF RECOMMENDATION(S)

Engineer		Recommendation:	NA
Biologist		Recommendation:	NA
Aqua	<i>DRB</i>	Recommendation:	Approval

date

[Signature]

date

[Signature] 2/11/19

Executive Director Sign-Off

date

[Signature] 11/21/19

date

[Signature]

Staff Sign off on Hearing Packet (Aqua)

Name: Boynton Reed Allen
CRMC File No.: 2019-03-064
Staff Report



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COASTAL RESOURCES MANAGEMENT COUNCIL
INTER-OFFICE MEMORANDUM

DATE: November 21, 2019
TO: Grover J. Fugate, Executive Director
FROM: David Beutel
SUBJECT: CRMC File No. 2019-03-064

Applicant's Name: Boynton Reed Allen
Project: commercial viability aquaculture
Location: Narragansett Bay, Portsmouth
Water Type/Name: Type 4, Multi-Purpose Waters,
Coastal Feature: submerged land

STAFF REPORT

This application is for a 1,000 square foot aquaculture site in the East Passage of Narragansett Bay near Carr Point. A variety of oyster growing bottom gear is proposed including: SEAPA hanging baskets, growout bags, and bottom cages with a PVC frame. All of the gear proposed would be on or near the bottom with five feet of clearance at mean low water (MLW). Each piece of gear would be attached to the next piece via longline. Only four corner buoys would be visible as the gear would be attached to two of the corner buoys.

This application was sent to the review list for preliminary determinations for the East Bay on April 15, 2019. Comments including objections from fishermen were received on April 28, 2019 and May 12, 2019. The comments were forwarded to the applicant with the request to have the applicant resolve the issues put forward by the fishing industry. The applicant re-surveyed the area and found one of the objections accurate. He requested to move the small site using coordinates provided on May 23, 2019 to avoid the mussel bed in the original objection. Staff encouraged the applicant to communicate and meet with the objectors to again try to resolve issues. The many attempts to meet with the fishermen were unsuccessful. Please see the attached e-mail train.

The applicant took numerous underwater videos of the site to show that there was little or no fish/shellfish activity in this location. Staff has viewed the videos on YouTube and they do not indicate a significant

Name: Boynton Reed Allen
CRMC File No.: 2019-03-064
Staff Report

presence of fish or shellfish on the location. There was no protected sub-aquatic vegetation visible in the videos.

CRMC has received a letter of no significant effect from the RI Historical Preservation and Heritage Commission; and a letter from the RI Department of Environmental Management Office of Water Resources stating a water quality certificate is not required.

Commercial viability permits are intended for the applicant to check the viability of a new location or check the viability of a new method. This application tests both intentions. Most commercial viability applications receive a Letter of Authorization (LOA) for the first 18 months of operation followed by Council review and an additional LOA for the final 18 months: 650-RICR-20-00-1 § 1.3.1(K)(5)(14). The section additionally states § 1.3.1(K)(4)(14)(AA)(iv) “that the permittee must show that in case of successful trial, there is sufficient potential area to expand to a commercial lease....” Section § 1.2.1(E)(9)(2)(c) is for a full aquaculture lease and asserts: “aquaculture leases shall be considered if the Council is satisfied there will be no significant adverse impacts on the traditional fishery.” It is difficult to imagine that a 1,000 square foot site would have a significant adverse impact but a larger site, depending upon the size of the site, may have a significant impact. Staff asserts that a one acre or less sized site would not have a significant adverse impact to the traditional fishery in this area. Any application for a larger area would require obtaining direct fishery use data for the area surrounding Carr Point.

It is staff opinion that this application has met the requirements of the RI Coastal Resources Management Program. The application is recommended for approval for a LOA for the initial 18 months of a commercial viability permit using the coordinates provide on May 23, 2019. If there are truly any issues with the location they should be determined before the application returns to the Council for the subsequent 18 month approval.



Aquaculture Coordinator

Dave Beutel

From: Dave Beutel <dbeutel@crmc.ri.gov>
Sent: Monday, April 15, 2019 2:08 PM
To: 'Livermore, Julia (DEM)'; 'Blanchard, Kurt (DEM)'; 'Erkan, Dennis (DEM)'; 'Ballou, Robert (DEM)'; 'Jason McNamee'; 'Azure Cygler'; 'White, Catherine (RIDOH)'; 'Leavitt, Dale'; 'David Prescott'; 'Jeff Grant'; 'Jim Arnoux'; 'John F. O'brien'; 'John Torgan'; 'LeBlanc, Edward G CIV'; 'Taylor.M.Bell@usace.army.mil'; 'Robert Rheault'; 'Mike Jarbeau'; 'Steve Medeiros'; 'Katie Eagan'; 'Art Ganz'; 'Dave Reis'; 'Michael A. Rice'; 'Rich Hittinger'; 'Rob Krause'; 'ckarp@brown.edu'; 'saltpondscoalition@gmail.com'; 'GerberWilliams, Anna (DEM)'; 'Gary R. Crosby'
Cc: 'Dick Pastore'; 'mclamdigger@aol.com'; 'Mcmanus, Conor (DEM)'; 'Osenkowski, Jay (DEM)'; 'Coit, Janet (DEM)'; 'Hannus, Cindy (DEM)'; 'IRunAlot38@gmail.com'; 'David Ghigliotty'; 'timothy gilchrist'; 'Jerry Carvalho'; 'Phil Capaldi'; 'Lisa Turner'; Michael Foley (mikefoleyfish@gmail.com); Kenneth Murgio; joshua soares; boynton allen (boboallen1@hotmail.com)
Subject: commercial viability aquaculture application
Attachments: 2019 CV Allen.pdf

CRMC has received a commercial viability aquaculture application to grow oysters at a 1,000 square foot site off Carr Point in Portsmouth (please see the attached application). Commercial viability applications do not receive a preliminary determination meeting. This notification is your opportunity to comment. Please provide comments to me by May 15, 2019.

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

2019-03-064

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
(401)783-3370

COMMERCIAL VIABILITY AQUACULTURE APPLICATION

File No.

Applicant's Name Boynnton Allen

Mailing Address 30 Wolcott Ave

State RI Zip 02842 Telephone Number: Bus. 401-378-0864

Fax _____ E-Mail: bohoallen1@hotmail.com

PROJECT LOCATION

Water body Name: Narragansett Bay

City/Town Portsmouth

Latitude-longitude coordinates of site 41.571621-71.297236

DESCRIPTION OF PROPOSED AQUACULTURE OPERATION:

Bottom gear setup for [eastern] oysters, within a 50' by 20' space, in water depth ranging from 7.5' to 8.5'

Line-haul approach with an expected 4 pieces of gear, & an allotment for 6.

Proposed species (common name; genus and species) eastern oysters (Crassostrea Virginica)

Proposed start and end dates for experiment May, 2019 - 1.5 year lease (Oct/Nov 2020), with option to pursue another 1.5 year

NOTE: The applicant acknowledges by evidence of their signature that they have reviewed the Rhode Island Coastal Resources Management Program, Department of Environmental Management regulations and have, where possible adhered to the policies and standards outlined. The applicant also acknowledges by evidence of their signature that to the best of their knowledge the information contained in the application is true and valid. The filing of false information can result in the Coastal Resources Management Council revoking the state assent.

Applicant's Signature Boynnton R. Allen

Appendix A
Rev. 05/05



Written Operational Plan for Commercial Viability Site

Applicant: Boynton Allen
30 Wolcott Avenue
Middletown, RI 02842
(401)378-0864
boboallen1@hotmail.com

Design:

Location: The proposed commercial viability site [for eastern oysters] is a 50' by 20' space (East to West by North to South, respectively), which is 1,000 square feet. It would be located approx. 215 yards from the shore of Carr Point in Portsmouth in approved shellfish waters. (See application form, "Location Maps," and/or "Site Plans" for lat./long. details.)

Bottom & Gear Type: The bottom is flat and a sand/mud composition, and the depth of the space -- running East to West -- is approx. 7.5' to 8.5' at mean low tide; therefor, the viability site would use bottom gear. (See "Gear Details" for specs.)

(**Note on mitigating conflict:** the depth of the space ensures that the site will not come into conflict with anyone raking for shellfish, while the distance from shore ensures that it will not come into conflict with casters; and both the depth and rather uninteresting nature of the site's bottom should significantly reduce any possible conflict with boat fisherman since the bottom is much shallower than the 20' contour and there is no cover for fish to hide and hunt. Additionally, the location of the site does not propose any unnecessary impediment to regular boat traffic. Lastly, *there is no eel grass in the vicinity.*)

Basics of System: The site will use a "long-line"/line-haul approach, with 1 line running from the SW corner to NE corner. The bottom gear will consist of PVC cubes in which grow-out baskets will be suspended, or it will consist of traditional bottom cages in which grow-out bags will be situated. (See "Gear Details" as necessary. At this time, it is anticipated that the PVC design will be preferred.) Only 4 such pieces of bottom gear is anticipated on the line, as the amount of baskets or bags within each piece can be increased to accommodate for oyster growth; however, an allotment of 6 pieces of bottom gear in total is requested should additional space become absolutely necessary.

The line will be attached to a pick-up buoy which will be attached to an anchored Line Main Buoy to which the vessel can be attached and work from. Additionally, the beginning of the line will have an additional, extractable anchor to help reduce strain on the system in high, westerly winds. (See "Site Plans.")

The site will be clearly delineated with marker buoys, a total of 6 anticipated (though the applicant welcomes guidance from the CRMC and other official parties as to the number and nature of the marker buoys).



Operation:

Frequency of Visits and Purposes: Once established, the site will be visited an average of once a week in the months May through October. Approximately 50% of these visits will assess and document oyster growth and mortality while all visits will assess and document the likelihood of potential problems with the site, including but not limited to those related to fetch exposure and fishing interests. (Visits will still likely occur in April and November, though with minimum frequency. Visits will not be conducted in winter months except for after large, westerly storms to make sure no gear washes up, though all extra precautions will be taken to ensure this does not occur.)

Oyster Handling and Gear Maintenance: It is anticipated that the oysters themselves will be hauled up and roughly inspected every other week. More thorough inspections, which will measure mortality rate in selected bags, will occur once a month. In the first year, it is anticipated that oysters will only be sorted once, in September and/or October; and if the desirability of the site is not determined in the first year, then it is likely that the oysters will be sorted twice a season thereafter -- in late Spring and the Fall -- until the determination is made. Regardless, sorting will be conducted onboard at the site.

Gear maintenance will be conducted on an as-needed basis as determined during inspections of the oysters. Typical maintenance will be limited to switching fouled bags/baskets with new and/or sun-treated bags/baskets, which will be easily accomplished aboard the vessel. If cages/basket-housings need significant maintenance or replacement, the same method will be used. (Bags/baskets and cages/housing will be kept at a commercial property in Middletown, RI.) In the unlikely event that any equipment is washed ashore, it will be removed by the applicant posthaste.

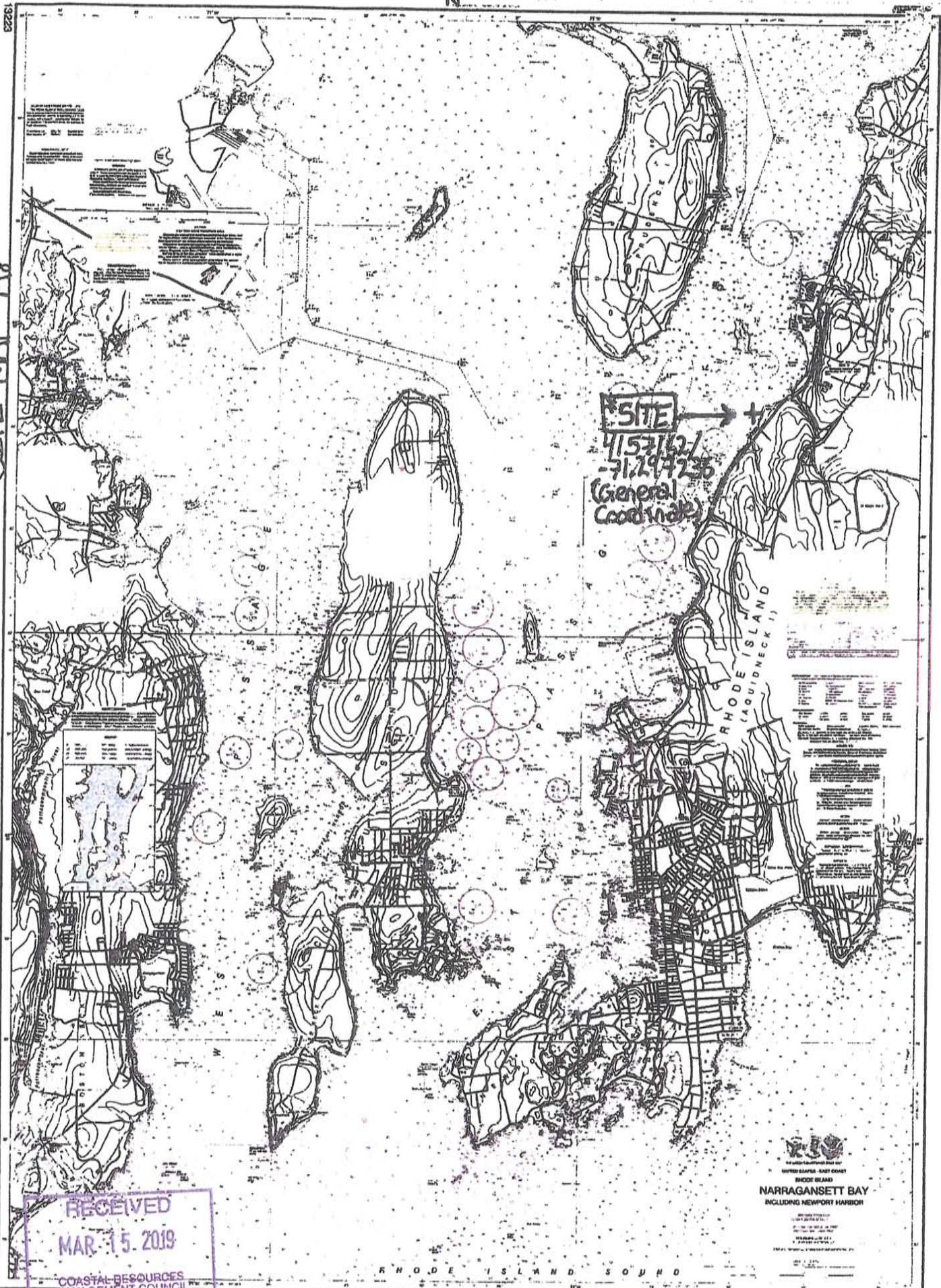
Harvesting: CRMC guidelines will be observed when it comes to harvesting oysters for market: it will only be a one-time sale to a RI licensed shellfish dealer. Differently, if CRMC approval is granted, the applicant may wish to keep oysters at the site if the commercial viability lease is still in effect and a submitted application for a full lease is approved; additionally, if it is granted by the CRMC, and since it is anticipated that a relatively modest number of oysters will be kept at the viability site, the applicant may seek to move these oysters to the recreational site previously permitted to him (A2013-09-065) so long as the maximum allotment of space for a recreational permit is not exceeded.

Seed Stock Origin:

The applicant will only use seed that pathology report has been reviewed and approved by the CRMC, etc. Additionally, the applicant will make sure the acquisition of seed complies with the guidance provided by the FDA National Shellfish Sanitation Program. (At this time, it is believed the oyster seed will be purchased through Rhode Island Oyster Seed Company, operated by Dave Roebuck.)



SITE MAP A₀



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 MAR 15 2019
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RI
 RHOODE ISLAND STATE
 NARRAGANSETT BAY
 INCLUDING NEWPORT HARBOR

P9



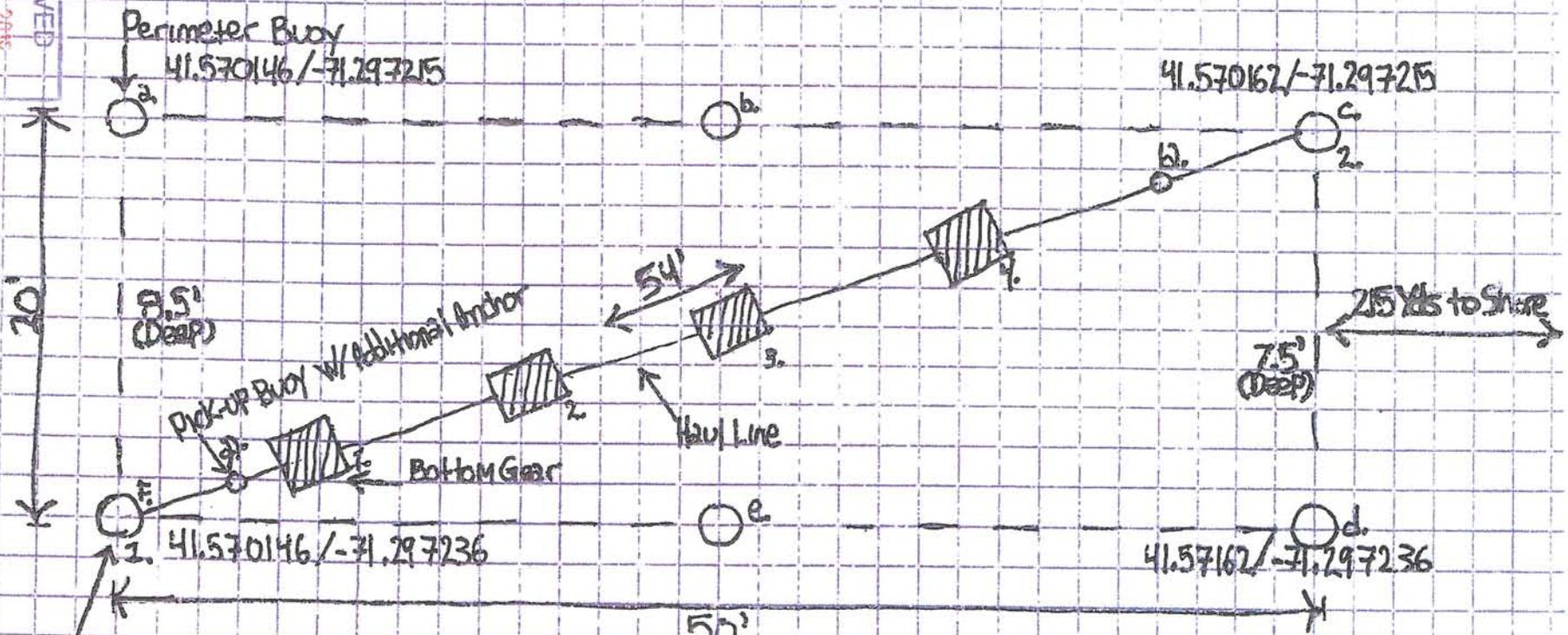
71.29641570 Degrees

NW: 41.5702197 / -71.2974249
SW: 41.5701673 / -71.2974229
NE: 41.5702227 / -71.2972358
SE: 41.570162 / -71.297236

RECEIVED
APR 12 2019
COASTAL RESOURCES
MANAGEMENT COUNCIL

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 MAR 15 2015
 OFFICE OF RESOURCES
 MANAGEMENT COUNTY OF

SITE PLAN A₀

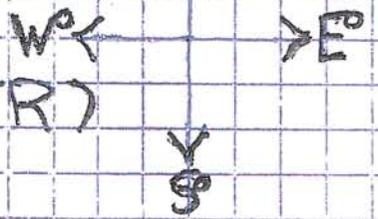


$\square = 250 \text{ FT}$

*SITE PLAN OVERHEAD (LARGER)

(Lat. & Long. Coordinates Included)

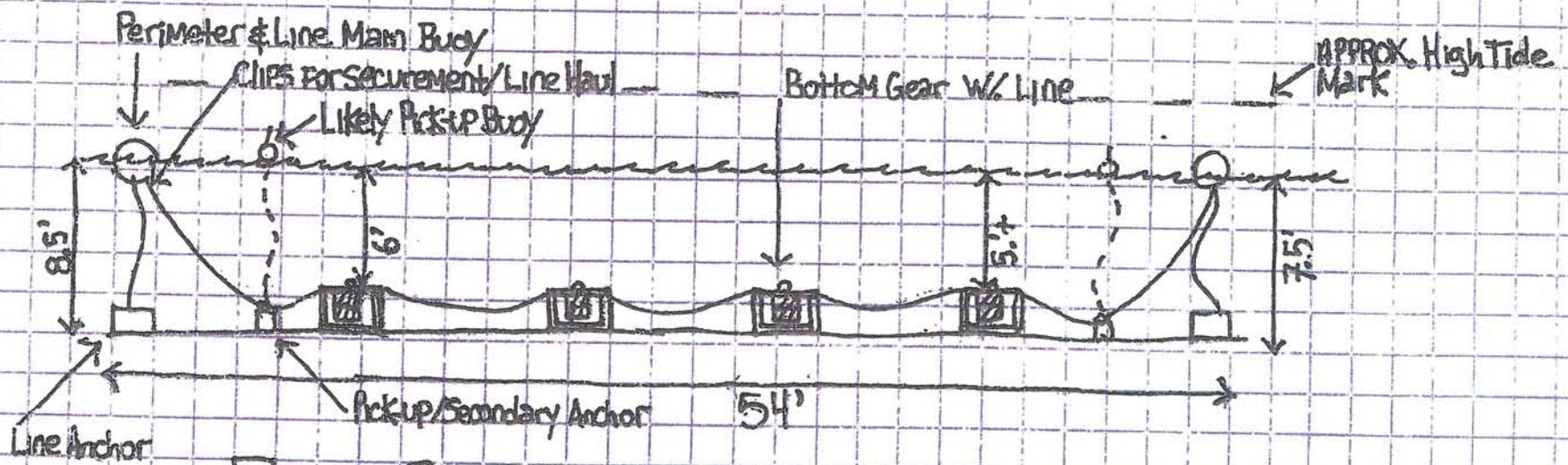
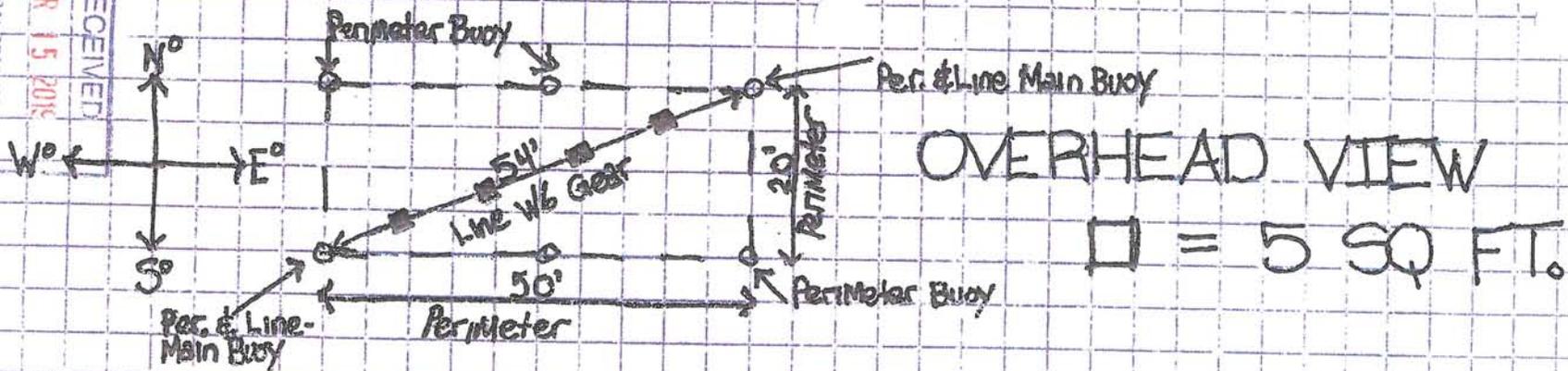
~~(Lat & Long on Add. Site Map & NOAA Chart.)~~



P10

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MAR 15 2016
COASTAL RESOURCES
ADMINISTRATION DIVISION

SITE PLAN B.



□ = 2 SQ FT.

LINE-HAUL SYSTEM W/ GEAR

* SITE PLANS W/ CROSS-SECTION
(Lat. & Long. on Add. Site Map.) & OVERHEAD VIEW*

P11

GEAR DETAIL A.

*NOTE: PHOTO IS OF CUBE 3' TALL, ACTUAL CUBE WILL BE 2.5' TALL



PVC HOUSING CUBE
(SEAPA Baskets will be housed/suspended in cube.)

DIMENSIONS = 2.5' x 3' x 3'
(*Some content will be contained in feet of cube to help prevent movement)



GEAR DETAIL B.

~~Fig. 6~~

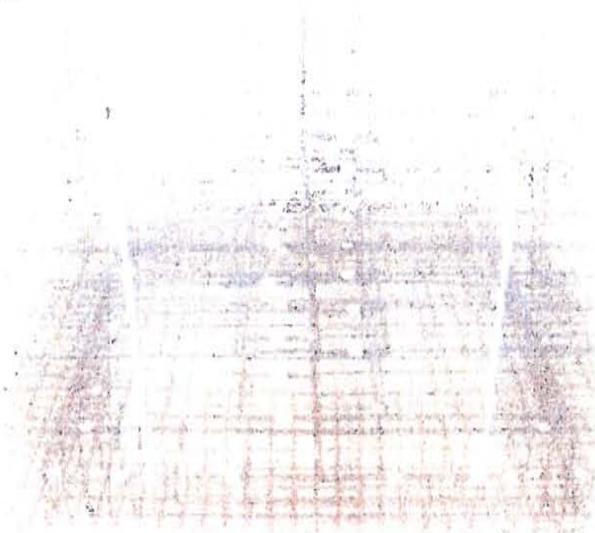
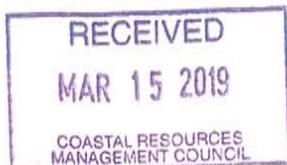


Image 1: 8 Bag Bottom Cage (36.5" deep, 45.5" wide, and 32.5" tall). (8 Bag Bottom Cage has same dimensions except 48.5" tall). (Bottom cages for subtidal-floating cage system would be approximately 36.5" deep, 26" wide, and 36" tall.)



GEAR DETAIL C₀

Fig. C2

For Bottom
Cages, if used.

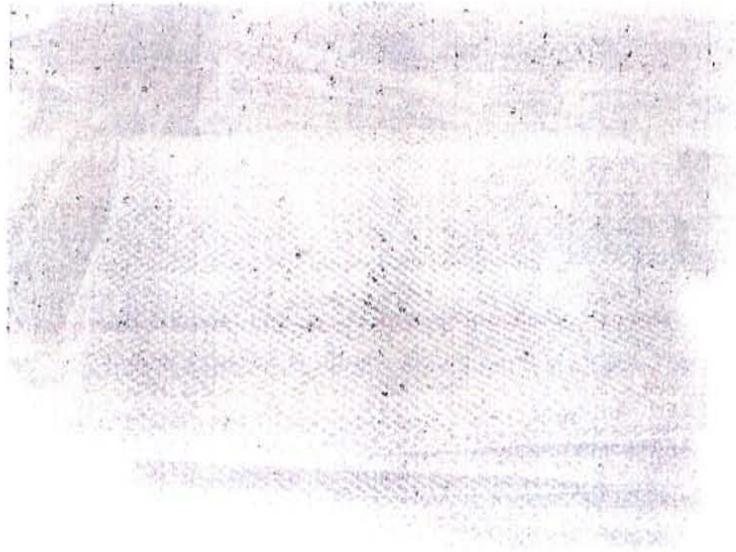


Image C1: a stack of typical oyster grow-out bags that are placed in cages.

For PVC Hosing Cube, if used.
*(Preferred.)

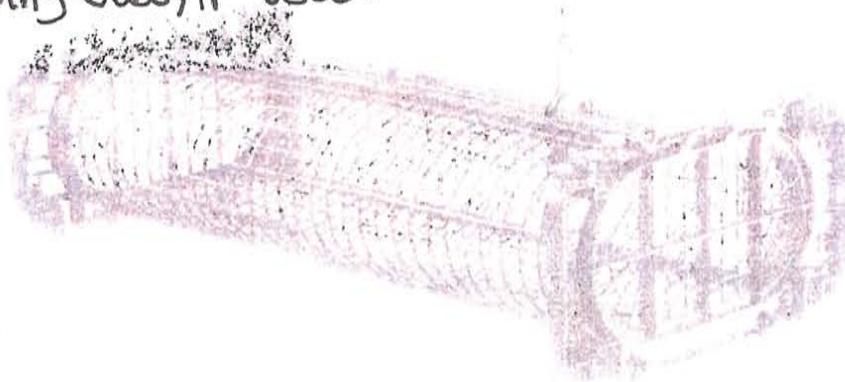
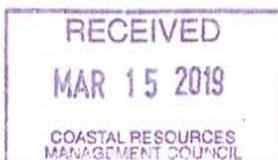


Image C2: GEAFV-1300 PVC hosing cube (25' size will be most used, ranging at
approx. 10.5' high, 15.5' wide, and 10.5' dia.)



Dave Beutel

From: Kenneth Murgo <kenneth.murgo@gmail.com>
Sent: Sunday, April 28, 2019 10:01 PM
To: Dave Beutel
Subject: Re: commercial viability aquaculture application
Attachments: Murgo carr pt application comment.pdf

Hi Dave,

Attached are my comments about this application (Allen, Carr Pt). Would it be possible to meet and discuss alternative locations for this applicant? The chosen location off Carr Point is just about as bad as it gets in terms of conflict with wild harvest fisheries. The applicant seems to be severely mis-informed about the area in question.

On Mon, Apr 15, 2019 at 2:04 PM Dave Beutel <dbeutel@crmc.ri.gov> wrote:

CRMC has received a commercial viability aquaculture application to grow oysters at a 1,000 square foot site off Carr Point in Portsmouth (please see the attached application). Commercial viability applications do not receive a preliminary determination meeting. This notification is your opportunity to comment. Please provide comments to me by May 15, 2019.

David Beutel

Coastal Resources Management Council

Aquaculture Coordinator

Oliver Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

401-783-3370

Dear Dave Beutel,

Would it be possible to meet and discuss alternative locations for this applicant? The chosen location off Carr Point in the Allen application is a commercially important wild shellfish bed containing high densities of quahogs as well as Blue Mussel beds; a lease here would cause significant hardship to numerous wild harvest fishermen across multiple fisheries. The applicant's statements in the "note on mitigating conflict" are blatantly false. He claims "the depth of the space ensures that the site will not come into conflict with anyone raking shellfish;" however, this indicates to me the applicant has not spent substantial time in the area. As a commercial fisherman out of New England Boatworks just to the north, I pass through this area 200 days a year and there have been multiple fisherman bull-raking and scuba-diving for quahogs directly in and around the proposed lease area on most days. Both scuba divers and bull-rakers regularly work in waters 7 to 9 feet deep (and often even shallower); therefore, the applicant's theory that the shallow water prevents conflict with the quahog fishery is false. In recent years, there has been a significant increase in quahogging activity in the mid-bay, specifically in the shallow waters on all sides of Dyer Island and off of Carr Point. All of the blue areas, the shallow water, shown in **Figure 1** have seen significant, and increasing wild-harvest shellfishing activity in recent years. This area has become very important for Rhode Island wild harvest shellfishermen.

Additionally, the applicants statement that the "uninteresting nature of the site's bottom should significantly reduce possible conflict with boat fishermen since the bottom is much shallower than the 20' contour and there is no cover for fish" is for lack of a better term, ignorant. The bottom in the proposed lease area is covered in significant mussel beds, some of the strongest fish-attracting habitat in the bay. These mussels are an important foundation in the Narragansett Bay food chain and attract large concentrations of predatory fish such as scup, fluke, black sea bass, and tautog. I fish 50 scup traps in the area outlined in red in **Figure 1** every summer because the wild mussel beds there attract a huge abundance of fish. These 50 traps yield 500-1000 pounds of scup daily in addition to fluke, black sea bass, and tautog. This is a very important part of my business and losing access to this mussel bed is a big loss. I also am not the only fisherman who sets fish traps in the area. There are multiple other scup-trapping fishermen who work the area every summer. Additionally, I often see recreation fishermen fishing for scup in the area.

There is also substantial whelk fishing activity in the area. Due to the large amount of whelk's prey, shellfish, there are very high concentrations of whelk with more than 5 or 6 whelk fishermen regularly working the area. Because this area is so rich in life, it is already a highly contested area amongst many commercial fishermen working in multiple wild harvest fisheries. Access to the wild shellfish beds off Carr Point provide Narragansett Bay commercial fishermen the opportunity to harvest many valuable species of fish and shellfish that we rely on to make a living. Therefore, due to the fact that this lease would displace a large amount of wild-harvest shell-fisheries and fin-fisheries I am strongly opposed to this proposed lease.

Sincerely,

Ken Murgo (Wild Harvest Fisherman RI MP 001365)

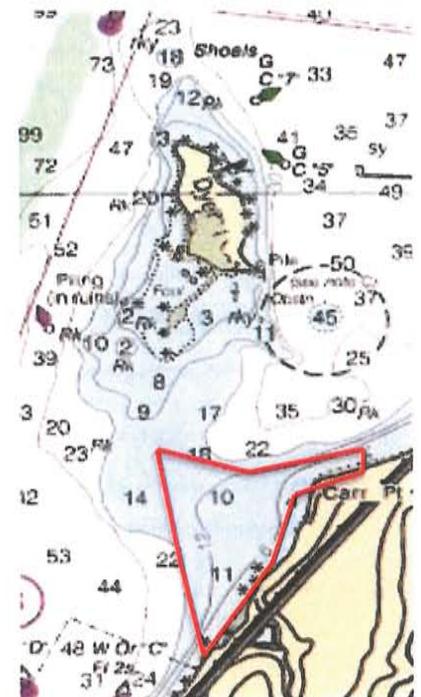


Figure 1

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Wednesday, May 01, 2019 11:31 AM
To: Dave Beutel
Subject: Re: commercial viability aquaculture application

Hi, Dave:

Bo, here. Please read and get back to me if you deem it prudent.

I have read Mr. Murgo's comments.

I surveyed the spot in November with a snorkel and mask, and did not see any mussel beds in the immediate area that I'm considering. I am willing to do a similar, more comprehensive survey of the adjacent area next week and will try to take images if my gear is working. (I will do some online research on mussel beds in the interim.)

As far as the comment on the raking, I simply meant that I can't see anyone without a boat raking for quohogs in 7' to 9' of water (MLT). My application did not account for shellfish divers, it is true, but I will not have a sense of how valid that objection is without continuous, repeated exposure to the spot; and as I do not intend to take up much space if a lease were granted after a commercial viability permit (and, I believe, divers would be legally permitted within any such space anyway), it is possible that Mr. Murgo overestimates the impact that I might have.

After the aforementioned, continued due diligence of the site next week or so, I might be willing to meet Mr. Murgo if he has specific recommendations for alternative spots that seem reasonable; otherwise, I'd expect that a meeting might be dissatisfying to both of us at this juncture.

If you think it is advisable for you and I to meet the later half of next week or so to discuss Mr. Murgo's concerns, proposal, or other considerations, please let me know. (I hear that the DEM is conducting a cleaning of the Carr point area.)

I hope all is very well.

Bo

From: Dave Beutel <dbeutel@crmc.ri.gov>
Sent: Monday, April 29, 2019 2:34 PM
To: boynton allen
Subject: FW: commercial viability aquaculture application

Bo,

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Friday, May 10, 2019 12:14 PM
To: Dave Beutel
Subject: Comm. Viability, Mr. Murgo's Comments/Questions

Follow Up Flag: Follow up
Flag Status: Flagged

Hi, Dave:

Bo, here, getting back to you on Mr. Murgo's comments, with a couple questions.

I snorkeled the area more extensively last evening, and Mr. Murgo is quite right: there is a bed of mussels located within the prospective site for testing commercial viability. The mistake is mine entirely. My initial judgement of the site was in itself logical, but was made on incomplete information and assumptions that didn't pan out. In short, my observations should have been more thorough.

A more comprehensive survey of the area with dive gear is in order to be exact, but it appeared by quick estimate that significant densities of mussels start at around 150 yards from shore, generally. Closer to shore, there were stretches of limpets/slipper shells, but I didn't see collections of mussels. (Again, a more thorough assessment would follow.)

Question #1: If this initial observation above turns out to be correct, would limpets present an obstruction to a proposed site in the area?

Question#2: How far should a proposed site be from significant collections of mussels?

As always, thank you; and apologies on this one. Obviously, I withdraw the application for commercial viability at this time.

I will reach out to Mr. Murgo shortly to inform him and request his input.

Be well,

Bo

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Friday, May 10, 2019 1:08 PM
To: Dave Beutel
Subject: Re: Comm. Viability, Mr. Murgos Comments/Questions

Many thanks, Dave. Reached out to Mr. Murgos shortly after I emailed you.

I will keep the viability application on file, then.

Best,

Sent from my iPhone

On May 10, 2019, at 12:59 PM, Dave Beutel <dbeutel@crmc.ri.gov> wrote:

Bo,

I would suggest speaking with Mr. Murgos to see if there is a location nearby where a commercial viability site can go. If there is we can use the new coordinates if it is relatively close. If there is not a nearby location then we will withdraw your application but it seems prudent for you to at least have a discussion with him. I assume that what you call limpets are *Crepidula fornicata* which has no protected status. There is no distance protocol for aquaculture sites in regards to mussel beds.

Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Friday, May 10, 2019 12:14 PM
To: Dave Beutel
Subject: Comm. Viability, Mr. Murgos Comments/Questions

Hi, Dave:

Bo, here, getting back to you on Mr. Murgos's comments, with a couple questions.

I snorkeled the area more extensively last evening, and Mr. Murgos is quite right: there is a bed of mussels located within the prospective site for testing commercial viability. The mistake is

mine entirely. My initial judgement of the site was in itself logical, but was made on incomplete information and assumptions that didn't pan out. In short, my observations should have been more thorough.

A more comprehensive survey of the area with dive gear is in order to be exact, but it appeared by quick estimate that significant densities of mussels start at around 150 yards from shore, generally. Closer to shore, there were stretches of limpets/slipper shells, but I didn't see collections of mussels. (Again, a more thorough assessment would follow.)

Question #1: If this initial observation above turns out to be correct, would limpets present an obstruction to a proposed site in the area?

Question#2: How far should a proposed site be from significant collections of mussels?

As always, thank you; and apologies on this one. Obviously, I withdraw the application for commercial viability at this time.

I will reach out to Mr. Murgo shortly to inform him and request his input.

Be well,

Bo

Dave Beutel

From: Katie Eagan <eagan.katie@gmail.com>
Sent: Sunday, May 12, 2019 9:45 PM
To: Dave Beutel
Subject: Re: commercial viability aquaculture application

Hi Dave,

This area is a very productive quahog ground. Many divers use the area and a few bullrakers as well. Besides being productive its, the proximity to Weaver Cove boat ramp and its relatively protected from east, northeast, and southeast winds make popular spot for commercial shellfish diving. Can I request a site survey for the area? If so, can it be done by a fisherman who knows the area?

I understand its a small commercial viability lease but this area is actively fished. Give me a call if you have any questions.

Thanks,
katie

On Mon, Apr 15, 2019 at 2:04 PM Dave Beutel <dbeutel@crmc.ri.gov> wrote:

CRMC has received a commercial viability aquaculture application to grow oysters at a 1,000 square foot site off Carr Point in Portsmouth (please see the attached application). Commercial viability applications do not receive a preliminary determination meeting. This notification is your opportunity to comment. Please provide comments to me by May 15, 2019.

David Beutel

Coastal Resources Management Council

Aquaculture Coordinator

Oliver Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

401-783-3370

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Tuesday, May 14, 2019 10:52 AM
To: Dave Beutel
Subject: Re: Comm. Viability, Mr. Murgo's Comments/Questions

Dear Dave:

You suggested I get new coordinates in the Carr point area to you (as opposed to withdrawing my application).

I'll be snorkeling out there this week and can get you those new coordinates by next Monday or Tuesday; however, I am checking to see if it's okay to postpone providing you with the coordinates -- and the CRMC keeping open and on file my current application -- till after my friend does a dive, by 6/2, to ensure the best, possible intel of the surrounding area (in forward looking preparation for a preliminary determination application down the line).

No worries if you are not able to oblige, and I will probably get you the new lats and longs well before then, anyway, but thought it best to check.

I have not yet heard back from Mr. Murgo about meeting to discuss alternative locations, but will reach out to him again later this week.

Be well,

Bo

From: Dave Beutel <dbeutel@crmc.ri.gov>
Sent: Friday, May 10, 2019 5:05 PM
To: 'boynton allen'
Subject: RE: Comm. Viability, Mr. Murgo's Comments/Questions

Bo,

I would suggest speaking with Mr. Murgo to see if there is a location nearby where a commercial viability site can go. If there is we can use the new coordinates if it is relatively close. If there is not a nearby location then we will withdraw your application but it seems prudent for you to at least have a discussion with him. I assume that what you call limpets are *Crepidula fornicata* which has no protected status. There is no distance protocol for aquaculture sites in regards to mussel beds.

Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center

4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Friday, May 10, 2019 12:14 PM
To: Dave Beutel
Subject: Comm. Viability, Mr. Murgo's Comments/Questions

Hi, Dave:

Bo, here, getting back to you on Mr. Murgo's comments, with a couple questions.

I snorkeled the area more extensively last evening, and Mr. Murgo is quite right: there is a bed of mussels located within the prospective site for testing commercial viability. The mistake is mine entirely. My initial judgement of the site was in itself logical, but was made on incomplete information and assumptions that didn't pan out. In short, my observations should have been more thorough.

A more comprehensive survey of the area with dive gear is in order to be exact, but it appeared by quick estimate that significant densities of mussels start at around 150 yards from shore, generally. Closer to shore, there were stretches of limpets/slipper shells, but I didn't see collections of mussels. (Again, a more thorough assessment would follow.)

Question #1: If this initial observation above turns out to be correct, would limpets present an obstruction to a proposed site in the area?

Question#2: How far should a proposed site be from significant collections of mussels?

As always, thank you; and apologies on this one. Obviously, I withdraw the application for commercial viability at this time.

I will reach out to Mr. Murgo shortly to inform him and request his input.

Be well,

Bo

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Thursday, May 23, 2019 11:29 AM
To: Dave Beutel
Subject: Revised Site for Comm. Viability:CarrPoint
Attachments: RevisedCarr_Coordinates.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello, Dave:

Bo, here. Last week, I did a comprehensive survey of a revised site for a commercial viability permit off of Carr Point, in response to the legitimate objection on Mr. Murgo's part that the initial location had mussels.

Attached, you will find the map and new coordinates for this revised site.

I have footage of this site, as well as the surrounding area, that shows its suitability -- that it would not interfere with existing mussels and quahogs. I will have to wait till next Monday or Tuesday to make the footage available to you, as I'll be away and officially offline till then, and the files are too large for standard email. In the meanwhile, please let me know if you would prefer Onedrive (via Outlook), googledrive, or some other method to access the video files.

The depth of the revised site at MLT falls between 7' and 8', so no revision of depth seems necessary.

I hope you are well, and that things are rolling into a good weekend ahead.

Bo,



NE: 41.569833 / -71.296164
SE: 41.5697594 / -71.2961727
NW: 41.569825 / -71.296346
SW: 41.5697691 / -71.296346

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Thursday, May 23, 2019 11:34 AM
To: Dave Beutel
Subject: Carr Point: Revised Site for Comm. Viability
Attachments: RevisedCarr_Coordinates.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hello, Dave:

Bo, here. Last week, I did a comprehensive survey of a revised site for a commercial viability permit off of Carr Point, in response to the legitimate objection on Mr. Murgo's part that the initial location had mussels.

Attached, you will find the map and new coordinates for this revised site. The depth of the revised site at MLT falls between 7' and 8', so no revision on depth seems necessary.

I have footage of this site via my GoPro, as well as the surrounding area, that shows its suitability -- that it would not interfere with mussels and quahogs, etc.

I will have to wait till next Monday or Tuesday to make the clips available to you, as I'll be away and officially offline till then, and the files are too large for standard email. In the meanwhile, please let me know if you would prefer Onedrive (via Outlook), googledrive, or some other method to access the video files.

I hope you are well, and that things are rolling into a good weekend ahead.

Bo

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Wednesday, May 29, 2019 2:31 PM
To: Dave Beutel
Subject: Re: Carr Point: Revised Site for Comm. Viability

No, but I reached out multiple times to him about alternative spots and did not hear back. I can't imagine he'd have a different opinion about this revised spot (minus the mussel part), but you think I should send him the revised image?

Was going to send you video footage mentioned previously tonight or tomorrow morning. Also, looks like they'll be putting in a marina just north of there and south of Melville marina.

If you think we should talk after I get you the footage, etc., please let me know.

Hope all is well.

Bo

Sent from my iPhone

On May 29, 2019, at 2:13 PM, Dave Beutel <dbeutel@crmc.ri.gov> wrote:

Have you run this location by Ken Murgo yet?

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Thursday, May 23, 2019 11:34 AM
To: Dave Beutel
Subject: Carr Point: Revised Site for Comm. Viability

Hello, Dave:

Bo, here. Last week, I did a comprehensive survey of a revised site for a commercial viability permit off of Carr Point, in response to the legitimate objection on Mr. Murgo's part that the initial location had mussels.

Attached, you will find the map and new coordinates for this revised site. The depth of the revised site at MLT falls between 7' and 8', so no revision on depth seems necessary.

I have footage of this site via my GoPro, as well as the surrounding area, that shows its suitability -- that it would not interfere with mussels and quahogs, etc.

I will have to wait till next Monday or Tuesday to make the clips available to you, as I'll be away and officially offline till then, and the files are too large for standard email. In the meanwhile, please let me know if you would prefer Onedrive (via Outlook), googledrive, or some other method to access the video files.

I hope you are well, and that things are rolling into a good weekend ahead.

Bo

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Wednesday, May 29, 2019 8:22 PM
To: Dave Beutel
Subject: CarrPoint: provision/note on video clips

Dear Dave,

I have made the video footage of the revised site available to you. Likely, access to them was sent to you from Youtube via 5 separate emails. (Sorry.) If you did not receive any such emails, you can likely access the clips by going to Youtube and searching for "Boynton Allen" and sussing out links for private and/or "shared" videos. (Will likely need to type in your email.) If you have trouble, let me know.

The clips are short (because of GoPro) and a little jerky, but I think clearly establish what is not down there. (Please start with "intro" and take from there.) I have many more videos of surrounding area, but did not want to bombard you further. If you request them, I will try to get them to you in a less obnoxious way.

I'll send Ken Murgo the updated spot, asking for his input, tomorrow.

Let me know if you have any questions.

Thanks.

Bo

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Thursday, May 30, 2019 8:45 AM
To: kenneth.murgo@gmail.com
Subject: Revised Viability Site off Carr
Attachments: RevisedCarr_Coordinates.pdf

Mr. Murgo,

This is Bo Allen again, the applicant for the 50' by 20' commercial viability permit off the Carr Point area. Since your objection that there were mussels where the initial site was plotted is correct, I revised the coordinates to an area where there are no mussels, and, diving it, I didn't see significant collections of quahogs, etc. You will find an image of this new, revised spot with coordinates attached to this email. I hope it meets you better than the first document. If you'd care to, you can supply me, or Dave Beutel, with any feedback on the revised spot.

Be well,

Bo Allen

Dave Beutel

From: Kenneth Murgo <kenneth.murgo@gmail.com>
Sent: Tuesday, June 11, 2019 8:28 PM
To: Dave Beutel
Subject: Re: commercial viability aquaculture application

Follow Up Flag: Follow up
Flag Status: Flagged

Dave,

I don't mind discussing with the applicant, I am trying my best to get back to him ASAP but this is a tough time of year for me work wise and I often don't have the time or energy to get to emails after long days fishing. However, for the conversation to be most effective I need more input from CRMC. I know a lot about the commercial fishing uses of different areas of Narragansett Bay but am ignorant of most other competing uses. I have some ideas of areas where the impact on commercial fishing would be minimal but I do not know if they would be fit for aquaculture or conflict with other users.

On Mon, Apr 29, 2019 at 8:08 AM Dave Beutel <dbeutel@crmc.ri.gov> wrote:

Hi Ken,

Thank you for the detailed response. If you don't mind I can forward your contact information to him and he could initiate the discussion.

Dave

David Beutel

Coastal Resources Management Council

Aquaculture Coordinator

Oliver Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

401-783-3370

From: Kenneth Murgo [mailto:kenneth.murgo@gmail.com]
Sent: Sunday, April 28, 2019 10:01 PM
To: Dave Beutel
Subject: Re: commercial viability aquaculture application

Hi Dave,

Attached are my comments about this application (Allen, Carr Pt). Would it be possible to meet and discuss alternative locations for this applicant? The chosen location off Carr Point is just about as bad as it gets in terms of conflict with wild harvest fisheries. The applicant seems to be severely mis-informed about the area in question.

On Mon, Apr 15, 2019 at 2:04 PM Dave Beutel <dbeutel@crmc.ri.gov> wrote:

CRMC has received a commercial viability aquaculture application to grow oysters at a 1,000 square foot site off Carr Point in Portsmouth (please see the attached application). Commercial viability applications do not receive a preliminary determination meeting. This notification is your opportunity to comment. Please provide comments to me by May 15, 2019.

David Beutel

Coastal Resources Management Council

Aquaculture Coordinator

Oliver Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

401-783-3370

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Tuesday, August 20, 2019 1:40 PM
To: Dave Beutel
Subject: Re: CarrPoint: provision/note on video clips

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you, Dave. I do understand; however, at this point I feel that the burden is on Mr. Murgo to come and voice his concerns to you if he feels it warranted to do so. (Last we corresponded, you said to hold tight for a few weeks until you and he talked; so I'm predicating this email on that — apologies if I'm missing something.)

I have reached out to Ken at least five times — I think 6 — and have not heard back once. As you know, a fair bit of effort goes into the applications, and I do not think it's fair for one to be waylaid indefinitely until someone may, or may not, specify his objections, in this case with a revised spot that was already modified to fit his original concerns. The commercial viability space is for a small area, as you know, and I would not be seeking a large space down the line — anticipate .5 to .75 acre — if a full permit were pursued.

Again, please forgive if I'm missing something, but these seem like fair perceptions to me.

Respectfully,

Bo

Sent from my iPhone

On Aug 20, 2019, at 12:43 PM, Dave Beutel <dbeutel@crmc.ri.gov> wrote:

Hi Bo,

I have not seen or talked with Ken Murgo. Until I hear that the objections are absent we won't be issuing a commercial viability permit for that location. Sorry.

Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Monday, August 19, 2019 9:28 AM
To: Dave Beutel
Subject: Fw: CarrPoint: provision/note on video clips

Hi, Dave:

Bo, here. Not sure if you're away, but sent an email last Monday to check in on my commercial application, and whether or not you've talked with Ken Murgo yet. Please drop me a line when you get this. (Feel free to call if it's preferable for some reason.)

Be well,

Bo
(401)378-0864

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Monday, August 26, 2019 12:42 PM
To: Dave Beutel
Subject: Re: CarrPoint: provision/note on video clips

Dave,

I greatly appreciate the response and effort. If, when you meet with Katie, she has any concerns you feel I can reasonably and truthfully calm, please send her my way (unless you deem it prudent for me to reach out to her beforehand).

Hope all is well.

Bo

Sent from my iPhone

On Aug 26, 2019, at 12:28 PM, Dave Beutel <dbeutel@crmc.ri.gov> wrote:

Bo,

I am going to meet with Katie Eagan from the East Bay (she objected to your application too) sometime in mid-September to see if anything can be resolved. If not, your application will be reviewed at a CRMC public hearing as a contested application. FYI, you are not the only commercial viability application in this position.

Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Tuesday, August 20, 2019 1:40 PM
To: Dave Beutel
Subject: Re: CarrPoint: provision/note on video clips

Thank you, Dave. I do understand; however, at this point I feel that the burden is on Mr. Murgio to come and voice his concerns to you if he feels it warranted to do so. (Last we corresponded, you said to hold tight for a few weeks until you and he talked; so I'm predicating this email on that — apologies if I'm missing something.)

I have reached out to Ken at least five times — I think 6 — and have not heard back once. As you know, a fair bit of effort goes into the applications, and I do not think it's fair for one to be waylaid indefinitely until someone may, or may not, specify his objections, in this case with a revised spot that was already modified to fit his original concerns. The commercial viability space is for a small area, as you know, and I would not be seeking a large space down the line — anticipate .5 to .75 acre — if a full permit were pursued.

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Bo

Sent from my iPhone

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Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Monday, August 19, 2019 9:28 AM
To: Dave Beutel
Subject: Fw: CarrPoint: provision/note on video clips

Hi, Dave:

Bo, here. Not sure if you're away, but sent an email last Monday to check in on my commercial application, and whether or not you've talked with Ken Murgo yet. Please drop me a line when you get this. (Feel free to call if it's preferable for some reason.)

Be well,

Bo
(401)378-0864

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Tuesday, September 17, 2019 2:39 PM
To: Dave Beutel
Subject: Comm. Viab. Permit Videos (Carr Point)

Hi, Dave:

Bo, here. Not sure if you've spoken with Katie Eagan yet, but just posted videos on Youtube of the surrounding area to my revised commercial viability site.

If you haven't yet seen the original videos I put up, you may want to, along with these new ones, as it gives a pretty clear look of what is and what isn't down there, which may be useful for Katie to see, so that she might worry less about potential impacts on quahogs, etc.

There are a total of 11 videos, starting with "intro." Titles of clips explain where stuff is in relation to proposed site. On Youtube, search "Boynton Allen -- Carr Survey." Have to click on my channel ("B") to access all the clips, and see in sequence.

Hope all is well.

Best,

Bo

Dave Beutel

From: boynton allen <boboallen1@hotmail.com>
Sent: Monday, November 04, 2019 8:44 AM
To: Dave Beutel
Subject: Re: CarrPoint: provision/note on video clips

Okay, Dave. Thank you.

Be well,

Bo

Sent from my iPhone

On Nov 4, 2019, at 8:42 AM, Dave Beutel <dbeutel@crmc.ri.gov> wrote:

Hi Bo,

I met with Katie twice in the last 2 weeks. I am going to treat the application as contested, finish the report, and put it in the queue for council decision.

Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Monday, November 04, 2019 8:28 AM
To: Dave Beutel
Subject: Re: CarrPoint: provision/note on video clips

Hi, Dave:

Just checking to see if you had that conversation with Katie Eagan. Thanks for your time.

Bo

From: Dave Beutel <dbeutel@crmc.ri.gov>
Sent: Monday, August 26, 2019 4:35 PM
To: 'boynton allen' <boboallen1@hotmail.com>
Subject: RE: CarrPoint: provision/note on video clips

Bo,

I am going to meet with Katie Eagan from the East Bay (she objected to your application too) sometime in mid-September to see if anything can be resolved. If not, your application will be reviewed at a CRMC public hearing as a contested application. FYI, you are not the only commercial viability application in this position.

Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]
Sent: Tuesday, August 20, 2019 1:40 PM
To: Dave Beutel
Subject: Re: CarrPoint: provision/note on video clips

Thank you, Dave. I do understand; however, at this point I feel that the burden is on Mr. Murgo to come and voice his concerns to you if he feels it warranted to do so. (Last we corresponded, you said to hold tight for a few weeks until you and he talked; so I'm predicating this email on that — apologies if I'm missing something.)

I have reached out to Ken at least five times — I think 6 — and have not heard back once. As you know, a fair bit of effort goes into the applications, and I do not think it's fair for one to be waylaid indefinitely until someone may, or may not, specify his objections, in this case with a revised spot that was already modified to fit his original concerns. The commercial viability space is for a small area, as you know, and I would not be seeking a large space down the line — anticipate .5 to .75 acre — if a full permit were pursued.

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Dave

David Beutel
Coastal Resources Management Council
Aquaculture Coordinator
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
401-783-3370

From: boynton allen [<mailto:boboallen1@hotmail.com>]

Sent: Monday, August 19, 2019 9:28 AM

To: Dave Beutel

Subject: Fw: CarrPoint: provision/note on video clips

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Be well,

Bo
(401)378-0864



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

DIVISION OF MARINE FISHERIES
3 Fort Wetherill Road
Jamestown, RI 02835

DIVISION OF FISH AND WILDLIFE
277 Great Neck Road
West Kingston, RI 02892

November 22, 2019

David Beutel
Aquaculture Coordinator
Coastal Resources Management Council
4808 Tower Hill Road
Wakefield, RI 02879

Re: Allen Commercial Viability Application #2019-03-064

Dear Mr. Beutel:

The Rhode Island Department of Environmental Management (Department), through the Division of Marine Fisheries (DMF) and the Division of Fish and Wildlife (DFW), has received and reviewed the application submitted by Boynton Allen for a 0.02-acre commercial viability lease for cultivating oysters (*Crassostrea virginica*) in the East Passage in Middletown, using bottom cages.

The DMF and DFW believe that the adverse impacts to marine fisheries and wildlife and their habitat from this prospective shellfish farm would be minimal. As such, the DFW and DMF do not have objections to this application. The Divisions' acceptance of the current proposal is specific to the location and specifications outlined in the application.

Sincerely,



Jason McNamee,
Chief of Marine Resource Management



Jay Osenkowski,
Deputy Chief, Wildlife

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

COASTAL RESOURCES MANAGEMENT COUNCIL

Title of Rule: Management Procedures (650-RICR-10-00-01)

Rule Identifier: 650-RICR-10-00-1

Rulemaking Action: Proposed Amendment

Important Dates:

Date of Public Notice: 11/22/2019

Hearing Date: 12/10/2019

End of Public Comment: 12/23/2019

Authority for this Rulemaking:

R.I. Gen. Laws Chapter 46-23 et seq.

Summary of Rulemaking Action:

The CRMC proposes to amend its Management Procedures to clarify and improve its regulatory procedures, including adding Council member coastal program training, adding specific requirements for staff recommendations and written findings of fact and conclusions of law in contested cases, and consolidation and simplification of determination requests and beach vehicle permit fees, among other proposed changes as summarized below.

Brief summary of proposed amendments to 650-RICR-10-00-1

1. Amend § 1.2(C) clarify member abstention process;
2. Add new § 1.2(G) for member training requirement and participation on a Council subcommittee;
3. Amend § 1.4.5 to simplify determination requests and fees;
4. Amend § 1.4.6(A)(11) to consolidate and simplify beach vehicle fees;
5. Amend § 1.5.1(A) to add specificity of public notice for variances and special exceptions; and
6. Add new §§ 1.8(B)(1) and (2) to add specificity for recommendations and findings of fact and conclusions of law.

Additional Information and Comments:

All interested parties are invited to request additional information or submit written or oral comments concerning the proposed amendment until December 23, 2019 by contacting the appropriate party at the address listed below:

James Boyd
Coastal Resources Management Council
Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879
jboyd@crmc.ri.gov

Public Hearing:

A public hearing, in accordance with R.I. Gen. Laws § 42-35-2.8, to consider the proposed amendment shall be held on December 10, 2019 at 6:00 pm at Administration Building, Conference Room A, One Capital Hill, Providence, RI 02908 at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-783-3370 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Regulatory Analysis Summary and Supporting Documentation:

The proposed amendments will provide more specific Council procedures to improve the operating efficiency of the Council. In addition, the proposed amendments will clarify and simplify applicant requirements under the Coastal Resources Management Program. The proposed regulations do not impose any new requirements on regulated entities including any small businesses or any city or town; therefore, there is no adverse economic impact. In consideration of the alternatives the CRMC has determined that there is no alternative approach among the alternatives considered that would be as effective and less burdensome to affected private persons as another regulation. In addition, there are no other state regulations which are overlapped or duplicated by the proposed regulation.

The CRMC has determined that the benefits of the proposed rule justify the costs of the proposed rule, and that the proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner and with greater net benefits than other regulatory alternatives.

For full regulatory analysis or supporting documentation see agency contact person above.

Proposed Management Procedures (650-RICR-10-00-1) Amendments

1.2 Meetings and Members

- A. The regular meeting schedule, unless changed by the Chairman or the Vice Chairman, shall consist of the second and fourth Tuesday of the months of September through June and only the fourth Tuesday in July and August.
- B. A quorum consists of seven members.
- C. A majority vote shall be a majority of those present and voting. If a Council member wishes to abstain, Council member shall announce the abstention prior to a hearing and the tally of the vote on the matter. An abstention shall not be counted as a vote in the tally, but shall be counted for the purposes of maintaining a quorum.
- D. The Council may have closed meetings. Such meetings shall be in accordance with the exceptions to the Open Meeting Law as set out in the Rhode Island General Laws, as amended.
- E. All meetings of the Council shall be open to the public except as set out in § 1.2(D) of this Part above and the public shall have a reasonable opportunity to be heard.
- F. In any 12 month period, when a Council member has three (3) unnoticed non-appearances at full Council meetings, the Chairman is authorized to contact said members appointing authorities to request appointment of an active member.
- G. Prior to serving on the Council all members shall complete a training program developed by the agency staff. As a condition of continuing to serve on the Council, members must routinely attend and serve on a subcommittee and attend training.

1.4.5 Determination Request

- A. Those ~~involving~~ projects ~~of the~~ for a individual single-family residential structure (existing or proposed), including a coastal feature verification for the site, filed by a homeowner or ~~potential~~ homeowner: ~~\$150.00~~300.00.
- B. All other projects (e.g., development of subdivisions, condominiums, commercial, industrial, waterfront business, etc.), including a coastal feature verification for the site: \$1000.00.
- C. Jurisdictional determinations: \$100.00.
- ~~D. Jurisdictional Determinations for Individual Lot Development of Residential Properties Adjacent to New Sewer Lines that no longer require an ISDS for Development: \$25.00.~~
- ~~E. Coastal Feature Verification: \$300.00~~

1.4.6 Applications for Council Assent

- A. All fees are summative. In addition, all fees are filing fees and are non-refundable.
 - 11. Beach Vehicle Permits:
 - a. Annual, in state vehicle registration: \$100.00.
 - b. Annual, out of state vehicle registration: \$200.00

- c. Three (3) day pass, in state vehicle registration: \$25.00
- d. Three (3) day pass, out of state vehicle registration: \$60.00
- ~~e. Seven (7) day pass, in state vehicle registration: \$50.00~~
- ~~f. Seven (7) day pass, out of state vehicle registration: \$75.00~~
- ~~g. Fourteen (14) day pass, in state vehicle registration: \$75.00~~
- ~~h. Fourteen (14) day pass, out of state vehicle registration: \$100.00~~

1.5. Notification And Review Of Permit Applications

1.5.1 Notification

- A. Upon receipt of complete applications, including necessary plans and attachments thereto which meet all the prerequisites of the Council as set forth herein, the Council shall cause to place public notice of the pendency of said application and a brief description of the proposed activity, the regulations from which variances are sought and the percent of the deviation from the standard and/or whether a special exception is required.

1.8 Final Decisions of The Council

- A. Final decisions or orders adverse to a party in a contested case shall be in writing and made part of the record. The final decisions shall include findings of fact and conclusions of law separately stated. Final decisions or orders adverse to a party in a contested case may be signed by the Chairman, Vice Chairman, or the Executive Director.
- B. Findings of Fact. If set forth, the statutory language shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. These facts shall be based exclusively upon the record and matters officially noticed. The parties and their attorneys of record shall be notified of the decision of the Council. The City or Town clerk and the local building official of the community of which the assent is granted shall be sent a copy of the assent or its denial.
 - 1. The Council shall consider the written recommendations of agency staff in making a final decision, in addition to any new evidence or sworn testimony offered at the meeting in which each case is heard.
 - 2. The Council shall make written express findings of fact and conclusions of law, separately stated, on each case. If the Council does not follow the recommendation of the agency staff, then it must specifically set forth the reasons therefore.