

In The Matter Of:
Coastal Resources Management Council
Perry Raso

Hearing
Vol. 4
December 4, 2020

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COASTAL RESOURCES MANAGEMENT COUNCIL
SUBCOMMITTEE HEARING

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IN RE:

CRMC File No. 2017-12-086

In the matter of Perry Raso

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Date: December 4, 2020
Time: 11:00 a.m.
Place: Via Zoom
Rhode Island

MEMBERS PRESENT

Jennifer Cervenka, Chair
Raymond C. Coia, Vice Chair
Donald T. Gomez
Patricia Reynolds
Anthony DeSisto, Esquire, Legal Counsel

STAFF PRESENT

Jeff Willis, Executive Director
Lisa Turner, Secretary
Ryan Moore, Moderator
James Boyd, Deputy Director

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FRIDAY, DECEMBER 4, 2020

[COMMENCING AT 11:15 A.M.]

CHAIRWOMAN CERVENKA: I'll call the meeting to order. Today's date is December 4, 2020. It's 11:11 a.m., and this is a meeting of the Subcommittee of the Rhode Island Coastal Resources Management Council.

We are here on our fourth meeting to consider an application, File Number 2017-12-086, in the matter of Perry Raso's application to establish a three-acre oyster and bay scallop farm using floating and suspended gear in Potter Pond, South Kingstown, Rhode Island.

I'm going to introduce for the record all of our Subcommittee members. When I call your name, if you can unmute and indicate that you're here. Starting first with Vice-chair Raymond Coia.

MR. COIA: Ray Coia is here.

CHAIRWOMAN CERVENKA: Thank you. Patricia Reynolds?

MS. REYNOLDS: Patricia Reynolds here.

CHAIRWOMAN CERVENKA: Thank you. Don Gomez?

MR. GOMEZ: Don Gomez here.

CHAIRWOMAN CERVENKA: And Vin Murray, our South Kingstown representative.

MR. MURRAY: Vin Murray here.

1 CHAIRWOMAN CERVENKA: And myself, Jennifer
2 Cervenka, Chair. From our staff, same thing, when I call
3 your name, if you can indicate that you're here. Our
4 executive director Jeffrey Willis?

5 MR. WILLIS: Willis here.

6 CHAIRWOMAN CERVENKA: Our deputy director Jim
7 Boyd?

8 MR. BOYD: Jim Boyd here, Madam Chair.

9 CHAIRWOMAN CERVENKA: Our chief legal counsel
10 Tony DeSisto?

11 MR. DESISTO: DeSisto here.

12 CHAIRWOMAN CERVENKA: Our secretary Lisa
13 Turner?

14 MS. TURNER: Here, Madam Chair.

15 CHAIRWOMAN CERVENKA: Our moderator Ryan Moore?

16 MR. MOORE: Here, Madam Chair.

17 CHAIRWOMAN CERVENKA: And our court reporter
18 Lisa Reis?

19 COURT REPORTER: Here.

20 CHAIRWOMAN CERVENKA: Okay. I thought that we
21 were going to have Mr. Beutel with us, but maybe that's
22 later on in our program; is that correct?

23 MR. WILLIS: That is correct, Madam Chair.

24 CHAIRWOMAN CERVENKA: Mr. Goetsch is here, just

1 not visible, but he's in the attendee group?

2 MR. WILLIS: That's correct.

3 CHAIRWOMAN CERVENKA: Okay. Before we get into
4 the matter, as we always do I will turn it over to our
5 moderator Ryan Moore just to indicate what this Zoom
6 format is, the rules for participating, and the authority
7 under which we're hosting it in this matter.

8 Mr. Moore?

9 MR. MOORE: Thank you, Madam Chair.

10 The virtual Subcommittee meeting of December 4,
11 2020 for the Rhode Island Coastal Resources Management
12 Council conducted in accordance with Executive Order
13 20-93-88 supplemental emergency declaration extension of
14 Executive Orders.

15 If you have any problems with your computer audio,
16 please use the call-in number listed for this meeting.

17 Council members, Applicant and CRMC staff, please
18 keep your video on. Do not use phone and computer audio
19 at the same time. Please raise your hand to be
20 recognized by the Chair. Identify yourself by name. Use
21 the chat box to communicate any issues with the audio or
22 video to the moderator.

23 Members of the public, please keep your videos off.
24 Mute your microphone when not speaking. Use the raise

1 hand function to be recognized by the Chair. When you
2 are recognized by the Chair and unmuted by the moderator
3 to speak, identify yourself by name.

4 Those on the phone, please press *9 to use the raise
5 hand function. When recognized, identify yourself by
6 full name. Once again, use the chat box to communicate
7 any issues of audio or video to the moderator. The Q and
8 A feature is disabled for this meeting.

9 CHAIRWOMAN CERVENKA: Thank you, Mr. Moore.
10 Okay. We've been at it for about 14 hours, and when we
11 last broke I believe we were on Mr. Capizzo's first
12 witness -- this is for the opposition -- Mr. Whitney.
13 And Ms. Noonan was in the midst of a cross-examination.
14 I'm not sure if it's been completed yet. I'll ask her in
15 a minute.

16 We're scheduled to go today for quite a while up
17 until 5:30. I would like it to be shorter if we can be
18 efficient, but if we need the time we have until 5:30.
19 We'll complete the opposition's case, and then we will
20 have any rebuttal from the Applicant if needed or
21 desired, and then we will finish today with questions
22 that the Subcommittee members may have of Mr. Beutel
23 based on what's come in through the Applicant's and
24 opponents' cases. We can have some limited questions

1 from the Applicant or opponents' counsel for Mr. Beutel
2 as well, but he's going to be available the last couple
3 of hours, Mr. Willis, one hour?

4 MR. WILLIS: Yes, Madam Chair, on the
5 assumption that today was going to be finished for the
6 opposition's witness and cross. Dave could be available
7 towards the end of the meeting. Just didn't have a
8 particular time frame for that.

9 CHAIRWOMAN CERVENKA: Is someone going to be in
10 touch with him?

11 MR. WILLIS: Yes.

12 CHAIRWOMAN CERVENKA: Today we will -- whatever
13 the case, we will not start public comment. Public
14 comment will be started at a subsequent meeting. Since
15 we were all here last time, we did consider whether or
16 not we should have longer periods of time during which
17 the public could speak. I think we ended up at a five to
18 ten-minute period as opposed to a two-minute period
19 because there were some members of the public who thought
20 that two minutes was too restrictive, and written comment
21 which we will consider.

22 In addition to all written comment that has been
23 submitted already by those who are going to speak, we
24 feel that all of those things combined will provide a

1 more than adequate opportunity to communicate any
2 concerns. So, again, that won't start until next time
3 but we wanted to preview that.

4 I think, Mr. Willis, correct me if I'm wrong, that
5 that's been communicated through our public website or
6 e-mails; is that correct?

7 MR. WILLIS: Yes. We began that communication
8 and we'll continue to remind everybody of that process.

9 CHAIRWOMAN CERVENKA: Thank you. So we're on
10 Mr. Whitney. He's still under oath. I'm trying to find
11 you, Mr. Whitney. You're still under oath and you
12 understand that, correct?

13 MR. WHITNEY: I do, yes.

14 CHAIRWOMAN CERVENKA: And Ms. Noonan, are you
15 going to continue with cross-examination?

16 MS. NOONAN: Yes, I am. I don't expect it to
17 be lengthy, but yes. Can I ask one thing, if you don't
18 mind before starting in terms of the public comment? Am
19 I correct that the sign-ups for public comment ended on I
20 believe Friday, November 13th?

21 CHAIRWOMAN CERVENKA: I'll defer that to Jeff.

22 MR. WILLIS: Yes, the public comment sign-up
23 period has concluded. We have the list in the order that
24 those folks have asked to speak. That will be conveyed

1 to the Chair so that she can alert everybody, but we have
2 already published that list as well.

3 MS. NOONAN: I just note that there's a
4 website, I believe, Save Potter Pond, and they are still
5 saying on that website that you can sign up for public
6 comment. I know that's not what you guys are saying. I
7 just wanted to make sure that that was out there to the
8 public.

9 CHAIRWOMAN CERVENKA: All right.

10 MR. CAPIZZO: Madam Chair, Dean Wagner is
11 having video issues. He emailed me, so if Ryan can help
12 him.

13 CHAIRWOMAN CERVENKA: Can he hear us?

14 MR. CAPIZZO: I believe so.

15 CHAIRWOMAN CERVENKA: Okay. Ask him first if
16 he can hear us, and if he can we will proceed without his
17 video.

18 MR. CAPIZZO: He can hear.

19 PAYSON WHITNEY,

20 Previously sworn testifies as follows:

21 CONTINUED CROSS-EXAMINATION BY MS. NOONAN

22 Q. All right, Mr. Whitney, how are you doing?

23 A. I'm okay. How are you?

24 Q. Great, thank you. As the Chair said, you're still under

1 oath from last time. You are aware of that, right?

2 A. I am, yes.

3 Q. Okay. Since the last time you were here, which was
4 November 17th, what if anything have you done in relation
5 to this project?

6 A. The only thing I've done is I reviewed the transcript a
7 little bit this morning and reviewed some of my notes and
8 looked at some of the -- I looked at some of our figure
9 in terms we were discussing the width of the pond when we
10 left. That's all I've done.

11 Q. Great. I'm going to ask you, did you communicate -- and
12 that's texts, email, Zoom, smoke signals -- with anyone
13 about this application since we last met on the 17th?

14 A. I have not.

15 Q. Okay. Did you obtain any input from anyone on the issue
16 of the 200-foot buffers in Section 4-8 of the town's
17 ordinances?

18 A. No.

19 Q. And did you have any conversations with the harbormaster?

20 A. No.

21 Q. That being the South Kingstown harbormaster.

22 A. Correct, still no.

23 Q. And did you have any other changes or corrections to your
24 report which is Objectors' Exhibit 1?

1 A. I don't believe so at this time, no.

2 Q. Okay. Perfect. Is it fair to say that as part of the
3 peer review that you did, that you just accepted the
4 applicability of the buffers in Section 4-8 of the town
5 ordinance and didn't question whether or not they were
6 appropriately enacted by CRMC?

7 A. That's correct. I reviewed the regulations and saw that
8 they were regulations and accepted them at face value.

9 Q. Perfect, fine. Although your report is dated, I believe,
10 April 20, 2020, did you have a chance to review the staff
11 report from Mr. Beutel that was dated June 2, 2020?

12 A. I did, yes. June 20th?

13 Q. June 2nd, I'm sorry, too many 2s there.

14 A. Let me check. I don't remember. I thought it was more
15 recent closer to this hearing than that.

16 Q. If I might, I think we received it more recently, but the
17 date is June 2nd on the document itself. I think we
18 received it either late October or early November.

19 A. Okay. I don't know if I see a date on this or not.

20 Q. Okay. On Page 1 of the staff report it does say
21 January 2, 2020. That's Exhibit 17.

22 [PAUSE]

23 A. Here we go. Yes, the date on it is June 2, 2020.

24 Q. Correct?

1 A. That's the date, yep.

2 Q. Were you on this Zoom hearing for Mr. Beutel's testimony
3 on November 12th?

4 A. I was.

5 Q. All right. And in the staff report which I'd like to go
6 to now, which is Exhibit 17, did you review the
7 categories of objection on the topics on Page 2 that
8 Mr. Beutel lists?

9 A. Yes.

10 Q. All right. And going in the area of navigation, let's
11 see, just looking at the report, he bullets them down
12 just to list them and then the second half of the page he
13 bullets them with a little discussion. Do you see that
14 there?

15 A. I do, I have it right In front of me, yes.

16 Q. Perfect. Okay. One of the categories he has is
17 navigation, which is the bullet at the bottom of Page 2.
18 Do you see that?

19 A. Yes.

20 Q. Great. And I think we talked about last time that your
21 navigation experience in terms of this has to do as a
22 recreational boater, correct?

23 A. In terms of as well as my time out doing marine surveys,
24 yes.

1 Q. But you don't have a captain's license, right?

2 A. I don't have a captain's license, no.

3 Q. At the bottom of Page 2, Exhibit 17, Mr. Beutel notes
4 that "navigation, this includes boating, waterskiing,
5 tubing, kayaking, paddle boarding, et cetera." Do you
6 agree with his classification of navigation?

7 A. I do.

8 Q. Okay. And then he goes on to state that this site will
9 have an effect on all those activities. Do you agree
10 with that statement also?

11 A. Yes.

12 Q. Then he proceeds to say at the bottom of Page 2, "The
13 significance of effect is debatable as is the amount of
14 navigational activity in Segar Cove." Do you see that?

15 A. I see that, yes.

16 Q. Do you have any basis to disagree with Mr. Beutel in that
17 statement?

18 A. Seems like it's his opinion, so I don't know that I have
19 a basis to disagree with it.

20 Q. Then going on to the end of that where he says, "floating
21 gear is safer to navigate than bottom gear because of its
22 visibility." Do you agree with that statement?

23 A. I guess in some senses, yes. I'm not really sure what
24 he's driving at there.

1 Q. Did you state an opinion as to the relative safety --
2 strike that.

3 You didn't state an opinion in your report as to the
4 relative safety between bottom gear and floating gear,
5 did you?

6 A. We did not, no. We didn't make that distinction.

7 Q. All right. Continuing on to Page 3 of Exhibit 17,
8 Mr. Beutel goes into a bullet point of recreation at the
9 top of Page 3 there, Mr. Whitney. Do you see that?

10 A. Yes, I do.

11 Q. And he notes that boating activities have been previously
12 acknowledged and that swimming through an aquaculture
13 site is not advisable. Do you agree with that?

14 A. I wouldn't swim through an aquaculture facility.

15 Q. Okay. That's good enough for me. He then goes on to
16 state, he references the five percent rule. I won't read
17 all the citations there. But what he then says is, open
18 quote, "if this site is permitted, Potter Pond will be at
19 three percent of allowable aquaculture activity. All
20 other activities will have 97 percent of the pond for
21 their opportunity."

22 Do you have any basis to disagree with Mr. Beutel's
23 statement of this?

24 A. Yes.

1 MR. CAPIZZO: I would object to that question.
2 It's beyond the scope of his expertise.

3 MS. NOONAN: Well, I disagree because he did
4 make a statement that we were under the five percent and
5 he goes into calculations of the relative amount of space
6 that -- he does talk about that in his report.

7 MR. DESISTO: It seems allowable and relevant.
8 He should answer.

9 Q. Mr. Whitney, do you have the question in your mind?

10 A. I think your question was, do I have an opinion as to the
11 accuracy of that statement or something to that effect?

12 Q. I took the exact quote and I asked you, do you have any
13 basis to disagree with that statement?

14 A. I do.

15 Q. What is that?

16 A. He's basing the three percent on the physical space, and
17 he's saying there's 97 percent of the pond for their
18 opportunity. You know, just with the buffers that are
19 established by the South Kingstown ordinance, that takes
20 additional area away. So I don't believe that 97 percent
21 is accurate.

22 Q. So you think the town buffers would cut into that
23 97 percent, right?

24 A. Yes.

1 Q. Okay. And you previously testified that you heard
2 Mr. Beutel's testimony the first day of these
3 proceedings, right?

4 A. I did.

5 Q. And you heard him testify that it is staff's opinion that
6 Mr. Raso has met all of the criteria for Category B
7 assent; do you recall that?

8 A. Vaguely. I don't remember his exact words. It's been a
9 number of weeks at this point.

10 Q. Well, just to refresh your recollection, I'm referring to
11 the transcript -- my phone is ringing for some reason.
12 If you guys can bear with me, I'm going to mute my office
13 call here.

14 [PAUSE]

15 Q. Going to the transcript of this hearing starting
16 Volume I, Page 30, did you review this first transcript
17 at all or just --

18 A. No. The only day I reviewed was the day of my testimony.
19 It was the only day I was provided.

20 Q. All right. Well, Page 30 of the transcript, Line 17,
21 Chairwoman Cervenka asked:

22 "And Mr. Beutel, in your opinion and based on your
23 review of the application materials, they not only
24 address the Category B criteria, but they were satisfied.

1 So the standard, in your opinion, was met for Category
2 B," to which Mr. Beutel answers: That's correct. It is
3 staff opinion that he has met all of the criteria for
4 Category B -- it says objections, but I think he meant
5 assents.

6 Does that refresh your recollection of Mr. Beutel's
7 testimony?

8 A. Yes.

9 MS. NOONAN: Madam Chair, may I just have a
10 moment?

11 CHAIRWOMAN CERVENKA: Yes.

12 [PAUSE]

13 MS. NOONAN: Thank you, Mr. Whitney. I have no
14 further questions for you.

15 THE WITNESS: Thank you.

16 CHAIRWOMAN CERVENKA: Okay. Mr. Capizzo, back
17 to you. I also wanted to just follow up on the exhibit
18 issue we had last time. I think that the exhibits were
19 found. They had been sent in hard copy to the agency. I
20 think they've been provided to Ms. Noonan. Is that
21 correct?

22 MS. NOONAN: Yes.

23 MR. CAPIZZO: That is correct, Madam Chair.
24 They were sent hand-delivered, I believe, to Coastal

1 Resources, I believe on Tuesday before the first hearing
2 so I think it was on the 10th. They were inadvertently
3 not sent. And relating to Exhibits 20, I think 20 --

4 MS. NOONAN: 24, 25 and 26.

5 MR. CAPIZZO: That's correct, were not sent to
6 Ms. Noonan via email or Mr. Wagner or to Coastal via
7 email. They were hand-delivered. No copies were sent to
8 Ms. Noonan and Mr. Wagner on November 23rd. I did
9 receive confirmation from Ms. Turner that they did in
10 fact did receive the amended exhibit list on the 10th,
11 but that it had not been uploaded to the system. It's my
12 understanding the Subcommittee members have that
13 information before them now.

14 CHAIRWOMAN CERVENKA: They are up on our
15 packet. So you intend to use these, correct, or
16 introduce them?

17 MR. CAPIZZO: Yes. I would ask that they be
18 marked as a full exhibit. I did take testimony from
19 Mr. Whitney on those exhibits. I ask they be marked as
20 full.

21 MS. NOONAN: I do not have an objection to
22 Exhibit 24, the visuals that you took pictures of. I
23 generally object to 25 and 26. They are municipal
24 ordinances and regulations that I don't think need to be

1 part of the record. I also -- what I don't see in
2 Exhibit 25 is, that's just the town certification of the
3 document. So my objection is that we do not know for
4 certain that CRMC has accepted these ordinances as part
5 of the Harbor Management Plan.

6 CHAIRWOMAN CERVENKA: Okay. So just as to kind
7 of applicable legal authority, do those need to be
8 exhibits, Mr. DeSisto?

9 MR. DESISTO: Well, the question being raised
10 is relevance, but otherwise they are admissible
11 documents. So I would recommend that they be admitted
12 into evidence particularly since they have been certified
13 to. There will be questions as to whether or not they
14 are relevant and are applicable to the Harbor Management
15 Plan, but they are otherwise admissible documents.

16 CHAIRWOMAN CERVENKA: Okay. So they come in,
17 and then I guess, Ms. Noonan, you can make argument as to
18 their relevance or weight.

19 MS. NOONAN: Correct. Thank you.

20 MR. CAPIZZO: While we're doing cleanup real
21 quick, there were two other exhibits marked for ID and
22 accepted subject to certification by the South Kingstown
23 Waterfront Advisory Commission and the Rhode Island
24 Marine Fisheries Council. Emails were sent to Ms. Turner

1 as well as Ms. Noonan, Mr. DeSisto and Mr. Wagner. We
2 did receive certification of the South Kingstown
3 Waterfront Advisory Meeting Minutes from February 14,
4 2018, and that's on opposition on the amended proposed
5 exhibit list, Number 12. And then Number 13 on that same
6 amended proposed exhibit list we did receive
7 certification from the Chair of the Rhode Island Marine
8 Fisheries Council for the meeting Minutes of 3-14-18. So
9 I'd ask those for the record be marked as full exhibits
10 as well.

11 CHAIRWOMAN CERVENKA: Okay. I see that 12 --
12 it looks like we have the certified copy that we're
13 looking at, and then I'm Just waiting for 13 to open up.
14 Is that accurate, Ms. Turner?

15 MS. TURNER: Yes, Madam Chair, we do have
16 those.

17 CHAIRWOMAN CERVENKA: Okay. And I see that we
18 have the certification from the Rhode Island Marine
19 Fisheries Council for 13. So thank you for supplying
20 those certifications.

21 MR. CAPIZZO: And the only other issues while
22 we're on this is on the second amended proposed exhibit
23 list. Number 10, the South Kingstown Waterfront Advisory
24 Commission letter to CRMC dated 2-15-18, I just ask --

1 this is included. I believe this was a letter sent to
2 Mr. Beutel from the South Kingstown Waterfront Advisory
3 Commission as a result of their hearings which we have
4 the Minutes that are marked as full exhibits and already
5 part of the Coastal file. Just for the purposes of the
6 record, I would like that to be marked as Opposition
7 Exhibit 10. I don't think it has been formally
8 introduced, although part of a very comprehensive CRMC
9 file. So if there's been a reference made to it, as well
10 as to the Minutes of those hearings, and that letter is
11 the culmination of the hearings that took place that were
12 filed with Mr. Beutel.

13 MR. DESISTO: Is it already part of the CRMC
14 file?

15 MR. CAPIZZO: It is, Mr. DeSisto. My concern
16 is I am not sure where it lies in that comprehensive
17 file. So I would just like it marked as an exhibit. If
18 someone is reviewing this, they can refer to that versus
19 trying to go through the entire file.

20 MR. DESISTO: It seems duplicative.

21 MR. CAPIZZO: I don't disagree with you, but
22 just for the purpose of ease of reference of that
23 document which has been referred to.

24 MR. DESISTO: Haven't we already had this

1 discussion?

2 MR. CAPIZZO: Not on this.

3 MR. DESISTO: Not for this particular document,
4 but other documents that are part of the CRMC file where
5 there's been an attempt to introduce them.

6 MR. CAPIZZO: I think there were multiple
7 documents, and so I don't disagree with you on the
8 duplicity of those documents. But because this document
9 is referenced specifically and as a result of those
10 Minutes, I just would request it be marked as a full
11 exhibit.

12 MR. DESISTO: Madam Chair, I am very reluctant
13 on this because it seems if a document is already part of
14 the CRMC file, you don't want the precedent to have it
15 marked as a separate exhibit. It just doesn't wash.

16 CHAIRWOMAN CERVENKA: Yeah, I mean, I'm okay
17 just relying upon what's already part of the file that is
18 an exhibit in this case. It might be confusing if it's
19 reviewed at a later time that there are two separate
20 exhibits but they are the same. So I think for ease of
21 administrative record it would be better to just have
22 one.

23 MR. DESISTO: You said it better than I. Even
24 Mr. Capizzo agrees with that. I can tell by his smile.

1 MR. CAPIZZO: No problem. I will move along.
2 Madam Chair, with your permission, just a brief redirect.
3 But before I begin a brief redirect, I was not sure, I
4 can't recall from the last hearing whether Mr. Wagner had
5 questions or he had no questions for this witness. I
6 can't see him, but apparently he can hear us. I don't
7 know if he is able to unmute himself.

8 MS. NOONAN: He had indicated that he had no
9 questions for this witness. I asked that specifically.

10 CHAIRWOMAN CERVENKA: Mr. Wagner, can you
11 confirm?

12 MR. CAPIZZO: While we're waiting for him, I'll
13 move along with my redirect. Hopefully he can resolve
14 his audio/visual issues.

15 CHAIRWOMAN CERVENKA: Maybe tell him to try to
16 get in via a different device. I mean, go ahead. We'll
17 figure it out.

18 MR. CAPIZZO: Yes. I would suggest, and Ryan
19 can take care of it, logging in and logging back in or
20 potentially a different device. I did see him
21 originally. I'll move along with.

22 REDIRECT EXAMINATION BY MR. CAPIZZO

23 Q. Payson, how are you today?

24 A. Good, Christian. How are you?

1 Q. Good, thanks. I just have a couple of questions. One
2 related to your testimony that Beth had asked you about,
3 this one for one skier. In the transcript, Page 472 of
4 the transcript, Beth had asked you:

5 "Again, moving this whole thing in terms of just
6 skiers is for one skier, additional skier to be allowed
7 to use the cove if the farm is put into place."

8 Your answer is: "One at a time. Not one total."

9 Is that correct?

10 A. That's correct, yes.

11 Q. Okay. So we're talking about waterskiers. I know your
12 testimony has been focused on towed water sports, the
13 application of the two ordinances to towed water sports
14 and personal watercraft and the relation to the buffer.
15 The impact it would have, and I believe Ms. Reynolds
16 asked you about the geometry, and we looked at Figure 5
17 with the circles. I'm getting to the question.

18 Does the proposed leased area impact other
19 recreational uses, such as someone just taking a
20 powerboat without a towed skier or a sailboat down that
21 quarter of Segar Cove where the proposed farm is?

22 A. I would say in terms of a power boater, obviously, or any
23 boater, if there are objects in the water then a boater
24 that may have gone there before something was there will

1 not go there because there's an object in the way. So,
2 yes, I would say in that instance, yes.

3 Q. And where would it push like a sailboat or a water boat,
4 I know we talked about this compression, does it push
5 them closer to the cove?

6 A. It would.

7 Q. And in regards to that compressed area, I know you talked
8 about the turns having to be tighter creating more wake,
9 creating more speed to make those turns. When you talk
10 about one skier at a time, that's usually one boat with
11 one skier or potentially two skiers on a boat
12 potentially; is that correct?

13 A. That's how skiing is done, yeah, it's normally one to --
14 I've actually done five. But, yeah, I think what we were
15 talking about was the number of vessels that could be
16 engaged in that activity at the time. I think that's
17 what the discussion was about.

18 Q. Okay. If those boats are operating in that compressed
19 area in the cove, when I say "those boats," waterskiing,
20 whether it's one, two, three or four, would you agree
21 with me that -- strike that. Let me rephrase the
22 question.

23 When you have waterskiing happening in that area,
24 you just testified that you would be unable to use that

1 corridor where the proposed farm is. So either you're
2 not using it or you're forced to go to another area of
3 the cove to navigate in that cove, correct?

4 A. Correct.

5 Q. Okay. What happens to -- what's the impact of
6 individuals in the water in that compressed area as it
7 relates to towed water sports and waterskiing, that
8 compressed area?

9 A. Can you explain what you mean by "individuals"?

10 Q. Yes. So let's say you've taken people skiing before, you
11 testified. You're waterskiing in that compressed area,
12 you said it's tight turn, higher speed to make those
13 turns if that farm was there. The skier falls, multiple
14 vessels in the area. What's the impact of that
15 compressed area on waterskiers or those recreating in the
16 water?

17 A. In the incident you described, if a skier falls obviously
18 that becomes a person in the water. And in a compressed
19 area, you know, boats are supposed to be maintaining
20 distance so that becomes something that a boat has to
21 stay 200 feet away from. So it raises the awareness and
22 also the compressed area reduces the ability to be able
23 to react, to be able to either go left or right to avoid
24 that person in the water.

1 Q. There was some testimony that you had made about whether
2 or not you did -- I think Mr. Murray asked a question
3 about traffic study or Beth had asked a question whether
4 or not you conducted traffic studies or barometric
5 readings for depth. You didn't do any of those, correct?

6 A. We didn't, no.

7 Q. You have given opinion about the Coastal Resources
8 regulations as it relates to the burdens that Mr. Rasso
9 has to satisfy in order to get this application approved
10 through Coastal?

11 A. Yes. There are a number of them, yes, yes.

12 Q. Am I correct in saying that those burdens, those
13 responsibilities are Mr. Raso's, not those who live on
14 the cove, correct, to satisfy those conditions?

15 A. Correct.

16 MR. CAPIZZO: Just one moment, Madam Chair.

17 [PAUSE]

18 MR. CAPIZZO: I don't think I have any other
19 questions. Thank you, Payson.

20 THE WITNESS: Thank you.

21 MS. NOONAN: Thank you, Mr. Whitney.

22 CHAIRWOMAN CERVENKA: Mr. Capizzo, are you
23 calling a second witness?

24 MR. CAPIZZO: I see Mr. Wagner logged on twice.

1 I don't know if we have him.

2 MR. WAGNER: Can you hear me?

3 CHAIRWOMAN CERVENKA: I can.

4 MR. WAGNER: I have no questions. Ms. Noonan
5 is correct, I have no questions for that last witness.
6 Thank you.

7 CHAIRWOMAN CERVENKA: Great, thanks. Are you
8 okay with participating this way?

9 MR. WAGNER: Yes. As long as I can hear and
10 talk, that's great. Thank you. No one is going to miss
11 my face.

12 MR. CAPIZZO: Madam Chair, I would call as my
13 next witness -- Ryan, if you could grant access to Kevin
14 Hunt, please. Kevin, can you hear me?

15 MR. HUNT: I can.

16 MR. CAPIZZO: Can you see me and the other
17 members of the Subcommittee as well as CRMC staff?

18 MR. HUNT: I see you and myself.

19 MR. CAPIZZO: As long as you can hear me. I
20 think, Ryan, he can change his view maybe.

21 [PAUSE]

22 KEVIN HUNT

23 Being duly sworn testifies as follows:

24 MR. DESISTO: Please state your name and spell

1 it for the record.

2 MR. HUNT: My name is Kevin Hunt, K-E-V-I-N,
3 H-U-N-T.

4 MR. DESISTO: Thank you.

5 MR. CAPIZZO: Madam Chair, may I proceed?

6 CHAIRWOMAN CERVENKA: Yes.

7 DIRECT EXAMINATION BY MR. CAPIZZO

8 Q. Good late morning, Kevin. How are you?

9 A. Very good, Christian. How are you doing?

10 Q. Good, thanks. All right. Can you tell the Subcommittee
11 and the staff -- actually, let's start here. Do you own
12 a house on Segar Cove?

13 A. Yes. I live at 98 Segar Court on Potter's Pond with my
14 wife Kristen and two children. I've been there since
15 2002.

16 Q. How did you come to Segar Cove?

17 A. Well, I grew up in Matunuck and I used to fish and play
18 on the pond with my father and grandfather. I had great
19 times. And I decided when I was younger that I would
20 somehow get back to the pond. Honestly I sort of
21 forgotten about that promise.

22 September 11, 2001 it was brought back into focus.
23 I was on the 74th floor of the Trade Center, South Tower,
24 and I survived. That night Kris and I decided to move

1 back to Rhode Island full-time, and six months later we
2 bought a home on the pond.

3 Q. The home that you're talking, Kris is your wife, correct?

4 A. Yes.

5 Q. The home that you're talking about, and has been
6 referenced, let me take a step back.

7 You participated in the hearings on the 12th, 13th
8 and 17th or at least have been listening to everyone's
9 testimony?

10 A. I did.

11 Q. You reviewed the Coastal Resources file?

12 A. I did, and the application, yes.

13 Q. And did you have an opportunity to view Mr. Beutel's
14 report?

15 A. Yes, I did, and I heard his testimony as well.

16 Q. Kevin, the property that we're talking about is known as
17 Ram's Point; is that correct?

18 A. Yes, it's known as Ram's Point.

19 Q. You lived there since 2002. Can you describe your
20 property on Ram's Point? I know we've seen it from a
21 map. I'm trying to get my exhibit to populate. While we
22 do that, can you describe the area for the Subcommittee
23 where you live and how you access the property?

24 A. Yeah. So as Christian said, I am on Ram's Point. To

1 access it, I go down Sycamore off Matunuck Beach Road and
2 then go down Segar Court. There's a driveway, a gravel
3 driveway, and going to my property is probably about a
4 half a mile long. We have a six-acre parcel there on
5 both Segar Court, Potter Pond and Sycamore Cove.

6 Q. You've heard reference made to your dock. Can you
7 explain the two sides, the eastern and western side of
8 your property?

9 A. Yes. The eastern side of my property is where I have the
10 dock. It's the western side where the proposed farm is.

11 Q. Are you familiar with Potter Pond?

12 A. I have a birds eye view of Potter Pond. In fact, Perry's
13 existing lease is right on [ZOOM INTERRUPTION] and I have
14 boated on that pond for a number of years. I have a
15 motorboat, paddle board, kayak. In the old days I used
16 to go out in my row boat there. I used to do some
17 swimming. Not as much now. In the old days I did some
18 skiing with the kids. They've gotten older and don't do
19 much more of that anymore.

20 Q. How are you familiar with Mr. Raso's current operations?

21 A. I've known Perry since I moved there. Actually, I was
22 one of his biggest advocates for that farm. It's only
23 about 240 yards off my property. I watched it grow from
24 the small farm where he used to service -- I heard him

1 talk about small skiffs. He had a smaller skiff back
2 then. Him and his dog used to service it, under the
3 water, very small. And now as you know, it's grown.
4 It's grown to above water industrial complex. He has big
5 crews, barges, permanent floating work station there.

6 Despite that, Perry and I remain friends. I still
7 support him in his efforts there. But it's a different
8 facility than it was in the old days and, you know, it is
9 not only visually, but it's a lot of activity there.
10 Perry has a much deserved reputation for his work ethic.
11 Anyone who has seen him in the restaurant or out on the
12 pond, he works all the time as does his crew. They are
13 not there nine to five, but they are there all hours.

14 In fact, on September 5th of this year I was woken
15 by lights on my bedroom wall. Low and behold out there
16 in the facility were all these boats and lights in the
17 middle of the night. So, you know, it's really a
18 full-time manufacturing facility.

19 Q. How would you describe your relationship with Perry over
20 the years?

21 A. It's been very good. I mean, again, I'm very supportive
22 of him, both his farm and also the restaurant. As you
23 probably recall, in the early days, he asked me
24 for business advice. People were looking to buy equity

1 into his restaurant, and I told him borrow the money.

2 Don't give up equity. Don't sell the equity. It would
3 go against you long-term.

4 Q. In regards to the current operations that are off of your
5 -- his current operations I should say, have you had the
6 opportunity to observe people navigating in or around his
7 current operation?

8 A. No. I heard some of that testimony. You know, I haven't
9 seen anyone go through there with paddle boats.
10 Certainly I didn't try. Other buoys out there marking
11 his place. I see people go around the edges, but I've
12 never seen anyone go through there. Again, I'm retired.
13 I am there every day of the week, you know, and I've
14 never seen anybody go through there.

15 Q. Can you describe for the Subcommittee, and I'm actually
16 -- let's see. For the record, this is Exhibit 2 which
17 has been entered as a full exhibit. Hold on a second.

18 [PAUSE]

19 [EXHIBIT DISPLAYED]

20 Q. Kevin, can you see Exhibit 2, or Figure 2, I should say?

21 A. I can.

22 MR. CAPIZZO: Okay. Madam Chair, are you able
23 to see it as well?

24 CHAIRWOMAN CERVENKA: I am. Thank you.

1 Q. So Kevin, Ram's Point I'm going to take the cursor, this
2 is for the record, where the cursor is right now, that is
3 your property?

4 A. It is.

5 Q. And the causeway you referred to, Kevin, is it from your
6 house, it goes along here?

7 A. Right all the way up to Segar Court Road.

8 Q. Where the cursor is now to the -- let's say to the
9 southeast of your property, is that where your current
10 dock is now?

11 A. It is, yes.

12 Q. Okay. Could you describe this area of Segar Cove for the
13 Subcommittee, please, and what this is known as?

14 A. Yes. That's called Sycamore Cove. And actually it's a
15 lot of eelgrass and very interestingly, by the way, the
16 CRMC I think and DEM have sort of an experimental oyster
17 field in that area along the causeway all the way down to
18 my neighbor's property. They are growing oysters, which
19 is sort of interesting, the size of dinner plates out
20 there. So that area is closed off, sort of slackish
21 water.

22 So everything north of my dock sort of into that
23 cove is not, you know, is not a great area to fish or
24 swim or do much in because the eelgrass and because it's

1 sort of the more stagnant water than the experimental
2 facilities there.

3 Q. So what type of recreational water dependent activities
4 take place in Sycamore Cove based on your proximity to
5 living right there?

6 A. Not much. You have some fishing. Actually, when there
7 was hatching in late May, early June, there's some
8 fishing there, but people avoid the northern end of that
9 pond because of the eelgrass. They are really sort of
10 more in between my property and Perry's existing
11 facility, then between my point, Ram Point, and Meadow
12 Point which is off to the east of my property.

13 Q. Are you familiar with what has been referred to in the
14 testimony as the northern basin?

15 A. Yes, I am.

16 Q. Can you tell the Subcommittee how you're familiar with
17 the northern basin?

18 A. Yes. That's the area where we see a lot of recreational
19 boating. You're talking about on Segar Cove; is that
20 correct?

21 Q. Well, I'm talking not -- let's start with the northern
22 basin which is referred to at Skier's Cove. Some people
23 refer to it as Skier's cove.

24 A. I understand now. Northern basin of Potter Pond, yes,

1 I'm very familiar with it. I'll boat up there on an
2 occasional basis. It's very picturesque, very nice.
3 It's a ways away from my dock.

4 One of the things that hasn't come through in the
5 testimony, in order to get up there to ski, it's going to
6 take a while. You're going to at least spend, depending
7 how fast you're going, it's going to take you five or
8 15 minutes in a powerboat, and certainly much longer,
9 it's a long pull on a kayak or paddle boat.

10 [EXHIBIT DISPLAYED]

11 Q. For the record, I'm going to show you what's been marked
12 as a full exhibit, Figure 1B, as in boy, the ESS
13 technical peer report. Are you familiar with this map?

14 A. I am.

15 Q. How are you familiar with it?

16 A. It's been part of the -- this is the ESS's report, and it
17 sort of shows all the areas, the red being it varies you
18 have an issue in terms of, you know, power boarding and
19 power boating, et cetera.

20 Q. So where the cursor is on the screen, Kevin, that's your
21 property?

22 A. Yes.

23 Q. Okay. And then where the cursor is now to the south of
24 your property, that is in the general area of where

1 Mr. Raso's current operations is in proximation to your
2 property?

3 A. It is, yes.

4 Q. What type of recreational activity takes place in this
5 part of Potter Pond? When I say this part of Potter
6 Pond, I'm talking about around Mr. Raso's current
7 operations.

8 A. All sorts of craft will come in, but it's rare that you
9 see -- you won't see any towed sports there. It's just
10 too shallow. But you will see powerboats cruising
11 through there. There's a lot of traffic going through
12 that area, you know, from the various moorings and docks
13 going out toward the ocean, or the cut way. But in that
14 area you can only see paddle boards and kayaks and that
15 type of craft. Again, you don't get too close to Perry's
16 holdings.

17 Q. Okay. If you are going north to the northern basin, can
18 you describe what type of recreational activity takes
19 place as you head north up Potter Pond following the
20 cursor?

21 A. Right. It's really shallow. There's just a really
22 narrow channel heading north. You have to sort of go
23 very slow or have your boat planed, if you have a power
24 boat, to get through that area. And then, again, it's

1 narrow until you really get up all the way to that skier
2 basin or that northern basin. Then you have a little
3 more room there to do whatever you want.

4 As I said, there's just two areas deep enough and
5 wide enough to do power boating, sailing, those types of
6 activity.

7 Q. So other than the northern basin, you heard the testimony
8 that the only other deep water area in Potter Pond is
9 Segar Cove; is that correct?

10 A. That's correct.

11 Q. I want to draw your attention now to 2 Segar Cove. Hold
12 on one sec. Are you able to see Figure 3 for the record?

13 A. I can.

14 Q. Are you familiar with this aerial?

15 A. Yes, I am.

16 Q. Okay. So let's talk about your recreation on Segar Cove
17 if you can describe for the Subcommittee what recreation
18 you and your family do on Segar Cove?

19 A. Yeah. As I said, we used to do some skiing and tubing,
20 but we've gotten away from that as we got old. I'm
21 hoping for grandchildren so I can introduce them to that.
22 Right now my wife and I will do some cruising through
23 that area. I have a paddle board and I enjoy using my
24 paddle board. That cove, Segar Cove, is one my favorite

1 coves to use. Actually it's where I store my paddle
2 board. The way often to access that is through my
3 causeway, my paddle board. And I'll go out there as well
4 with my kayak. I really enjoy the paddle board.
5 Sometimes that's spills on it.

6 Also along that side of my property is, it's not
7 going to be anymore, but it's my secret fishing spot. I
8 get a lot of fishing there in all times of seasons, not
9 just when there's hatching. I see other people use that
10 as well.

11 Actually one of my favorite things to do on that
12 side of my property is at low tide I get my boots on and
13 stir a stick and wander along that shore way. Because of
14 the prevailing winds there's a lot -- you get some
15 interesting debris and whatnot along the shoreline there.
16 So I'm very familiar with that shoreline in the areas
17 proposing for the aquaculture farm. I recreate in that
18 cove myself quite a bit. As well, along the area that
19 hugs my property, you know, we refer to it in the pond as
20 the slow lane.

21 Along that lane if you're not just participating in
22 the tubing and whatnot, you stay out of their way and,
23 you know, as well, it's a great area -- I've seen
24 pictures that you've shown in your exhibits already, the

1 Committee showing. This area of the pond does not have
2 houses. It has great vegetation and trees. It has a lot
3 of wild life.

4 Right there in my causeway, there's an osprey's
5 nest. That osprey's nest was built in conjunction with
6 the CRMC and DEM. The utility group, because we kept
7 looks osprey to the power lines there, they were trying
8 to build nests there. So a lot of people including
9 myself watch from the water the osprey's nest, and they
10 have chicks every year. It's sort of fun to watch.

11 Also along that corridor on my property you see
12 there's a family of fox that you see toward the tip of
13 Ran's Point. Also an interesting thing in that property,
14 the deer love to swim from Ram's Point over Prospect
15 Point and further over to the Meadow Point there to the
16 east. So there's a lot of things going on that myself
17 and other people enjoy in that corridor.

18 Q. When you talked about this osprey nest you say it's on
19 your causeway. Where about on this map on the causeway
20 would you say that osprey nest is closer to your house?

21 A. The very -- if you look at between my house and the
22 narrow area, it's right in the narrow area of the
23 causeway on the eastern side. Right about there. So
24 again move over a little bit because that's where it is.

1 Q. Okay. You talked about this slow lane as compared to the
2 other portion of the Segar Cove. What would you consider
3 that, the fast lane?

4 A. Well, yeah. I think the middle of Segar Cove you're
5 going to get more tubing. You know, I walk down that
6 causeway, I exercise my dog, basically the dog exercises
7 me, several times a day and it gives me a great viewpoint
8 on that body of water. You know, every night that I go
9 up there, 90 percent of the time there are families out
10 there, you know, doing tubing, doing some waterskiing.
11 It seems like families come home after work and go out on
12 the boats with their kids for an hour or two. You know,
13 that's the fastest lane in the middle I would say.
14 You're going to get more boat traffic. I know I avoid
15 those wakes and hug the shoreline so I don't embarrass
16 myself falling off the paddle board.

17 Q. You heard the testimony that you can paddle from both
18 Perry and from some of the witnesses that he's presented
19 that you can certainly paddle board through these types
20 of aquaculture farms?

21 A. I heard the testimony. I know I wouldn't try it. You
22 know, two things. I grew up when you see buoys, if you
23 see buoys you give them respect. You don't go in there
24 above water or below water facility.

1 I haven't seen them do that on Perry's existing
2 farm. I certainly, you know, I don't think I could
3 paddle through there at all. I wouldn't go out in the
4 kayak through there as well.

5 Q. You mentioned your secret fishing spot, which is no
6 longer a secret, but where did you say that spot is that
7 you typically fish off your property?

8 A. Yeah, it's if -- it's about halfway, almost parallel to
9 my house. So you go back a little bit, right about
10 there. So thanks for giving that up, Christian. I
11 shared my secret with the world.

12 Q. Okay. Other than fishing in that area and some of the
13 recreational activities that you described, did you
14 observe any type of shellfishing or other type of
15 activities in that area where the proposed farm is going
16 to be?

17 A. Definitely, you know, I was surprised that they said no
18 shellfishing. I see on a regular basis, both wild and
19 commercial shellfishing. Those of you who have done
20 shellfishing, it's hard work. These commercial shell
21 fishermen are back there on a regular basis. If they
22 were taking clams out of that area, they certainly
23 wouldn't be bad. So I've seen them regularly there.

24 MR. CAPIZZO: I think you provided us with a

1 photograph. For the record, this has been premarked as
2 Exhibit 6, so I'll mark it for ID purposes. Give me one
3 second.

4 [PAUSE]

5 [EXHIBIT DISPLAYED]

6 Q. Kevin, do you recognize this photograph?

7 A. Yes, I certainly do. That's the photograph from June 5th
8 of 2018. I'm standing on my causeway. I talked to this
9 gentleman, Gary Anderson, who is a commercial shell
10 fisherman standing right in the spot that Perry wants to
11 use for his aquaculture farm.

12 Q. Where did you take this photograph from, from your
13 property?

14 A. Yeah. I'm standing on my causeway, probably the western
15 side of my causeway. It's very narrow, this causeway.
16 I'm standing on this. I was walking by, and I saw him
17 and we chatted. He was third or fourth generation shell
18 fisherman. He lives over in Prospect Point.

19 Q. Is this a fair and accurate representation of what you
20 observed on that day in June?

21 A. That is.

22 MR. CAPIZZO: Madam Chair, I ask this be marked
23 as a full exhibit, Opposition 5, excuse me, 6, for the
24 record.

1 CHAIRWOMAN CERVENKA: Any objection?

2 MS. NOONAN: No.

3 MR. CAPIZZO: Thanks, Beth.

4 CHAIRWOMAN CERVENKA: That's admitted full.

5 [OPPOSITION EXHIBIT #6 MARKED FOR ID]

6 Q. Kevin, you had the opportunity to observe the photographs
7 that Perry had submitted in part of his application,
8 around 12, I think he said 12 to one every day for a
9 period of time.

10 A. I did.

11 Q. Do you agree with Mr. Raso's application which states,
12 reading from Number 10 which is part of this CRMC file
13 where it asks Mr. Raso how he has demonstrated that the
14 alteration or activity will not result in significant
15 conflicts with water dependent uses and activities, such
16 as recreational boating, fishing, swimming, navigation
17 and commerce.

18 Do you agree with Mr. Raso's statement in his
19 application that he's only seeking -- in a proposed
20 leased area which will not be impeded if this lease is
21 granted. I've never seen anyone fishing or shellfishing
22 either commercially in the proposed area.

23 MR. DESISTO: Before the witness answers the
24 question, since he's fact based, I think the question

1 should really be whether or not he's observed something
2 that would be contrary to what was in there rather than
3 asking for an opinion. He's testifying on facts, and I
4 think that's fine. Opinion, I don't think, is
5 appropriate here.

6 CHAIRWOMAN CERVENKA: Can you reformulate your
7 question, Mr. Capizzo?

8 MR. CAPIZZO: Yes.

9 Q. So Kevin, did you hear Mr. DeSisto's articulate
10 suggestion of the question?

11 A. Yes.

12 Q. Do you understand the question?

13 A. Yes. So you're asking what have I observed?

14 Q. Correct.

15 A. It's what I observed. I think you heard from some
16 witnesses who have been there a day or you've seen some,
17 you know, moment-in-time photos. But as I said, I'm
18 there every day. With my own eyes I see a great deal of
19 activity on Segar Cove.

20 As I said, some of these moments in time don't
21 depict the busy time there, which is usually in the
22 evening, when again these hardworking families come home
23 and bring their family out for tubing and waterskiing and
24 recreating.

1 [EXHIBIT DISPLAYED]

2 Q. Are you able to see that, Kevin?

3 A. I am.

4 Q. You said you reviewed Perry's application. You're
5 familiar with the proposed configuration of the --
6 polygon?

7 A. Yes.

8 Q. I think it's been referred to as Option B?

9 A. Yes.

10 Q. On Figure B, is that your understanding of what the farm
11 is going to -- how it's going to be configured in Segar
12 Cove?

13 A. That's my understanding, yes.

14 Q. What if any concerns do you have as to that location in
15 Segar Cove as it relates to where you live?

16 A. Well, that's already been testified. That's been around
17 800 feet along my shoreline, and also Steven's and
18 Alicia's shoreline. In some ways it's going to be as
19 close as 10 feet off my shoreline and only as far away as
20 65 feet. So based on that, you know, it's really going
21 to preclude me from swimming, fishing, launching a boat
22 or paddle board in that area. There's some talk about
23 maybe you could circumnavigate. You can't circumnavigate
24 there. That water is too shallow. There are some huge

1 boulders that are just off my causeway in the middle of
2 that right where it pinches there. You couldn't
3 circumnavigate it if you wanted to.

4 You know, a sizeable part of my property would be
5 closed off to me in terms of entering the waterway at
6 that point. Again, it's an area I enjoy recreating there
7 unlike the other side of the pond which is sort of
8 stagnant and full of eelgrass.

9 Q. What impact does this have on your access to the
10 causeway?

11 MR. CAPIZZO: I'm going to share with you
12 Figure 4E if you give me one second.

13 [EXHIBIT DISPLAYED]

14 Q. Kevin, can you see Figure 4E?

15 A. I can.

16 MR. CAPIZZO: For the record, this is
17 identified as modified proposed aquaculture lease
18 distance to the shoreline.

19 Q. Are you familiar with this document?

20 A. I am.

21 Q. For the record, is the proposed polygon Option B off of
22 your property?

23 A. Yes.

24 Q. The causeway you're talking about, I want to take the

1 cursor from your house, going down. Is this the causeway
2 we're talking about right here?

3 A. It is.

4 Q. Can you explain how this will impact your access to that
5 causeway?

6 A. It won't impact my access to that -- well, I couldn't
7 reach that causeway from the water. If I wish to try to
8 get over that side, I don't think there's any way I could
9 get over there in any type of craft. I tried to take a
10 look at it from the water because, you know, we had
11 erosion issues there from Sandy. In Sandy it was
12 completely under water, so we tried to take a look there,
13 go from walking along it and also from the water to make
14 sure I'm not losing any more soil, et cetera. My main
15 issue though is if I want to launch, I'm lazy, if I want
16 to launch my paddle board from there it would not -- I
17 can't see a way that I would be allowed, that I could get
18 through that area in my paddle board or my kayak or any
19 craft.

20 Certainly, fishing, he's right there in my secret
21 spot, and I think I would have difficulty fishing in my
22 spot anymore.

23 Q. You had mentioned that there are some rather large rocks.
24 Where are those rocks, if you could, in regards to this

1 map?

2 A. If you move the cursor, let's see, move up from there
3 just past that narrow area, there are two very large
4 boulders right about there. You know, one bigger than
5 the other. There's literally no way -- that shore line
6 is very rocky, it's shallow, then it falls off to a
7 sandier bottom.

8 In the area that is between the proposed farm
9 boarder, keep in mind, it would be tough to get -- you
10 know Perry is really good with those big barges of his,
11 but I don't know how -- I don't see how he's going to get
12 through there.

13 Q. Well, you heard the testimony that they would put up the
14 work barges on the inside of this proposed farm?

15 A. I've heard the testimony. Again, you know, I read the
16 application. The application doesn't talk about any of
17 these things. They are talking about no machinery, they
18 are talking about no sorters, they are talking about not
19 having the boat docked there overnight. His application
20 doesn't mention any of those things. It doesn't mention
21 the hours of operation either.

22 Q. How far, if you know, will this proposed facility if
23 allowed be from your house?

24 A. My house is 151 feet from the shoreline, so you're

1 talking about 200 feet. I hear -- you know, I can hear
2 them very clearly from 240 yards away on the other side.
3 Now we're talking 200 feet. Basically they are putting a
4 commercial facility 200 feet from my home. I'm not aware
5 of any regulatory rule in the state that has ever
6 permitted that.

7 Q. You talked about -- you heard the testimony from Perry,
8 and I think Madam Chair had also mentioned it as well,
9 that Perry said he's not going to use, I believe, the
10 water hoses or the sorters, machinery that you can hear
11 from the other facility. You heard that testimony?

12 A. I did.

13 Q. You said you reviewed the application but you didn't see
14 that in there, did you?

15 A. I did not.

16 Q. You mentioned something about your concerns about the
17 hours of operation. Can you elaborate on that a little
18 bit?

19 A. You know, my experience with his existing facility is,
20 it's open all hours. You know, it's 240 yards away, but
21 I can hear a lot of it. So I am concerned about hours of
22 operation. It wasn't stipulated.

23 You know, my experience with his previous thing
24 is -- his existing farm is it grew this small thing to

1 this very large farm. It grow over its regulatory
2 boundaries, and that was pointed out in the ESS analysis.
3 We told the CRMC it was correct, but, you know, I'm
4 concerned that, you know, once the farm is there, you
5 know, if he wants to bring machinery in, if he wants to
6 operate whenever, you know, I have very little ability to
7 stop that. It's not in his proposal. It's in his
8 testimony. But it seems like CRMC is a very busy agency.
9 I'm not sure if they are in the business of enforcing
10 these types of things once the application is approved.

11 MR. CAPIZZO: Can I have one moment, Madam
12 Chair?

13 CHAIRWOMAN CERVENKA: Okay.

14 [PAUSE]

15 Q. Kevin, were you present when ESS conducted their site
16 visit in June of 2018?

17 A. I was.

18 MR. CAPIZZO: For the record, this is
19 proposed -- it has been marked as a full exhibit. This
20 is the visualization that we were talking about,
21 Exhibit 24.

22 [EXHIBIT DISPLAYED]

23 Q. Kevin, are you able to see what's been labeled as ESS,
24 waterfront properties Segar Court, existing conditions

1 figure?

2 A. Yes.

3 Q. Are you familiar with this picture?

4 A. I am, yes.

5 Q. Could you tell the Subcommittee how you're familiar with
6 this picture?

7 A. Yeah, I was there when it was taken. That is a picture
8 from the causeway, my causeway, looking out at a boat
9 that is in the area proposed by Perry for his new aqua
10 farm.

11 Q. The boat in the area, is that -- are you familiar with
12 that boat?

13 A. Yes. That's Dave's boat.

14 Q. I was going to say -- you mean David Latham?

15 A. Yes.

16 MR. CAPIZZO: Bear with me one moment, please,
17 while I cue up the other photo.

18 [PAUSE]

19 [EXHIBIT DISPLAYED]

20 Q. Kevin, do you recognize this photograph?

21 A. I do.

22 Q. For the record, it's Figure B1 view from front property
23 Segar Court visual simulation of proposed aquaculture
24 lease boundary. How are you familiar with this picture?

1 A. Again, I was there when it was taken. It is showing the
2 boundaries of Perry's proposed aquaculture farm.

3 Q. And you heard Payson's testimony earlier about how he
4 took the GPS coordinates as it relates to this polygon
5 shape?

6 A. Yes.

7 MR. CAPIZZO: Can I have one moment, Madam
8 Chair?

9 [PAUSE]

10 Q. You said you had the opportunity to review the Coastal
11 Resources file on this matter as well as Dave Beutel's
12 staff report?

13 A. Yes.

14 Q. And the objectors' letters, you had an opportunity to
15 look at those objectors' letters?

16 A. I did. I heard David's testimony --

17 MS. NOONAN: I'm going to object. He's going
18 beyond the scope of the question.

19 A. Restate the question again.

20 Q. You have to wait until the Chair and legal counsel
21 advise.

22 MR. DESISTO: I think the objection should be
23 sustained.

24 MR. CAPIZZO: Should or should not? I'm sorry.

1 MR. DESISTO: Should.

2 Q. So Kevin, you had the opportunity to review the objection
3 letters?

4 A. I did.

5 Q. You also had the opportunity to hear Mr. Beutel's summary
6 of those objection letters?

7 A. I did.

8 Q. And you agree with his summation of those objection
9 letters?

10 MR. DESISTO: Here is what I think the issue
11 is. You're basically asking for his opinion. As I said
12 previously, this is a fact witness. So you either have
13 to reframe it on that basis, but you can't be asking an
14 opinion on this. He's not an opinion witness. He's a
15 fact witness.

16 MR. CAPIZZO: I'll let the objector letters
17 speak for themselves. I don't think I have any other
18 questions for you, Mr. Hunt. Thank you.

19 MR. HUNT: Thank you, Christian.

20 CHAIRWOMAN CERVENKA: Okay, Mr. Hunt, I'm going
21 to open it up to any Subcommittee members who may have
22 questions for you and then we'll turn it over to the
23 Applicant's counsel for cross-examination. But first,
24 any Subcommittee members have questions for Mr. Hunt?

1 [NO RESPONSE]

2 CHAIRWOMAN CERVENKA: Okay. I don't think we
3 have any questions for you. I think it was pretty
4 straightforward. So I'll turn it over now to Ms. Noonan.

5 MS. NOONAN: My only question is if Mr. Wagner
6 was going to be questioning this witness or not, if he
7 would go first.

8 CHAIRWOMAN CERVENKA: Okay, thank you.
9 Mr. Wagner, did you have any questions?

10 MR. WAGNER: I have no questions.

11 CHAIRWOMAN CERVENKA: Thank you. Back to you.

12 MS. NOONAN: Thanks so much.

13 CROSS-EXAMINATION BY MS. NOONAN

14 Q. Mr. Hunt, how are you this afternoon?

15 A. Very good, Ms. Noonan.

16 Q. You indicated that you moved up here to Rhode Island in
17 2002, correct?

18 A. That's correct.

19 Q. And since that time have you lived here year round
20 full-time?

21 A. No. I'm only on that property basically May through
22 November. There is immediate family members who live in
23 that house year round, and it's my own residence.

24 Q. So your observations that you've been talking about

1 today, you're firsthand observations, are limited to the
2 May to November timeframe of each year, correct?

3 A. That's right.

4 Q. Okay. And then in terms of your background, you said you
5 were retired. I don't want to push too much. Was what
6 was your background in, sir?

7 A. I was in the financial industry.

8 Q. I assume since obviously you were there at 911, not a
9 marine biologist or an aquaculture expert or any of those
10 things, correct, Mr. Hunt?

11 A. Not at all.

12 Q. Either am I. I rely on my experts, too.

13 In terms of that expert -- or in terms of testimony
14 on that, you are aware under Rhode Island law that your
15 rights to the shoreline only go to a certain extent,
16 correct?

17 A. Yes.

18 MR. CAPIZZO: Objection.

19 MS. NOONAN: I'll rephrase.

20 Q. Mr. Hunt, you're aware that your rights to the water stop
21 at the mean high water mark? Aside from being a member
22 of the general public, you understand that, correct?

23 MR. CAPIZZO: I would again object.

24 MR. DESISTO: There's an objection. He's not a

1 lawyer. You're actually asking for him to give a legal
2 opinion on that one. I recommend that the objection be
3 sustained.

4 Q. When you talked about everyone else's use in Segar Cove,
5 you realize no one has exclusive use of the cove area,
6 right?

7 A. Of course.

8 Q. In fact, you stated you have a six-acre parcel where you
9 do have a dock on the other side of Ram's Point, right?

10 A. I'm not aware of anything that says because I have a dock
11 on one side I can't use the water on the other.

12 Q. I wasn't saying that, sir. I'm just confirming where
13 your dock was located.

14 A. Yes.

15 Q. You indicated that at Mr. Raso's current farm you saw
16 something on September 5th in the middle of the night
17 with lights?

18 A. Yes.

19 Q. Are you positive that was Mr. Raso's operation in the
20 middle of the night?

21 A. Not at all. I just assumed it was probably him because
22 he is cautious about that property and the size and scope
23 of what I saw was a big large operation when someone is
24 sneaking out to get a couple oysters.

1 Q. In terms of this being, as I think you said, a commercial
2 or a large scale manufacturing operation, you're aware
3 that this is an aquaculture operation, right?

4 A. Yes.

5 Q. And that there is no machinery on the site when the
6 barges are not there, correct?

7 A. Yes.

8 Q. Okay. And in looking at -- one moment.

9 A. Well --

10 Q. Just hold for another question. Mr. Capizzo can ask you
11 more if you need to.

12 You talked about some experimental activities by
13 CRMC in Sycamore Cove. Can you tell me a little more
14 about that?

15 A. Yeah. Paddle boarding down there a couple times as that
16 group is in there and they are seeding oysters on that
17 side, and they are unusual ones. I am not sure where
18 they are from, but they are very large, diverse seeding.
19 That area is closed off to shellfishing and fishing as
20 well. There's a sign up going across my property all the
21 way across the other property.

22 Q. And you didn't object to that, or you raised no objection
23 to CRMC's work --

24 A. I could probably volunteer to help them with those

1 activities. I've been a big supporter of shellfishing my
2 whole life.

3 Q. Understood. Did you -- you said you reviewed the --
4 actually, strike that.

5 Mr. Capizzo asked you about reviewing the
6 applications and your concerns that there was nothing in
7 it about limits on operations, of hours of operation. Is
8 that your testimony, Mr. Hunt?

9 A. It was.

10 Q. All right. Well, in Exhibit 1 of Plaintiff's, which is
11 the application itself, did you review the operation plan
12 at Number 7 where it states specifically that the
13 hours -- let me get this here -- it specifically talks
14 about the hours of operation within the operation plan.
15 Did you see any of those restrictions?

16 A. I saw restrictions on operation during migratory birds,
17 yeah, that was for migratory birds in a very finite
18 period of time. Winter months, I believe.

19 Q. So if this application was approved, and I know you're
20 opposed to it, I assume you would be in favor of
21 conditions limiting the time of the operation in addition
22 to the migratory bird time, correct?

23 A. Yeah. I would like to see a more formal declaration of
24 some of the things Perry stated if it proceeds, but I

1 would oppose it, obviously.

2 MS. NOONAN: Just a few more moments here. One
3 second.

4 [PAUSE]

5 MS. NOONAN: I have no other questions for you,
6 Mr. Hunt. Thank you.

7 MR. HUNT: Thank you.

8 CHAIRWOMAN CERVENKA: Okay. Any redirect,
9 Mr. Capizzo?

10 MR. CAPIZZO: No redirect, no.

11 CHAIRWOMAN CERVENKA: So moving to your next
12 witness.

13 MR. CAPIZZO: Mr. Wagner has no questions; is
14 that correct?

15 CHAIRWOMAN CERVENKA: He said he did not.

16 MR. WAGNER: No questions. Thank you.

17 MR. CAPIZZO: Thank you, Dave. Madam Chair, I
18 want to make sure of the time. Are we going to 1:30
19 today for the first part?

20 CHAIRWOMAN CERVENKA: Yeah. I mean, I can be
21 flexible. I did want to take a half hour break, so it
22 can be at 1:00, it can be at 1:30. I'm sort of open to
23 that. Are you making a proposal?

24 MR. CAPIZZO: No, I'm not. I just wanted to

1 make sure I'm mindful of the time and the witness.
2 That's all.

3 CHAIRWOMAN CERVENKA: I don't want to interrupt
4 a witness. So if we start a new one, I would go through
5 your next witness fully until we took a break.

6 MR. CAPIZZO: Okay. Why don't we do that then.
7 Ryan, if you can cue up Alicia Cooney, please.

8 Alicia, can you hear and see me okay?

9 MS. COONEY: Yes. I can see you, but I can't
10 see anybody else.

11 MR. CAPIZZO: That's okay. You want to go to
12 the right of the screen.

13 MS. COONEY: I got them. Okay.

14 MR. CAPIZZO: I'm going to have Mr. DeSisto
15 swear you in as a witness.

16 MR. DESISTO: Ms. Cooney, can you put your
17 video back on, please, if you can. Raise your right
18 hand.

19 ALICIA COONEY

20 Being duly sworn testifies as follows:

21 MR. DESISTO: Please state your name and spell
22 it for the record.

23 MS. COONEY: Alicia Cooney, A-L-I-C-I-A,
24 C-O-O-N-E-Y.

1 MR. Desisto: Thank you.

2 DIRECT EXAMINATION BY MR. CAPIZZO

3 Q. Good afternoon, Alicia. How are you?

4 A. Fine, thanks.

5 Q. Good. Can you tell the Subcommittee where you own a
6 house on Segar Cove, please?

7 A. Yes. We are at 95 Segar Court, which is right on Segar
8 Cove. In fact, there's Segar Cove.

9 [WITNESS GESTURING]

10 Q. And when you say "there" you are pointing out your
11 window?

12 A. I'm pointing out my window, right there.

13 Q. All right. Who do you reside at that address with?

14 A. My husband Steven Quigley, and we have two boys and two
15 cats and a dog.

16 Q. Can you tell the Subcommittee your history of how you've
17 come to Segar Cove?

18 A. Yes. So I have been -- I am a Rhode Island resident,
19 although I currently work in Boston. I have been in
20 Matunuck for every single summer of my life, all summer,
21 and lived over the road as did my father and my
22 grandfather. There's a ton of Cooneys in Matunuck and we
23 always lived here. We were up across the road about a
24 mile away for most of our summers, and my grandparents

1 and father were just on the other side of the pond in
2 what we call the park of Matunuck every summer.

3 About 12 years ago family friends who had this
4 property, who knew that we always wanted to be on the
5 pond and they had a dock and we used to come and use
6 their dock all the time, when the family retired, well,
7 the gentleman was going to sell the property and move
8 into assisted living. Before he put it on the market, he
9 called us and said, you're such close friends. You
10 always had interest in this spot, you've used our dock,
11 would you be interested in buying the property, and we
12 did.

13 That was about 12 or so years ago, about 12 or
14 13 years ago in this particular property, but I have been
15 every summer in Matunuck as a resident. Frankly, as our
16 generation is now the generation of our family that's
17 here, our locus is Matunuck. So it's not just a summer
18 resident.

19 We've had many weddings, family weddings here, even
20 from people who live elsewhere and, sadly lately, quite a
21 number of funerals at St. Romuald Church. Matunuck is
22 our family connection, and that's my connection to
23 Matunuck.

24 Q. What's your connection to Segar Cove over the course of

1 those years growing up in Matunuck?

2 A. It is where I learned to swim, learned to sail on a
3 Sunfish, learned to row because we have actually had a
4 boat and had two oars. That's the way we got around the
5 pond. And quahog, I learned how to quahog not far from
6 the gut, Perry's gut, the gut by Perry's restaurant. We
7 were out here and we went to the beach at the end of Lake
8 Avenue, and this was our pond. This was -- we swam here
9 before we were allowed to go to the ocean because the
10 undertow at Matunuck Beach is pretty strong so when you
11 were a little kid you swam the pond. So I do not
12 remember the first time I stepped foot in this pond
13 because I was so young.

14 Q. How did you access the pond? You said something about
15 Lake Avenue. Can you explain to the Subcommittee where
16 Lake Avenue is in relation to your property?

17 A. If I'm looking directly -- maybe about 10 o'clock, 11:00,
18 if I'm looking due west, but if you are familiar with
19 where the mooring field is which is at the end of the
20 park, which is concentrated between Lake Avenue to Park
21 to Atlantic, so those three main paved streets that run
22 down to the end of where that mooring part would be,
23 which would be southwest or due south part of Segar, if
24 that makes sense to everybody. You looked at the maps,

1 I'm sure you have some kind of --

2 MR. CAPIZZO: Alicia, I'm actually going to
3 pull up -- give me one second. For the record, this is
4 Figure 1 of ESS report which I think is marked as
5 Exhibit 2.

6 [EXHIBIT DISPLAYED]

7 Q. Alicia, are you able to see what's on the screen?

8 A. Yes.

9 Q. I'm going to go to full screen mode. I know the
10 Subcommittee is probably aware, but just for the record,
11 this Figure 1, your property is right where the cursor is
12 in Segar Cove?

13 A. Correct.

14 Q. Kevin Hunt's property and your dock, current dock, is
15 that listed as Number 1; is that right?

16 A. Right.

17 Q. Let's see. The area that you're talking about, Lake Ave,
18 is where? You said to the southern part of the cove?

19 A. Right. If you look at the line that I think is the
20 dotted line that suggests is the mooring field. You see
21 the dotted lines you have outlining. If you move your
22 cursor up right, yeah, like right about there.

23 Q. This is Lake Ave right here?

24 A. Um, no, no, next one over.

1 Q. North or south?

2 A. North.

3 Q. So up this way?

4 A. Yeah, yeah, there you go. It's pretty overgrown, but you
5 can bring in -- there's a boat ramp there. You can bring
6 in a boat there. You'll see if you go to the end of
7 that, that's where it is. All the people that live in
8 that area to the west which I'm calling the park, if you
9 go to the end of Lake Avenue, whether you are driving
10 down getting to the pond or coming up from the cove you
11 will see piles of kayaks and paddle boards from all the
12 people who do not necessarily have a place on the pond,
13 but that's their day access. So you would leave your
14 kayak there all summer, or your rowboat, and pick it up
15 and throw it in the water and use it.

16 Q. Are you familiar with the other access points other than
17 Lake Ave in that area?

18 A. To take on a boat, to take a boat?

19 Q. To access the cove, whether putting a boat in or
20 accessing it for kayak, paddle board, rowboat.

21 A. Oh, sure. We used to take it down and take it to the
22 bottom of park. If you had a bigger boat you'd go down
23 to the point, come in on water. I know them all.

24 Q. Okay. Are they reflected in this aerial photograph?

1 A. If you were on the cursor -- if you look to the south of
2 Dock 10, right, you would see -- you go east from that
3 spot you see. There are kayaks. You can bring your
4 kayaks in there. It's a little tricky at the bottom of
5 Atlantic, but it can be done. What's not on this map is
6 if you went all the way down to Matunuck Point, end of
7 Prospect, there is another boat ramp that is very
8 convenient if you had a trailer and a bigger boat.

9 Q. Okay. When you were growing up --

10 A. And the reason why I know that is, I have kayaked every
11 square foot of that cove many, many times for, you know,
12 more years than I want to admit.

13 Q. And the types of activities, recreational activities, I
14 think you talked about some of them from growing up on
15 the cove. I want to bring you forward to more recently.
16 Have you had the opportunity from your property and from
17 the cove to observe what types of activities take place
18 on the cove?

19 A. Absolutely. It is a combination of activities. So you
20 have the kayakers like my self, the paddle boarders like
21 my son, the small sailboats, you know, boaters which is
22 very interesting because the wind is very fickle here.
23 It's fun but tricky to sail in that property, in that
24 whole area. You've got people who are coming in by

1 either land or boat to quahog, to dock their boats and
2 just put on like those day rafts off the back of the
3 boats and jump in the water and hang out and have their
4 lunch or whatever.

5 And then you've got the folks that are on motorboats
6 either just cruising around or motorboats either with --
7 not so much waterskiers these days, but wake boarders
8 which is what my kids like and, you know, rafts, where
9 you just tow people around in the rafts. And you've got
10 people, our kids, actually who just jump off our dock and
11 swim. So it's any combination of those at any given time
12 and the jet skiers as well.

13 In fact, there was more jet skiing activity this
14 summer than I've seen in quite some time. So that has
15 been a newer thing that we see on the pond. It's all of
16 it.

17 Q. And do you have a powerboat at the dock at your property
18 that you and your family use?

19 A. Yes.

20 Q. We talked about the recreational activities that take
21 place in Segar Cove. Are you familiar with Potter Pond
22 as a whole?

23 A. Absolutely.

24 Q. How are you familiar? Why don't you tell the

1 Subcommittee, and I know you already touched on it, how
2 you're familiar with the rest of Potter Pond.

3 A. Well, couple of ways. One is that I personally will take
4 a several-hour kayak and cover the entire pond by kayak
5 all the way up to Route 1 up by the docks that are
6 closest to Route 1. I guess I never called it Skiers
7 Cove, but we used to call it the North Cove, up to the
8 North Cove.

9 An then on the powerboat, my husband and kids and I
10 would be inclined to, you know, go up there all the way
11 up and cruise around and see what's going on and look at
12 the North Cove to see whether it's busy enough to do the
13 ramp, do the rafting. Sometimes we would go up there and
14 use it, or sometimes we would say it's too crowded up
15 there and we'll go back and we'll stay at our cove.

16 So, yes, the whole area including, I will tell you,
17 going through the gut over to Point Judith Pond. I could
18 take you through Point Judith Pond too.

19 Q. Let's focus on Potter Pond. I want to share my screen
20 with you and I think I showed the same one to Kevin.

21 [EXHIBIT DISPLAYED]

22 Q. Can you see Figure 1B, ESS Group?

23 A. Yes.

24 Q. I want to take a step back. You've been in attendance

1 and listened to all the testimony from November 12th,
2 13th, 17th as well as today?

3 A. Correct.

4 Q. You reviewed Mr. Beutel's report in the Coastal Resources
5 file that's been referred to?

6 A. Correct.

7 Q. You've reviewed ESS's report as well?

8 A. Yes.

9 Q. I want to take you to the area where -- are you familiar
10 with Perry's current operations?

11 A. Absolutely.

12 Q. Can you tell us how you're familiar with his current
13 operations?

14 A. Well, I've kayaked all over there before there was an
15 oyster farm there and have kayaked around over it
16 originally, and now only around it because it's --
17 contrary to other people's opinions about kayaking within
18 an oyster farm, I have not -- somehow I don't feel like I
19 could get past the buoys and I'm not comfortable going
20 there so I've gone around it, the circumference of it,
21 often.

22 Q. Okay. How would you describe the area around Mr. Raso's
23 current operation in regards to the type of recreational
24 activity that takes place in this general area of Potter

1 Pond around his operation and in Sycamore Cove which you
2 heard Kevin testify to?

3 A. Right. Well, in my opinion, the three quarters or three
4 I guess I should say three sides of that rectangle, the
5 southwest, the east, the northeast, you know, the three
6 that are farther away from where I would be coming from,
7 from my house are quite shallow. I mean, I can't imagine
8 -- you couldn't get a powerboat in there. You might not
9 want to get a sailboat in there. You certainly could
10 kayak or paddle board in there, but it's too shallow for
11 any motorized activity in my point of view. And on the
12 side that is closer to the northwest, it seems a little
13 bit more open, but even I with my kayak, I don't go too,
14 too close, but three sides of it you couldn't go on with
15 a motorized water vehicle of any variety.

16 Q. And you talked about kayaking, and you said that you --
17 are you able to kayak over that operation?

18 A. No. You haven't been able to in years. I'm not exactly
19 sure. I only became quite focused on the topic of oyster
20 farms in the last three years, but it has grown over the
21 years from being when you could kayak over it to now
22 where you cannot kayak over it.

23 Q. Okay. Did you testify that you previously did kayak over
24 his operations?

1 A. Yes, I was fascinated. I'm sorry, maybe I shouldn't have
2 been trespassing but...

3 Q. Well, you heard the testimony that you can kayak and
4 paddle board over Perry's operation, is that correct,
5 over the farm that he's proposing?

6 A. What I heard people say is that you could go down the
7 lanes within the farm, and I would suggest that that is
8 not possible. Unless you are extremely adept in a very
9 small narrow kayak with very, very good positioning of
10 your paddle, I don't think it is safe or wise to do that.
11 I would feel like I would get caught. I'd wreck an
12 oyster, you know, the wiring. I just don't see how one
13 could do it frankly in all honesty. And if I had the
14 opportunity and it was 75 degrees and a gorgeous day
15 today and I was going there now I wouldn't do it for my
16 own safety.

17 Q. What about -- have you paddle boarded before in that
18 area, Alicia?

19 A. Nowhere near because if I fall off -- my sons have. Not
20 me. My sons have. And they've never gone over, gone --
21 you know, they go around it, but they won't go anywhere
22 in that thing. They wouldn't try, believe me.

23 Q. I want to take you north that you talked about, the
24 northern basin, and you've heard the testimony about the

1 northern basin and that there's two deep water areas
2 within Potter Pond. So can you describe the type of --
3 strike that.

4 Are you familiar with following the cursor going
5 north up Potter Pond? Are you familiar with the area
6 just before the northern basin?

7 A. Yes.

8 Q. Can you describe for the Subcommittee what that area is
9 like?

10 A. Um, well, it's -- I would characterize it as sort of
11 channels in the sense that most people are using those
12 areas. It's fairly deep. You can get in there with a
13 motor boat. There are a number of places, however, where
14 you have to be very careful because as you can see from
15 the shadowing on the water there's some places where it's
16 rock deep or all of a sudden it's shallow and then it
17 gets deep again. And most people in that space are not
18 hanging out the way that they are in either of the coves.
19 They are using those channels, is the best way I would
20 use to get from one point to the other if that makes
21 sense to you.

22 Q. So is there -- we heard about towed water sports,
23 sailing, wakeboarding. Can do you that in this area?

24 MS. NOONAN: Objection. Which area? Are you

1 still on the northern cove?

2 MR. CAPIZZO: Yes. I'm sorry, Beth.

3 Q. The area we're talking about right now, Alicia, where we
4 are talking about where the channels are just before the
5 northern --

6 A. Yes, yes. So what I'm describing is -- no, what people
7 do is -- I have never seen anybody wakeboarding in that
8 area. What I have seen is people slowly, you know, going
9 up in their motorboat or sometimes not so slowly,
10 depending on whether they have a tow or raft behind,
11 going to the northern basin to use it. And then you
12 know, then you get -- you throw your raft in the water or
13 you throw your waterskis or your wakeboard in the water
14 and you use the northern basin, or you couldn't in and go
15 back down. The best word I could use, which is probably
16 not a technical term, is it seems more of a channel.

17 Q. Okay. Then you talked about the northern basin where
18 you're familiar with the northern basin?

19 A. Yes.

20 Q. How would you describe the northern basin?

21 A. It is -- it's conducive to using your motorized vehicles
22 and water vehicles, and it's also very conducive to, you
23 know, anything else whether it's -- I never sailed up
24 there actually, but I certainly kayaked up there. My

1 sons have paddle boarded all the way up there and there
2 are a number of people, particularly in the southwest
3 corner of that northern basin, that drop anchor and swim
4 in that corner a bit away from where people would use the
5 circle, sort of natural circle, to do various water
6 activities whether it's waterskiing or rafting or
7 whatever.

8 Then in the very far northern basin above that,
9 which you can only access without a motorized vehicle,
10 and that's the blue line that goes up to Route 1, people
11 spend a lot of time going up there through that northern
12 basin where the motorboats are in order to get up there
13 to kayak. There's a lot of nice natural habitat animals
14 and birds up there.

15 Q. I want to just take you a step back. You referenced that
16 the southern part of the northern basin is where the
17 cursor is. Is this where you're talking about, this area
18 right here?

19 A. Yes.

20 Q. You described that area as where people would raft,
21 anchor or raft; is that correct?

22 A. Yes. People come in, and these wouldn't necessarily be
23 residents of, you know, the circumference of the pond.
24 These people would be coming in from elsewhere, day

1 people, day recreationers, come and they drop anchor,
2 they put up their raft, eat their lunch, they swim around
3 and enjoy themselves.

4 Q. And the waterskiing that you referred to, that takes
5 place in this general area right here where I'm circling
6 the cursor; is that correct?

7 A. Correct.

8 Q. I want to draw your attention -- we're going to head back
9 to Potter Pond back to Segar Cove. I want to talk to you
10 about -- you talked about your observations about the
11 recreational activity at Segar Cove. We talked about
12 different types of water dependent activities and using a
13 motorboat, kayaking, paddle boarding, sailboat. Have you
14 observed any people shellfishing or fishing from your
15 property or from recreating on the cove?

16 A. Sorry. What did you ask, was it fishing?

17 Q. Fishing or shellfishing in Segar Cove.

18 A. Yes. The fishing seems to be -- and I think it may be
19 dependent on how fish run. I know one of my cousins
20 often uses my dock and he kayaks where he fishes off the
21 kayak. It comes and goes. And certain days it seems
22 they must call each other and say, is fish running and
23 there's a lots of people out on kayaks or very, very
24 small motorboats fishing actually quite close to our end

1 of the cove.

2 Where you see a tremendous, two very good spots, for
3 shellfishing or really right where the proposed oyster
4 farm is between Mr. Hunt's, Kevin Hunt's, property and
5 right at that point, and then just across, right across
6 the way by Mr. Wilke's dock. And these are folks that
7 are coming from elsewhere and usually coming in a tiny
8 motorboat anchoring the boat and getting out with the
9 rakes and their feet and quahogging.

10 Q. Okay. Are you familiar with Perry's current proposed
11 farm, the configuration of that farm?

12 A. Yes. As a matter of fact, I can look at it right now out
13 my window.

14 Q. Okay. But are you -- you heard the testimony and
15 reviewed the documents as it relates to Option A, which
16 is more rectangular, and B which is a polygon?

17 A. Yes, because the buoys obviously also are demarking it.

18 MR. CAPIZZO: Okay. I want to share 4B.

19 [EXHIBIT DISPLAYED]

20 Q. Alicia, can you see that?

21 A. Yes.

22 Q. Are you familiar with this map?

23 A. Absolutely.

24 Q. Okay. If you could describe for the Subcommittee,

1 similar to what you just did for the northern basin of
2 how your observations are of how the activity takes play
3 on that cove, let's start with the vessel activity I
4 guess you could say. So let's start with towed water
5 sports. Where does that take place on the cove based on
6 your observations?

7 A. There's really only one place that towed water sports can
8 have enough room and they do have enough room, and it
9 would run from east to west at the widest part of the
10 cove going from -- if I'm looking at this map, on the
11 widest part would be right north of the label, Segar
12 Cove, going from the west side directly east across to
13 where the proposed oyster farm would be. So this is a
14 circle naturally. It's a natural circle that one would
15 take with your towed motor sports. So there's -- all the
16 red is, you can't go down there. Either there's docks,
17 there's a no wake zone or there's moorings.

18 Q. When you say you can't go down there, you're talking
19 about further south towards the mooring field?

20 A. Yes. All of that is off the table in terms of towed
21 water sports. It's where the green -- the bulk of the
22 green line is where the label says Segar Cove. In that
23 natural, it looks to me like a natural circle, and that's
24 where it is.

1 Q. What type of -- strike that.

2 Have you had the opportunity to observe the activity
3 that takes place where the proposed farm is or where
4 Perry is proposing to put the farm?

5 A. Absolutely.

6 Q. Can you tell us what observations you've made about the
7 type of activity that takes place based on those
8 observations?

9 A. Yes. So what you would do is you'd have, you know, a
10 couple motorboats with waterskiers or wake boarders or
11 rafters going around kind of taking turns, and then you
12 would have me hugging the cove -- hugging the side to
13 avoid the motorboats. And not so much the motorboats
14 themselves, but the raft, the waterskier, or the wake
15 from them.

16 So that would be me right within the perimeter of
17 the proposed oyster farm. And then you'd have one or
18 more folks, other paddle boarders, or other kayaks out
19 there and someone who would be frankly on Kevin Hunt's
20 shore just south of the southern point of the proposed
21 oyster farm that would be doing their quahogging. That
22 would be a typical scenario.

23 Q. When you talked about the northern basin and you talked
24 about boats anchoring or rafting, where does that take

1 place based on your observations in the cove?

2 A. The most typical place is right from about where it says
3 six-foot -- along the perimeter of the proposed oyster
4 farm where it says five or six-foot depth.

5 Q. Right here where the cursor is?

6 A. No. They would be more south along Kevin Hunt's property
7 like right -- I'm pointing with my own finger just south
8 of where you are, so the bottom third of the proposed
9 farm. Because, you see, I think what happens is people
10 come from elsewhere and they swing around the point into
11 the cove and they like it right there.

12 Q. Alicia, how would you describe the area? You heard Kevin
13 testify about the shoreline along his property. How
14 would you describe the shoreline along your property in
15 the area where the cursor is right now? So the northern
16 portion of that farm area.

17 A. It is -- the shoreline itself is, you know, it's
18 indigenous vegetation towards almost to the shoreline.
19 Then there is a small amount of space that you could
20 actually walk. We've actually, you know, made a path.
21 Our dog goes down there frankly. Then there's some
22 rocks. It's actually quite shallow. I can kayak in
23 there but it is tough. You certainly couldn't go in
24 there with a motorboat.

1 Q. Okay.

2 A. You know, in between the yellow line and my shore.

3 MR. CAPIZZO: Okay. Alicia, I, want to direct
4 your attention -- I want to share my screen. For the
5 record this is Exhibit -- maybe it's Exhibit 5. Hold on.

6 [PAUSE]

7 MR. CAPIZZO: Exhibit 5.

8 [EXHIBIT DISPLAYED]

9 Q. Are you able to see what's on the screen?

10 A. Yes.

11 MR. CAPIZZO: Madam Chair, are you able to see
12 what's on the screen?

13 CHAIRWOMAN CERVENKA: I am.

14 Q. Alicia, are you familiar with this photograph?

15 A. Absolutely.

16 Q. Can you tell the Subcommittee how you're familiar with
17 this photograph?

18 A. It's either one I took or my husband took. It would have
19 been July or August of 2019.

20 Q. If you could describe for the Subcommittee members where
21 you were when this photograph was taken?

22 A. I would have been in my kayak slightly outside of the
23 proposed -- more in the middle of the pond, sort of
24 outside of the proposed oyster farm and, you know, took

1 pictures of activity. It was probably between four and
2 six in the afternoon, as I recall, but I was on the water
3 on the other side, you know, probably kind of about in
4 the middle of the pond.

5 Q. Okay.

6 A. You could see the wake.

7 Q. Can you describe in the background of this photograph,
8 can you explain to the Subcommittee members what we're
9 looking at?

10 A. Well, just to the powerboat on the left is my house, and
11 our backyard is facing the pond. And then there's
12 vegetation which looks quite thick, but is not quite as
13 thick as you realize. It's -- bushes and whatever and
14 where we go down. And then the shoreline that you see
15 just below that is our shoreline property. Probably goes
16 to about where the waterskier is in the blue jacket.

17 Right after that, to the right of that, would be the
18 Hunts' property including his road to his driveway to his
19 house, and I'm just -- you can see the various -- I
20 actually wondering if the very, very far corner, I guess
21 that's an exposed rock, you see the exposed rock.

22 Q. Where the cursor is right now?

23 A. Yeah, so the tide must have been a little low.

24 Q. You heard Mr. Hunt testify about a rock in that area?

1 A. Oh, there's a lot of rocks in that area.

2 Q. All right. Is this a fair and accurate representation of
3 what you observed, activity that you observed, on Segar
4 Cove in that July 2019, August 2019?

5 A. Yes, a very typical day.

6 Q. I want to show you a second photograph. Can you tell us
7 where this photograph was taken from?

8 [EXHIBIT DISPLAYED]

9 MS. NOONAN: I'm sorry. What numbers are these
10 and are they numbered within the document?

11 MR. CAPIZZO: They aren't, Beth. They should
12 be in order, though, one after the other within the
13 exhibit.

14 MS. NOONAN: Okay, thanks.

15 MR. CAPIZZO: All right. Do you need a sec to
16 grab it?

17 MS. NOONAN: No problem. I'll find it. That's
18 all right.

19 Q. Alicia, can you tell us, do you recognize this
20 photograph?

21 A. Yes.

22 Q. How were you able to do that?

23 A. Okay. This is another photograph that I took from my
24 backyard.

1 Q. What are we -- explain to the Subcommittee what we're
2 looking at.

3 A. We're looking at due south with some more water activity
4 on the pond. This would be -- that boat is heading
5 directly towards the proposed oyster farm. The houses on
6 the other side are, you know, which one would
7 characterize I guess as -- I never knew the name of it
8 growing up, but I guess Gardener Island. If you see the
9 mooring field to the right, in the upper right-hand
10 corner of the photograph, and that would be I think the
11 dock on that far right is the last house on Atlantic
12 Avenue.

13 Q. You testified earlier the general area for towed water
14 sports, is this the area that you're referring to within
15 the photograph where that boat is?

16 A. Yes.

17 Q. Okay. Is this a fair and accurate representation of what
18 you observed? Do you recall when this was taken?

19 A. It was either July or August of '19.

20 Q. Okay. Is it a fair and accurate representation of what
21 you observed that day?

22 A. Yes.

23 Q. Photograph Number 3, again, is this the same -- let me
24 take you a step back.

1 A. It's another photography took on another day within the
2 same month while I was out on the water kayaking.

3 Q. Okay. And drawing your attention to the background, I
4 know it's probably obvious to the Subcommittee members,
5 but for the record can you explain to the Subcommittee
6 members what's in the background of this photograph on
7 the shore?

8 A. Right. So that's our house just above the water spray
9 and the wake. Again, sort of our property going down to
10 the shoreline, and then to the right of the motorboat
11 would be above the property line between our property and
12 Mr. Hunt, Kevin Hunt's property.

13 Q. Okay.

14 A. And the osprey. See the ospreys?

15 Q. You heard Kevin testify about the osprey nest. Is that
16 the osprey nest he was talking about?

17 A. Yes. That osprey nest, I think there's one on the other
18 too. The osprey nest was busy all summer. I didn't
19 think they would ever fly out of there.

20 Q. You said you're familiar with the location of Mr. Raso's
21 proposed aquaculture farm. Where would that be in this
22 photograph?

23 A. I'm actually surprised that you can't see the buoys
24 because we're looking directory at it. Probably from

1 stretching to -- certainly the wake behind the person to,
2 you know, to the right of the osprey nest for sure. That
3 whole, that whole space.

4 Q. Do you know those people on that boat?

5 A. I'm not sure.

6 Q. Okay. Is this a fair and accurate representation of what
7 you observed on that day, that activity taking place on
8 Segar Cove?

9 A. Absolutely.

10 [EXHIBIT DISPLAYED]

11 Q. Showing you another photograph, Alicia, do you recognize
12 that photograph?

13 A. Yes.

14 Q. How are you able to recognize this photograph?

15 A. Again, I was out trying to -- it's hard to take pictures,
16 especially when you're me kayaking, but there it is.

17 Q. When was this taken?

18 A. Again, either a bunch of pictures I took in July or a
19 bunch of pictures I took in August, 2019.

20 Q. Just to get orientation of where this picture is, what
21 this picture is looking at, what are we looking out to?
22 You're in Segar Cove. Where are we looking out to?

23 A. You're looking out on due south at six houses just behind
24 the boat that would be on I guess it's called Ocean

1 Avenue, but it's the point. It's the end of Matunuck
2 Point. Prior to the '38 hurricane there were houses on
3 the other side of that.

4 Q. Okay. Is it fair to say this is -- we heard testimony
5 about Ram's Point and Gardener -- I guess Gardener
6 Island?

7 A. Right.

8 Q. Is this the way to see Segar Cove, that area that I'm
9 circling?

10 A. Yes. That is the one access point that is just a little
11 bit wider than where that boat and the wake is.

12 Q. Then you see the Lathams' house on the right at the end
13 of the island, this right here?

14 A. Yes, and then you see another boater.

15 Q. Right here?

16 A. Hanging out over on the right, yes.

17 Q. Okay. Again, is this a fair and accurate representation
18 that you observed in July, August, 2019?

19 A. Yes.

20 Q. I'm asking you the same line of questioning. Do you
21 recognize the photograph?

22 A. Yes, a series from the prior photograph.

23 Q. Is this a fair and accurate representation of what you
24 observed on Segar Cove?

1 A. Yes.

2 Q. Again, we're looking at the entryway of Segar Cove; is
3 that correct?

4 A. Yes. The boat is about to cross onto the proposed oyster
5 farm.

6 Q. I think this might be the last -- do you recognize this
7 photograph, Alicia?

8 A. Yes.

9 Q. If you could for the record, can you describe what we're
10 looking at?

11 A. So we are looking at Mr. Hunt's house on the left. We're
12 looking just over the motorboat. Behind the motorboat is
13 the access to Segar Cove. I'm not exactly sure, there's
14 something in the water that's right in front house on the
15 left, and it's either a buoy or a lobster buoy or
16 something, something in the pond.

17 Q. But it's a fair and accurate representation of the
18 activity you observed on Segar Cove?

19 A. Correct.

20 Q. That would be in the July/August 2019 time frame?

21 A. Yes.

22 Q. Okay.

23 MR. CAPIZZO: Madam Chair, I just ask that
24 Exhibit 5 be marked, the series of photographs Exhibit 5

1 be marked as a full exhibit.

2 MS. NOONAN: No objection.

3 CHAIRWOMAN CERVENKA: Admitted full.

4 [EXHIBIT #5 MARKED FULL]

5 Q. Alicia, what concerns do you have about the proposed
6 location of Perry's farm?

7 A. The proposed location is absolutely taking for the
8 purpose of one individual a critical space in our pond
9 that is currently shared by multiple individuals, over
10 the course of the summer hundreds of individuals, versus
11 just one for an industrial farm. You know, an industrial
12 activity and a farm that would restrict the use of that
13 absolutely critical space given the geography of that
14 cove and make it not as useful for the rest of the people
15 using the pond for recreation or for other people who
16 were quahogging or fishing for their own purposes, and it
17 will be very unsafe and in the way, in the critical spot
18 of the cove.

19 So that is my objection. I think that there should
20 be a real balance here. He has a terrific farm already
21 in a spot that cannot be shared by as many of the
22 recreators where we are. I actually think it looks like
23 there's room to expand over there, particularly towards
24 East Matunuck State Beach where it's shallow and nobody

1 can get over there. Oysters would probably love it
2 there. But where we are, I can't kayak over that farm.
3 I'm not kayaking through lanes. You know, and I'm not
4 the only one. I take my dog with me. The dog jumps off,
5 swims around, gets back in the kayak, gets back on the
6 paddle board. He can't go over there. He's going to get
7 caught. He's going to hurt himself. It is just
8 completely imbalance in terms of the multiple use that
9 the waters are meant to be for everybody.

10 I'm opposed to this, as is the rest of our family,
11 because it seems that it's segregating for the purposes
12 of one commercial activity versus all of us in balance.

13 I am not against Perry. I'm a huge fan of the
14 greens with the goat cheese salad with the fried oysters
15 on top, the lobster roll with fries, and my husband loves
16 your clam chowder. That's our standing takeout order all
17 through Covid.

18 We admire everything that has happened for the
19 restaurant. It is so wonderful that you have built the
20 farm and built the restaurant. That seagull joint that
21 was there before you opened the restaurant was never
22 successful. So I have no objection to that.

23 The objection is the location of this proposed farm
24 in one of the really only the two areas that the whole

1 public, and not just the residents on the pond, frankly,
2 not just the dock owners on the pond, but all the people
3 who come in through the gut with their motorboats on a
4 day trip. It's for the public. Not just the homeowners,
5 not just the oyster farmer. The public.

6 If you took a poll of all the people using the pond
7 on an average basis, it's not the dock owners only. It's
8 not just Kevin, myself, and the Lathams and my Cooney
9 cousins on the other side. It's the people that are
10 coming in on the water, or they are walking down from the
11 park and bringing their kayaks that they've left on the
12 side and gotten in. It's the people that are taking the
13 little motorboats through the gut, past Perry's
14 restaurant to quahog or to drop a line and just cruise
15 around, bring their sandwiches, bring their kids. It's
16 for the public.

17 And that's my objection. That it's not the balance.
18 There's no imbalance when we have a swarf of this
19 critical geographic space, given the interesting
20 configuration of our cove and have that oyster farm right
21 there. So in sum, that would be my objection.

22 Q. Thank you, Alicia.

23 MR. CAPIZZO: One moment, Madam Chair.

24 [PAUSE]

1 MR. CAPIZZO: I don't have any other questions.
2 Thank you, Alicia.

3 CHAIRWOMAN CERVENKA: Thank you, Christian.
4 Any questions for Ms. Cooney from the Subcommittee
5 members? Okay, Mr. Murray.

6 MR. MURRAY: Good afternoon, Ms. Cooney. I
7 just have one question. Would you characterize towed
8 motor sports as water sports as the most predominant
9 motorized usage of the cove?

10 MS. COONEY: The majority, yes. There are
11 other motorboats where people drop anchor or would be
12 going from one location to the other. And as I
13 mentioned, more recently, jet skis.

14 MR. MURRAY: Thank you.

15 CHAIRWOMAN CERVENKA: Okay. Is that all,
16 Mr. Murray?

17 MR. MURRAY: Yes.

18 CHAIRWOMAN CERVENKA: Any other questions from
19 Subcommittee members?

20 [NO RESPONSE]

21 CHAIRWOMAN CERVENKA: Any questions,
22 Mr. Wagner, that you have of this witness?

23 MR. WAGNER: No, Madam Chair. Thank you.

24 CHAIRWOMAN CERVENKA: Thank you. Okay,

1 Ms. Noonan?

2 MS. NOONAN: I have a few. I switched my
3 audio. Can everyone hear me okay?

4 CHAIRWOMAN CERVENKA: Yes.

5 CROSS-EXAMINATION BY MS. NOONAN

6 Q. Ms. Cooney, how are you?

7 A. I'm fine thanks, Ms. Noonan. How are you?

8 Q. I'm well, thank you. Appreciate the fact that your
9 family has been around the Matunuck area for a long time,
10 and I'm sure it's been great for your family. I also
11 appreciate your comments about Mr. Raso and his business.
12 So thank you for that.

13 Were you aware though that Mr. Perry had tried to
14 expand his existing farm, but he was not allowed to due
15 to the presence of the eelgrass?

16 A. I have read the reports.

17 Q. This is about his existing farm. He tried to expand that
18 as you discussed and he wasn't able to do that. I didn't
19 know if you were aware of that.

20 A. It's been discussed, yes, to the northwest.

21 Q. On the photographs that are Exhibit 5, you took those
22 from your kayak, right?

23 A. Yes.

24 Q. Okay. Was your dog with you that day? Because that

1 would have been a real challenge for you.

2 A. Um, one of the days he was and one of the days he wasn't.

3 Q. That was my question. Were those all done on the same
4 day or different days?

5 A. Different days.

6 Q. How many different days?

7 A. I would have to check in my files, but I believe four.

8 Q. Okay. So Exhibit 5 consisted of seven photos total that
9 I have. Christian can correct me if I'm wrong, but I'm
10 looking at your Exhibit 5 opened up to a power point and
11 there are several different photos there.

12 It's your testimony that those took place on
13 approximately four different days in July or August of
14 2019; is that fair to say?

15 A. I would have to check. I know there are several days and
16 they were all in July or August of 2019.

17 Q. That's fair. Thank you. When you talked about your use
18 of the your property, let's say, and some of the exhibits
19 that Mr. Capizzo had shown you, in your sort of northern
20 part of Segar Cove is there any towed water sports going
21 on up there?

22 A. Not really, no. You can -- what you could do is you
23 could go up there and cruise around in your boat when
24 it's our turn, but you know, maybe take a rest, relax.

1 But if you are going to go in the circle, that you tend
2 to like to go in, that my kids like to go in, they would
3 drive their motorboat up there, our motorboat, or our son
4 would, but they wouldn't be actively on the back of a
5 waterski.

6 Q. And your dock that you have on your property, you or your
7 kids or maybe grand kids at some point can still jump off
8 and swim off your dock, right?

9 A. Yes.

10 Q. That won't be impacted by this farm?

11 A. The only way it would be impacted is if it pushes a bunch
12 of other activity up there such that you would have to be
13 careful from being in the water.

14 Q. Sure, but in terms of towed sports which you just told
15 Mr. Murray is sort of one of the predominant activities,
16 they are not going up into the northern part because of
17 size, I presume, as well as those sort of buffers where
18 they are not supposed to bring a towed sport within
19 200 feet of stationary objects. Right?

20 A. There are motorized vehicles that are going past us all
21 the time. So you have motorized vehicles without a tow,
22 and you have the jet skis which, you know, one really has
23 to be quite careful of.

24 Q. Do the jet skis go on the northern part of Segar Cove?

1 A. Sure.

2 [ZOOM INTERFERENCE]

3 Q. What I was talking about were the exhibits from the ESS
4 report that Christian had shown you and the northern part
5 of the Segar Cove near your property it was showing those
6 200-foot boundaries where towed water sports and jet
7 skiers aren't supposed to go within 200 feet of the
8 shoreline or stationary objects, right?

9 A. It would be helpful for me if you showed me that exhibit
10 again, please.

11 MS. NOONAN: Sure. Why don't we use 4B. And
12 Leslie, can you pop up -- sorry about that if I jumped
13 that at you, one of the exhibits from Christian's report.

14 MS. PARKER: Yes. I just need permission to
15 share my screen.

16 MS. NOONAN: Ryan, can you --

17 MR. MOORE: You should be all set, Leslie.

18 MR. CAPIZZO: I have an objection for the
19 record. She can certainly testify as to her
20 observations, but any testimony as it relates to the
21 coordinates and whether jet skiers are complying with the
22 200-foot buffer is outside of her fact knowledge as a
23 witness.

24 MS. NOONAN: She testified that she observed.

1 I'm looking at what she observed out there I guess, so
2 that's what I'll stick to.

3 MR. DESISTO: Excuse me, Ms. Noonan. That's
4 correct. All the question can be confined to is the
5 observation as to the 200 feet.

6 MS. NOONAN: All right.

7 Q. So Ms. Cooney, can you see on your screen now what is
8 Figure 4B from the ESS report? Do you see that?

9 A. Mmm-hmm.

10 Q. And you're up there, you know, Leslie with the cursor up
11 there towards above the farm area. That cursor is on
12 your house, right, or property?

13 A. Correct.

14 Q. Okay. And then what I'm trying to see is in the northern
15 part of Segar Cove you said that generally people don't
16 do towed sports whether it's waterskiing or water
17 boarding up in that area, correct?

18 A. Correct --

19 Q. -- and then my question was -- right, right. I'm not
20 disagreeing. Just asking. You spend more time there
21 than I do.

22 My question is, though, in terms of jet skis, which
23 are called personal watercrafts under the town's
24 ordinances, do jet skis go out to the northern part of

1 the cove?

2 A. If you have a dock at the northern cove and you have a
3 jet ski, or you're dropping somebody off at the dock,
4 you'd have to get there.

5 Q. Simple question. Do people use jet skis in the northern
6 part of Segar Cove?

7 A. I have seen jet skis up there.

8 Q. Okay. Thank you.

9 MS. NOONAN: Thank you, Leslie. I'm done with
10 that picture.

11 Q. One of the things you talked about at the beginning was
12 your history and your family's history in Matunuck and
13 the Segar Cove area. I'm going to try to repeat that
14 back what you said generally.

15 You talked about a combination of activities. Do
16 you recall that testimony?

17 A. If you would like to refresh me, that would be helpful.

18 Q. You said there were a combination of activities. From
19 what I was able to jot down you said kayak, paddle board,
20 small sailboats, fickle wind but small sailboats,
21 motorboats, tubers or wakeboards, you said your sons do
22 that, and kids jump off the dock and jet skiers. Those
23 are all uses, combination of activities that you
24 described when you first started your testimony. Did I

1 summarize that fairly?

2 A. I think you missed quahoggers and fishers.

3 Q. You're right. I'm just talking about people on the water
4 at this point. But yes, I understand quahoggers and
5 fishers. In these combination of activities, though, is
6 it fair to say --

7 A. Excuse me, excuse me, the fishermen are on the water.

8 Q. They are using boats, right? I'm trying to get to the
9 activities on the water. They are necessarily in boats
10 or kayaks, right?

11 A. Yes.

12 Q. Okay, or they are very tall standing in the water, but
13 okay, boats or kayaks.

14 A. Excuse me. The quahoggers are actually in the water.

15 Q. That I know, right. I'm not talking about the
16 quahoggers. That's why I didn't include them.

17 A. I see.

18 Q. What I want to say is that you've been there for, and I
19 won't ask you to state your age, but you've been out on
20 Segar Cove for a long time and your family has been also,
21 right?

22 A. Correct.

23 Q. And so each time that there's been a dock added in the
24 time you've been there, that has restricted the area of

1 the cove a little more, hasn't it?

2 MR. CAPIZZO: I would object to that, to that
3 question.

4 MR. DESISTO: On what basis?

5 MR. CAPIZZO: Beyond the scope of her
6 expertise. She's a fact witness. She can testify
7 whether it was --

8 MR. DESISTO: Well, here is the thing. The way
9 I hear the question is, and of course Ms. Cooney did
10 testify a length of time that she had experience with the
11 water body, so the question is really designed for the
12 facts of what the use was to the current use. I don't
13 think that's an opinion. I do think that's fact based on
14 her experience which she already laid the foundation for.

15 I recommend that the objection be overruled.

16 CHAIRWOMAN CERVENKA: I agree. I think it's a
17 fair question based on prior testimony.

18 A. Can you repeat the question?

19 Q. Yes.

20 MS. NOONAN: I'll ask Ms. Reis if you can
21 repeat that question, please.

22 [THE RECORD WAS READ BY THE COURT REPORTER]

23 A. I would have to give that some thought because in the
24 number of years that I have been here, and frankly when I

1 was much younger, I wasn't counting docks. And I could
2 not be able to tell you the course, the period of time,
3 how many docks there were, how many docks have been added
4 per year, how many docks have been removed. We had a
5 dock here at our house that fell apart before the other
6 dock was put in, so I wouldn't be able to give you a
7 specific answer to that.

8 What I would tell you is that the activity on the
9 pond, on the cove, over the course of this time has
10 increased steadily. And how the docks do or do not
11 restrict activity, I don't have enough specific
12 information to provide you with that.

13 Q. That's entirely fair. Thank you. Just a ballpark, if
14 you can, the time if you can from when you saw this
15 activity steadily increasing, do you want to give me a
16 time frame that you're comfortable with?

17 A. 63 years.

18 Q. I ask you generally the same of the mooring field that's
19 at the southern part of the Segar Cove that Mr. Capizzo
20 questioned you about or you discussed that area. Was
21 that mooring field in place, the same size, in that
22 entire 63 years that you've been on Segar Cove?

23 MR. CAPIZZO: I think we may have lost her.

24 MS. NOONAN: Her video is gone.

1 MR. CAPIZZO: I don't see her.

2 MS. NOONAN: Ms. Cooney, are you still with us
3 there?

4 CHAIRWOMAN CERVENKA: Christian, do you have
5 the ability to text her to see what's going on?

6 MR. CAPIZZO: Let me se. I'll send her an
7 email. Madam Chair, she dialed back in. I think she's
8 waiting in the lobby area so if Ryan could let her in.

9 CHAIRWOMAN CERVENKA: Mr. Moore, did you get
10 that?

11 MR. MOORE: Did she call in by phone?

12 MR. CAPIZZO: I don't know. I think she said
13 she did it via Zoom.

14 MR. MOORE: What was her full name?

15 MR. CAPIZZO: Alicia Cooney.

16 MR. MOORE: Okay.

17 MS. CAPIZZO: It just popped up as Alicia.

18 MR. MOORE: She should be coming in now.

19 MR. CAPIZZO: Great. Thank you, Ryan.

20 MS. COONEY: I'm so sorry. My computer died.
21 I'm on my phone. Does this work?

22 MR. CAPIZZO: Yes.

23 MS. COONEY: Sorry about that.

24 CHAIRWOMAN CERVENKA: No problem. Ms. Noonan?

1 MS. COONEY: Ms. Noonan, I did not do that on
2 purpose. I promise you. But I do need to have the
3 question repeated.

4 MR. CAPIZZO: Beth, you're on mute.

5 MS. NOONAN: Thanks. Lisa, can you read back
6 the last question?

7 [THE RECORD WAS READ BY THE COURT REPORTER]

8 MS. COONEY: Thank you for reminding me.
9 Again, I'm so sorry. I did not do that on purpose.

10 MS. NOONAN: Not a problem.

11 A. You know, I don't know. I mean, when you're ten years
12 old and you're out fooling around in a sail fish and
13 trying to see what cute guy was on the other boat, you're
14 not counting moorings. There have always been moorings
15 there. Whether it has been -- I would say the perimeter
16 has been approximately the same. What the number of
17 moorings is, I wouldn't really know, but it's always
18 been --

19 Q. The mooring field has always been there, right?

20 A. Yeah.

21 Q. Okay.

22 A. The right person to ask this question is the
23 harbormaster, obviously, because he knows. He knows
24 every mooring, every number and who is using it.

1 MS. NOONAN: Thank you, Ms. Cooney. I'm glad
2 you got back into our meeting, but I'm all done with my
3 questions. Thank you.

4 MS. COONEY: Thank you very much.

5 CHAIRWOMAN CERVENKA: Thank you, Ms. Noonan.
6 Is there any redirect, Mr. Capizzo?

7 MR. CAPIZZO: No, Madam Chair. No redirect.

8 CHAIRWOMAN CERVENKA: Okay. So I think we
9 should take that half hour break and come back here at
10 2:30.

11 Do you have one more witness, Mr. Capizzo?

12 MR. CAPIZZO: That's correct.

13 CHAIRWOMAN CERVENKA: All right. So anything
14 before we break?

15 MR. CAPIZZO: I don't think so. Beth?

16 MS. NOONAN: No.

17 CHAIRWOMAN CERVENKA: Okay. We'll sign back on
18 at 2:30. Thank you.

19 [RECESS WAS TAKEN OFF THE RECORD FROM 2:00 TO 2:40]

20 CHAIRWOMAN CERVENKA: I think that we are ready
21 to resume at 2:37. Mr. Capizzo, you were going to call
22 your final witness, and I think we just need Mr. Latham
23 sworn.

24 MR. CAPIZZO: That's correct, Madam Chair.

1 Thank you.

2 MR. DESISTO: Mr. Latham, please raise your
3 right hand.

4 DAVID LATHAM,

5 Being duly sworn testifies as follows:

6 MR. DESISTO: Please state your name and spell
7 it for the record.

8 MR. LATHAM: David Latham, L-A-T-H-A-M.

9 MR. DESISTO: Thank you.

10 MR. CAPIZZO: Thank you, Mr. DeSisto.

11 DIRECT EXAMINATION BY MR. CAPIZZO

12 Q. Hey, David. How are you today?

13 A. I'm doing dandy.

14 Q. Can you tell the Subcommittee how you're familiar with
15 Segar Cove?

16 A. Well, my grandparents when they retired, they've been
17 summering down in Rhode Island Carpenters. They both
18 lived and worked in Providence. When they retired, they
19 built a house in 1968 at the end of Prospect Road, and I
20 started spending my summers there around 1970. So a
21 couple years after they built the house, me and my four
22 brothers and sisters, and turned out and later additional
23 half brothers and sisters spent every summer there since
24 then.

1 Q. Can you for the Subcommittee and for the record give the
2 address of that property?

3 A. Yes, it's 298 Prospect Road.

4 Q. I'm going to share with you Figure 1 for the record so we
5 can identify that on the map. This is part of the ESS's
6 report.

7 [EXHIBIT DISPLAYED]

8 Q. David, are you able to see what's on screen?

9 A. Yes, sir.

10 Q. We're looking at, for the record, Segar Cove dock mooring
11 area in South Kingstown, Rhode Island, Figure 1. And
12 Prospect Road, is this part where the cursor is right now
13 the south of Segar Cove? Is this Prospect Road right
14 here?

15 A. Yes, it is.

16 Q. Okay. Where is your house?

17 A. At the extreme northern tip of Palmer Island, so right
18 there.

19 Q. So I've heard this referred to as a couple different
20 names. I've heard Palmer Avenue, Gardener Island, I
21 think Alicia 4referred to it as something else. What did
22 you know it as?

23 A. You know, it's a little bit like South County. There's
24 no such thing as South County, but people call it South

1 County. I've heard it a Palmer Island, I heard it as
2 Gardener Island. I don't know why, where that came from.
3 We always just called it Nana and Bud's house.

4 Q. Okay. How long have you been recreating in Segar Cove
5 for that -- well, let's start with Segar Cove?

6 A. Since 19 -- about 1970.

7 Q. What about the rest of Potter Pond, the same?

8 A. The same, yeah. Every year we got a little bit more
9 knowledge of the pond as we got older, and our parents
10 would let us leave the cove. In a little green boat we
11 would go out, we would go exploring. So I'm well
12 familiar with mostly every inch of the Potter Pond right
13 now and Segar Cove.

14 Q. Just, again, for the cursor and for the Subcommittee, I'm
15 going to stop sharing in one sec, but this is your
16 property right here?

17 A. That's correct, and that dock at the extreme northern tip
18 is our dock.

19 MR. CAPIZZO: Okay. Bear with me one second.

20 [PAUSE]

21 [EXHIBIT DISPLAYED]

22 Q. I'm going to show you what's been marked as, hold on,
23 Exhibit 5. Photographs taken by Alicia Cooney. David,
24 are you able to see that photograph?

1 A. Yes.

2 Q. I'm not sure what number this is, Beth, in the
3 photographs, but this is -- are you familiar with this
4 photograph, David?

5 A. I just saw it for the first time today a little bit
6 earlier, so, yes I'm familiar with it now.

7 Q. Okay. Can you identify in this photograph just so the
8 Subcommittee can see where your property is? I know
9 Alicia referenced it, but I would like you to reference
10 it just for a point of orientation.

11 A. Sure. If you're looking at the powerboat that's there,
12 not one of the six houses in the distance that go right
13 through the cup there, but the first house to the right
14 of those is our house.

15 Q. Here?

16 A. That's right.

17 Q. And the dock you referred to where I have the cursor now;
18 is that correct?

19 A. Yes.

20 Q. What's on the outside of your house?

21 A. There's a deck that goes around the entire house.

22 Q. Okay. When you refer to the cup, can you tell us what
23 you mean when you say "the cup"?

24 A. Just the entrance to the cove. The only way in and out

1 of the cove is from the tip of our property to the tip of
2 Mr. Hunt's property. That's the way in and out of the
3 cove. If you're going to the ocean or Point Judith Pond
4 or anywhere out of the cove, that's where you need to
5 transit through.

6 Q. Do you have a powerboat or do you operate a powerboat
7 from the dock, from your property?

8 A. I do. Our family has boats as well. So we have
9 sailboats there and powerboats.

10 Q. Okay.

11 A. I think you can see the sailboat there on the dock.

12 Q. Sorry about that. I just --

13 A. No problem.

14 Q. As you said that I --

15 A. It's got a mast just like every other sailboat.

16 Q. Right here?

17 A. That's it, yes. You see the sailboat parked right there
18 with the mast.

19 Q. Okay. You're familiar -- you reviewed the materials, the
20 CRMC file, ESS's report, and the testimony of all the
21 witnesses that have testified from November 12th, 13th,
22 and the 17th and today. And you have in preparation for
23 today you reviewed those materials?

24 A. Yes, I have.

1 Q. And listened to that testimony?

2 A. Yes, I have.

3 Q. Are you familiar with Mr. Raso's current operation?

4 A. I am.

5 Q. And you're familiar with his proposed location?

6 A. I am.

7 Q. Okay. Can you identify just in this photograph where
8 that proposed location would be from your house?

9 A. Well, looking at this photograph it would be just off the
10 bow of the powerboat, and extending to the left of the
11 photograph is where the proposed lease site would be.
12 From our house it is looking straight out of the living
13 room window you would see it straight across the water
14 and off to the east somewhat.

15 Q. Okay. David, you said you've been on Segar Cove since
16 1970. Can you tell the Subcommittee from 1970 to today
17 the types of recreational activities that you observed on
18 Segar Cove in particular?

19 A. Wow, that's a pretty long period of time. Those people
20 familiar with Segar Cove realize that it's pretty dynamic
21 so the kinds of activities there over the years changes.
22 But I've seen everything there, waterskiing, sailing,
23 clamming. Back in the day when there were crabs, people
24 used to do a lot of crabbing along the whole perimeter of

1 the cove. We'd go out at kids and literally get a bushel
2 full of blue crabs. And then my brothers, because I was
3 the smallest and presumably the best salesman, they would
4 send me down the street to sell the rest of the crabs.

5 So, yeah, we did a lot. Like we'd have sailboat
6 races in there, we'd have waterski contests, we would go
7 clamming, later when the paddle boards came in, we did
8 that. Anything having to do with boats and water we were
9 all in all the time.

10 Q. That's in regards to your use. Were you able to make
11 observations of the public or other people's uses of that
12 cove during that time frame from 1970 --

13 A. Certainly, yes. We've seen a little bit of everything
14 back in this cove from people tieing up for the afternoon
15 on big giant floats the size of boxing rings and having
16 friends out there and a cooler, to people rowing, people
17 sailing, people paddling, boogie boards, people on rafts,
18 little kids on inner tubes, people on jet skis, people on
19 jet skis pulling waterskiers.

20 There's a couple guys who ski every morning around
21 6:30 when it's super calm, and they are on jet skis and
22 they switch. One guy drives and the other guy skis. So
23 pretty much anything that you can imagine people doing on
24 the water, people have done and continue to do out there

1 depending upon the season and when -- they don't do a lot
2 of fishing there in the wintertime, although some people
3 do.

4 When the worm hatches there, it's a great place to
5 catch striped bass. We used to catch a lot of soft
6 shelled steamer clams back when Mr. Raso started digging
7 clams commercially. I well remember when that first
8 started. There were soft shell clams all over the pond,
9 and you could get just pails full of them and they
10 disappeared a little bit.

11 When I first started in the 70s there were actually
12 scallops in the pond. Not so much in Segar Cove, but
13 over in other parts of Potter Pond there were wild
14 scallops. My grandfather took me out one October, and I
15 couldn't believe how cold the water was. He said "look
16 and pointed to the beautiful scallop with a blue shell.
17 So, yeah, every kind of shellfish we've done, speared
18 flounder over by the gut and caught big stripe bass right
19 off Mr. Hunt's point there. So a little bit of
20 everything.

21 Q. I have a question. I'm going to pull up another figure
22 for you to look at.

23 MR. CAPIZZO: For the record, this would be 1A,
24 ESS's report.

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[PAUSE]

[EXHIBIT DISPLAYED]

Q. David, I keep hearing about this gut. Alicia referenced it. That's one thing I haven't heard of during my involvement in this matter. Can you tell me where that is?

A. Yes. The oyster bar restaurant. The oyster bar restaurant sits on the gut. So if you go to the west, right there, right there, that is the gut. That is a cut between that allows the tide to come in and out of the pond, the estuary, it's extremely narrow and the water can move really quickly through this. Perry's restaurant is right on the western edge of Succotash Road which is right there. There's a bridge that limits the height of any of the boats that can come into the pond. In addition to being shallow, most of the pond, you also have to be able to get your boat in and out under that bridge which at high tide gives you about three and a half or four feet of clearance.

So you won't see any boats with super structures on the top because they have to get under there. Going in and out of the gut, that was a big milestone in my youth because once you were allowed to go there, you could go out to the Salt Pond and out to the ocean, and it was a

1 little bit more freedom than being confined to the pond.

2 Q. Okay. Thank you for that. So are you familiar with the
3 Figure 1A that I have up on the screen that I'm sharing?

4 A. Yes, I am.

5 Q. Are you familiar, based on having recreated and living in
6 the area, of the different public access points that are
7 referenced on the map?

8 A. Yes, I am.

9 Q. So when we talk about public access points, these are --
10 are you familiar with the areas that are identified?

11 A. I am.

12 Q. Can we start with the northern most triangle right here.
13 I think Alicia had referenced this as well. I didn't ask
14 her this, but I'm going to ask you. Can you describe
15 what type of access point that is?

16 A. Well, it's at the end of a public road that sort of
17 slopes into the water. I think maybe back in the day
18 people used to put powerboats in there. Now it's mostly
19 people put in kayaks or smaller rowboats that they store
20 the kayaks on the side. Both of those put in points
21 there people will keep their kayaks, people from say the
22 Matunuck community as an association who have a kayak
23 might keep it there and put their boat in and paddle out
24 of the cove that way.

1 Q. What about the triangle, the yellow triangle south of
2 that?

3 A. Same deal.

4 Q. Okay. What about the third triangle to the south of
5 that?

6 A. I think that that's a little trickier. You have to know
7 that one is there because it is at the end of a road, but
8 it sort of almost looks like it's someone's property but
9 I think there is an access point down there. Again, the
10 kind of thing where you would get your kayak and carry it
11 ten feet and then put it down into the water.

12 Q. Finally, the fourth one on Segar Cove?

13 A. That fourth one on Segar Cove, I can't speak specifically
14 to that one because there's a tidal marsh back there.
15 I'm not aware of as many people using that as use the
16 other three or any of the other ones that are in red
17 because it's extremely shallow back there.

18 Q. I was going to ask you about that. Are you familiar with
19 that area of Segar Cove?

20 A. Yes, yes. It's not -- it's not conducive to doing much
21 of anything other than getting out of there. The water
22 is, in addition to being really shallow, it does not get
23 a lot of tidal flushing there. So it tends to be a
24 little weedier and it's still -- it doesn't get as clean

1 as the rest of the cove.

2 Q. Is that the area where the mooring field is?

3 A. Yes, it is. Although not its entirety. The part to the
4 extreme south of that, there is no mooring field in there
5 but nobody uses that water for anything other than
6 transiting through it to get out of that dead end of the
7 cove.

8 Q. Okay. You're familiar with Segar Cove. What about the
9 rest of Potter Pond? You talked about the recreation
10 that you observed on Segar Cove. What about in the
11 area -- I think you heard me ask Alicia and Kevin the
12 types of recreational activity that takes place in and
13 around Mr. Raso's. I think you said you were familiar
14 with his current operation?

15 A. Yes.

16 Q. Based on your observations what would you describe, or
17 how would you describe the types of recreational
18 activities that take place in the area around Perry's
19 existing operation?

20 A. Well, the water there, except for the northern side of
21 it, the water is really too shallow to do any power
22 boating there. So typically, for example, like I learned
23 how to windsurf right out there. The prevailing wind is
24 a southwest wind. It comes over the water and hits it

1 beautifully right there. It's shallow. So every time I
2 got thrown off the windsurfer, which was frequently, I
3 could just stand on the bottom, get back up, and learn
4 how to do it.

5 But, again, there is very shallow draft on a
6 windsurfer, eight or ten inches, so you can do that back
7 there. But in any other powerboat, back when we were
8 kids we would get in a rowboat, row out there in the
9 morning and then float over those sand flats with a crab
10 net and go crabbing there.

11 People don't do that now, A, because there's a farm
12 there; and B, because the blue crabs seem to have mostly
13 disappeared. But I had seen people -- I, like Kevin and
14 others, I've never seen anybody doing anything within the
15 confines of that farm other than working. The most I've
16 ever seen is people paddling around it either in a kayak
17 or a standup paddle board perhaps.

18 When the worm hatch comes in there are quite a
19 number of people, believe it or not a big group of people
20 that walks out from the marshes at East Matunuck State
21 Beach. They walk all the way across the water to park
22 themselves on the northern edge of his farm to cast flies
23 into the deeper water right there so that they can catch
24 striped bass during the worm hatch.

1 Q. You refer to east -- was it East Matunuck Beach?

2 A. Yes.

3 Q. Is that the area right here?

4 A. That's correct.

5 Q. It would be the southern end of where Perry's operation
6 is on the furthest southern end which you can see the
7 beach access?

8 A. Yes, that's right. And you can just see from the
9 photographs how the sand is shaded there. It shows --
10 that water is all about at high tide it could be three
11 feet deep, and at low tide it could be a foot deep.

12 Q. So you are telling me people walk from East Matunuck all
13 the way to north end of --

14 A. Yes, they do.

15 Q. Okay. And have you been out to Perry's operation?

16 A. I have.

17 Q. On what types of --

18 A. I've been out there on a standup paddle board, on a
19 kayak, on a windsurfer and on a kite surfboard.

20 Q. What about navigating around that area with the motor
21 vessel?

22 A. Yeah. It's not advisable because, like I said, the water
23 is extremely shallow and there's plenty of places that
24 you might be able to get into, but you might not be able

1 to get out of because it can go from two feet to a foot
2 of depth. So no, you almost never see powerboats on the
3 southern side of that farm.

4 Q. Okay. You heard Alicia's testimony earlier, correct?

5 A. Yes.

6 Q. At some point in time do you recall being able to kayak
7 or paddle board over --

8 A. I do. I remember kitesurfing over the entire farm. As I
9 said, the wind is -- it's an ideal place to do all kinds
10 of sailing, at least on a windsurfer a kite surfer
11 because they don't have a center board. So on the
12 southwest wind you can get a broad reach and go back and
13 forth, and back and forth to your heart's content. So
14 yeah, I've been on a windsurfer, on a kayak, on a standup
15 paddle board, on a row boat.

16 Q. What about now? Are you able to do those things with
17 this current operation there?

18 A. No, no, absolutely cannot windsurf anywhere near it,
19 can't kite surf anywhere near it, can't sail anywhere
20 near it since it's taken away from reach. You can't make
21 those runs anymore so people don't do that anymore. The
22 best that you can do is -- I do see people occasionally
23 windsurfing just to the south of the southern tip of his
24 farm, and they'll go back and forth there to Ram Point.

1 That's the most that they can do.

2 Q. Okay. I'll stop sharing for a second.

3 What about the -- you've heard the testimony of
4 Kevin and Alicia kind of taken them on a tour of Segar
5 Cove and I'm sure everyone is tired of hearing it. I
6 want to walk you through because each of us have their
7 own individual experiences of Potter Pond. Give me one
8 sec.

9 David, are you familiar with this figure, Figure 1B
10 from ESS's available for towed water sports?

11 A. Yes.

12 Q. Let's travel north from Perry -- actually, before we
13 leave that area, are you familiar with what Kevin
14 referred to as Sycamore Cove?

15 A. Yes.

16 Q. Can you describe for the committee members what your
17 observations are of Sycamore Cove?

18 A. The most salient thing about Sycamore Cove is that it's
19 absolutely choked with weeds. There is a lot of eelgrass
20 growing from the bottom. It's probably just as deep as
21 the rest of the pond, which is to say maybe six or eight
22 feet, but the weeds are extremely thick and grow very
23 near to the surface. So you don't see anybody swimming
24 or skiing or doing anything in there because if you fall,

1 just trying to get pulled up out of those weeds is
2 totally impractical. The most that you can do in there
3 is go paddling back and forth with a kayak or a standup
4 paddle board, but even then that could be difficult
5 because the weeds are so abundant they will foul your
6 skeg and you'll end up having to clear the weeds off your
7 rudder five times every minute. So people do not
8 recreate there as much as they do in other parts of the
9 pond.

10 Q. What size powerboat do you operate on the cove?

11 A. A 20-foot Aqua Sport with a 90 -- I used to have a
12 115 horsepower on it, and now it has a 90.

13 Q. Okay. Over the course of your -- since 1970 to 2020,
14 30 years, have you operated motorboats on Potter Pond?

15 A. I have, yes.

16 Q. Same size, bigger, smaller?

17 A. They typically are not too much bigger. As I said, there
18 is a limit to the size boat that you can get into the
19 pond because of the low bridge at the gut. So they are
20 all about -- they've been from 18 to 20 feet.

21 When we were younger, we operated a little whaler
22 that was 13 feet, had a 40 horsepower, and that in some
23 sense is a little easier because the water is so shallow.
24 Most of the places it can be a little bit easier to

1 navigate with a boat that size but typically we've gone
2 with a little bit bigger boats so we can both fish in the
3 pond and out in the ocean when the fish are out there.

4 Q. So let's travel north past the cut. I want to, just so
5 we're clear, it's from the northeast of Perry's existing
6 farm going up to just before we enter into the northern
7 basin. If you could describe that area for the
8 Subcommittee members?

9 A. Well, that's mostly a transit zone. You can see right
10 where the gut is there, you can see that there's a semi
11 circle at the sand. As the water pushes into the pond
12 it's created a very shallow sandbar. In the center of
13 that it's quite deep. It's almost 20 feet down there and
14 there are flounder and striped bass and all sorts of
15 wonderful aquatic life in there.

16 All the way to the edge of that sand it's literally
17 a foot deep so you can't -- if you're leaving Segar Cove
18 and heading north, you have to get your boat up onto a
19 plane because, otherwise, if you don't, you can't get it
20 up onto a plane in any other place because it's not deep
21 enough. As soon as you give power to the boat, you'll be
22 dragging your prop on the bottom. So you get it up on a
23 plane before you hit the channel, which is just before
24 you get to the farm, and then continue on more or less

1 hugging the coast as you head north.

2 There are significant visible rocks north of the
3 gut, and north of that sandbar there's a big patch of
4 visible rocks on your right-hand side. So you are
5 staying as close to the left or western side of that as
6 you can and stay away from the dock as a way to get up to
7 the northern cove. So it's mostly for transit. You do
8 see people fishing. There's quite a bit of fishing --
9 there can be quite a bit of fishing down there during the
10 worm hatch, but mostly the powerboats are using that to
11 transit.

12 Because it's so narrow, people are not skiing in
13 there or tubing or anything like that because if the
14 skier were to fall, they would be in the water in the
15 middle of the channel.

16 Q. The rocks that you are talking about, the north cut, are
17 those rocks visible?

18 A. They are. You know, about 15 years ago there was I think
19 a boater was killed at the house just to the right of the
20 rocks. If you don't know where you're going, you can
21 easily drive your boat into the wrong spot, into the
22 wrong spot there, yeah. So you have to stay well left of
23 those rocks and stay in the middle of the quote unquote
24 channel. Although it's not a marked channel. It's a

1 just a common channel.

2 Q. From your family's property to the northern basin on
3 headway speed, how long does it take you to get up to the
4 northern basin?

5 A. Ten minutes maybe.

6 Q. Okay. Now I want to talk about, you heard the northern
7 basin of Potter Pond. You referred to it as a couple of
8 different names, Skiers Cove, and I think Alicia
9 mentioned something else. Are you familiar with that
10 area of Potter Pond?

11 A. Very, very. You know, I'm with Alicia. I've never heard
12 it referred to it as Skiers Cove; although people do a
13 lot of skiing there. We always referred to it when we
14 were kids and growing up as Third Cove or Make out Cove
15 because that's where everybody went to try to get a
16 little privacy from the prying eyes of their parents, and
17 they'd throw a little anchor on their rowboat out and,
18 you know, do what kids do.

19 Q. Have you had the opportunity over the course of 30 years
20 to -- I won't ask you about making out, but how about
21 recreating in the northern basin?

22 A. Yes, certainly every type of recreation, you know. I
23 even remember the first aquaculture operation that was
24 put in there. That was referenced during I think

1 somebody's testimony earlier in these meetings talked
2 about one of the first aquaculture operations, and I
3 remember exactly where it was and what it looked like and
4 wondering what it was.

5 That cove is quite different than the rest of Potter
6 Pond because I'm led to believe that there's freshwater
7 springs that come in down there and it's four times as
8 deep as any other part of the cove. It's 20 or 30 feet
9 deep in there. I think it's an old kettle pond. So that
10 is certainly a preferred place to ski if you can if
11 there's room, which lately these days has kind have been
12 a problem because that cove gets -- every year it gets
13 more and more crowded with more picnickers, people
14 anchoring up for the day and having their kids swim and
15 things like that.

16 But, yes, we've caught clams down there, done a lot
17 of fishing back there, done a lot of exploring back
18 there. There's even a secret little fishing spot to the
19 extreme northern part of that. It's called Perch Cove,
20 where the right time of year you might find some striped
21 bass back there. I've seen -- the only time I've ever
22 seen them are the saltwater otters that live in Potter
23 Pond was in there.

24 Q. Okay. Have you had the opportunity over the course of

1 those 30 years to waterski, wakeboard, whatever?

2 A. You said it was 30 years. I think it's more like
3 50 years. I'm an old timer.

4 Q. Have you had the opportunity to recreate up there?

5 A. Yes, I certainly have, yes.

6 Q. You heard Alicia's testimony about her observations of
7 how people recreate up there. Can you describe how you
8 recreate, I think you said at the cove, the Third Cove,
9 how you waterski up there, and then I'll ask you another
10 question.

11 A. Well, you know, that's a particularly great place to
12 waterski because it's sheltered from the wind and
13 whatnot. If you're there at the right time of day when
14 it's not jamb packed full of boats, it's world class
15 waterskiing there.

16 My brothers and I would go up out there and ski,
17 particularly for barefoot waterskiing was really optimal
18 because it is sheltered from the wind on so many
19 different sides. So you would have -- conditions. So we
20 would go out there and ski and ski and ski and ski until
21 we ran out of gas and then go borrow money and go ski
22 some more.

23 Q. Okay. What areas of that northern basin would you use to
24 ski?

1 A. Well, Not so much on the western edge that's indicated
2 that people do because we made a habit of not skiing
3 anywhere near a channel. So the ingress and egress to
4 Third Cove there came through, you see there's a little
5 strip there that you need to navigate, and there's some
6 nasty hidden rocks there that once every ten years will
7 rip the bottom your propeller off. So you have to be
8 careful about where you go in there.

9 Once you turn the corner and get into the cove, it's
10 more or less it would be fair game to ski the entirety of
11 that provided you weren't too close to the shore. You
12 needed to make your turns so that you could do that
13 safely without running into the shore or the dock or
14 anything like that.

15 In recent years that water has become more difficult
16 to use because there are more and more people picnicking
17 there for the day. You know, we would just go for an
18 hour or two, but recently people -- when I say recently,
19 the past five or seven years -- people will picnic there
20 for the entire day. They will get two or three boats,
21 tie up and anchor up, typically a little bit on the edge
22 so that the center is still available for skiing, but
23 there will be five, six, seven boats in there all skiing
24 or dragging a tube at the same time. For that reason,

1 it's not a great place to ski anymore because it's
2 typically too crowded.

3 Q. When you say people are rafting up or anchoring up there,
4 what part of the northern basin based on your
5 observations would they be doing this?

6 A. Mostly on the southern -- the southeastern edge there.
7 That whole patch of water is protected. You see there's
8 no homes on the shore there, so it's spectacularly
9 scenic. It's deep. And the wind is typically calm since
10 the wind is usually from the southwest. That's right
11 against the land. It's very calm there. So it's not
12 uncommon to see 15 or 20 boats spaced out as much as they
13 can afford to, anchored out there, swimming. They'll
14 swim, listen to music, maybe they'll ski for a little bit
15 and then anchor up a little bit, have lunch, and
16 sometimes there is music and other people are coming and
17 going.

18 Q. Okay. There was testimony before, I think it was
19 Dr. Rheault who testified about an aquaculture farm. You
20 just said you remember that farm --

21 A. I do.

22 Q. -- in the northern basin. Where in the northern basin
23 was that? I think he said it was in the 1980s, I
24 believe.

1 A. Yeah, my recollection it was just to the left. If you go
2 to the center of the cove, it's just to the north of
3 that, but not at the -- not at the far north of that. So
4 two thirds of the way toward the top, and it's not giant
5 but all I remember mostly were the big black drums. They
6 had big black plastic drums. I think they were plastic,
7 each of the corners holding it up. Different gear than
8 they use these years but...

9 Q. Okay. Is the channel -- you are talking about the
10 channel leaving from, let's say entering from the cut
11 from near Perry's restaurant coming into Potter Pond. Is
12 that I guess you could say channel marked going out to
13 the basin?

14 A. No, no. To the everlasting regret of anybody who has
15 ever tried to navigate that pond without a lot of local
16 knowledge, it is not marked. There is -- and only some
17 of the obstructions, there are a couple little rock piles
18 that people put out there on their own. It's just you
19 need to know where to go; otherwise, you can't power up.
20 You can probably lift your engine all the way and
21 navigate on 80 percent of it, but you will do so at one
22 or two miles an hour.

23 Q. What about public access that points to that Third Cove?

24 A. There are no public access that I know of to get into the

1 Potter Pond via Third Cove.

2 Q. Okay. I want to take you back now to Segar Cove. You
3 testified about how you recreated and some of the
4 observations that you've made as to recreation on the
5 cove. Could you describe based on those observations how
6 you use that cove, let's say, if you're doing towed water
7 sports?

8 A. Well, I think Alicia made a really good point about just
9 the big macro view of how that cove is used, the area.
10 One of the reasons why I think so many people got really
11 interested in voicing their opinion about this is that
12 Segar Cove is kind of an oblong shape. For people,
13 anybody doing water sports at high speed, be it skiing or
14 tubing or wake boarding or whatever comes next, or bill
15 boarding, they typically would head down the western side
16 and then they would go north and then they would make a
17 turn around. I think there's a diagram in the ESS of
18 what a typical waterski run would look like.

19 Q. David, I will stop you there for one sec. I'm trying to
20 share my screen. Figure 4B, the one that Alicia had
21 referenced. I couldn't pull it up quick enough.

22 [EXHIBIT DISPLAYED]

23 Q. Can you see that?

24 A. Yes, I can. Again, this is really just specific to the

1 water sports, the tow sports issue. There are other
2 issues that this impacts related to [ZOOM INTERFERENCE]
3 nobody talked anything about that. I hope I have the
4 opportunity to do that.

5 But as far as waterskiing goes and tubing, wake
6 boarding, things of that nature, they typically would
7 head up along the western side of the cove and then bang
8 a pretty sharp turn as they head up towards the north
9 side, curve back around, veer left a little bit, come
10 towards our property, and then take a right. So it would
11 be more or less an oblong that they are tracing. And for
12 anybody who's done that, it is immediately apparent that
13 putting a farm, or anything for that matter, in that
14 section of the water is going to alter the dynamic of how
15 this is used. Because while the tow sport folks are
16 using the fat meaty center, anybody else, either in a
17 sailboat or a paddle board or a boogie board or a raft or
18 whatever they are doing, would typically hug that side,
19 the northern, the northeastern side, to stay out of that
20 traffic.

21 When people enter the cove, they do so at speed.
22 Remember, they are typically not coming in at five miles
23 an hour because they need to get up on a plane. They
24 enter the cove right by our house and they either go left

1 down to the mooring field, which is where they keep their
2 boat, or if they are just out for a pleasure trip, they
3 would typically go right and take -- do a
4 counterclockwise circuit of the cove and show their
5 friends and family, like how cool is this, look at this,
6 there's a beautiful farm there.

7 When they are doing that, if there's activity, that
8 area where the farm is would be -- that's like the slow
9 zone of the cove. And they would use that as a safety to
10 get away from the activity that's happening in the center
11 where there are jet skis pulling skiers or boats pulling
12 skiers. That activity happens more towards the center,
13 and anybody else would make themselves safe by getting
14 over to that western side right where the lease is.

15 If that lease is there, all of those people, while
16 they may theoretically be able to park themselves on the
17 inside edge of the farm, I think as a practical matter I
18 think it's unlikely to assume that people will do that.
19 Nobody is going to want to jamb themselves into the eight
20 feet between floating oyster cages and the shoreline. I
21 think it's more likely that they are going to head
22 further to the west and park themselves out into that
23 buffer zone now.

24 So the skiers, importantly, are going to have to

1 turn around earlier. Since they won't be able to go as
2 far north, they have to make turns earlier and that is
3 going to create dangerous conditions in the center of
4 that cove for people who are skiing, especially people
5 who are skiing. Because if a kid -- you know, even
6 without the farm there, a kid who is skiing needs to be
7 instructed about what to do when they fall because this
8 is a busy stretch of water on a hot summer day.

9 So we spend a lot of time with anybody we take
10 skiing saying, if you fall you have to splash the water,
11 you have to hold your hand up, you have to do this, you
12 have to make yourself visible because there's a lot of
13 traffic coming and going and not everybody is as
14 conscientious as we would like them to be.

15 With that farm there, it really frightens me to
16 think that the one or two or three people skiing at the
17 same time or tubing or whatever are going to be doing
18 that in a smaller water sheet with more traffic in it.
19 So I just -- to me, it seems on its face a really bad
20 place to put an obstruction in the middle of the water
21 that will create -- it sets a motion of bad dynamic for
22 all kinds of people, for the people skiing, it puts them
23 at risk, and the people kayaking because this puts them
24 in the middle, and the people paddle boarding, and it

1 sort of cascades down the negative effects of that.

2 Q. You just previously mentioned a sailboat or sailing
3 within the cove and there hasn't been much conversation
4 on that. Have you had the opportunity over your -- we'll
5 leave it at your time on the cove rather than dating it,
6 have you had the opportunity to sail on that cove?

7 A. Yes, very much. We used to have sailboat races. We
8 still have a sailboat, still enjoy sailing very much.
9 Because most of the pond is so shallow, you can't -- you
10 can do downwind across the flats with your center board
11 up, but typically that's not how you make ground to
12 windward. This cove is really the only place on the
13 entire pond that you can sail.

14 As I said, the northern cove or Third Cove is really
15 protected from the wind, and in my 40 years, I've never
16 seen one sailboat out there at all. Nobody sails on that
17 cove at all because they can't. It's impractical to get
18 there in a sailboat or to get back in a sailboat. The
19 only place people will sail on this entire pond is
20 80 percent of it is in Segar Cove or immediately adjacent
21 to Segar Cove inside the channel.

22 Q. Can you explain for the Subcommittee where in Segar Cove
23 you sailed first, and then we'll talk about when you
24 observed other sailboats doing in the cove.

1 A. Typically what you would do in sailing, again, the wind
2 is prevailing southwest which is coming from the mooring
3 field and heading towards the farm. So just to start
4 out, in order to get some speed moving, you would transit
5 directly through the lease site as you crawled your way
6 windward. And then you have to tack on the other side
7 and gradually make your way up. Then as you approach the
8 mooring field the wind typically would die up there
9 because there are homes and whatnot blocking it. So you
10 turn around and either go straight back in as far as you
11 could go, right down through the lease site, you would
12 come about and repeat the process.

13 Q. Okay. Is that consistent with what you've observed the
14 public to do as well?

15 A. Certainly. Yes, yes, I'm sure members of the public will
16 tell you how there's a couple of identifiable sailboats
17 that come through on a daily basis and do exactly what I
18 just said, spending a couple hours sailing doing nothing
19 other than enjoying the peace and quiet.

20 Q. We talked about on the Third Cove about rafting and
21 anchoring. Can you describe, had you had the opportunity
22 to observe whether yourself, other family members, Kevin,
23 Alicia or members of the public, have you had the
24 opportunity to observe rafting or anchoring in Segar

1 Cove?

2 A. Yes, and more of that every year. I think that as the
3 northern cove, you know, the past five or six years I
4 have seen a noticeable increase on the amount of people
5 on the pond. I attribute part of that as sort of natural
6 growth and the popularity of South County, but I also
7 think some of it has to do with the fact Point Judith
8 Pond expanded their aquaculture to the point where
9 activities that were taking place there are now taking
10 place up here. People are looking for free water that
11 they can recreate on, whether it's sailing or skiing or
12 doing whatever.

13 So back in the day, nobody anchored up down here on
14 Segar Cove. That just wasn't done. That's not how they
15 enjoyed the pond. Nowadays, it is very common to see two
16 or three boats anchored up right at the lease site.
17 They'll throw one of those rubber wrestling mats out the
18 back and the kids will play on the back of it. While
19 skiers or jet skiers are using the center, they and the
20 kayaks and other people would be off to the edge there in
21 the slow lane sort of taking it all in, watching it,
22 spending a day on the water.

23 Q. Are you familiar with the shoreline that runs the length
24 of the proposed farm?

1 A. Yes, I am.

2 Q. Can you tell the Subcommittee how you're familiar with
3 that shoreline area?

4 A. Well, I literally have swum the perimeter of the entire
5 cove with a mask and snorkel, so I can tell you how deep
6 it is everywhere and what the bottom looks like and where
7 the rocks are. But I've also been out there on a paddle
8 board and a kayak and the powerboats and whatnot. You
9 know, three or four times in the past 25 years I've gone
10 over to that shore to pick up a dock. Our dock floated
11 there once at the end of a storm. Because the wind
12 typically again is from the southwest, a lot of stuff
13 will wash up on that shore, so I've been out on that
14 shore many times.

15 Q. What other observations have you made such as
16 shellfishing or fishing in that area?

17 A. There's -- this is what -- you know, what is stupefying
18 about the staff report was that -- and in the
19 application, Mr. Raso is saying there's no shellfish
20 there. Then the report says, well, we tested it for
21 shellfish and there's only one clam per square meter.
22 I'm here to tell that you there are more clams than that
23 there. You can go out there with a rake and get them
24 yourself, and you'll get a bucket or two. I know the

1 people do it commercially there. They harvest clams
2 there. I've been clamming there. I've got soft shell
3 clams there and hard shell clams there. It's a great
4 place to get clams.

5 Q. Has that changed over the years in regards to clamming
6 from your own experience I should say?

7 A. It has. You know, the fact that they couldn't find
8 anything this year doesn't mean that they are not going
9 to be there next year.

10 As I said, when we first -- when Perry first started
11 commercial shellfishing, he was digging steamer clams.
12 For about seven or eight years the entire pond was
13 rotting with steamer clams and now you can't find a
14 steamer clam anywhere in the pond. I don't know what
15 happened to them, whether they got fished out or the
16 water change or something like that, but steamer clams
17 are nowhere to be found. Maybe they will come back in
18 five years. I don't know.

19 I know that we've had a little resurgence of blue
20 crabs. They disappeared entirely for what seemed like 15
21 or 20 years, but I noticed more blue crabs coming back in
22 the past few years. So the only thing I think that you
23 could get there right now as far as shellfish would be
24 hard shellfish clams or quahogs.

1 MR. CAPIZZO: Okay. Bear with me one second,
2 David.

3 [PAUSE]

4 Q. David, are you familiar with Figure 4E which is a full
5 exhibit that is entitled, Modified Proposed Aquaculture
6 Lease to Shoreline?

7 A. Yes, I am.

8 Q. How are you familiar with this?

9 [EXHIBIT DISPLAYED]

10 A. This resembles the Plan B or something when it was
11 revised after the original rectangle was proposed. This
12 trapezoid or whatever shape it was was proposed. I've
13 seen it in the plans.

14 Q. You heard everyone's testimony about the distance between
15 this Option B polygon to the shore as well as today's
16 testimony of Kevin and Alicia. Have you had the
17 opportunity to visit the areas between what would be the
18 proposed farm and the shoreline?

19 A. Yes, I have.

20 Q. What concerns do you have as it relates to access to that
21 area if this farm is put there? And when I say "the
22 area," the shoreline in the area between -- I recognize
23 that I'm pointing to my computer screen and you can't see
24 this, but between the polygon and the shoreline.

1 A. Well, I think it's certainly going to limit access to any
2 part of that shore via a powerboat. I think it's
3 debatable whether or not you could circumnavigate this
4 proposed farm in a powerboat. Personally I wouldn't try
5 it, I wouldn't do it. That little 10-foot section right
6 there, it may not measure 10 feet, but if you look at the
7 shore there, there are obstructions and rocks. It's
8 really going to be about -- you have six feet of
9 clearance. And if the tide is low, you just won't get a
10 boat through there.

11 So you may be able to access that from the northern
12 part of it and transit on the way down but, again, those
13 would -- you'd have to really know what you're doing and
14 be familiar with all of this submerged obstructions that
15 are there. And there are a quite a number of them. As
16 Kevin said, there are quite large boulders that are
17 underneath there that certainly would destroy your
18 powerboat if you tried to navigate around there.

19 Q. Are you familiar with the work barges that Perry uses on
20 his current operation?

21 A. Yes, I am.

22 Q. You heard testimony from Perry and others that those work
23 barges would potentially be placed on the inside versus
24 the outside of this polygon?

1 A. I did hear that.

2 Q. Based on your observations of that area and your
3 knowledge of the size of those barges, would you be able
4 to get a barge in that area?

5 A. No.

6 MS. NOONAN: Objection. I don't think this is
7 in the scope of his factual testimony.

8 MR. DESISTO: Agreed. It's an opinion.

9 MR. CAPIZZO: I'll move on.

10 Q. David, let's talk about -- you had the opportunity to
11 take some photos of the cove; is that correct?

12 A. Yes.

13 MR. CAPIZZO: Just give me one moment to cue
14 those up.

15 [PAUSE]

16 [EXHIBIT DISPLAYED]

17 MR. CAPIZZO: Okay. Beth and Dean, this is
18 Exhibit 4.

19 MS. NOONAN: Yes.

20 MR. CAPIZZO: And there's 17 photos and one
21 video. I'll try to be a little quicker going through
22 these photos for everybody.

23 Q. David, did you take a series of photos or provide a
24 series of photos of recreational activity on Segar Cove?

1 A. Yes.

2 Q. Over what time did you take those photographs?

3 A. The ones that I took were mostly taken within the past
4 three years when we became aware of the fact that this
5 was being proposed, so between 2018 and 2020. I think
6 some of the photos might be historical in nature meaning
7 they were taken 15 years ago at the spot of the proposed
8 lease.

9 Q. When you say 15 -- the photos that you provided --

10 A. I think I have a picture of my nephew in an inner tube,
11 and I don't remember if another nephew who was
12 waterskiing, and since the nephew has now graduated from
13 college and he's 29 years old, and in the picture he's
14 about 14 or 15, it was quite some time ago.

15 Q. So the picture you're referring to, I pulled it up on the
16 shared screen. Can you see that?

17 A. No. I see your desktop.

18 Q. Hold on.

19 A. Looks like you're camping in a green tent.

20 Q. It's not as nice as Mr. Ryan's. Hold on a second. Let
21 me see.

22 [PAUSE]

23 [EXHIBIT DISPLAYED]

24 Q. See that now?

1 A. Yes. That's the exact photo I was thinking about. That
2 young man in the yellow vest is my nephew Aiden.

3 Q. How are you familiar with this picture?

4 A. Because I took it.

5 Q. Okay. Where did you take it?

6 A. I took it from the console of the boat that I was pulling
7 him on.

8 Q. Can you tell us where this is in relation to where in
9 Segar Cove?

10 A. This would be smack dab in the middle of the lease site.

11 Q. When was this picture taken?

12 A. I would say about 15 years ago.

13 Q. Do you recall when or what month that --

14 A. It would have been in the summertime. Probably in August
15 I am guessing.

16 Q. Is it a fair and accurate representation of what we're
17 looking at?

18 A. Yes.

19 Q. Showing you a second photograph, do you recognize this
20 photograph?

21 A. I do.

22 Q. How do you recognize it?

23 A. Well, because I was just sitting at the house one day. I
24 was reading through the Raso application saying that he

1 had never seen anybody fish in the proposed lease site.
2 I looked out and there were four kayaks who were -- you
3 see barely there's a group of birds there. There's a
4 school of striped bass right there that is essentially,
5 again, right in the middle of the proposed lease site and
6 those kayakers are going to get those fish.

7 Q. In the background can you describe on the shore what
8 we're looking at?

9 A. That's Alicia's house there. And just to the right on
10 scene past the telephone poles there would be Mr. Hunt's
11 house.

12 Q. Okay. This is the proposed area of where the lease that
13 Mr. Raso is proposing?

14 A. Yes.

15 Q. This does not look like the summer.

16 A. It actually was the summer. It's just an overcast day.
17 Typically the worm hatch happens in May, I think, it goes
18 from two weeks to three weeks. It would have been early
19 in the season probably in 2019, I believe.

20 Q. I want to draw your attention to the right of the screen,
21 at least the right of my screen along the shoreline
22 there. You were previously describing that shoreline. I
23 think you heard Kevin and Alicia testifying about rocks
24 and boulders and about it being rocky?

1 A. Yes.

2 Q. Can you draw the Subcommittee's attention to what you
3 were referring to when you say it was "rocky"?

4 A. You can see from the photograph right now it's low tide
5 in the cove, and the tidal flow there can be three or
6 four feet. A lot of the shoreline is exposed. Where
7 it's light is typically dry, and where it's dark colored
8 it is covered in weeds and is usually underwater at a
9 higher tide. So those are the sorts of obstructions
10 there are right there.

11 So the first four to five feet of shoreline, even
12 though it says there is five feet of navigable water
13 there, the water is not navigable because you're going
14 over those rocks.

15 Q. And the rocks you're referring to where the cursor is
16 along the shoreline, and this is Kevin's property,
17 running along his causeway and then you see the rocks on
18 the shore and then you see a rock to the left of the
19 shore?

20 A. Yes.

21 Q. Then going down all the way to Alicia's property?

22 A. Yes. I might be wrong, but there are occasionally people
23 who are clamming deep in that cove there to the right
24 where your cursor just was, even to the right further to

1 the right, keep going, right there. That's a spot where
2 commercial clammers go very frequently, there and about
3 20, 30 feet out from there. Those might be the boats
4 right there. I don't know, it's difficult to see.

5 Q. Okay. Can you tell us -- this is the third photograph, I
6 believe. Can you tell us what we're looking at here?

7 A. You're looking at a jet ski pulling a kid, a jet ski with
8 a passenger pulling somebody on a tube, and then you're
9 looking at a paddle board pulling someone in a tube.

10 Q. And from what vantage point are you taking those photos
11 from?

12 A. This is taken from the deck at 298 Prospect Road.

13 Q. So looking north on Segar Cove?

14 A. That's correct.

15 Q. What shoreline are we looking at behind the jet ski?

16 A. You're looking at the western shore of the cove, and they
17 are heading -- remember I said it's an oblong. So
18 typically what they will do is head from one end to
19 another in usually a straighter line that they can and
20 both of them are heading down that straight line. The
21 jet ski is doing it on the northern side, and the other
22 boat is doing it on the southern side. They will have to
23 navigate their turn when they get to the other end. One
24 will go inside and one will go outside.

1 Q. Do you recall when this was taken?

2 A. I would say that was probably July or August of 2018.

3 Q. Another photograph, can you tell us, are you familiar
4 with this photograph?

5 A. Yes, I am because I took that photo also from the deck at
6 298 Prospect. There's a powerboat pulling a tube with a
7 couple kids on it. There's a boat that is sort of
8 floating there. It looks like a Boston Whaler, and then
9 there's a jet ski pulling a couple of kids on a tube.

10 Q. Again, which vantage point? I know you said you took it
11 from your deck, but we're looking at what part of Segar
12 Cove?

13 A. We're looking at the northern part of the cove, but the
14 western shore of Segar Cove.

15 Q. Okay. Do you recognize this photograph?

16 A. I do.

17 Q. Tell us how you're able to recognize this photograph.

18 A. I took it from my boat.

19 Q. When was this taken?

20 A. That photo was taken in August of 2018.

21 Q. Can you tell us what -- I know the picture speaks for
22 itself, but for the record can you tell the Subcommittee
23 what we're looking at and what area of the cove we're
24 looking at?

1 A. Yeah, we're looking north right against Mr. Hunt's
2 property at causeway. Those two poles are on the
3 causeway that lead from Segar Court down to his home. So
4 that is the causeway right in front of us. And these
5 paddlers are heading to the west section of the cove.

6 Q. Is this in the same location that Mr. Raso is proposing
7 his farm?

8 A. Yes. They are basically inside the lease location right
9 now, and I think that Kevin referenced that osprey nest
10 that a lot of people like to watch, exactly.

11 Q. Again, this is fair and accurate representation?

12 A. Yes, sir.

13 Q. Okay. Are you familiar with this photograph?

14 A. I am.

15 Q. Can you tell us how you're familiar with it?

16 A. I took it.

17 Q. Do you know these people?

18 A. I don't think I do, no.

19 Q. What about the ones in the prior photograph?

20 A. No, I do not.

21 Q. All right. Is this -- can you tell us where you took
22 this from?

23 A. I took it from my boat, I think. Yeah. My camera is not
24 -- I don't have a telephoto on it so I would have to have

1 been close. So, yes, this is from my boat.

2 Q. Can you tell us what section of the cove, and for the
3 record, what we are observing?

4 A. It's kayakers, one with a dog. One I think she's alone.
5 Maybe she's got a beast in there or not, I don't know.
6 But we're looking at the Cooney property in the
7 background at the northern section of Segar Cove. These
8 kayakers are doing what people typically do in that part
9 of the cove. That's the slow part of the cove, and they
10 are recreating on it.

11 Q. When did you take this photograph?

12 A. That also would have been in 2018. You know, I think I
13 took a flurry of photos in 2018 in preparation. You
14 know, I was naive enough to think, hey, this is being
15 proposed. Let's take some photos and we'll get it done.
16 But then it got delayed and delayed and delayed. So I
17 think that the idea of taking photos was put to the back
18 of the burner, so I'd say July or August of 2018.

19 Q. That's Alicia Cooney's house in the background?

20 A. Yes, the Cooney/Quigley house.

21 Q. Again, for the record, is it -- do you recognize this
22 photograph?

23 A. I do. I took this photograph.

24 Q. Do you know these people? Because they are waving at

1 you.

2 A. I do not know these people, but I'll wave right back at
3 them. They look really friendly.

4 Q. And what section -- I don't want to put words in your
5 mouth. But again, these are taken from your boat?

6 A. Taken from my boat. This is on the lease I site, the
7 proposed lease site, the center pole in the background, I
8 believe, or perhaps the right pole is the osprey nest or
9 the other way around. One of those is the osprey nest.

10 Q. How do you know this is in the proposed lease area?

11 A. A, because I took the photo; B, because I think that
12 bumper or that buoy that is right in the front where they
13 are, I think was one of the points of demarkation.

14 Q. Right here?

15 A. Yes.

16 Q. That the dog is looking at?

17 A. That's right. The dog is looking like it's a bone.

18 Q. When was this taken?

19 A. Also 2018.

20 Q. You said 2018. Was it in the summer?

21 A. Summer, July or August.

22 Q. Drawing your attention to the next photograph, do you
23 recognize this photograph?

24 A. I do.

1 Q. Can you please tell us how you recognize it?

2 A. I took that photograph from the deck at 298 Prospect
3 Road. It shows sort of a typical activity for what would
4 be a summer day on Segar Cove. We're looking straight
5 across the water to the Cooney property. Most of what we
6 see is occupied by what the lease -- by the lease site.
7 At least three of those boats there are in the lease
8 site --

9 MS. NOONAN: If I may, I'm going to object and
10 move to strike at this point. He's not qualified as an
11 expert or an engineer. He keeps saying they are in the
12 lease site, and we have nothing to support that these
13 photos are. So I let it go for a while, but I think we
14 kind of need to reel that back in.

15 A. The buoys there -- I'm sorry, the buoys there are orange
16 on the water --

17 MR. CAPIZZO: David, hold on.

18 MR. DESISTO: Okay. Christian, actually Beth
19 is raising a good point. This testimony has been going
20 on for some time now. Is there some way for you to
21 establish at least a bases that this is in fact the lease
22 area?

23 MR. CAPIZZO: Sure.

24 MR. DESISTO: I hesitate to say that,

1 Christian, because as I say, your testimony has been
2 going on and on now.

3 MR. CAPIZZO: I understand. He has reviewed
4 the materials. He identified that he's familiar with the
5 area where the lease is proposed. He has referenced
6 markers for the lease. I will try to draw his attention
7 through this photo, and if I can't through this photo
8 I'll do it visualization. That may be what I need to do,
9 Mr. DeSisto.

10 MS. NOONAN: If I might add also. There are
11 two proposals. There is actually one application which
12 is the rectangle and then there's a polygon. So I don't
13 know when he says it's in the lease area which one he's
14 talking about.

15 MR. CAPIZZO: I think to that, Mr. DeSisto, I
16 would say that the one that Mr. Beutel based his staff
17 report on was the polygon. Not Option, A.

18 MR. DESISTO: Okay. Are you going to establish
19 that through the testimony so at least it's clear?

20 MR. CAPIZZO: I can, and I thought I did, but I
21 will do it again.

22 Q. David, the lease area that we're talking about, we've
23 heard lease area, Option A and Option B, Option A being
24 the rectangle that you just heard and Option B. Are you

1 familiar with the two options?

2 A. Yes.

3 Q. So I want to draw your attention -- one second, please.
4 Are you able to see Figure 4A?

5 A. Yes.

6 Q. You reviewed the materials. Is this what you understand
7 Option A to be?

8 A. Yes.

9 Q. Okay. And previously I presented this aerial which is a
10 full exhibit. This is Option B, the polygon; is that
11 correct?

12 A. Yes, that's my understanding.

13 Q. Okay. You've reviewed the materials as it relates to the
14 polygon. And when you refer to the individuals being in
15 the quote "lease area," what area are you referring to,
16 Option A or Option B?

17 A. Option B because that is the one that was marked with
18 buoys.

19 Q. Let's talk about that. How long has that been marked
20 with buoys for?

21 A. As soon as it was proposed as of that January of 2018.
22 Whenever it was first proposed those buoys showed up.

23 Q. And who marked those buoys?

24 A. I think Mr. Raso did in conjunction with the CRMC staff.

1 Q. Okay. Have you had an opportunity to go out to those
2 buoys for that area?

3 A. Yes.

4 Q. In June of 2019, I believe, did you have the opportunity
5 to go out to that area with ESS?

6 A. Yes.

7 Q. Okay. So when we're talking about these individuals
8 being in "the lease area" and to address the other
9 questions that are being asked, I want to draw your
10 attention to Exhibit 24 which is a full exhibit. Do you
11 recognize this photograph, Mr. Latham?

12 [EXHIBIT DISPLAYED]

13 A. Yes, I do.

14 Q. It's entitled, for the record, Figure VS1 view from
15 Latham property Prospect Road existing condition dated
16 June 29, 2018. How are you familiar with this
17 photograph?

18 A. It was part of the ESS site visit. I did not take this.
19 I'm operating the boat in the center of it, but I saw
20 this as part of their package.

21 Q. Is that a fair and accurate representation of your
22 vantage point from your property?

23 A. Yes.

24 Q. From Segar Cove?

1 A. Yes.

2 Q. And you heard Payson Whitney's testimony from ESS in
3 regards to taking GPS coordinates of the proposed polygon
4 Option B farm that currently exists out there; is that
5 correct?

6 A. Yes.

7 Q. You also heard Payson's testimony about how there was a
8 missing -- I think a missing buoy from his area and he
9 had to replace that with a marker while we were out
10 there; is that correct?

11 A. Yes. Those buoys, by the way, are visible in that
12 photograph just off the bow of the boat right now, right
13 there. You can see one. And if you go in towards shore
14 is the other one, right there. And the others are too
15 far away to see.

16 Q. Well, we're going to get there, so just hold on one
17 second. I have to escape out to get to the next slide,
18 unfortunately. Bear with me one second.

19 [PAUSE]

20 Q. David, do you recognize this photograph?

21 A. That's the same photograph we were just looking at.

22 Q. Again, is it a fair and accurate representation from your
23 property?

24 A. Yes.

1 Q. Are you familiar -- how are you familiar with this
2 photograph?

3 A. That was part of the ESS proposal. I mean materials.

4 Q. Again, there is a boat in the water. And whose boat is
5 that?

6 A. That's my boat.

7 Q. The areas that are demarcated by a black upsidedown
8 triangle with yellow on the outside of that triangle, is
9 that a fair and accurate representation of the markers
10 that exist on Segar Cove based on your observations?

11 A. Yes, although those buoys have moved quite a bit for
12 various reasons, I guess, but they are approximately
13 where they are located to this day, I believe, yes.

14 Q. So the prior photo that we were looking at, and I could
15 appreciate Beth's clarification, so we're talking about
16 the polygon, not the rectangle, correct?

17 A. Correct.

18 Q. So when we were looking at that photograph, and let me
19 get back to it. David, when we're looking at this
20 photograph can you tell us, is that the same area that
21 the proposed polygon lease is in?

22 A. Yes.

23 Q. The boats we're looking at, again, can you see the
24 markers that were referenced?

1 A. Yes.

2 Q. So let's walk through that. So let's go to the northern
3 most marker. I have a cursor there. Is that one of the
4 markers that you observed over the years of this polygon
5 shape?

6 A. Yes. That's the northern most tip of the proposed farm.

7 Q. And here, moving south I would say closer to your
8 property, is that a marker referencing the polygon shape
9 of the lease area?

10 A. Yes. That is the buoy that was adjusted when they moved
11 from the rectangle to the polygon.

12 Q. Okay, and I want to go closer. So moving east towards
13 the shore, is that the other marker?

14 A. Yes.

15 Q. Okay. So these two boats, when I see these two boats,
16 the closest boats to the shore, what are those boats
17 doing?

18 A. Well, I believe that's only one boat. There's a blowup
19 raft next to that boat. They're having a party in the
20 raft so they've anchored up there. The other boat just
21 appears to be transiting for the time being.

22 Q. In the boat that I have the cursor on now that's heading
23 I guess northwest towards Ms. Cooney's house, does that
24 look like it's towing anybody?

1 A. No.

2 Q. What about the boat coming across the screen heading
3 towards the east, is that towing anybody?

4 A. No.

5 Q. Again, is this a fair and accurate representation of what
6 you observed on -- when did you take this photograph?

7 A. This would have been in August of 2018. One other point.
8 I believe that there is a person in the water in this
9 photograph to the left of that right there, exactly. I
10 believe that that's a skier or a somebody involved
11 with -- the closest boat there is circling back around to
12 pick them up.

13 Q. Okay. Do you recognize this photograph?

14 A. I do. Isn't it spectacular?

15 Q. Did you take it?

16 A. A drone took it, but I was the one who took it off the
17 camera, yeah.

18 Q. Did you take the photograph?

19 A. The drone took the photograph.

20 Q. But were you operating the drone?

21 A. I was next to the guy who was operating the drone and
22 said, take a photo of that, please.

23 Q. Where was this individual operating the drone from?

24 A. From my brother Jeff's house which is also on Segar Cove.

1 Q. When was this taken?

2 A. The summer of 2018. It would have been August.

3 Q. Is it a fair and accurate representation of what you
4 observed in August on Segar Cove?

5 A. Yes.

6 Q. Can you tell us, where the cursor is right now what is
7 that?

8 A. That is the western most buoy demarcating the proposed
9 lease site.

10 Q. Do you know the person in the I think it's a crew boat or
11 a sculling boat?

12 A. I did not at the time. I met her once over the past
13 couple of years. She introduced herself to me. I had
14 the occasion to apologize to her for annoying her with a
15 drone taking a photograph of her because she was quite
16 annoyed at this drone.

17 Q. Do you recognize this photograph, David?

18 A. I do.

19 Q. Can you tell us how?

20 A. It's taken from the deck at 298.

21 Q. When did you take this?

22 A. I'm going to say that's also 2018, probably August.

23 Q. Is it a fair and accurate representation of what you
24 observed on that date?

1 A. Yes.

2 Q. What is that to the left of the screen near Alicia's
3 house?

4 A. That's a boat, a boat pulling a tube.

5 Q. What direction is it headed in?

6 A. It's headed north.

7 Q. Do you recognize this photograph, David?

8 A. I do.

9 Q. How are you able to recognize this photograph?

10 A. I took it from the deck at 298.

11 Q. Can you describe to the Subcommittee and for the record
12 what we're looking at?

13 A. Well, we're looking at, again, north into the lease site
14 and we have a group of kayakers on the right-hand side of
15 the photograph. Four or five boats there are kayaking to
16 the north, and also shows a wake, a boat wake from a boat
17 that was coming from the other direction and headed
18 outside of the cove. That's the remnants of their path.

19 Q. Okay. When did you say this was taken?

20 A. August of 2018.

21 Q. Is this a fair and accurate representation of what you
22 observed that day?

23 A. Yes, sir.

24 Q. Next photograph, do you recognize this photograph?

1 A. I do.

2 Q. Tell us how.

3 A. I took it from the deck at 298.

4 Q. For the record, can you explain what we're looking at?

5 A. We're looking in the same direction north across the
6 water to the Cooney house, and we're looking at two
7 boats, one of which is at least inside the lease site.
8 The other is about to enter it. And the other boat has
9 just exited it, and they are pulling somebody in a tube.

10 Q. What about the boat that's heading north, are they
11 pulling anybody?

12 A. I do not believe so. They seem to be moving along at a
13 slower speed. You can see from the wake that they are
14 not on a plane.

15 Q. Again, is this August -- when was this taken?

16 A. August of 2018.

17 Q. How about this one, David?

18 A. Also 2018. Also the same direction taken from the deck
19 at 298 that shows three boats in the proposed lease site
20 and a sailboat about to enter, again, sailing with that
21 prevailing southwest wind as I mentioned.

22 Q. Next photograph, David.

23 A. Taken also from the deck at 298 about the same time.

24 This one shows two boats in the lease site, the proposed

1 lease site, and a jet ski heading in the direction of
2 that lease site.

3 Q. What direction are the boats and the jet ski heading?

4 A. North.

5 Q. Does it appear from the photograph that anyone is towing
6 somebody on these boats? Well, strike that.

7 A. It is difficult to tell. The center boat might be towing
8 somebody. It's unclear. The discoloration in the wake
9 right there to the left.

10 Q. I'm going to strike that question. The photograph is too
11 hard to see.

12 A. Okay.

13 Q. But it's a fair and accurate representation of what you
14 observed --

15 A. Yes.

16 Q. How about this one, David?

17 A. Yes. This was taken from my boat. Not from the deck,
18 but from my boat. And this was I think taken in August
19 also of 2018. It shows one paddle boarder, one sailboat,
20 and a couple people on rafts inside the proposed lease
21 site.

22 Q. Is it a fair and accurate representation of what you
23 observed that day?

24 A. Yes.

1 Q. Who is this character?

2 A. You know, I have no clue. When we first started this, I
3 asked for people to send photos of them using the water
4 and this came in over the transom. You can see from the
5 houses in the background that --

6 Q. I'm going to stop you there. You did not take this
7 photo?

8 A. I did not take this photograph.

9 Q. So we are not going use this photograph. So I'll strike
10 this photo and strike the witness's testimony. I
11 apologize.

12 A. Okay.

13 MR. CAPIZZO: Give me one second everybody.

14 [PAUSE]

15 Q. David, have you had the opportunity to observe jet skis
16 operate on the cove?

17 A. Yes.

18 Q. Typically, based on your observations where do these jet
19 skis operate on the cove?

20 A. I'm not sure I know what you mean. Where on the cove?
21 The entirety of it. But typically they will enter the
22 cove from the north side of Potter Pond and 90 percent of
23 the time they head up the western edge of the cove and
24 then they'll play around on the western side there and

1 a fair and accurate representation of what you observed
2 on that day.

3 A. Okay.

4 [VIDEO PLAYED]

5 Q. Did that play or did I sit in silence?

6 A. It was a little jumpy but it played.

7 Q. Okay. Again, is that a fair and accurate representation
8 of your observations of the jet skis operating in that
9 area of Segar Cove?

10 A. Yes, it is. You know, the reason that I captured that is
11 that jet skis and their speed is one of the big concern
12 here with a constricted -- if the farm goes in, the area
13 for other recreation on the pond will be restricted, and
14 these things move really quickly. They are somewhere
15 between 40 and 70 miles an hour, and I just know that
16 there's going to be a risk there that somebody is in the
17 water waterskiing and falling down, and jet skis come
18 around the corner at that speed and they are not paying
19 attention. It scares the heck out of me that someone is
20 going to get run over.

21 Q. While we have that up, do you know what this is that I'm
22 circling right here is?

23 A. I do not.

24 Q. Can we play the video again and see if we can see it.

1 [VIDEO PLAYED]

2 A. It appears to be a buoy.

3 MR. CAPIZZO: Madam Chair, I would ask that the
4 video and photographs -- strike that.

5 Q. Let me ask you about this, David, since I have it up. If
6 you didn't take it, just tell me and then don't answer.
7 Hold on. Sorry, everybody.

8 MR. CAPIZZO: Madam Chair, I'll ask that photos
9 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 along
10 with the video be entered as a full exhibit.

11 CHAIRWOMAN CERVENKA: Any objection?

12 MS. NOONAN: I am sorry, Christian, I may have
13 lost this. Are you excluding the two photos of the
14 waterskiers directly?

15 MR. CAPIZZO: Yes.

16 MS. NOONAN: No objection then, as long as you
17 exclude those.

18 MR. CAPIZZO: Yes.

19 CHAIRWOMAN CERVENKA: Anything from you,
20 Mr. Wagner?

21 MR. WAGNER: No, thank you.

22 CHAIRWOMAN CERVENKA: Okay. So those, except
23 for the ones excluded, are admitted in full.

24 [EXHIBIT #7 MARKED FULL]

1 MR. CAPIZZO: Thank you. I don't think -- hold
2 on one second, please.

3 [PAUSE]

4 MR. CAPIZZO: I don't think I have any other
5 questions for Mr. Latham.

6 Thank you, David.

7 THE WITNESS: Thank you.

8 CHAIRWOMAN CERVENKA: Mr. Wagner, do you have
9 any questions for Mr. Latham?

10 MR. WAGNER: I have no questions. Thank you.

11 CHAIRWOMAN CERVENKA: Okay. I meant to ask if
12 the Subcommittee members had any questions. Sorry about
13 that. Any Subcommittee members want to ask Mr. Latham
14 any questions?

15 [NO RESPONSE]

16 CHAIRWOMAN CERVENKA: Okay. I don't see any.
17 So to you, Ms. Noonan.

18 MS. NOONAN: Thank you.

19 CROSS-EXAMINATION BY MS. NOONAN

20 Q. Mr. Latham, how are you this afternoon?

21 A. I'm doing fine. How are you?

22 Q. I am well. Thank you.

23 A. Good.

24 Q. Let's talk about the very last thing we just looked at,

1 the jet ski video. You didn't know what the buoy was
2 that Mr. Capizzo asked you about, correct?

3 A. It wasn't clear to me that it even was a buoy.

4 Q. All right. None of those jet skis were in the proposed
5 lease area, were they?

6 A. I couldn't tell.

7 Q. You couldn't tell on this one, okay. Are you concerned
8 about the speed of four or five jet skiers coming in
9 regardless of the farm being there?

10 A. I'm always concerned about the jet skis because they
11 represent a heightened danger for anybody in the water.
12 And typically, they are run by younger people who may not
13 have the boating experience that would give them caution
14 to operate safely, so yes, I'm always concerned about
15 that, yes.

16 Q. And especially in the light of all the photos, your other
17 photos showing kayakers and paddle boarders that
18 inherently could create a navigational conflict, right?

19 A. Certainly.

20 Q. I know Mr. Capizzo had stood corrected that 50 years
21 experience of yours on the pond. But do you live in
22 Rhode Island full-time?

23 A. I do not, no. My wife and I split our time between
24 New York, Brooklyn, and Matunuck.

1 Q. Great. So mainly you're here in the summer; is that
2 fair?

3 A. I'm here year round on the weekends, three days out of
4 the week but mostly on the weekends, yes. This year
5 notwithstanding.

6 MS. NOONAN: Good place to hide out up here.
7 I'd like to show you, if you can, Leslie, put this up.
8 It will be for identification Exhibit 18 for
9 Petitioner's. I'll let Leslie screen share if possible.

10 [PAUSE]

11 MS. PARKER: You'll have to confirm I'm showing
12 the right one. Do you want our exhibit?

13 MS. NOONAN: It's not marked, but it's the
14 original one showing the site with white blocks on it.
15 Thank you.

16 Q. Mr. Latham, have you ever seen this picture before?

17 A. Yes, I have.

18 Q. Is it fair to say that this is from SaveSegarCove.org?

19 A. It's from Save Potter Pond --

20 Q. Save Potter Pond, okay.

21 A. That's correct.

22 Q. And you've been talking about the locations of the buoys
23 and everything. Would you agree with me that this
24 proposed new site that is showing in Segar Cove is not

1 accurate to scale?

2 A. I would agree that that is not necessarily to scale.

3 Q. Overstates the size of the lease area, would you agree
4 with that?

5 A. I'm not sure I would agree with it. I would just say
6 that it's not accurate. I think I could say it's not
7 accurate right there.

8 MS. NOONAN: Okay. Leslie, if you could just
9 show the next one which we will call Exhibit 19 for ID.

10 Q. In this, Mr. Latham, we have superimposed the graphics
11 for Plan A, if you will, the original proposal on the
12 site. Do you see that?

13 A. I do.

14 Q. Is that consistent with your knowledge of what the
15 Proposal A was?

16 A. Is what consistent? Is the green marking?

17 Q. Yes.

18 A. Something like that, yes.

19 Q. Okay. And the ones that's are showing in the white box,
20 you saw that on -- it's Save Potter Pond, is that what
21 the organization site?

22 A. That's correct.

23 Q. In fact, Mr. Latham, didn't they organize sort of a
24 float-in with a lot of boats and everything and paddle

1 boards and different people showing up on particular
2 days?

3 A. Yes.

4 Q. And those were done in 2018, were they not?

5 A. That's correct.

6 Q. And all the photos that Mr. Capizzo went through, you
7 gave us some general times when you thought they were
8 taken. Do you have the specific dates of when any of
9 those photographs were taken?

10 A. I do, buried in the metadata of several different cameras
11 and expired phones, but yes that information is
12 available. But none of those images that were submitted
13 were taken during that float-in.

14 Q. Okay, but the dates haven't been presented yet as to when
15 those photos were taken beyond your testimony that it was
16 generally August and July, correct?

17 A. That's right.

18 Q. Okay. In terms of heading up to -- what do you call it
19 Third Cove now? Everybody has a different name for it.

20 A. It does. We still call it Third Cove, so I'll stick with
21 Third Cove.

22 Q. Okay. You said it takes, what, ten minutes to get up
23 there?

24 A. Depends if you can get up on a plane. If there's

1 somebody on the channel and you can't get up on a plane
2 it may take 15 minutes because you may have to stay off
3 plane all the way up there.

4 Q. It is a relatively short distance between the entrance to
5 Segar Cove and up to Third Cove or Skiers Cove as we're
6 calling it?

7 A. It's not miles and miles, no.

8 Q. Okay. And the house that you're at, what did you say,
9 298 Prospect? You said it a few times, I should know.

10 A. Yes.

11 Q. That covers the whole point of Gardener Island?

12 A. That's correct, yes. My grandparents built it, several
13 years after they built it there's two lots right next to
14 it that my father bought so that my grandparents would
15 have a view of the ocean side as well. So yes, it does
16 take up the whole -- it's four lots. That's one home.

17 Q. So you or your family and Mr. Hunt are sort of the
18 guardians of the cove on those two entrances, Ram Point
19 and Gardner Island, right?

20 A. Sentinels of the cove, yes.

21 Q. If you will, yeah, sure.

22 A. We see it all.

23 Q. I imagine. From your perspective, one moment, please,
24 sorry.

1 You had talked a bit about Sycamore Cove and the
2 eelgrass, how no one could boat there because of the
3 eelgrass, correct?

4 A. That's true.

5 Q. Okay. Did you know that generally one can't put
6 aquaculture where eelgrass is. Are you aware of that?

7 A. Not before 2018 I wasn't really aware of that because I
8 wasn't following the story as closely as I'm following it
9 now.

10 Q. And you've learned a lot since then, right?

11 A. More than I really wanted to.

12 Q. What is your background, Mr. Latham, professionally?

13 A. I work in a nonprofit as a program director for a
14 foundation.

15 Q. I also asked Mr. Hunt, aside from your personal
16 experience on the water you don't have an aquaculture or
17 a maritime background professionally?

18 A. No, I don't.

19 Q. Okay.

20 MS. NOONAN: Can I just have one moment,
21 please?

22 [PAUSE]

23 Q. Mr. Latham, I guess I should have asked this. But on the
24 Save Potter Pond website they are opposed to the farm; is

1 that correct?

2 A. When you say "they," I'm not sure what you mean --

3 Q. Well, the Save Potter Pond organization. Let me ask so
4 the stenographer can keep it clear.

5 If I went on to the Save Potter Pond's website
6 today, would I find any support for Mr. Raso's proposed
7 aquaculture farm?

8 A. No. The Save Potter Pond came about organically. The
9 people in the community were generally opposed to it and
10 so that became a vehicle to collect information and
11 really present information to anybody. Really, at the
12 very beginning it was neutral. It was like if you have
13 an opinion about this, here is what you need to do to let
14 the powers to be know. And it became clear real quickly
15 that most people did have an opinion and a strong opinion
16 about it, and I think that it grew out of that.

17 Q. That was the same organization though that put up that
18 Exhibit 18 for ID that I showed you that overstated the
19 size of the farm, correct?

20 A. It's on the Save Potter Pond website, yes.

21 MS. NOONAN: Okay. I don't have any more
22 questions for you, Mr. Latham. Thanks.

23 MR. LATHAM: Okay.

24 CHAIRWOMAN CERVENKA: Okay. Mr. Capizzo, back

1 to you for any redirect.

2 MR. CAPIZZO: No, I'm good. Thank you. I'm
3 good, Madam Chair.

4 CHAIRWOMAN CERVENKA: I think we're done with
5 you, Mr. Latham. Thank you.

6 MR. LATHAM: Thank you.

7 CHAIRWOMAN CERVENKA: Mr. Capizzo, is there
8 anything further from you?

9 MR. CAPIZZO: No. That would be the
10 opposition's presentation.

11 CHAIRWOMAN CERVENKA: Okay, thank you. So at
12 this point I think we wanted to shift back to Mr. Beutel.
13 I'm looking to see, Mr. Moore, can you admit him?

14 MR. CAPIZZO: Madam Chair, may Mr. Latham I
15 guess be released or taken off the screen?

16 CHAIRWOMAN CERVENKA: Ms. Noonan, are you going
17 to have any rebuttal?

18 MS. NOONAN: No, not at this point.

19 MR. CAPIZZO: Thanks, Ryan.

20 CHAIRWOMAN CERVENKA: Mr. Beutel, are you
21 there?

22 MR. BEUTEL: I am.

23 CHAIRWOMAN CERVENKA: Do you want to put your
24 video on?

1 MR. BEUTEL: Yes.

2 CHAIRWOMAN CERVENKA: Welcome back, Mr. Beutel.

3 MR. BEUTEL: Okay. Do I need to say thank you?

4 CHAIRWOMAN CERVENKA: You don't. Okay. So I
5 think, well, we asked you to come back for a couple of
6 reasons. One, if the Subcommittee members have any
7 questions for you after they've heard the case in chief,
8 and the opponents' presentation. And then following
9 that, we would offer to counsel for the applicant or the
10 opponents if they wanted to ask you any I'll call it
11 clarifying questions with respect to your staff report,
12 and I think Mr. DeSisto, wanted to address that.

13 MR. DESISTO: I do, yes. Mr. Beutel is really
14 assisting the administrative body in making this
15 decision. He's not an adverse witness, and I would ask
16 all three of the legal counsel to bear that in mind.
17 This is not a cross-examination.

18 If you need some clarifications, that's fine to help
19 the fact finder, but it is definitely not a
20 cross-examination. So as long as there is an
21 understanding on that, we can proceed on that basis.

22 Thank you, Madam Chair.

23 CHAIRWOMAN CERVENKA: Thank you, Mr. DeSisto.

24 Okay. So I'll open it first to the Subcommittee members.

1 Does anyone want to ask Mr. Beutel anything about his
2 staff report or his review of this application in light
3 of what's been presented to us over the course of several
4 meetings? Okay, Ms. Reynolds.

5 MS. REYNOLDS: I have a question not
6 specifically about the report, but about a statement that
7 one of the witnesses made. Is that permissible?

8 CHAIRWOMAN CERVENKA: Go ahead.

9 MS. REYNOLDS: In the last witness, there was a
10 statement made that the expansion of aquaculture in
11 Point Judith Pond has put pressure on Potter Pond and
12 increased activity there. And I was wondering if this is
13 something that Dave had an opinion about or had noticed,
14 or he feels that it's potentially a problem that's
15 happened.

16 MR. BEUTEL: Point Judith Pond has reached
17 basically its capacity of five percent, so it has reached
18 the five percent rule. You heard me say before that
19 leaves 95 percent for all other activities. So in my
20 observation of Point Judith pond, the aquaculture has,
21 does have an effect on recreational activities, but it is
22 a very slow effect. And as Mr. Latham had said, the last
23 witness said, it's very difficult to run through that
24 channel under the bridge and get to Potter Pond. So

1 traffic going from Point Judith Pond to Potter Pond is
2 really quite minimal.

3 MS. REYNOLDS: Thank you.

4 CHAIRWOMAN CERVENKA: Mr. Beutel, I just wanted
5 to ask you about the original proposed lease area and
6 then the alternative, what we've been referring to as B,
7 the polygon lease area. I just want to confirm for the
8 record that your staff report is based on the preferred,
9 your preferred, alternative B configuration.

10 MR. BEUTEL: So my staff report recommends
11 configuration B. The report is based upon both
12 configurations.

13 CHAIRWOMAN CERVENKA: Okay. So it doesn't --
14 so tell me all your reasons why you prefer configuration
15 B.

16 MR. BEUTEL: The major reason was in discussion
17 with the Applicant that clearly there would be some
18 effect of towed water sports, that configuration B would
19 have less of an effect on towed water sports than the
20 original configuration.

21 CHAIRWOMAN CERVENKA: Is it limited --

22 MR. BEUTEL: That's the logic that was used.

23 CHAIRWOMAN CERVENKA: So it only related to I
24 guess mitigating the potential impact on towed water

1 sports?

2 MR. BEUTEL: That was what we had discussed.

3 CHAIRWOMAN CERVENKA: Okay. And everything --
4 all the other analysis for the Category B, it would apply
5 either to the original proposed or the Configuration B?

6 MR. BEUTEL: Correct.

7 CHAIRWOMAN CERVENKA: Another thing that I've
8 been listening about is the depth of the water in the
9 proposed lease area. Can you address that?

10 MR. BEUTEL: It is one of the deeper parts of
11 Segar Cove which is why the methods and species proposed
12 for this application, why this site was chosen. One is,
13 Mr. Raso has worked very hard to establish bay scallop
14 aquaculture. It needs to have a sufficient depth for
15 suspended culture so that the cages will hang down and
16 not be effected by potential winter cold or potential
17 winter ice in terms of harvesting the animals.

18 The other piece is that the sediment in the proposed
19 lease area is soft mud and cages would not be appropriate
20 in soft mud. Floating and suspended gear are appropriate
21 methods for soft mud, and we have shown this in other
22 applications throughout Rhode Island.

23 CHAIRWOMAN CERVENKA: Okay. Thank you. Any
24 other questions for Mr. Beutel about his report?

1 Mr. Gomez?

2 MR. GOMEZ: I appreciate the discussion on
3 configuration B, but as I've gone through this, it seems
4 to me that there's pros and cons for both. I'm kind of
5 leaning toward the original configuration. Do you see
6 that as a major problem, Dave?

7 MR. BEUTEL: I do not see that as a major
8 problem, while it clearly establishes that the original
9 proposal could be okay, if the original proposal in terms
10 of a business layout for the Applicant is much better
11 than alternative B.

12 MR. GOMEZ: It is certainly more efficient and
13 easier to work with. One of the big items as we've gone
14 through a thousand of this is the issue of balance. To
15 me, I think you've done a good job of trying to achieve a
16 balance. Do you want to talk about that a little bit?
17 Do you believe at least we have in fact achieved a
18 balance for all the uses that we've heard that the cove,
19 Segar Cove is put to, the idea of a balance?

20 We're taking a very small percentage, I think, for
21 this farm. People are indicating I guess that it's in a
22 critical area, but the whole area is reasonably small.
23 So getting back to my issue is whether you feel we have a
24 balanced use with this farm being placed in the area?

1 MR. BEUTEL: I do think that the uses would be
2 balanced. The report does say the uses will be effected,
3 but it is my assessment that the effects will not be
4 significant.

5 MR. GOMEZ: Thank you.

6 MR. BEUTEL: Different presentations, kayaking
7 will still occur virtually as it is now, as will paddle
8 boarding. Sailing will be minimally effected. Towed
9 water sports are effected a little more than the others.

10 Very clearly in the site assessment from both CRMC
11 and the Department of Environmental Management and
12 Fisheries, this is not a good clamming area. Any area of
13 mucky sediment is not a good clamming area. I fully
14 agree that adjacent to it in a slightly harder bottom,
15 those are good clamming areas for both quahogs and
16 steamers. Although, the steamers are virtually
17 nonexistent now, as are the bay scallops on that pond.

18 So following the track on steamers and bay scallops,
19 for wild harvest it seems really irrelevant to me. The
20 relevant species is quahogs, and there are good quahog
21 areas in there. Just this lease site is not one of the
22 good quahogging areas.

23 MR. GOMEZ: We did have discussion at one of
24 the earlier meetings about the issue of the skiers. I

1 think, as I remember, the net result was that it appeared
2 that with the farm in place it went from the ability
3 safely to handle two skiers in that area doing basically
4 ovals close by, down to one skier. So it seemed to turn
5 out that, you know, for this farm to be in that area that
6 you may lose one skier. One skier would fit comfortably
7 doing circles. Two skiers would have a problem. So if
8 you denied the farm, you added in one skier to the
9 environment. That's just a statement on my part. I
10 guess you really don't need to comment on that.

11 I have one last question. What, in your idea of
12 removing one row of the cages, is that a severe impact to
13 the Applicant? I know it's an impact. It would make the
14 hole feel a little bit smaller and it might get us a
15 little off shore from that ten-foot, the ten-foot
16 problem, or moving the whole farm out another ten feet or
17 something.

18 Do you see that the removal of one row of the oyster
19 bags, not the plantings, maybe adding in a little more
20 area for the bottom plants with the scallop, although I
21 think the financial aspect are really with the oysters,
22 but I'm not an expert on that.

23
24 So my question really is the impact of the removal

1 of one modifying it to remove one row of the bags. Your
2 comment?

3 MR. BEUTEL: Removing one row of bags certainly
4 would have an impact on the bottom line, but it's small.

5 MR. GOMEZ: Okay, very good. Thank you.

6 CHAIRWOMAN CERVENKA: Thank you, Mr. Gomez.
7 Mr. Murray or Coia, anything from you two?

8 VICE CHAIRMAN COIA: No.

9 MR. MURRAY: No.

10 CHAIRWOMAN CERVENKA: Now turn it over, I'll
11 start with Ms. Noonan. Do you have any questions for
12 Mr. Beutel on the staff report or review of the
13 application?

14 MS. NOONAN: I do not. Thank you.

15 CHAIRWOMAN CERVENKA: Okay, thank you.
16 Mr. Capizzo?

17 MR. CAPIZZO: Madam Chair, may I just have one
18 moment? I was looking at my notes.

19 CHAIRWOMAN CERVENKA: Sure, I'll go to
20 Mr. Wagner.

21 MR. WAGNER: Thank you. Good afternoon,
22 Mr. Beutel. You acknowledge that Segar Cove is a good
23 recreational fishing area, right?

24 MR. BEUTEL: Could you repeat the question,

1 please?

2 MR. WAGNER: I believe in your report you
3 acknowledge that Segar Cove is a good recreational
4 fishing area, the entire cove?

5 MR. BEUTEL: I acknowledge that the Segar Cove
6 is the fishing area, yes, particularly during the worm
7 hatch.

8 MR. WAGNER: Okay, and locating a three-acre
9 shellfish farm would limit fishing in that three-acre
10 area, right?

11 MR. BEUTEL: During the worm patch the worms
12 hatch from very shallow water. Shallower than the
13 proposed site. The effect of the proposed site would
14 have on the worms is after they have really come up out
15 of the sediment, they would drift down into the site
16 area. So it is a major location for fishing for striped
17 bass during worm hatch. It is a location. It's not a
18 major location. It is one of the many locations within
19 Potter Pond.

20 MR. WAGNER: Okay. I think you testified that
21 it would be hard to imagine someone fishing in that
22 three-acre area amongst the floating gear; is that fair?

23 MR. BEUTEL: It would be difficult to fish with
24 a rod and reel inside the three-acre area with floating

1 and suspended gear.

2 MR. WAGNER: Okay. I think you determined that
3 the proposed site is not -- you just talked about it not
4 being valuable clam habitat at this time.

5 MR. BEUTEL: That is correct, as did DEM.

6 MR. WAGNER: But you acknowledged that adjacent
7 to the proposed lease area are good clamming areas?

8 MR. BEUTEL: We did.

9 MR. WAGNER: Now, there was some testimony
10 today and I want to ask you about that. There was
11 testimony that someone made a point that that could
12 change, that this is a dynamic system. You could conduct
13 a shellfish assessment five years from now and find out
14 it's full of clams. Do you agree with that?

15 MR. BEUTEL: I'm sorry. I'm having a hard time
16 understanding you.

17 MR. WAGNER: I'm sorry, Mr. Beutel. I'll try
18 to slow down. We had some testimony here today that that
19 actually was a very good clamming spot, the leasing area.
20 And I'm asking you is, do you agree that's a dynamic
21 system? You could, for example, conduct a shellfish
22 assessment five years from today in that same spot and
23 find that it's full of clams. Do you agree with that?

24 MR. BEUTEL: I do not. The only way that the

1 clam in the area would become a better clam habitat is if
2 it became a harder bottom. So the fact that it is soft
3 sediment, mucky sediment, is not going to change the clam
4 density in that area.

5 MR. WAGNER: Okay. I think you acknowledge
6 that the proposed farm would have a greater impact on
7 sailboats and powerboats than on kayaks and I think it
8 was paddle boards; is that right?

9 MR. BEUTEL: If I understood the question
10 right, the site will have an effect on paddle boats most,
11 kayaks, paddle boards very little, and sailboats in
12 between.

13 MR. WAGNER: Okay, and I think you testified
14 that swimming could be effected if people wanted to swim
15 through that site.

16 MR. BEUTEL: I would agree. Swimming in the
17 site would -- floating in submerged gear would not be a
18 good idea.

19 MR. WAGNER: I think you said it is not
20 advisable.

21 MR. BEUTEL: Yeah, I wouldn't advise anyone to
22 do it.

23 MR. WAGNER: So I think we can agree that there
24 is no question that the proposed farm would interfere

1 with someone's ability to swim in that area, right?

2 MR. BEUTEL: Please repeat that.

3 MR. WAGNER: Would you agree that the proposed
4 farm would interfere with someone's ability to swim in
5 that area?

6 MR. BEUTEL: Yes.

7 MR. WAGNER: Now, in the staff report you state
8 that boating activities have previously been
9 acknowledged. Swimming through an aquaculture site is
10 not advisable. Please note five percent rule, and then
11 you cite to the regulation. Do you remember that?

12 MR. BEUTEL: I'm sorry. Please repeat that.

13 MR. WAGNER: Sure. In your staff report you
14 state, "Boating activities have previously been
15 acknowledged. Swimming through an aquaculture site is
16 not advisable. Please note five percent rule."

17 Do you remember that?

18 MR. BEUTEL: Yes.

19 MR. WAGNER: First, there's no question that
20 there are existing uses and activities in that area,
21 right, boating, fishing and swimming. We all agree with
22 that, right?

23 MR. BEUTEL: Yes.

24 MR. WAGNER: Now, the five percent rule is

1 designed to address ecological consequences, correct?

2 MR. BEUTEL: I think you heard the testimony of
3 Carry Byron and Dr. Rheault, Dr. Byron and Dr. Rheault,
4 and that really the five percent rule is a social
5 carrying capacity. It was originally based on ecological
6 carrying capacity and the results of Dr. Byron's Ph.D
7 work showed that five percent was really miniscule
8 compared to the overall ecological carrying capacity for
9 aquaculture.

10 MR. WAGNER: So you think five percent applies
11 to more than the ecological issues?

12 MR. BEUTEL: I think the five percent rule is
13 important, but it is mostly because of social carrying
14 capacity. Social issues.

15 MR. WAGNER: Okay. Here, the Applicant seeks
16 to divide the three-acre area equally between two uses or
17 two species, right?

18 MR. BEUTEL: Yes.

19 MR. WAGNER: As I understand, Mr. Raso is
20 seeking to grow oysters using floating cages and to grow
21 I think it's bay scallops using suspended lantern nets;
22 is that right?

23 MR. BEUTEL: Correct.

24 MR. WAGNER: He's currently farming oysters in

1 the existing 6.9-acre farm?

2 MR. BEUTEL: Correct, and he has worked with
3 bay scallops in the existing farm.

4 MR. WAGNER: He does bay scallops in the
5 existing farm as well?

6 MR. BEUTEL: No. He has worked with them. I
7 won't say he has been successful with them.

8 MR. WAGNER: Okay. Am I correct that the
9 scallops require the deeper water, right?

10 MR. BEUTEL: Correct.

11 MR. WAGNER: Okay, but oysters can be farmed in
12 the shallow water?

13 MR. BEUTEL: Correct, which is his proposed
14 layout. The oysters in the shallower water, scallops in
15 the deeper water.

16 MR. WAGNER: So the proposed floating cages and
17 suspended lantern nets, they would occupy the entire
18 water column though, right?

19 MR. BEUTEL: Please repeat that.

20 MR. WAGNER: I'm wondering about this term off
21 bottom culture. I take that to mean that the proposed
22 floating cages or the lantern nets, they occupy not just
23 the bottom but basically the water column right up to the
24 surface.

1 MR. BEUTEL: They are -- lantern nets would be
2 in the water column. Floating oyster cages would be in
3 the water surface. It would not be on the bottom. You
4 are correct that they would not be on the bottom.

5 MR. WAGNER: Okay. So Generally speaking, off
6 bottom culture uses -- they use more of the water column
7 than the bottom culture?

8 MR. BEUTEL: In the depth, yes.

9 MR. WAGNER: Off bottom culture creates more
10 conflicts with other uses because they physically exclude
11 other types of activities in that area, right?

12 MR. BEUTEL: They exclude some activities.

13 MR. WAGNER: Okay. On the other hand, a bottom
14 culture is not as invasive because there are no
15 structures in the water column that would prevent the
16 overlying water from being used for other activities; is
17 that fair to say?

18 MR. BEUTEL: It depends upon the depth of the
19 water. For example, a three-foot tall cage that sits on
20 the bottom in three and a half feet of water would effect
21 the water column. So no, I don't think you can make that
22 assumption.

23 MR. WAGNER: Here we're talking about water
24 between five and six feet; is that right?

1 MR. BEUTEL: Correct, the mean well water.

2 MR. WAGNER: Okay. Limiting the method to
3 bottom culture would significantly reduce any use
4 conflicts here, wouldn't it?

5 MR. BEUTEL: Limiting this site to bottom
6 culture would eliminate the ability to grow shellfish
7 because of the soft sediment that is there.

8 MR. WAGNER: Okay. How about limiting the size
9 of the lease area? Would that reduce potential use
10 conflicts?

11 MR. BEUTEL: Obviously.

12 MR. WAGNER: Okay. And here Mr. Raso is asking
13 for the maximum size, three acres?

14 MR. BEUTEL: Mr. Raso is asking for three
15 acres. When he submitted this application, there was not
16 a regulation addressing the size of the applications.
17 There were guidelines that addressed the size of the
18 application, but not regulations, but now that has since
19 changed.

20 MR. WAGNER: Okay. Now that he's using
21 floating cages and other off boating gear, that's limited
22 to three acres maximum, right?

23 MR. BEUTEL: That's correct.

24 MR. WAGNER: I think you stated that Mr. Raso

1 has made an effort to address the many objections the
2 application has received here.

3 MR. BEUTEL: I made that statement.

4 MR. WAGNER: And part of what he did was he
5 suggested this Plan B, right?

6 MR. BEUTEL: That was part of it.

7 MR. WAGNER: And your recommendation is Plan B
8 is preferable?

9 MR. BEUTEL: That's my recommendation.

10 MR. WAGNER: Mr. Raso has never offered to
11 reduce the size of the lease area, has he?

12 MR. BEUTEL: He has not.

13 MR. WAGNER: In your testimony you talk about
14 Mr. Raso's business being a very successful restaurant,
15 and I think you testified that he has been successful in
16 Matunuck and Potter Pond and wants to expand his
17 business.

18 MR. BEUTEL: He wants to expand the oyster
19 business.

20 MR. WAGNER: I think you just testified that
21 eliminating one row would impact the bottom line.

22 MR. BEUTEL: That's right. If he eliminates
23 one row, he will have that many less oysters to grow and
24 harvest.

1 MR. WAGNER: You're familiar with the state law
2 and the CRMC regulations relating to aquaculture in
3 general, right?

4 MR. BEUTEL: Say that again, please.

5 MR. WAGNER: We all know --

6 MR. DESISTO: Hold on. Let me jump in. It's
7 starting to sound like a cross-examination. It's
8 starting to sound like that. Can you just ask the
9 question whatever it is, Dean?

10 MR. WAGNER: Sure, I will.

11 The CRMC manages the tidal waters and lands as a
12 public trust for the citizens of this state, right?

13 MR. BEUTEL: Correct.

14 MR. WAGNER: This is referred to as the Public
15 Trust Policy or the Public Trust Doctrine, right?

16 MR. BEUTEL: Correct.

17 MR. WAGNER: And the leasing process must take
18 into consideration what is best for all the residents of
19 the state, right?

20 MR. BEUTEL: Correct.

21 MR. WAGNER: We're not just concerned about
22 Mr. Raso's business, right?

23 MR. BEUTEL: Say that again, please.

24 MR. WAGNER: As the aquaculture coordinator you

1 shouldn't be concerned about Mr. Raso's business. You
2 should be more concerned about the public, the residents
3 of the state, right?

4 MR. BEUTEL: Well, Thank you for telling me
5 what my job should have been.

6 MR. DESISTO: Excuse me. Hey, Dean, for
7 clarification purposes that's really an argument, to me,
8 that you'd make at the end. If you have some
9 clarification on the report, that's fine, but you're
10 basically -- now it's stretching into cross-examination
11 and final argument. If you have any questions to clarify
12 what he had in his report, can you stick to that, please?

13 MR. WAGNER: Sure.

14 Mr. Raso's business is not limited to selling
15 shellfish at his restaurant, right?

16 MR. BEUTEL: No.

17 MR. WAGNER: He's using -- his existing lease
18 of 6.9 acres is to sell oysters all across the country,
19 right?

20 MR. BEUTEL: I have no idea where he sells all
21 of his oysters.

22 MR. WAGNER: Have you visited his website?

23 MR. BEUTEL: I have not.

24 MR. WAGNER: Are you aware whether he ships all

1 across the northeast?

2 MR. BEUTEL: I hope that he does.

3 MR. WAGNER: Why do you hope that he does?

4 MR. BEUTEL: I am not aware of it.

5 MR. WAGNER: Okay. I'm going to move on to a
6 different topic because I see Mr. DeSisto ready to jump
7 off his seat. I'm going to move to the last topic here.

8 Mr. Raso exceeded the boundaries of the existing
9 farm, right?

10 MR. BEUTEL: Say that again, please.

11 MR. WAGNER: Mr. Raso has a 6.9-acre farm now,
12 right?

13 MR. BEUTEL: Correct.

14 MR. WAGNER: And he exceeded the boundaries of
15 that farm, didn't he?

16 MR. BEUTEL: Yes, he did.

17 MR. WAGNER: Who is responsible for monitoring
18 existing aquaculture farms?

19 MR. BEUTEL: The CRMC aquaculture coordinator.

20 MR. WAGNER: Were there any regulatory
21 consequences for Mr. Raso enlarging the size of his
22 existing farm?

23 CHAIRWOMAN CERVENKA: Does this have anything
24 to do with the staff report or reviewing the application?

1 MR. DESISTO: It doesn't. By the way, Dean,
2 here is my point. When you make your final argument,
3 that's what you say. This is what I didn't want to have
4 happen because it's turning into a cross-examination, But
5 you can say it at the end.

6 The testimony is it exceeded the limits and nothing
7 happened. You can say that later on, but if you have
8 some questions, please do it. Okay?

9 MR. WAGNER: Okay. I'm citing from his report
10 where he talks about the fact that he exceeded the last
11 farm. So I --

12 MR. DESISTO: Why do you need a clarification
13 of that if it's in the report? That's what I'm trying to
14 say. Is there some confusion on the issue? I don't
15 think there is.

16 MR. WAGNER: All right. Mr. Beutel, was
17 Mr. Raso fined or were there any adverse consequences
18 when he exceeded his lease area?

19 MR. BEUTEL: Mr. Raso was not fined for
20 exceeding his lease area. He worked with CRMC and
21 Department of Environmental Management to configure it
22 back to 6.9 acres. That has been actually a common
23 practice for, not common but not unusual practice, for
24 other leases of this age where the original GPS

1 coordinates were taken with less accurate instruments.

2 MR. WAGNER: Thank you Mr. Beutel. I have no
3 further questions.

4 CHAIRWOMAN CERVENKA: Thank you, Mr. Wagner.
5 Mr. Capizzo?

6 MR. CAPIZZO: Hey Dave, how are you?

7 MR. BEUTEL: Good, Christian. How are you?

8 MR. CAPIZZO: Good to see you even though it's
9 virtually. Dave, how long were you the aquaculture
10 director for?

11 MR. BEUTEL: From 2009 into when I retired
12 earlier this year.

13 MR. CAPIZZO: You retired June of 2020,
14 correct, the end of June 2020?

15 MR. BEUTEL: I retired at the end of June,
16 June 30th.

17 MR. CAPIZZO: Okay. As part of your -- you
18 just talked about as part of your duties as aquaculture
19 director is to review these applications and make sure
20 that the applicants are satisfying that the requirements,
21 here Category B requirements, in order for you to give a
22 positive recommendation to the full Council; is that
23 correct?

24 MR. BEUTEL: I'm sorry. I missed that whole

1 question. I think the question was reviewing the
2 application for the Category B requirements. Is that --

3 MR. CAPIZZO: Yeah, Dave. Lisa will read it
4 back because I don't want to mangle it.

5 MR. DESISTO: Okay, but before she does that,
6 can I ask a question, Christian? Is the purpose of the
7 question designed to impeach him? Is that what you're
8 trying to do?

9 MR. CAPIZZO: Not at all.

10 MR. DESISTO: Is there something unclear in his
11 report that would lead you to ask that question?

12 MR. CAPIZZO: I'm trying to understand whose
13 burden it is, Mr. DeSisto, to satisfy the requirements.
14 So if Mr. Beutel can answer that question as to Category
15 B requirement, whose burden it was.

16 MR. DESISTO: Let me ask you a question because
17 it's a legal question. Don't you think that that's in
18 the regulations? Shouldn't that be on the Applicant?

19 MR. CAPIZZO: It is on the Applicant.

20 MR. DESISTO: Okay. So why are we asking a
21 question?

22 MR. CAPIZZO: I just want to hear it from
23 Mr. Beutel because it relates to his staff report.

24 MR. DESISTO: I'm going to say this to the

1 Chair. That would call for a legal conclusion. That
2 just would. You know, to me, if he could stick to the
3 facts on this thing and go.

4 You know, we said no cross-examination. Everybody
5 nodded their heads. And that's what I'm stressing. If
6 there's something unclear in his report that you need to
7 have clarified, fine. But please, don't make your final
8 arguments in questioning Mr. Beutel. It is not
9 appropriate in an administrative proceeding. It just
10 isn't.

11 MR. CAPIZZO: I understand, Mr. DeSisto. I
12 worked with Mr. Beutel for over ten years at the AG's
13 office. I respect him. I'm not trying to impeach him.
14 What I'm trying to determine, and I'll ask Mr. Beutel
15 this question.

16 Dave, the burden is on the Applicant to satisfy you
17 to approve the application. The information that is
18 provided by Applicant is what you base your decision on;
19 is that correct?

20 MR. BEUTEL: That's correct. If there are --
21 if more information is required, I'll answer your
22 question.

23 MR. CAPIZZO: Okay. And as it relates to Perry
24 demonstrating that this farm will not result in

1 significant conflicts, you received photos from Mr. Raso?

2 MR. BEUTEL: He submitted photos.

3 MR. CAPIZZO: Okay. In addition to that, he
4 submitted a revised map, Option B; is that correct?

5 MR. BEUTEL: Yes.

6 MR. CAPIZZO: So other than those two documents
7 and then his statement that this will not significantly
8 impact, significantly conflict water dependent uses, did
9 Perry submit any other information to you?

10 MR. BEUTEL: The information that he submitted
11 is in the file.

12 MR. CAPIZZO: Okay, but the information that
13 was presented at this hearing by Perry, was that
14 presented to you in your review?

15 MR. BEUTEL: Yes.

16 MR. CAPIZZO: Okay.

17 MR. BEUTEL: Say that again.

18 MR. CAPIZZO: It's okay. I'm not trying to
19 confuse you or trick you. Diprete Engineering
20 information that Beth provided, was that provided to you
21 as part of your staff recommendation?

22 MR. BEUTEL: The information that is in the
23 application is what was provided to me.

24 MR. CAPIZZO: Okay. You also testified, Dave,

1 that Perry has been trying to do this type of operation
2 to expand his farm for at least six years. Is that
3 expansion solely in Potter Pond?

4 MR. BEUTEL: He has tried to expand in Potter
5 Pond.

6 MR. CAPIZZO: Did he go outside of Potter Pond
7 to try to expand?

8 MR. BEUTEL: Repeat that, please.

9 MR. CAPIZZO: Sure. You worked with Perry over
10 those six years assisting him trying to determine
11 locations. Did Perry ever present you with an option
12 outside of Potter Pond for what he's proposing within
13 Segar Cove?

14 MR. BEUTEL: He has not presented an
15 application for outside of Potter Pond. He has come in
16 and discussed locations outside of Potter Pond.

17 MR. CAPIZZO: You've been doing this for a long
18 time, and I know you made some reference in your
19 testimony and in your staff report about the opposition.
20 I know you heard it all, I'm sure, over the course of
21 your years from those opposing and those in support of;
22 is that fair to say?

23 MR. BEUTEL: I didn't understand what you mean.

24 MR. CAPIZZO: The question is, you've heard it

1 all as it relates to opposition to these types of farms,
2 as well as support, over the course of your time as the
3 aquatic director at Coastal as it relates to opposition
4 and in support of. When I say "hear it all," the
5 objections or the letters of support, correct?

6 MR. BEUTEL: I heard many objections before.
7 I've heard many supporters before.

8 MR. CAPIZZO: Okay. And you included in your
9 report, or at least in your testimony and it's referenced
10 in your report, that there was 147 written objections,
11 reference social media, and you distinguished between
12 non-residents, non-Rhode Island residents and Rhode
13 Island residents; is that correct?

14 MR. BEUTEL: That's in the report.

15 MR. CAPIZZO: And in fact, you included I think
16 it was a drawing of Save Potter Pond. Stop Oyster Cage
17 Expansion in Segar Cove, some type of drawing, and it has
18 a bird diving down. Did you include that in your staff
19 report, too?

20 MR. BEUTEL: That was in the report.

21 MR. CAPIZZO: Can you explain to me why you
22 felt the need to include that in the report?

23 MR. BEUTEL: So that the Coastal Council could
24 review all of the types of materials that had come in.

1 MR. CAPIZZO: You didn't include -- I think you
2 summarized 147 letters, but you didn't include those with
3 the staff report, correct?

4 MR. BEUTEL: All of the applications are
5 attached to the report.

6 MR. CAPIZZO: Okay.

7 MR. DESISTO: Is that for purposes of --
8 Christian, is that for purposes of impeachment?

9 MR. CAPIZZO: It is not, Mr. DeSisto. I'm just
10 trying to get a clarification --

11 MR. DESISTO: What is the purpose of it?

12 MR. CAPIZZO: I'm trying to get a clarification
13 what he based his staff report on, and if it's based on
14 what's been submitted, Mr. DeSisto. He included that
15 pamphlet.

16 MR. DESISTO: So it's clear he put one thing in
17 but summarized others, correct?

18 MR. CAPIZZO: That's fair.

19 MR. DESISTO: Okay. So does it need to be -- I
20 mean, you're asking motivations. To me it's clear. One
21 thing went in. Something else got summarized. I'm only
22 saying this so that we can be fair about this. I thought
23 I was clear with Mr. Wagner, and I have to be clear with
24 you, too. This is for clarity purposes. You can ask him

1 questions, but it certainly is not an opportunity for
2 cross-examination to impeach. He's not really a witness.
3 He's really here, he gave a staff report. That's what
4 I'm trying to do to keep this hearing --

5 MR. CAPIZZO: I understand. I'm not trying to
6 impeach him. The staff report holds a lot of weight, and
7 I respect Mr. Beutel when I worked with him and I
8 continue to respect him. I'm just trying to get a better
9 understanding of his staff report as to what he based his
10 recommendation on. And part of that goes to his review
11 of the letter of objections versus the letters of
12 support. I'm just trying to get a better
13 understanding.

14 MR. DESISTO: And you're able to say that when
15 you file your brief on this thing and you argue to this
16 Subcommittee and the Council that this happened.
17 Correct?

18 MR. CAPIZZO: That is correct. I'm just trying
19 to get clarification from Mr. Beutel. That's all,
20 Mr. DeSisto.

21 MR. DESISTO: You're trying to get to his
22 motivation and you're trying to impeach him. Because if
23 you get to the motivation, depending on what he says,
24 then you can use that to impeach him later on even though

1 he's just presenting a staff report.

2 MR. CAPIZZO: You're very clear on that.

3 That's not the intent. I'll move along, Mr. DeSisto.

4 If I can have a moment?

5 [PAUSE]

6 MR. CAPIZZO: I don't have any other questions.

7 Thanks, Dave.

8 CHAIRWOMAN CERVENKA: Thank you, Mr. Capizzo.

9 So it appears that we are concluded for the day. We
10 achieved everything we wanted to achieve. We are not
11 starting public comment until our next meeting which is,
12 Mr. Willis?

13 MR. WILLIS: The public comment will begin
14 10:00 a.m. on December 16th and also continued on
15 December 30th, at 10 a.m.

16 CHAIRWOMAN CERVENKA: Those are both three-hour
17 meetings, correct?

18 MR. WILLIS: That is correct.

19 CHAIRWOMAN CERVENKA: Then if we need to have
20 an additional meeting, we will, but it will obviously be
21 determined on the 30th.

22 MR. WILLIS: Yes.

23 CHAIRWOMAN CERVENKA: Okay. Anything else
24 administratively, Mr. Willis?

1 MR. WILLIS: No, Madam Chair. That is it. We
2 will make sure that we continue to notify all parties,
3 all interested parties of the proceedings to come and
4 make sure that our website is up to date and accurate.
5 But at this time there is no more administrative issues
6 to deal with.

7 CHAIRWOMAN CERVENKA: Okay. I think,
8 Mr. DeSisto, we wanted to ask for at some point proposed
9 findings of fact, conclusions of law, and post-hearing
10 briefs. And we're not at the end yet, but that's a major
11 piece of work product that we will want in the new year.
12 Correct?

13 MR. DESISTO: Yes, that's correct, yes, and
14 prior to a decision of the Subcommittee.

15 CHAIRWOMAN CERVENKA: And prior to our
16 workshop.

17 MR. DESISTO: Correct, yes.

18 CHAIRWOMAN CERVENKA: Okay. All right.
19 Anything else from counsel?

20 MS. NOONAN: No.

21 MR. WAGNER: Nothing.

22 CHAIRWOMAN CERVENKA: If nothing else, then I
23 will move to adjourn. Is there a second?

24 MR. COIA: Second, Madam Chair.

1 CHAIRWOMAN CERVENKA: Thank you, Mr. Coia. All
2 in favor?

3 [UNANIMOUS VOTE TAKEN]

4 CHAIRWOMAN CERVENKA: Thank you, everyone.
5 Good night.

6 [ADJOURNED AT 5:05 p.m.]

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C E R T I F I C A T I O N

I, Lisa M Reis, hereby certify that the foregoing Pages 479 through 689, inclusive, are a true and accurate transcript of my stenographic notes of the proceedings, via Zoom, which occurred on the above-entitled dates, to the best of my ability.

LISA M. REIS, RPR
Court Reporter/Notary Public
My Commission expires on 7/27/24

Sworn to and subscribed before me,
This 16th day of December, 2020

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