

STATE OF RHODE ISLAND  
MANAGEMENT COUNCIL  
PROVIDENCE, SC.

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

## **DECISION**

Petition of: Jamestown Boatyard

Docket No.: 2019-06-014

Applicant, Jamestown Boatyard (“JBY”), filed with the Coastal Resources Management Council (“Council”) an application which will include extending 3 piers within the existing Marina Perimeter Limit and dredging approximately 2,000 cubic yards in Type 3 waters, with high intensity boating. Located at plat 10, lot 18; 60 Dumping Road, Jamestown, Rhode Island.

A meeting was held by the Council on October 20, 2020, using the Zoom platform, pursuant to the Administrative Procedures Act. At that time, evidence was submitted on behalf of the applicant as well as other interested parties. Further evidence was submitted by staff members of the Council and by other state agencies, all of which was incorporated into the record. Further, all evidence so submitted to the Council pursuant to this application whether it be by interested parties, through its staff members and other various state agencies has been and is available to all interested parties at the Council offices located at the Stedman Government Center, Tower Hill Road, Wakefield, Rhode Island 02879.

Mr. Danni Goulet, Marine Infrastructure Coordinator, gave a brief overview of the application. He explained that the original application was considered to be a Category B application due to the marina perimeter limit modification, but that throughout the review process, the application was amended significantly and was ultimately reduced to a Category A application for the improved dredging proposed. Mr. Goulet stated that the three docks proposed to be extended would fall under the CRMC Marina Maintenance Program and would not require Council review. Mr. Goulet explained that the proposed dredging would include approximately 2000 cubic yards of improvement dredging with CAD cell disposal of materials. Mr. Goulet stated that the application received a RIDEM Dredge permit which included a RIDEM Water Quality Certificate which included the characterization of the sediment at the marina. Mr. Goulet explained the process by which RIDEM reviews sediment testing. Mr. Goulet explained in detail the importance of the sediment testing and testing results for the dredging portion of the project as the results would help to decide where the dredged materials would be stored or used. The actual dredging would be limited to the timeframe of October 15<sup>th</sup> through January 31<sup>st</sup>, and would be limited to mechanical methods. Mr. Goulet stated that eel grass beds would be marked on the dredging computer to ensure the operator avoids the area.

Mr. Gagnon asked about the approximate length of time to complete the dredging. Mr. Goulet stated it would take approximately two weeks.

At Chair Cervenka's request, Mr. Goulet explained that in reviewing an application for dredging, CRMC relies on the expertise of the Department of Environmental Management regarding the determination of marine sediment.

Chair Cervenka asked for clarification on the changes the applicant made with their project over time and the reasons for the changes. Mr. Goulet stated that the applicant made the changes based on federal, state and local regulatory processes as well as local resident's concerns. Mr. Goulet confirmed for Chair Cervenka that if the application had been received by CRMC as it is now, it would have been reviewed as a Category A application for the dredging, which required a Public Notice. Mr. Goulet stated that pending the outcome of the Public notice period and the sediment testing, it could have been approved administratively.

Attorney Christian Infantolino, present for the Applicant, addressed the Council stating that they had read the CRMC staff report and agreed with staff and all the conditions laid out within the report. Mr. Infantolino gave a brief history of the boatyard explaining that it had been in the present location for over 100 years. Mr. Infantolino completed opening remarks by stating that the application received a RIDEM Water Quality Certificate, and Army Corps of Engineers General Permit and that CRMC staff was recommending approval.

Mr. Infantolino introduced Jamestown Boatyard's General Manager, Stephen Devoe, who was then duly sworn and identified himself for the record.

Mr. Devoe briefly addressed the Council stating that the proposed improvements were meant to increase the operational efficiency of the boat yard. Mr. Devoe explained that under the current conditions, all of the mechanical work that is done on boats is based on the tide cycle, bringing boats in and out of the boat yard based on the tide, as the water depth at the working docks is not deep enough during mean low water. Mr. Devoe stated that with the dredging proposed, the boat could stay at the dock through the tide cycle until the boat is fixed. Mr. Devoe explained that the boat yard did not have the intention of increasing traffic, but that the traffic should decrease, as they would not have to bring the boats back to the mooring depending on the tide cycle.

Mr. Infantolino asked to reserve the right for rebuttal throughout the hearing process.

Chair Cervenka asked how many boats could be worked under the proposed project. Mr. Devoe stated that 6 boats could be worked on throughout the tide cycle with the proposed project.

Chair Cervenka asked what the Applicant wished to accomplish with the original application. Mr. Devoe stated that they would decrease the back log during the summer

months with boats needing maintenance, as well as being able to work on more boats. Mr. Devoe stated that with the size of their facility and the crew, he does not envision working on larger boats than what they usually work on, which is in the 30 to 50' range.

There were no further questions from Council to the Applicant. Again, Mr. Infantolino asked that he be allowed to reserve the right to call on rebuttal witnesses throughout the process.

Attorney Justin Shay addressed the Council stating that he represented the Dumplings Association and Ocean Highlands LLC who were both abutters of Jamestown Boatyard, also known as the Safe Harbor Marine Jamestown. Mr. Shay began with a brief explanation on his client's use of the waters in the area of the proposed project. Mr. Shay explained a property line dispute between the Boatyard and the northern property line and expressed concern that a revised plan was not submitted to CRMC showing revised property lines. Mr. Shay stated that without the settlement of the property line, the Marina Perimeter Limit is called into question. Mr. Shay also brought into question the CRMC designation of the Water Type in the area being Type 3 waters. Mr. Shay stated that the proposed project lacked a zoning board approval. Mr. Shay stated that the CRMC Marina regulations parking requirement could not be met. Mr. Shay stated that the boatyard had spilled over onto town land and that it creates an unsafe traffic condition in a narrow road. Mr. Shay brought into question that the application failed to address conflict of low intensity recreational uses which had been going on in the area for generations. Mr. Shay also stated that the application failed to address dredging in or near eelgrass beds. Mr. Shay stated that a CRMC Biologist report should have addressed the issues relating to subaquatic vegetation (SAV). Mr. Shay also brought into question the levels of highly toxic TBT that could be released and carried by the tides during dredging. Lastly, Mr. Shay stated that the proposed project would jeopardize the scenic value of the area.

Mr. Infantolino commented that the application is subject to the Water Type at the time of the submittal and that the zoning issue is not under the purview of the CRMC.

Mr. Shay introduced two witnesses: Dr. Susan Driscoll and Marie-Helene Cormier.

Dr. Susan Kane Driscoll, Aquatic Toxicologist was sworn in and identified herself for the record. Dr. Driscoll gave testimony on the detrimental effects of TBT that was found in samples taken from sediment within the boatyard on subaquatic vegetation and sensitive species.

Mr. Shay stated that they will stand on Dr. Driscoll's statements and Council can ask questions.

Mr. Gomez asked what the probability would be that the toxins could be higher than limits allowed. Dr. Driscoll stated that without having data of content, it would be difficult to give an accurate probability.

Chair Cervenka asked Mr. Goulet to address the so-called data gap that effected State findings and conclusions.

Mr. Goulet stated that he would have to defer to RIDEM.

Chair Cervenka asked Mr. Shay or Dr. Driscoll if they had any interaction with RIDEM during their review for Water Quality determination. Mr. Shay stated that they did not have interaction with RIDEM. Dr. Driscoll confirmed for Mr. Shay that in her opinion, further toxicity testing should be done.

Chair Cervenka asked Dr. Driscoll if she had referred to any state standards that would have influenced her conclusion. Dr. Driscoll stated that she looked at national ambient criteria but not the sediment quality criteria for the state.

Mr. Shay introduced Marie-Helene Cormier, who was duly sworn and identified herself for the record. Ms. Cormier stated that she was a Research Scientist with a strong expertise with marine geophysics. Ms. Cormier spoke about seafloor processes, siltation rates, and sediment transport issues as relates to dredging in the Dumplings Cove area of Jamestown.

Chair Cervenka asked Ms. Cormier if, when rendering her conclusion and analysis, she referred to state standards. Ms. Cormier stated that she did not. Ms. Cormier stated she conducted a qualitative analysis.

Mr. Shay, in his closing remarks, stated that he believed the application to be deficient and that it is the burden of the Applicant to provide documentation that the application is complete and that all requirements have been met. Mr. Shay asked that the Council not act on the application until all questions have been answered regarding property, safety issues, and environmental issues. Mr. Shay urged the Council to deny the application as presented.

Chair Cervenka addressed the property issue raised by Mr. Shay stating that the Council does not have jurisdiction on the determination of property ownership and that it was an issue to be raised in Superior Court. Chair Cervenka asked if there was a pending Superior Court action, to which Mr. Shay replied that there was. John Longo, CRMC legal counsel, added that the CRMC permit would not trump property rights.

Chair Cervenka explained that there were many arguments made that did not fall into CRMC authority, such as zoning compliance which is not CRMC jurisdiction. Chair Cervenka explained that the classification of water types in the area would be considered under a different petition that was not before the Council then, and that for the purpose of the present application, the Council must assume the type of waters referenced when the application was submitted.

Mr. Longo explained that the Council requires that an Applicant acquire local approval prior to submitting an application, and that it is beyond the scope of review for

Council to review zoning issues. Mr. Longo stated that if the proposed project meets CRMC marina parking requirements, it is okay.

Mr. Shay urged the Council to look at safety issues that involve the local waters, such as first responders being able to get to necessary emergency calls as well as safety issues on the water itself.

Mr. Goulet clarified at the request of Chair Cervenka that adverse scenic impact is included within CRMC standards, but is not measurable and is not a part of the Category A application review.

Mr. Shay completed his argument and thanked the Council.

Mr. Infantolino stated that he would reserve his response until after objectors were heard and would summarize at end of hearing.

Attorney William Landry briefly addressed the Council as representing the Friends of Dumplings Cove, stating that their organization's intent was to protect the traditional value of the Dumplings Cove area. Mr. Landry spoke about the cozy community as well as their love and intimate knowledge of the island. Mr. Landry stated that the historic, scenic and recreational aspects of the Dumplings area as well as the rock formations give the area its character. Mr. Landry spoke to how the area had changed over the most recent years with increased water activity as well as congestion of boaters and the dangers that residents face while trying to recreate through competing interests. Mr. Landry also asked the Council to wait for a property line determination to be procured before rendering a decision. Mr. Landry stated he is also in agreement with a Water Type change recognizing that this application would not be affected but asking the Council to consider that not all Type 3 waters were the same. Mr. Landry recognized that the applicant is not proposing more boats, but was concerned that bigger boats will eventually be accepted at the boatyard as well as usual customers. Mr. Landry also expressed concern with the parking requirements not being met.

Mr. Goulet confirmed for Chair Cervenka that the application before the Council did not modify the current marina perimeter limit nor did it modify the current boat count. Mr. Goulet reiterated that parking does not come into play for this review.

No questions from Council for Mr. Landry.

Objections: The Council heard objections and concerns from Corey Sertl, Hannah Swett, Ben Tuff, Dennis Dowling, Paula Shevlin, Chad George, Kim Wescott, William Hutchinson, Susan Plowden, and Barbie Carton.

Chair Cervenka motioned, seconded by Vice Chair Coia, to continue the current proceedings to the Council's October 27, 2020 Semimonthly Meeting and that only the people who have identified themselves at this meeting will be given the opportunity to speak.

Readjourning during the October 27, 2020 semi-monthly meeting, Chair Cervenka began by stating that the public comment portion would continue followed by rebuttal from the Applicant.

Objections (continued): The Council heard objections and concerns from Patricia Sheehan, Lisa Allen, Chris Powell, Stuart Ross, Scott Ruhren, Trudy Cox, Andrew Potter, James Taylor, Will Laurie, Peter Converse, Victoria Corey, Bertram Lippincott, Susannah P. Holloway, Anne Kuhn-Hines (current Jamestown Conservation Commission Chair), and Alexander Wharton.

Attorney Joseph DeAngelis, co-legal counsel with Christian Infantolino for the Applicant, summarized the matter. Mr. DeAngelis closed by reviewing CRMC policies to preserve protect and enhance an area that is already a high intensity boating area. Mr. DeAngelis asked the Council to weigh the facts that were presented by engineers and consultants of the Applicant and reviewed by CRMC engineering staff. Mr. DeAngelis talked about the frequency of larger dredging projects in Rhode Island waters and mentioned the difference in size of this smaller project. Mr. DeAngelis addressed the TBT issue stating that the levels of TBT in sediment surrounding a boatyard that had been in the same area for 117 years, were very low and that the soil sample that was tested resulted in just above the beach nourishment standards. Mr. DeAngelis asked the Council respectfully to follow the Redbook regulations.

No questions from Council members for Mr. DeAngelis.

The Council discussed Mr. Shay's request to reopen the testimony of Dr. Driscoll based on the request received by CRMC earlier on the day of the Council meeting. Mr. Willis addressed the Council and stated that the timeframe for staff to review the large amount of information submitted was not reasonable and recommended that the Council not re-open the testimony of Dr. Driscoll on that basis. Mr. Willis confirmed for Chair Cervenka that the management procedures clearly stated that information needed to be submitted at a minimum 5 business days prior to the meeting date. Mr. DeSisto confirmed the Management Procedures regulation and agreed with statements made on the matter.

Mr. Gomez motioned to deny both testimony and/or written statement with backup materials from Dr. Driscoll based on statements of Mr. Willis and Mr. DeSisto. Chair Cervenka stated that the motion was in compliance with the management procedures and she supported the motion to deny. There were no further comments.

Roll Call Vote:

Vice Chair Coia	Nay - allow brief statement	Ms. Reynolds	Aye
Mr. Hudner	Aye	Chair Cervenka	Aye
Mr. Gomez	Aye		
Mr. Gagnon	Aye		

Vote was 5 ayes to 1 nay – Motion carried to deny request to open testimony of Dr. Driscoll.

Chair Cervenka closed the public hearing.

Mr. DeSisto addressed the Council, stating that it was appropriate to state that comments be based on personal observations of those of the public referring to case Restivo vs Lynch.

Chair Cervenka addressed the appropriateness of utilizing the Zoom platform to conduct the Council meeting based on the Governor's current Executive Orders. Mr. DeSisto confirmed and agreed that the meeting was being done in conformance with the Governor's Executive Order.

Regarding property ownership and boundary questions that were raised, Mr. DeSisto confirmed for Chair Cervenka that the RI Superior Court has jurisdiction on all matters of title and interest in real estate. Mr. DeSisto stated that if there is no lawsuit, the Council can proceed in their deliberation.

Chair Cervenka addressed the concerns raised on zoning violations stating that zoning issues are not in the purview of the CRMC.

Mr. DeSisto confirmed for the Council that it was appropriate to consider Category B standards based on the procedural travel of the case.

At Chair Cervenka's request, Mr. Goulet addressed the lack of a CRMC staff biologist report stating that, once the Applicant reduced the dredging footprint to avoid impact to the eelgrass bed, CRMC programmatic concerns were met, and the staff biologist felt it was not necessary to file a report.

Mr. Goulet spoke to the dredging window of October 15th through January 31st, stating that any decision to allow dredging outside of this window would have to come from very compelling situations in which RIDEM would make the call. CRMC and RIDEM dictate that they shall dredge within the dredging window.

Mr. Goulet confirmed for Mr. Gagnon that the application before the Council was requesting permission to dredge, and did not include a request for permission to expand. Mr. Goulet stated there would be no change in boat count and that the docks to be expanded were within the marina perimeter limit.

Chair Cervenka began Council discussion by stating that the dock extension would allow for an additional 4 boats to the existing 6 boats that could be serviced at one time, which did look like an allowance for an expansion. If the current boat count was able to be kept during a full tidal cycle, it would improve the existing operations without needing to add more boats. Chair Cervenka stated that based on public comment, existing conditions in the cove are very congested and that she viewed the expansion as

exacerbating a problematic set of conditions at the cove. Chair Cervenka referred to CRMC standards regarding conflicted uses, adding that the Council could not interfere with public access nor conflict with other dependent uses. Chair Cervenka stated that an increase in boats coming in would lead to such a significant impact that she did not feel she could support the pier extension. However, the dredging for operational efficiency would allow for existing clients to remain through a full tidal cycle and help the boatyard with existing uses.

Mr. Gomez agreed with Chair Cervenka, that the Council needed to balance its uses, but that the dock extension was within the existing marina perimeter limit. He stated he could accept it as a change and still have balance.

Mr. Hudner agreed with Mr. Gomez, stating that the existing marina perimeter limit would not expand, and that this issue as to how the water could be used within the marina perimeter limit was decided with the issuance of that limit. Mr. Hudner stated he was in favor of approving the project.

Vice Chair Coia concurred with what was said and stated that he took all the testimony seriously, whether hearing testimony from CRMC staff, contradictory testimony from well-credentialed attendees, or lay testimony from objectors based on personal experience and observations, and gave all the information its due weight. Vice Chair Coia stated that the Council is guided by law and when applying all the evidence to the standard of review it supports the expansion.

Ms. Reynolds stated that the combination of both the dredging and extension of the docks would be considered an expansion, as it would allow them to accommodate larger vessels allowing for additional user conflicts. Ms. Reynolds stated she could not support the project as it interferes with recreational users.

Mr. Gomez went back to Mr. DeAngelis' remarks on Type 3 waters, stating that this is the type of use prioritized in Type 3 waters and that he continued to support the proposal.

Chair Cervenka referred to the Redbook Category B Requirements Section 1.3.1(f) and 1.3.1(j) – impairment of public access or conflict of water dependent uses. Chair Cervenka suggested to give the Applicant what they need to operation more efficiently but not allow the dock extension which would exacerbate the conflicting conditions outside of the marine perimeter limit.

Mr. Hudner expressed concern that constricting what a marina can do within their established marine perimeter limit could be considered an unauthorized taking.

Mr. Gagnon suggested limiting the number of boats that could be at the docks for maintenance work to 6, which would allow for longer maintenance times but would not restrict the size of boat allowed.



Mr. Willis and Mr. DeSisto confirmed for Chair Cervenka that the Council could put a limitation on the number of boats at the docks based on user groups.

Mr. Hudner stated that the boat yard had a legal right to have a marine business in that location and they should be able to run their business within the legal parameters granted. Mr. Hudner did not feel that the number of boats was material for impact.

Mr. Gomez agreed with Mr. Hudner stating that the congestion of the area was due to the increased use of the area from recreational users. Mr. Gomez stated that the parking congestion was also from the increased recreational users.

At the request of Mr. Hudner, Mr. Willis explained the significance of a marina perimeter limit stating that there is a defined area in which they can operate their marina.

Mr. Willis confirmed for Mr. Hudner that the Applicant worked with staff to bring a reduced proposal before the Council.

Mr. Gagnon stated he appreciated the remarks of Council and Staff and did not feel there would be a major impact on navigation in the harbor itself considering how busy it is. Mr. Gagnon stated that he would support the dredging and expansion as applied for.

Mr. Hudner motioned that this application be approved based on all activity being done within the existing marina perimeter limit. Mr. Hudner stated that the application was extremely well presented in a technical point of view and compliance with Redbook.

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

1. The proposed project location is the Jamestown Boatyard in Jamestown, Rhode Island.
2. The coastal feature is Manmade, Coastal Beach.
3. The proposed project is in Type 3 waters, high intensity boating.
4. The Applicant sought approval to extend 3 piers within the existing Marina Perimeter Limit and to perform approximately 2,000 yards of improvement dredging with CAD cell disposal of materials.
5. The Council hereby adopts and incorporates the findings made by the CRMC staff.
6. The Council hereby finds that the Applicant has met its burdens of proof under the applicable sections of the CRMP or SAM Plan, and agrees with the staff recommendations which meet the variance criteria.

7. Based on the foregoing, there is not a reasonable probability of conflict with a plan or program for management of the State's coastal resources as well as damage to the coastal environment of the State of Rhode Island.

Conclusions of law:

1. This Council has been granted jurisdiction over the above-mentioned project pursuant to CRMP 1.2.1(C); 1.3.1(D); 1.3.1(I); 1.3.1(R).
2. The proposed alterations do not conflict with the management plan approved and adopted by this Council and in effect at the time the application was submitted.
3. The record reflects that the evidentiary burdens of proof as set forth in the Coastal Resources Management Program have been met for this project.

Mr. Gomez seconded the motion.

Roll Call Vote:

Vice Chair Coia	Aye for reasons enumerated	Ms. Reynolds	Nay user interference from larger boats
Mr. Hudner	Aye	Chair Cervenka	Nay for reasons previously stated
Mr. Gomez	Aye		
Mr. Gagnon	Aye		

Motion carried 4 to 2. Application is approved.

Mr. DeSisto asked that the Council vote to have a draft decision written delegated to Attorney DeSisto or Attorney Longo that they will present at a future meeting so that members present can vote on the written decision itself.

Chair Cervenka motioned to delegate to Attorney DeSisto or Attorney Longo to prepare written decision to put before the Council two meetings from now. Seconded by Mr. Hudner.

Roll Call Vote:

Vice Chair Coia	Aye	Ms. Reynolds	Aye
Mr. Hudner	Aye	Chair Cervenka	Aye
Mr. Gomez	Aye		
Mr. Gagnon	Aye		

Motion carried.

WHEREFORE, as a result of these findings of fact, and conclusions of law, it appears that the proposed activity does not have a reasonable probability of causing a detrimental impact upon the coastal resources of the State of Rhode Island. As a result of these findings of fact and conclusions of law, the Council hereby approves the application.

FOR THE COUNCIL,

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Jeffrey M. Willis, Acting Executive Director

Dated: