

In accordance with notice to members of the Rhode Island Coastal Resources Management Council, a meeting was held on Tuesday, October 11, 2011 at 6:00 p.m. in Conference Room A of the Administration Building, One Capitol Hill, Providence, RI.

Members Present

Anne Maxwell Livingston, Chair
Paul Lemont, Vice Chair
Donald Gomez
Dave Abedon
Bruce Dawson
Ron Gagnon, RIDEM
Tony Affigne
Guillaume de Ramel

Staff Present

Jeffrey M. Willis, Deputy Director
Kenneth W. Anderson, PE
Laura Miguel, Enforcement
David Beutel, Aquaculture Coor

Brian A. Goldman, Esq.

Members Excused

Michael Hudner
Raymond C. Coia

1. **CALL TO ORDER**

Chair Livingston called the meeting to order at 6:00 p.m. Chair Livingston stated that Mr. Fugate had a family emergency and that he would not be in attendance. Mr. Willis acted in his place.

2. **APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING**

Chair Livingston called for approval of the minutes from the August 23, 2011 meeting. Vice Chair Lemont motioned, seconded by Mr. Gomez, for approval of minutes. Chair Livingston asked that the minutes be corrected to reflect that the opening statement was not made. Motion carried on unanimous voice vote.

3. **SUBCOMMITTEE REPORTS**

Vice Chair Lemont gave update to the Council stating that the Administrative Fine hearings are up to date as a result of the last three hearings held.

Mr. Goldman stated that the Council Subcommittee received the report for the Salt Pond/Downing application, all subcommittee members have agreed on report, and it will be released to the public upon signature of subcommittee Raymond Coia.

4. **STAFF REPORTS**

Mr. Goldman stated that in the circuit Court of appeals, Downing has filed a Petition for Certiorari.

Mr. Goldman stated that the Harris case was heard on October 6, 2011 and an order was made by Judge Rubine that the marina be removed; and if not removed, Mr. Harris will be held in willful, civil contempt. Mr. Goldman stated that a Special Master was appointed by the judge for removal of docks from marina and that Mr. Harris would be held responsible for all costs.

Mr. Goldman also updated the Council on the Enforcement action on the Koolen case saying that the boats and dock structures remain in the Kickemuit River. Mr. Goldman stated that they have an October 25, 2011 court date.

Mr. Willis stated that the Ocean Special Area Management Plan has been federally approved on geographic location and was effective as of Friday, October 7, 2011. Mr. Willis stated that Rhode Island was the 1st in the nation to achieve this federal approval.

Chair Livingston took applicant's attendance to see who was present for each application -- both applicant and opposition. Mr. Goldman stated during an administrative fine hearing presided over by Vice Chair Lemont, Mr. Jarnes agreed to remove his unpermitted dock structure by midnight of Monday, October 10, 2011. Mr. Goldman stated that at some point today part of the unpermitted structure had been removed. Chair Livingston stated that if the structure was not removed to CRMC staff satisfaction that Mr. Jarnes would be called back before the Council on the next agenda and a hefty fine could be assessed.

Mr. Goldman made an opening statement regarding the proceedings and the Assent receipt process.

5. **APPLICATIONS WHICH HAVE BEEN OUT TO NOTICE FOR 30 DAYS AND ARE BEFORE THE FULL COUNCIL FOR DECISION:**

2010-04-101 CHRISTOPHER CLARENDON – Aquaculture commercial viability for trawl of oyster bags located in the Sakonnet River, Tiverton, RI.

Mr. Clarendon was present as well as many people in opposition of the commercial viability application. Mr. Beutel gave brief history of application to Council stating that it was an application for commercial viability of an aquaculture project to try a trawl project with attached oyster bags. Mr. Beutel stated that Mr. Clarendon has asked to use only 1/3 of the area of 1000 sf. Mr. Beutel stated that the Town of Tiverton has reviewed the application at the same time as the Sebring aquaculture application and many objections were received. Mr. Beutel described the project as a simple long line with eight bags of oysters; 4 bags off of each side which would be anchored into the bottom of the River on the North side of Fogland Point in a water depth of as little as one foot at mean low tide. Mr. Beutel stated that he had met in June with Town officials and that Mr. Clarendon had modified his plans so that the helix anchors were only six inches above sediment to keep the profile very low. Mr. Beutel stated that the objections were mainly due to a conflict in usage of the area and that letters of objection had been received from the wind and kite surfing community. Mr. Beutel stated that an equal number of letters of support were received as well. Mr. Beutel stated that the aquaculture aspect of the application is not onerous at all but was being asked if the two uses were compatible or will it effect the current use of wind surfing in that area? Mr. Beutel stated that he had visited the area and that the Eastern part does not look like an active wind surfing area. Vice Chair Lemont asked for clarification on the size of the project with Mr. Beutel stating that it would be a 1/3 of 1000 sf. and that only the anchors and marker buoys would be seen. Mr. Gomez stated that there has been very little recreational use in this particular area as it is very shallow and usage is up along the beach for clamming. Vice Chair Lemont asked what the next step would be is the project was determined to be viable. Mr. Beutel stated that if the project was determined to be viable and had success, the applicant could ask for the 3 acres to set up his aquaculture farm. Mr. deRamel stated that he was familiar with the area as a wind/kite surfer and that the area is very well used due to area sheltering, especially for beginners. Chair

Livingston stated that the letters were not clear on the size of the area to which Mr. Beutel stated that the commercial viability area was only 30' long and 10' wide. Mr. deRamel stated that his concern was regarding the next phase of the project if the area was found viable. Mr. Beutel stated that the commercial viability project would not eliminate the use of the area as suggested in some of the letters of objection and that the main objections were for what might come in the future; objecting to the concept not the current project.

Mr. Clarendon was sworn in and identified himself for the record stating his name is Christopher Clarendon, owner of Seapowet Shellfish which operated a lease across river from proposed site. Chair Livingston asked Mr. Clarendon of his future plans if approval was granted for commercial viability and project was successful; would he request an expansion into this area. Mr. Clarendon answered that if the viability project was successful he may ask for expansion in this area but at this point in time there is no guarantee that the project would be successful. Mr. Clarendon explained the procedure he would employ for his project and showed the Council his trawl system using line with connected vinyl mesh bags which sit on two brackets also made of wire mesh (recycled traps). Mr. Clarendon explained that if all of the bags were on one side of the line the area required would only be three feet wide.

Mr. Clarendon stated that there was a Mooring field in the area which but that the water was very shallow and his test was an extremely small part of the 1.5 million s.f. of the river. Mr. Clarendon stated that he distributed an informational letter to windsurfing community, which he read out for record, addressing misconceptions and giving a background for his project with clarification of the operation. Mr. Clarendon stated that aquaculture would also give the community the benefit of helping to clean the river naturally. Mr. Clarendon submitted photos taken on weekend days which were made part of the record (5 photos) showing fair and accurate representations of activities on the water at various times during the season; June #1 through Sept #5 – 3/5s of the year with no wind surfers. Mr. Gomez asked if bags would be exposed during very low tides. Mr. Clarendon stated that it was possible for the bags to be exposed on extreme Spring tides with inclement weather. Mr. deRamel stated again that the area is attractive to beginners and expressed concern regarding the possibility of injury due to the placement of the equipment. Mr. Clarendon stated that there was not much to snag a foot on and that the bags were durable enough for someone to step on without damage to the person or the equipment.

Mr. Affigne asked about future plans. Mr. Clarendon stated that it was becoming untenable to use current lease site and if project was deemed viable, he would possibly consider moving a portion of his operation. Mr. Clarendon stated that the weather was a factor and the proposed new area was a protected spot which could be used efficiently. Mr. Clarendon stated that the actual recreational designation is on the south side of the river and that the vast majority of recreation takes place with swimmers and wind surfers. Mr. Clarendon stated that there was less wind in the basin but because of that it is a good place for beginners.

Mr. Dawson asked about timeframe and grow out period. Mr. Clarendon stated that each oyster is different and that it would take from 18 months to 3 years. Mr. Dawson asked what happened when the oysters grew too big for the mesh bags. Mr. Clarendon stated that when the oysters outgrew the test bags and they would be moved to his other site.

Objectors Pam Chace, Fred Flannigan, and Shirley Prior were sworn in and each identified themselves for the record.

Ms. Chace stated that her objection was due to the conflict of usage and feeling that the area was beautiful and perfect for recreational use stating that there were very few places for kayaking, swimming and windsurfing. Ms. Chace stated that from her knowledge of the area, the test site is on a far corner which is used for wind surfing or kite sailing. Ms. Chace reiterated that the shallow area was good for beginners but also used for wading and swimming. Ms. Chace expressed concern that such a public area could be taken over for private use. Ms. Chace expressed her concern about Mr. Clarendon's future prospects if the viability project was successful.

Mr. Flannigan stated he was a wind surfer who tried to get on the water from 40-75 times a season, and that he had been frequenting the Fogland area for last 4-5 years making him very familiar with conditions at Fogland. Mr. Flannigan stated that he was in favor of aquaculture and oyster growing in bay but that this particular project would create a hazard. Mr. Flannigan stated that a Windsurfer's fin sticks down into water and could snag on line or bags. Mr. Flannigan also agreed that the area was a great place to learn wind surfing and kite sailing and that a lot of people who can't control their trajectory would be in danger. Discussion on marking equipment for visibility.

Chair Livingston expresses interest in the positive aspect of project in which information could be gleaned from having the test area such as whether it is a good area for future aquaculture sites and whether the project would really affect the use of the area.

Mr. Affigne asks if Council can put restrictions in place and what restrictions are typically set in permit. Mr. Beutel stated that the restrictions on usage vary based on site and area but that the Council could add their own restrictions as well. Mr. Affigne also expressed concern that the public would disrupt the aquaculture site and asked if site would have protection from that as well.

Vice Chair Lemont requested for demarcation to be more visible. Vice Chair Lemont stated that Rhode Island can be one of the worst states in country to do business in and those entrepreneurs were a good thing for building RI's reputation for business. Vice Chair Lemont stated that this project could be looked at as an opportunity for someone to bring money and jobs into the state and that he fully supports the approval of the project. Mr. deRamel stated that there were at least 25 objections coming from out of state and that consideration should be given to the out of state visitors who spend money in Rhode Island in more areas than the ocean front such as stores, restaurants, and overnight accommodations.

Council members discussed liability responsibility in the event of injury due to the project's equipment. Mr. Goldman stated that the liability would remain with Mr. Clarendon. Mr. Dawson suggested a stipulation requiring liability insurance.

Mr. Abedon asked if staff could monitor how the recreational season goes. Mr. Beutel stated that it would require more time and man hours than CRMC staff could provide to monitor a small viability operation.

Mr. Affigne stated that he would not be inclined to approve the project without stipulations, signs and floats and liability insurance. Mr. Affigne also questioned whether CRMC had the ability to ask for nonmarket comparison regarding the economic impact on Town of Tiverton.

Mr. Willis stated that during the course of the review on staff level, economic impact is not part of the review process, however, the Council has the ability to hire an outside source. Mr. Affigne

stated that both directions needed to be looked at from the state/local economic impact and the private economic impact. Mr. Dawson suggested some sources of information for economic review could be CRMC yearly lease figures, town fees, and tax information.

Mr. Flannigan asked about an appeal period. Mr. Goldman stated that CRMC is subject to the Administrative procedures act.

Bruce Cox was sworn in and identified himself for the record as a citizen of Tiverton and Chairman of Tiverton Harbor Commission. Mr. Cox stated that he found the variety of comments interesting and that he was in favor of task so that information can be ascertained as there is a lack of data for this area. Mr. Cox stated that Mr. Clarendon should be given to opportunity to see if something will grow there and that there was need for balance of public and private utilization of water.

Vice Chair Lemont motioned for approval of application with stipulations that this commercial site be better marked (Dave Beutel to work with applicant) and with applicable and correct amount of insurance. Mr. Dawson seconded the motion. Aquaculture application process discussed. Mr. Gomez expressed his support stating that aquaculture was an innovative process with different techniques for different areas. The motion was carried with seven ayes in favor and one nay from Mr. deRamel.

2011-06-063 DEPARTMENT OF TRANSPORTATION -- Replace existing Providence Viaduct Bridge No. 578 and associated ramps. The proposed bridge construction will consist of the following elements: Replacement of existing I-95 Southbound viaduct; Replacement of existing I-95 Northbound viaduct; Modifications to the Route 6/10 SB off-ramp (Exit 22) and replacement of bridge; A temporary bridge for construction staging at the Route 6/10 SB off-ramp and replacement of bridge; Modifications to the Atwells Avenue SB off-ramp (Exit 21) and replacement of bridge; Modifications to the Ramp CB-2 and Ramp DB-B on-ramps; Modifications to the Atwells Avenue NB on-ramp and replacement of Bridge No. 578. Additional project components include stormwater runoff collection and treatment and removal of the existing NB/SB Pier No. 7 from within the channel of the Woonasquatucket River. SB Pier 6 and Ramp DB Pier 6 will be relocated southerly further from the river. The project requires a variance from RICRMP Section 300.6 (amended 5/16/11) to treat less than required "water quality volume" (46% of WQV project-wide to be treated due to site constraints). (Virtually no treatment is provided currently.) Located on Rte I-95; Providence, RI.

Mr. Anderson gave brief overview of application to the Council stating that staff recommended approval. Mr. Dawson asked what the difference would be in the application is used the current Stormwater manual as opposed to the 1993 Stormwater Manual that was used. Mr. Anderson stated that the newer manual was more stringent and had more innovative source controls. Mr. Anderson stated that same constraints due to soil characteristic limitations but the current version has requirements on low impact development. Mr. Dawson asked what would be the condition of the yards of materials removed. Mr. Anderson stated that it was not anticipated that there would be any contamination. Mr. Anderson stated that the vital infrastructure was fast approaching its life expectancy. Mr. Dawson motioned, seconded by Mr. Gomez, approval of application with staff stipulations. Motion carried on a unanimous voice vote.

6. **CATEGORY “A” LIST**

None were held.

7. **ADJOURN**

Vice Chair Lemont motioned, seconded by Mr. Dawson, to adjourn. Motion carried on unanimous voice vote. Meeting adjourned at 7:35 p.m.

Respectfully submitted,

Lisa A. Turner
Recording Secretary