STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 25, 2026)

ANDREW WILKES AND 454 BEACH ROAD, LLC, ***Plaintiffs/Appellants*,** **v.** **RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL AND JEFFREY M. WILLIS, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR,** ***Defendants/Appellees*.**	**C.A. No. PC-2024-05023**
DAVID LATHAM, KEVIN HUNT, STEPHEN QUIGLEY, ALICIA COONEY, DIRCK E. WESTERVELT, TRUSTEE OF THE DIRCK E. WESTERVELT TRUST, ***Plaintiffs/Appellants*,** **v.** **RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL, AND JEFFREY M. WILLIS, IN HIS CAPACITY AS EXECUTIVE DIRECTOR, AND PERRY RASO,** ***Defendants/Appellees*.**	**C.A. No. PC-2024-05065**

DECISION

MONTALBANO, J. Before this Court are the Complaints of David Latham, Kevin Hunt, Stephen Quigley, Alicia Cooney, Dirck E. Westervelt, Trustee of the Dirck E. Westervelt Trust (the Latham Plaintiffs), and Andrew Wilkes and 454 Beach Road, LLC (the Wilkes Plaintiffs), appealing the Rhode Island Coastal Resources Management Council's (CRMC) final decision

issued on August 13, 2024. Jurisdiction is pursuant to G.L. 1956 § 42-35-15, the Administrative Procedures Act (APA).

I

Facts[1]

On December 29, 2017, Perry Raso (Mr. Raso) filed an application (the Application)[2] with CRMC for approval to establish a three-acre oyster and scallop farm (the Proposed Farm) located in Potter Pond in South Kingstown, Rhode Island. *See* Appl. for State Assent. The aquaculture site was to be positioned "South West of Ram Point and north of the inlet into Segar Cove," and included the use of twelve rows of fifty lantern nets for scallops and twelve rows of thirty floating cages for oysters. *Id.* at 7.

A

Review of the Application

The South Kingstown Waterfront Advisory Commission (the WAC) held a meeting on February 1, 2018, where members of the public expressed their concern over the impact of the Proposed Farm on recreational activity in the area. *See* South Kingstown Waterfront Advisory Commission Meeting Minutes, Feb. 1, 2018. The WAC decided to table the issue and requested an extension of the public comment deadline so they could review concerns expressed during the meeting. *See id.* When the WAC reconvened two weeks later, more members of the public

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[1] The facts of PC-2024-05023 and PC-2024-05065 are identical, as both cases arose out of the same circumstances.

[2] Before filing the Application, Mr. Raso filed a Preliminary Determination application, which is a request for CRMC to evaluate its regulations as they pertain to the proposal and provide preliminary staff recommendations. *See* R.I. Coastal Resources Management Council's Report of Findings – Preliminary Determination, Oct. 16, 2017. After holding a meeting and reviewing the proposed application, CRMC provided Mr. Raso with recommendations on how to improve his proposal when filing his full application. *See id.* Mr. Raso filed his official Application shortly after CRMC issued its Preliminary Determination. *See* Appl. for State Assent.

objected to the Application. *See* South Kingstown Waterfront Advisory Commission Meeting Minutes, Feb. 14, 2018. As a result, the WAC passed a motion to object to the proposal due to the significant negative impact on recreational activity in the area. *See id.*

On February 7, 2018, the Shellfish Advisory Panel (the SAP) of the Rhode Island Marine Fisheries Council (the MFC) met to discuss the Application. *See* Shellfish Advisory Panel Meeting Summary, Feb. 7, 2018. After hearing from CRMC, Rhode Island Department of Environmental Management, the public, and Mr. Raso, the SAP passed a motion to recommend no objection to the Application. *See id.*

On March 14, 2018, the MFC held a meeting, where it heard from Mr. Raso and the public, who again expressed their concerns with the Application. *See* R.I. Marine Fisheries Council's Meeting Summary, Mar. 14, 2018. A motion was made to recommend to CRMC "that the activities posed by the [A]pplication are consistent with competing uses engaged in the utilization of marine species[.]" *Id.* at 5. However, the MFC was split, and the motion failed 3-3. *Id.*

The next day, Mr. Raso submitted a revised proposal to CRMC, reconfiguring the original rectangle-shaped farm to an elongated pentagonal shape. *See* e-mail from Perry Raso to Dave Beutel, Mar. 14, 2018, 1:54 PM (stamped received on Mar. 15, 2018 by CRMC). The revised site was the same in all other aspects, including the overall area of three acres. *See id.*

On June 2, 2020, David Beutel (Mr. Beutel), CRMC's then-Aquaculture Coordinator, prepared a Staff Report on the Application (the Beutel Report or the Staff Report). *See* Inter-Office Mem. from David Beutel to Jeffrey M. Willis, Interim Exec. Dir., Coastal Resources Management Council (June 2, 2020) (Beutel's Report). He noted that CRMC received 147 written objections[3]

[3] The Staff Report states that "[o]f the 147 objections, 79 were received from non-RI residents and 68 were received from RI residents." *See* Beutel's Report. Further, the Report notes that "multiple family members and neighbors submitted identical objections." *Id.* at 1-2.

from the public, Potter Pond residents and visitors, fishermen, a recreational fishing association, and the Town of South Kingstown. *See id.* at 1. He also addressed each objection topic—including noise, wildlife, recreation, and property values—and recommended approval, determining that the Application met the requisite requirements. *See id.* at 1-3.

B

Subcommittee Hearings and Decision

In November of 2020, the Latham Plaintiffs and the Wilkes Plaintiffs (collectively, Plaintiffs) moved to intervene in the matter. *See* Mot. to Intervene, Nov. 5, 2020; Mot. to Intervene, Nov. 9, 2020. As such, CRMC scheduled a public hearing and appointed a Subcommittee to review the contested Application. *See* Notice of Public Hr'g and Workshop, Oct. 27, 2020; *see also* 650 RICR 10-00-1.1(B), 10-00-1.5.2(A). The Subcommittee held seven hearings from November 12, 2020 to January 29, 2021, wherein it heard sworn testimony from nine witnesses, both expert and lay, as well as commentary from fifty members of the public.[4] *See* Hr'g Trs., Nov. 12, 2020, Nov. 13, 2020, Nov. 17, 2020, Dec. 4, 2020, Dec. 16, 2020, Dec. 30, 2020, Jan. 29, 2021. The Subcommittee also heard evidence presented by the Latham Plaintiffs, including a Technical Peer Review Memorandum prepared by their expert witness. *See* Hr'g Trs., Nov. 17, 2020, Dec. 4, 2020.

After the hearings, the Subcommittee reconvened for a meeting on March 8, 2021 and issued a recommendation thereafter (the Subcommittee Recommendation). *See* Workshop Tr., Mar. 8, 2021; *see also* Subcommittee Recommendation. In its recommendation, the Subcommittee

[4] The Subcommittee also questioned Mr. Beutel, but the testimony was not under oath and was solely to provide the Subcommittee with clarification. *See* Hr'g Tr. at 658-687, Dec. 4, 2020.

examined the eleven "Category B" requirements[5] and noted that, although ten were met, Mr. Raso "did not demonstrate that the alteration or activity will not result in significant conflicts with water

[5] Pursuant to section 1.3.1(A), chapter 20 of title 650 of the Rhode Island Administrative Code, applicants applying for a project in tidal and coastal pond waters are required to demonstrate eleven "Category B" requirements. *See* 650 RICR 20-00-1.3.1(A). To comply with these requirements, Applicants must:

> "a. Demonstrate the need for the proposed activity or alteration;
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> "b. Demonstrate that all applicable local zoning ordinances, building codes, flood hazard standards, and all safety codes, fire codes, and environmental requirements have or will be met; . . .
>
> "c. Describe the boundaries of the coastal waters and land area that is anticipated to be affected;
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> "d. Demonstrate that the alteration or activity will not result in significant impacts on erosion and/or deposition processes along the shore and in tidal waters;
>
> "e. Demonstrate that the alteration or activity will not result in significant impacts on the abundance and diversity of plant and animal life;
>
> "f. Demonstrate that the alteration will not unreasonably interfere with, impair, or significantly impact existing public access to, or use of, tidal waters and/or the shore;
>
> "g. Demonstrate that the alteration will not result in significant impacts to water circulation, flushing, turbidity, and sedimentation;
>
> "h. Demonstrate that there will be no significant deterioration in the quality of the water in the immediate vicinity as defined by DEM;
>
> "i. Demonstrate that the alteration or activity will not result in significant impacts to areas of historic and archaeological significance;
>
> "j. Demonstrate that the alteration or activity will not result in significant conflicts with water dependent uses and activities such as recreational boating, fishing, swimming, navigation, and commerce, and;

dependent uses and activities such as recreational boating, fishing, navigation, and commerce." *See* Subcommittee Recommendation at 10. Specifically, the Subcommittee found that the project would significantly reduce the overall space for water sports by 23 percent, be a physical obstacle to various recreational activities, and stand as a physical barrier to those that use the area for finfishing and shellfishing. *See id.* at 10-12. Because "the proposed activity has a reasonable probability of causing a detrimental impact upon the coastal resources of the State of Rhode Island[,]" the Subcommittee recommended that CRMC deny the application. *Id.* at 12.

C

Supplemental Exhibit and "New Evidence"

On January 16, 2023, one week before the full Council was scheduled to hold a hearing on the Application and Subcommittee Recommendation, Mr. Raso attempted to submit a "supplemental exhibit" as "new evidence." *See* Letter from Elizabeth McDonough Noonan, Adler Pollock & Sheehan P.C. to Anthony DeSisto, Esq., Anthony DeSisto Law Associates, Jan. 16, 2023. The new evidence was a "Proposed Reduced Layout," which sought to decrease the farm's size by one-third, remove the use of floating gear, and move the farm's location from the pond's center. *See id.*

Both the Latham and the Wilkes Plaintiffs objected to the introduction of this "new evidence," noting that the Proposed Reduced Layout did not constitute new evidence, and the new layout was an entirely different application that would require a new application process. *See* Letter from Christian F. Capizzo, Partridge Snow & Hahn, to Anthony DeSisto, Esq., Anthony DeSisto

"k. Demonstrate that measures have been taken to minimize any adverse scenic impact . . . ." *Id.*

Law Associates, Jan. 23, 2023; Letter from Dean J. Wagner, Savage Law Partners, to Anthony DeSisto, Esq., Anthony DeSisto Law Associates, Jan. 23, 2023.

D

The Council Meetings

The Council met on January 24, 2023 and passed a motion declining to accept Mr. Raso's Proposed Reduced Layout because it did not constitute newly discovered evidence. *See* CRMC Meeting Minutes, Jan. 24, 2023. Thereafter, Council Member Sahagian "suggested that the Council consider a 39 [percent] reduction of the farm from sea to land giving an additional 50' buffer[,]" which would have resulted in the approval of 80,500 square feet[6] and the elimination of all floating devices. *Id.* at 2. The motion failed 4-4, but a subsequent motion passed to refer the proposed modification to staff for review and determination. *See id.* at 5.

On May 15, 2023, Mr. Willis[7] issued a Staff Report discussing staff's "opinion on the reduction of the application's originally presented configuration[.]" *See* Exec. Director's Report 2, May 15, 2023. Using Mr. Raso's original rectangular model, Mr. Willis provided two revised figures. *See id.* at 2-6. Out of the modified configurations, Mr. Willis noted that "Figure 3 best addresses the recreational and safety concerns of the [S]ubcommittee while finding a configuration that matches the requirements of the Motion to locate an 80,500 [square foot] farm within the originally presented footprint that is [fifty] feet landward from the original location." *Id.* at 5.

[6] Although Council Member Sahagian stated that the approved area would equal 80,500 square feet, it was later determined by staff that a 39 percent reduction of the original Proposed Farm would equal 79,714.8 square feet. *See* Exec. Director's Report 2, May 15, 2023. However, the Council continued to discuss the modification as having an area of 80,500 square feet. *See id.*

[7] The Staff Report was prepared by CRMC's Executive Director because the Aquaculture Coordinator, Benjamin Goetsch, had a conflict of interest with Mr. Raso. *See id.*

Figure 3 "is as far north as possible and as far east as possible, with its northeast and southwest corners designed to accommodate recreational use issues and safety issues." *Id.*

On June 13, 2023, the Council reconvened. *See* CRMC Meeting Minutes 4, June 13, 2023. Mr. Willis explained the new configuration and noted that although it satisfied the conditions in the motion, it was not a substitute for the Subcommittee's deliberations and recommendations. *Id.* at 5. Then, Council Member Robinson Hall expressed concern that the Council's authority to modify an application did not extend to cases involving a substantial change, and instead, the public needed to be notified of the modification. *Id.* at 6. Despite these concerns, a motion was made that the modification be accepted as proposed (the Modified Application) and that the Council adopt the Subcommittee's findings and the subsequent incorporation of said findings in the Modified Application. *Id.* at 6. The motion passed with a 4-2 vote. *Id.* at 7.

E

The Council's Decision

On August 13, 2024, the Council issued its final decision (CRMC's Decision or the Council's Decision), approving the Modified Application (the Approved Farm). *See* Council's Decision. The Council deleted and replaced all the Subcommittee's findings of fact and conclusions of law concerning water dependent uses in Segar Cove and found that Mr. Raso "demonstrated that the alteration or activity will not result in significant conflicts with water dependent uses and activities[.]" *Id.* at 7-12; *compare* Council's Decision *with* Subcommittee's Recommendation.

The Council based their decision on Mr. Beutel's Staff Report and the meeting minutes of the South Kingstown WAC Meeting, where the South Kingstown Harbormaster stated that "there are no safety concerns or issues related to the boats and waterways ordinance." *See* Council's

Decision at 9; Beutel's Report; *see also* South Kingstown Waterfront Advisory Commission Meeting Minutes, Feb. 1, 2018. The Council also noted that "to the extent that there is conflict between navigation and the Applicant's project, such conflicts are reduced as a result of the Council's decision to modify the [A]pplication by reducing the size of the project to 80,500 square feet (approximately 1.85 acres)." *See* Council's Decision at 12.

Attached to CRMC's Decision was a copy of the modified plan submitted by Mr. Raso on January 15, 2024. *See id.* Ex. A. In addition to new coordinates reflecting the changed position of the farm, the modified plan also changed the number, location, and layout of the lantern nets. *See id.* at 1. Instead of the original plan to have twelve rows of fifty lantern nets, the modified plan included sixty-seven rows of nets, ranging from eighteen nets per line in the southernmost line, to forty-four per line in the center, and twenty-nine per line in the northernmost line. *Id.* Additionally, instead of each line holding 100 spat bags as originally proposed, the new plan stated that the southernmost lines would hold thirty-six spat bags, the center lines would hold up to eighty-eight, and the northernmost lines would hold a maximum of fifty-eight. *See id.*

After the Council's Decision was released, on October 15, 2024, CRMC issued an Aquaculture Assent and Indenture of Lease to Mr. Raso, approving the proposed aquaculture activity for a term of fifteen years. *See* Aquaculture Assent; Indenture of Lease.

II

Travel

On September 11, 2024, the Wilkes Plaintiffs—owners of real property abutting Segar Cove—filed a Complaint seeking judicial review of CRMC's Decision. *See* Wilkes's Compl. On September 13, 2024, the Latham Plaintiffs—owners of real property abutting Potter Pond—also filed a Complaint. *See* Latham's Compl. Pursuant to Rule 42(a) of the Superior Court Rules of

Civil Procedure, the parties moved to consolidate the two cases, and the motion was granted under Rule of Court. *See* Docket PC-2024-05023; Docket PC-2024-05065. On February 6, 2025, Mr. Raso was permitted to intervene as a defendant in PC-2024-05065 but was only permitted to file an amicus brief in PC-2024-05023. *See* Order, Feb. 6, 2025.

On May 9, 2025, the Latham and Wilkes Plaintiffs filed respective Briefs in support of their appeal.[8] *See* Latham's Br.; Wilkes's Br. Thereafter, on July 11, 2025, Mr. Raso[9] and CRMC both filed Briefs in opposition to the appeal, to which the Latham Plaintiffs submitted separate Replies on August 18, 2025. *See* Raso's Br.; CRMC's Br.; Latham's Reply to Raso; Latham's Reply to CRMC. The Wilkes Plaintiffs submitted a Reply Brief in support of their appeal on August 18, 2025. *See* Wilkes's Reply Br. Mr. Raso filed a Brief of Amicus Curiae in PC-2024-05023 on September 18, 2025. *See* Raso's Amicus Br.

Pursuant to this Court's request for supplemental briefing, Mr. Raso and CRMC filed supplemental memoranda on February 6, 2026. *See* Raso's Suppl. Br.; CRMC's Suppl. Br. The Latham Plaintiffs and the Wilkes Plaintiffs filed their supplemental memoranda on February 20, 2026, and Mr. Raso filed a reply memorandum on March 4, 2026. *See* Latham's Suppl. Br.; Wilkes's Suppl. Br.; Raso's Suppl. Reply.

III

Standard of Review

When reviewing the decision of an administrative agency, the Court "sits as an appellate court with a limited scope of review." *Mine Safety Appliances Co. v. Berry*, 620 A.2d 1255, 1259

[8] The Latham Plaintiffs' Brief was filed in PC-2024-05065, and the Wilkes Plaintiffs' Brief was filed in PC-2024-05023.

[9] Because Mr. Raso was not permitted to intervene in PC-2024-05023, he filed his Brief in opposition to the appeal in PC-2024-05065. *See* Raso's Br.

(R.I. 1993). The Court's review is governed by the Rhode Island Administrative Procedures Act (APA), G.L. 1956 chapter 35 of title 42. *See Iselin v. Retirement Board of Employees' Retirement System of Rhode Island*, 943 A.2d 1045, 1048 (R.I. 2008). Section 42-35-15(g) provides, in pertinent part:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> > "(1) In violation of constitutional or statutory provisions;
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> > "(2) In excess of the statutory authority of the agency;
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> > "(3) Made upon unlawful procedure;
> >
> > "(4) Affected by other error of law;
> >
> > "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> >
> > "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 42-35-15(g).

When reviewing a decision under the APA, the Court may not substitute its judgment for that of the agency on questions of fact. *See Johnston Ambulatory Surgical Associates, Ltd. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000). The Court defers to the administrative agency's factual determinations if they are supported by legally competent evidence. *See Arnold v. Rhode Island Department of Labor and Training Board of Review*, 822 A.2d 164, 167 (R.I. 2003). "Legally competent evidence is 'relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.'"

Id. (quoting *Rhode Island Temps, Inc. v. Department of Labor and Training, Board of Review*, 749 A.2d 1121, 1124 (R.I. 2000)). "[I]f 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" *Auto Body Association of Rhode Island v. State of Rhode Island Department of Business Regulation*, 996 A.2d 91, 95 (R.I. 2010) (quoting *Rhode Island Public Telecommunications Authority v. Rhode Island State Labor Relations Board*, 650 A.2d 479, 485 (R.I. 1994)).

The Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." *Baker v. Department of Employment and Training Board of Review*, 637 A.2d 360, 363 (R.I. 1994) (internal quotation omitted). The Court cannot "weigh the evidence [or] pass upon the credibility of witnesses [or] substitute its findings of fact for those made at the administrative level." *E. Grossman & Sons, Inc. v. Rocha*, 118 R.I. 276, 285, 373 A.2d 496, 501 (1977). While the Court affords "great deference to the factual findings of the administrative agency, 'questions of law—including statutory interpretation—are reviewed *de novo*.'" *Banki v. Fine*, 224 A.3d 88, 93 (R.I. 2020) (quoting *Blais v. Rhode Island Airport Corp.*, 212 A.3d 604, 611 (R.I. 2019)).

IV

Analysis

A

Standing

CRMC contends that the Latham and Wilkes Plaintiffs (collectively, Plaintiffs) lack standing because their alleged injuries are not concrete or particularized. *See* CRMC's Br. at 16; CRMC's Suppl. Br. at 2. Specifically, CRMC claims that Plaintiffs do not allege any personalized injury in their respective Complaints, and they merely speculated at the Subcommittee hearings

how the project may affect them. (CRMC's Br. at 17.) CRMC also argues that Plaintiffs do not have a legally protected interest in Segar Cove, and any alleged harm "is shared by homeowners and the public alike because the right to use the Segar Cove is vested equally in all members of the community." *Id.* at 18; *see* CRMC's Suppl. Br. at 3-4.

Mr. Raso contends that Plaintiffs lack standing because their alleged injuries are unique to the original Proposed Farm. (Raso's Suppl. Br. at 4.) He avers that Plaintiffs have failed to demonstrate a personalized injury distinct from the community as a whole, and instead, Plaintiffs' alleged injuries mirror those that the community at large expressed to the Subcommittee. *Id.* at 8-15. Mr. Raso further argues that the Plaintiffs' due process claim does not create standing because they offer "vague, conclusory allegations that fail to identify any property or liberty interest[.]" *Id.* at 17-18.

To the contrary, the Latham Plaintiffs argue that they have a personalized injury because they are abutting property owners, the Approved Farm would interfere with their right to wharf out and their ability to boat, swim, and fish, their substantive and procedural rights have been infringed upon, and CRMC and Mr. Raso "fail[ed] to disclose the 'true project' until months *after* the Final Decision[.]" *See* Latham's Reply to CRMC at 3-4; Latham's Suppl. Br. at 4.[10]

The Wilkes Plaintiffs argue that Wilkes provided testimony that the Approved Farm would impact his own yearslong water dependent uses and activities on Segar Cove, including fishing to navigational and recreational activities, which is an injury in fact sufficient to establish standing. (Wilkes's Reply Br. at 7.) They contend that their injury is personal, and "[t]he fact that other

[10] The Latham Plaintiffs also allege that Mr. Raso's Supplemental Memorandum is, in substance, a motion to dismiss all the Plaintiffs' claims. *See* Latham's Suppl. Br. at 5. This Court will not analyze Mr. Raso's Supplemental Memorandum as a motion to dismiss, nor will it address any disputed issues of fact that the Latham Plaintiffs so claim. *See id.* at 6.

people who testified during the Subcommittee hearings also share that same injury—but then chose not to appeal or sue—does not deprive these Plaintiffs of their standing to challenge this Decision." *Id.* at 7.

"Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit." *Narragansett Indian Tribe v. State of Rhode Island*, 81 A.3d 1106, 1110 (R.I. 2014). "In deciding whether a party has standing to maintain a claim, '[the Court] examine[s] the complaint to determine if plaintiffs are entitled to relief under any conceivable set of facts.'" *Benson v. McKee*, 273 A.3d 121, 128 (R.I. 2022) (quoting *McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005)). "The essence of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to ensure concrete adverseness that sharpens the presentation of the issues[.]" *Blackstone Valley Chamber of Commerce v. Public Utilities Commission*, 452 A.2d 931, 933 (R.I. 1982).

The determination of whether a party has standing "begins with the pivotal question of whether the party alleges that the challenged action has caused him or her injury in fact." *Narragansett Indian Tribe*, 81 A.3d at 1110. The alleged injury in fact must be "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997) (internal quotation omitted). In addition, "standing is generally limited to those plaintiffs asserting their own rights, not the rights of others." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 535 (R.I. 2013) (citing *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 27, 317 A.2d 124, 130 (1974)).

Under the APA, "[a]ny person . . . who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final order in a contested case is entitled

to judicial review[.]" Section 42-35-15(a). Similarly, under CRMC's regulations, "[a]ny person who has exhausted all administrative remedies available to him or her within the agency, and who is aggrieved by a final decision in a contested case is entitled to judicial review . . . ." 650 RICR 10-00-1.13(A). In this case, Plaintiffs have exhausted all administrative remedies within the agency. They intervened as parties in the proceedings, participated in the hearings before the Subcommittee, and followed the procedure to obtain judicial review. *See id.*; § 42-35-15(b). Therefore, the threshold issue is whether Plaintiffs were aggrieved by the final order of CRMC sufficient to establish an injury in fact.

A party is aggrieved "when the order, decision, or decree adversely affects in a substantial manner some personal or property right of the party or imposes upon it some burden or obligation." *New England Telephone and Telegraph Co. v. Fascio*, 105 R.I. 711, 717, 254 A.2d 758, 761-62 (1969). Plaintiffs attempted to provide evidence to the Subcommittee to demonstrate that they would incur injuries as a result of Mr. Raso's Approved Farm. Plaintiffs own—or previously owned—property abutting or near the Approved Farm, and they frequently use the pond for various recreational purposes. Most of the Plaintiffs testified before the Subcommittee regarding the injuries they alleged they would incur because of the Approved Farm. For example, Plaintiff Kevin Hunt testified that the farm would "preclude [him] from swimming, fishing, launching a boat or paddle board in that area." (Hr'g Tr. at 527:20-22, Dec. 4, 2020.) Plaintiff Andrew Wilkes told the Subcommittee about his concern with navigation in the area. (Hr'g Tr. at 702:13-20, Dec. 16, 2020.) Plaintiff Alicia Cooney testified regarding her inability to kayak near the Proposed Farm. (Hr'g Tr. at 572:2-7, Dec. 4, 2020.)

Notwithstanding the evidence presented to the Subcommittee, Plaintiffs have not sufficiently alleged to the satisfaction of this Court a concrete and particularized injury in their

respective Complaints. *See McKenna*, 874 A.2d at 226 ("The plaintiff must allege to the court's satisfaction that the challenged action has caused him injury in fact, economic or otherwise.") (internal quotation omitted). The Wilkes Plaintiffs' Complaint merely states that they "have been and are aggrieved by the CRMC's Decision." (Wilkes's Compl. ¶ 211.) The Latham Plaintiffs' Complaint claims that their "protected rights of due process have been infringed by the agency's unlawful and arbitrary procedures" and that CRMC's Decision "is causing Plaintiffs irreparable harm . . . ." (Latham's Compl. ¶¶ 74, 76.) However, neither Complaint asserts any allegations demonstrating a personal stake in the outcome. *See Blackstone Valley Chamber of Commerce*, 452 A.2d at 933. The Complaints merely set forth that Plaintiffs own property in proximity to the proposed project and that Plaintiffs have been injured as a result of the Council's Decision. Plaintiffs' Complaints do not describe what these injuries are, nor do they describe how CRMC's Decision caused those injuries. *See Save the Bay, Inc. v. Rhode Island Coastal Resources Management Council*, No. PC-2014-1685, 2014 WL 4956050, *6 (R.I. Super. Sep. 29, 2014) ("In order to assert standing, Save the Bay claims that its members who reside on and/or who use the waters near the subject structure will suffer injuries in fact. . . . It makes no claim as to what such an 'injury in fact' would be. . . . Save the Bay does not meet its burden of demonstrating an 'injury in fact' simply by amending its Complaint to recite the term 'injury in fact.'") (internal quotation omitted) (brackets omitted). Our Supreme Court "requires a complaint to contain specific statements from which standing may be inferred." *Apex Oil Co., Inc. v. State by and through Division of Taxation*, 297 A.3d 96, 109 (R.I. 2023) (internal quotation omitted). Consequently, this Court finds that Plaintiffs have failed to meet their burden to demonstrate they have suffered a specific injury in fact sufficient to establish standing.

The Latham Plaintiffs allege for the first time in their Reply Brief that "Mr. Raso's scallop farm would . . . interfere with the right to wharf out." *See* Latham's Reply to CRMC at 3, 3 n.3; Latham's Suppl. Br. at 8 ("The Latham Plaintiffs certainly have standing to complain that arbitrarily snatching away their riparian rights to benefit a private business, not the public, wrongfully interferes with their right to wharf out."); *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1260 (R.I. 1999) ("[T]he riparian land owner has the right to construct whatever wharf or dock is necessary to gain access to navigable waters, as long as such construction does not interfere with navigation or the rights of other riparian land owners."). However, the potential infringement of said right to wharf out was not alleged in the Latham Plaintiffs' Complaint, nor was it alleged in any of the proceedings before the Subcommittee. *See McKenna*, 874 A.2d at 226 ("Our review of the complaint reveals no facts that entitle these plaintiffs to an adjudication of the allegations raised in the complaint.").

Even assuming *arguendo* that the Complaints sufficiently set forth an injury in fact, any alleged injuries that can be inferred from the Complaints are not distinct from those of the community as a whole. "[S]tanding is generally limited to those plaintiffs asserting their own rights, not the rights of others." *Mruk*, 82 A.3d at 535. "[A] plaintiff must demonstrate a personalized injury distinct from that of the community as a whole . . . [and c]ritically, generalized claims alleging purely public harm are an insufficient basis for sustaining a private lawsuit." *Benson*, 273 A.3d at 129 (internal quotation and citations omitted). The Plaintiffs "must demonstrate that they have a stake in the outcome that distinguishes their claims from the claims of the public at large." *Id.* (internal quotation omitted) (brackets omitted).

"Under the public-trust doctrine, the state holds title to all land below the high water mark in a proprietary capacity for the benefit of the public." *Town of Warren*, 740 A.2d at 1259 (internal

quotation and citations omitted). As conceded by the parties, Potter Pond is public trust water, and the right to use the pond is shared by the public at large. Thus, the public would suffer the same injuries with regard to recreation and navigation as Plaintiffs. Consequently, this Court finds that Plaintiffs have not demonstrated that they will suffer *any* particularized injury, much less an injury that affects the entire community.

The Latham Plaintiffs argue that "CRMC's theory that the public trust doctrine obviates standing would mean that there could never be a challenge of CRMC's approval of an aquaculture operation—or any other activity in state waters, for that matter—under any circumstances." (Latham's Reply to CRMC at 4 (emphasis omitted).) This argument is without merit. Abutting property owners can still challenge CRMC's approval of an aquaculture operation if they allege a specific injury distinct from injuries to the public at large. *See Benson*, 273 A.3d at 129.

In *Meyer v. City of Newport*, 844 A.2d 148 (R.I. 2004), the defendant built a marina that impeded a public right of way to the waterfront. *Meyer*, 844 A.2d at 149. Plaintiffs claimed that they were harmed by the lack of access to the water. *Id.* at 151. However, our Supreme Court stated that this harm "arises from riparian and littoral rights that are vested equally in all members of the community." *Id.* Our Supreme Court found that plaintiffs lacked standing because they did not demonstrate a personalized injury which was distinct from that of the community as a whole. *Id.*; *see also N&M Properties, LLC v. Town of West Warwick ex rel. Moore*, 964 A.2d 1141, 1146 (R.I. 2009) ("[T]he right to use the municipal parking lots 'was equally vested in all citizens of the town or visitors thereto.' When the town sold the municipal parking lots to the developer, the public as a whole was affected by the overall decrease in available public parking. The plaintiff's experience is not different from the experience of other businesses or people who utilized the municipal parking lots. As such, plaintiff has failed to demonstrate 'a personalized injury distinct

from that of the community as a whole.'") (quoting *Meyer*, 844 A.2d at 151). In this case, Plaintiffs' alleged harm, specifically the harm alleged before the Subcommittee, involves riparian and littoral rights that are shared by the community. Any impact on recreation or navigation as a result of the Approved Farm would affect the entire community, as Plaintiffs' experiences are not different from the experiences of other members of the public who also use the pond. *See Save the Bay, Inc.*, 2014 WL 4956050, at *7 ("'[T]he harm Save the Bay's members claim to have suffered—interference with their use of the waters near Four Twenty's property—arises from riparian and littoral rights that are vested equally in all members of the community.'") (quoting *Meyer*, 844 A.2d at 151) (brackets omitted). This Court therefore finds that Plaintiffs have not demonstrated they have suffered a personalized and distinct injury from that of the community as a whole.

The Latham Plaintiffs claim that "[a]butters and parties to an agency proceeding are undeniably entitled to certain rights and protections, including the right to have the agency comply with its own rules and regulations, governing law, and fundamental due process." (Latham's Suppl. Br. at 3.) They attempt to distinguish *Meyer* by claiming that "[u]nlike *Meyer*, this case does not involve a plaintiff's alleged interests in a public right of way: instead, there are unique private property interests at stake." *Id.* at 6-7. However, although Plaintiffs are abutting property owners, they have not sufficiently alleged any unique private property interests. Any injury that could be surmised from their Complaints and the evidence submitted to the Subcommittee reflects an injury to the public as a whole: one that affects boating, swimming, and fishing. Even though Plaintiffs themselves partake in said activities, so too does the public, which is evidenced by the voluminous objections and testimony received by the Subcommittee regarding the same alleged injuries as

Plaintiffs. Furthermore, a right to wharf out—which is not shared by the public at large—was not alleged by Plaintiffs in either Complaint.

The Latham Plaintiffs cite *Key v. Brown University*, 163 A.3d 1162 (R.I. 2017) to support the proposition that they have an injury in fact solely because they are abutting property owners. (Latham's Suppl. Br. at 3.) However, their reliance on *Key* is misplaced. In *Key*, Brown University sought to renovate its athletic complex, and its master plan included a sketch of a field in a different location from where it was subsequently constructed. *Key*, 163 A.3d at 1164. The hearing justice ruled that the plaintiffs—abutting property owners—lacked standing to seek a declaratory judgment that the master plan was deficient and that the field's use was unlawful. *Id.* at 1169. However, on appeal, our Supreme Court held that the plaintiffs had sufficiently alleged an injury in fact related to their home—physical damage, a decrease in their home's value, and a diminished use and enjoyment of their property—all of which were measurable economic injuries that were unique to the specific abutting property owners. *Id.* at 1170. To the contrary, in this case, Plaintiffs have not sufficiently alleged *any* injuries in their respective Complaints, nor are the injuries alleged before the Subcommittee unique to Plaintiffs as abutting property owners.

The Latham Plaintiffs further rely on an out-of-context statement taken from *Key*, wherein the Court stated "[a]s abutting property owners, the plaintiffs have clearly established an injury in fact." *Id.* at 1171; Latham's Suppl. Br. at 3. The *Key* Court stated:

> "[T]he plaintiffs allege that Brown omitted material elements of its construction project from its [master plan], thereby depriving the [City Plan Commission] of an opportunity to review 'the true project.' As a consequence, the plaintiffs further contend, 'no public forums were held with respect to the field hockey field location, design and amenities prior to the submission or approval of the [master plan], as required.' As abutting property owners, the plaintiffs have clearly established an injury in fact." *Id.* at 1171 (brackets omitted).

In this case, the Latham Plaintiffs fail to acknowledge an important distinction: in *Key*, the plaintiffs specifically alleged their injuries, which were related to their own property and thus distinct from any injuries to the public. *See id.* at 1169. In the instant case, however, Plaintiffs do not sufficiently articulate their injuries, nor are their alleged injuries distinct from the public's injuries. The *Key* Court's statement that "[a]s abutting property owners, the plaintiffs have clearly established an injury in fact" does not mean that Plaintiffs in this case have established an injury in fact solely because they are abutting property owners. A prerequisite—alleging a particularized injury—is required. Additionally, and importantly, this court and our Supreme Court have recognized that "abutter status alone cannot give rise to standing." *Humphrey v. The Coastal Resources Management Council*, Nos. PC-2010-1317, PC-2010-1384, 2011 WL 3153309, *9 (R.I. Super. June 28, 2011) (citing *Meyer*, 844 A.2d at 150).

What is more, the Plaintiffs do not allege anywhere in their Complaints that the lack of public notice of the modified plan resulted in injuries unique to them. Plaintiffs state that "[t]he Council's final Decision to 'modify' [Mr.] Raso's Application . . . [did not give] public notice or an opportunity for *intervenors, objectors and members of the public* to be heard . . ." (Latham's Compl. ¶ 68) (emphasis added), and "there has been none of the required *stakeholder review, public comment*, *or testimony* before a hearing officer or Subcommittee on this new proposal . . . ." (Wilkes's Compl. ¶ 169) (emphasis added). However, each of these statements contend that both Plaintiffs *and* members of the public had no opportunity to be heard. The lack of public notice does not result in an injury unique to Plaintiffs. Thus, the Latham Plaintiffs' reliance on *Key* is misplaced.

The Wilkes Plaintiffs cite *East Greenwich Yacht Club v. Coastal Resources Management Council*, 118 R.I. 559, 376 A.2d 682 (1977), to argue that "if the plaintiffs in [that case] had

standing to challenge a CRMC decision approving an apartment building on a nearby island, so too, then, must these Plaintiffs have standing to challenge this Decision when it impacts, restricts, and engenders [*sic*] their use of the waters at Segar Cove." (Wilkes's Reply Br. at 7-8.) However, the Wilkes Plaintiffs' reliance on *East Greenwich Yacht Club* is also misplaced. In *East Greenwich Yacht Club*, our Supreme Court stated that "[u]se by and injury to its members provides the organizational plaintiff with the essential element of an 'injury in fact.'" *East Greenwich Yacht Club*, 118 R.I. at 564-65, 376 A.2d at 685. This Court is of the opinion that our Supreme Court in *East Greenwich Yacht Club* was focusing more on the standing of an organizational plaintiff to represent its members as a party rather than whether "[u]se by and injury to its members" constitutes an injury in fact. *Id.*

The Wilkes Plaintiffs further cite various United States Supreme Court cases to support the proposition that recreational and aesthetic injuries are cognizable under the law. (Wilkes's Suppl. Br. at 4-6.) The United States Supreme Court has held that "environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 183 (2000) (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)). However, this Court does not dispute that recreational and aesthetic injuries are cognizable under the law. *See In re Narragansett Electric Co.*, 276 A.3d 363, 372 (R.I. 2022) ("Harms to aesthetic and recreational interests are cognizable interests."). Rather, this Court holds that Plaintiffs here have not sufficiently *alleged* any such injury.

Moreover, although Plaintiffs intervened in the proceedings before the Subcommittee, our Supreme Court has made clear that "[t]he right of a party to intervene and to present evidence to

the commission is quite different from standing to obtain judicial review." *Blackstone Valley Chamber of Commerce*, 452 A.2d at 934. In *Blackstone Valley*, the Court stated that "the mere fact that petitioner was permitted to intervene before the Commission does not entitle it to institute an independent suit to set aside the Commission's order in the absence of resulting actual or threatened legal injury to it . . . ." *Id.* (internal quotation omitted) (brackets omitted). The mere fact that Plaintiffs intervened in the Subcommittee proceedings does not in and of itself relieve them from satisfying the justiciability requirements of this case.

Further, the Latham Plaintiffs contend that it is too late to raise the issue of standing because Mr. Raso expressly waived any objection to the motions to intervene before the Subcommittee. *See* Latham's Suppl. Br. at 5. However, the issue before the Court relates to the Plaintiffs' standing to file the instant appeal, not to appear before the Subcommittee. Thus, this Court disagrees that the proper time to raise the issue of standing was before the Subcommittee. *Id.*

Finally, the Latham Plaintiffs assert in their Complaint that their "protected rights of due process have been infringed by the agency's unlawful and arbitrary procedures[.]" (Latham's Compl. ¶ 74.) However, this claim lacks specificity, as it does not allege how the "unlawful and arbitrary procedures" caused the infringement, nor does it indicate what specific due process right was infringed upon. *See Bradford Associates v. Rhode Island Division of Purchases*, 772 A.2d 485, 490 (R.I. 2001) ("A claimant alleging a deprivation of due process rights must demonstrate that either a property or liberty interest clearly protected by the due process clause was divested . . . without adequate procedural safeguards.") (internal quotation and brackets omitted).

In their supplemental memoranda, the Latham Plaintiffs attempt to support their contention that their due process rights have been violated by merely reiterating their substantive arguments.

(Latham's Suppl. Br. at 4.) They state that the "grave, repeated irregularities in the agency proceedings are a particularized injury that entitles [them] to seek judicial review and redress under the APA." *Id.* However, the due process claims still lack the necessary specificity and fail to articulate the specific right allegedly infringed upon.

It is clear that "[t]he most fundamental characteristic of standing is that it focuses on the party seeking to have a claim entertained 'and not on the issues he or she wishes to have adjudicated.'" *McKenna*, 874 A.2d at 225 (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968)) (brackets omitted). "[W]hen standing is at issue, the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff 'whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable' or, indeed, whether or not it should be litigated." *Id.* at 226 (quoting *Flast*, 392 U.S. at 99-100). This Court finds that Plaintiffs are without standing to request an adjudication of the issues they have raised with respect to the CRMC Decision in this case.

Notwithstanding Plaintiffs' lack of standing, however, "'on rare occasions, [this Court has] overlooked the question of standing and proceeded to determine the merits of a case because of substantial public interest in having a matter resolved . . . .'" *Save the Bay, Inc.*, 2014 WL 4956050, at *8 (quoting *In re Town of New Shoreham Project*, 19 A.3d 1226, 1227 (R.I. 2011)). Given the numerous objections to the Proposed Farm and the dozens of members of the public that testified before the Subcommittee, this Court finds that the public has a substantial interest in having this matter resolved. Thus, this Court will address the remaining issues in the Plaintiffs' appeal.

B

Merits of Plaintiffs' Claim[11]

The Wilkes Plaintiffs argue that the Council's Decision on the merits failed to give deference to the Subcommittee Recommendation. *See* Wilkes's Br. at 31-34. They also assert that the Council ignored the evidence before the Subcommittee and created and approved an entirely new project without any public input. *See id.* at 34-47.

The Latham Plaintiffs contend that the Council's Decision violates constitutional and statutory provisions, exceeds the Council's authority, was made upon unlawful procedure, and reflects multiple errors of law. *See* Latham's Br. at 47-56. They also aver that the modification of the Subcommittee's Recommendation was not supported by substantial evidence and was arbitrary and capricious. *Id.* at 56-63.

CRMC argues that the Council's Decision is legally sufficient on the merits because the record contains legally competent evidence to support the conclusion that the project satisfies CRMC's regulations. *See* CRMC's Br. at 16-42. It further contends that the Council followed proper procedure in approving the modified application. *See id.* at 42-50.

Mr. Raso argues that the Council's approval of the Application did not violate any statutory or constitutional provision, did not exceed CRMC's statutory authority, and did not constitute an error of law. *See* Raso's Br. at 36-39. He contends that the issuance of the aquaculture permit was the product of lawful procedure, and that the Council's Decision was neither arbitrary nor capricious and contemplated the reliable, probative, and substantial evidence on the record. *See id.* at 49-55.

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[11] For the sake of brevity, this Court will summarize the parties' arguments at a birds-eye view.

1

Deference to the Subcommittee

The Wilkes Plaintiffs argue that the Council's Decision failed to articulate the reasons for rejecting the Subcommittee's Recommendation in violation of G.L. 1956 § 46-23-20.4(a). *See Environmental Scientific Corp. v. Durfee*, 621 A.2d 200 (R.I. 1993); *Nolan*, 755 A.2d 799; *Wolff v. Wynne*, No. PC-2001-4377, 2003 WL 1880125 (R.I. Super. Mar. 25, 2003); *see also* Wilkes's Br. at 32-34.

Section 46-23-20.4(a) provides, in pertinent part:

> "every hearing for the adjudication of . . . a contested matter shall be held before a hearing officer or a subcommittee. . . . After due consideration of the evidence and arguments, the hearing officer shall make written proposed findings of fact and proposed conclusions of law which shall be made public when submitted to the council for review. *The council may, in its discretion, adopt, modify, or reject the findings of fact and/or conclusions of law provided, however, that any modification or rejection of the proposed findings of fact or conclusions of law shall be in writing and shall state the rationales therefor*." Section 46-23-20.4(a) (emphasis added).

In *Durfee*, the Rhode Island Supreme Court described the deference the Department of Environmental Management (DEM) should give to the hearing officer in application proceedings, comparing it to a "funnel-like system." *Durfee*, 621 A.2d at 207. The Court stated:

> "Sitting as if at the mouth of the funnel, a hearing officer hears testimonial and documentary evidence from all affected parties: the applicant, the department, and interested members of the public. Just as the funnel narrows, the hearing officer analyzes the evidence, opinions, and concerns of which he or she has been made aware and issues a decision. At the discharge end of the funnel, the DEM director reviews the hearing officer's findings and issues a final decision. Because the director sits at the narrowest point of the funnel, he or she is not privileged personally to hear or witness the broad spectrum of information that entered the widest end of the funnel. Therefore, the further away from the mouth of the funnel that an administrative official is when he or she evaluates the

> adjudicative process, the more deference should be owed to the factfinder." *Id.* at 207-08.

The Court held that the rationale of the DEM's decision was not "substantiated by more than mere philosophical differences with the hearing officer[,]" did not "rel[y] on a previously articulated standard[,] and [was not] supported by substantial evidence in the record."[12] *Id.* at 209-10.

Our Supreme Court's decision in *Durfee* was confirmed in *Nolan*; however, the *Nolan* Court noted distinctions between the decision-making process of the department in that case and the appellate review by the DEM in *Durfee*. *See Nolan*, 755 A.2d at 806-07. Specifically, the Court found that the council in *Nolan* was an "advisory body" whose role was solely "to consult and advise," which was distinct from the DEM's administrative review scheme where the hearing officer conducts "adjudicatory proceedings" and stands in a quasi-judicial role. *Id.* at 806. The Court also noted that the hearing officer at the DEM conducts the hearings and directly observes the evidence and testimony presented while the council in *Nolan* does not conduct the hearings and is not required to attend them. *Id.* Because the council in *Nolan* did not have the same role as the hearing officer in *Durfee*, the Court held that the deferential standard articulated in *Durfee* was not applicable to the situation in *Nolan*. *See id.* at 807.

This Court extended *Durfee* to the CRMC in *Wolff*:

> "Contested cases before the CRMC are heard in a two-tiered agency review system for evaluating environmental impacts to coastal regions. The Subcommittee sits as a trial court and hears testimony and reviews evidence. The full Council acts as an appellate court and reviews recommendations of the Subcommittee. The two-tiered system has been likened to a funnel. . . . The Subcommittee sits at the mouth of the funnel receiving information and conducting public hearings in accordance with appropriate rules of law and the CRMC rules and regulations. At the conclusion of the hearings, the Subcommittee issues a written recommendation to the full Council

[12] The statute applicable to the DEM in *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200 (R.I. 1993) was nearly identical to the statute applicable to the CRMC. *Compare* G.L. 1956 § 42-17.7-6 (prior version) *with* G.L. 1956 § 46-23-20.4(a).

> within thirty (30) days of the final hearing. . . . The further away from the mouth of the funnel that an administrative official is when they evaluate the adjudicative process, the greater the deference should be owed the factfinder. . . . Our Supreme Court has held that in a two-tiered system, . . . an agency cannot use its 'unquestionable power to assess the credibility of witnesses to posit factual findings unsupported by *any* evidence other than its disbelief of one or more witnesses.' . . . In addition, our Supreme Court has held that in a two-tiered system, the second tier is required to give great deference to the first tier's findings of fact and conclusions of law unless they are clearly wrong." *Wolff*, 2003 WL 1880125, at *5 (citations omitted).

In *Wolff*, CRMC failed to give an explanation or cite any legally competent evidence as to why it disagreed with the Subcommittee's findings. *Id.* at *6. Thus, this Court held that the CRMC's blanket statement that the Subcommittee was less credible than the applicant's experts "[did] not overcome the deference which a full Council must afford to its Subcommittee[,]" and the decision of the CRMC was "arbitrary and capricious and clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Id.*

In this case, the Council was required to give great deference to the Subcommittee's findings of facts and conclusions of law unless they were clearly wrong. *See id.* at *5. If the Council disagreed with the Subcommittee and found its findings of fact or conclusions of law to be clearly wrong, it had the authority to reject the Subcommittee's Recommendation as long as it articulated in writing its rationale for doing so. *See* § 46-23-20.4(a). In CRMC's Decision, the Council omitted the following findings of fact that were made by the Subcommittee:

> "15. If the proposed project were approved, the total area of aquaculture managed by Applicant would equal 3 [percent] of the total water surface area of Potter Pond.
>
> ". . .
>
> "21. Segar Cove is an active location for water dependent uses.
>
> "22. Water dependent uses in Segar Cove include, but are not limited to, the following: fishing, crabbing, clamming, swimming,

canoeing, kayaking, sculling, paddleboarding, operating motor vessels (including towed water sports), operating personal watercraft and operating sailing vessels.

"23. The location of the proposed project is frequently used for water dependent uses.

"24. Motor vessels (including vessels engaged in towed water sports and personal watercraft) and sailing vessels would not be able to operate through the proposed project.

"25. Swimming in the proposed project would not be advisable.

"26. 16.7 acres of Segar Cove are currently available for water skiing.

"27. The proposed project, in combination with the South Kingstown Boats and Waterways ordinance, would reduce the area available for water skiing to 12.9 acres.

"28. The proposed project would reduce the amount of vessels able to engage in towed water sports simultaneously in Segar Cove.

"29. Motor vessels, including personal watercraft and vessels engaged in water sports, tend to operate in the center of Segar Cove.

"30. The proposed project is sited on a sector of water where non-motor vessels tend to operate (i.e. the 'slow lane') to avoid conflict with motor vessels operating in the center of the cove (i.e. the 'fast lane').

"31. Motor vessels and sailing vessels would not be able to safely operate around the proposed project.

"32. Swimmers and paddleboarders would increase risk of injury by operating within [the] area of the proposed project.

"33. The proposed project size and location would force water dependent uses (kayaking, paddle boarding, swimming), that use[d] to occur in the slow lane, into the fast lane.

"34. Compressing water dependent uses into a small area would increase risk of dangerous conflicts.

> "35. Residents expressed concern that the size and location of the proposed project would pose significant risk to water dependent users.
>
> "36. Residents expressed concern that safety concerns and congestion may limit when and how Segar Cove may be used.
>
> "37. Residents demonstrated that they shellfish where the proposed project has been sited.
>
> "38. Residents demonstrated that they finfish where the proposed project has been sited.
>
> "39. The site of the proposed project is known to be a productive fishing area.
>
> "40. Finfishing or shellfishing in the proposed project would prove difficult, if not impossible."[13] *Compare* Subcommittee's Recommendation at 5-7 *with* Council's Decision at 7-9.)

Instead, the Council replaced the omitted findings of fact with the following:

> "21. The CRMC Staff Report states with regard to recreational fishing that 'kayak and boat fishermen operate throughout Potter Pond. Staff agrees that this area can be good for fishing. Staff does not agree that this small area will significantly negatively impact the fishing experience for Potter Pond.'
>
> "22. The CRMC Staff Report states, with regard to clamming, that 'the shellfish assessment for the site area found 0.88 clams/square meter. RI Department of Environmental Management (DEM) Division of Marine Fisheries conducted a site assessment for soft shelled clams and found none . . . [t]he aquaculture site itself is not [a] valuable clam habitat. The nearby shoreline and firmer bottom area south of the site are suitable clamming sites and will be accessible whether the aquaculture site is present or absent.'
>
> "23. The CRMC Staff Report includes a letter from DEM's Division of Marine Fisheries; that letter states the following: 'The DMF and DFW believe that the adverse impacts to marine fisheries and wildlife and their habitat from this prospective site would be

[13] Additionally, finding of fact paragraph 41 was changed from "[t]he proposed project would include oyster gear with low profile floats and scallop gear that is submerged[,]" to "[t]he proposed project would include scallop gear that is submerged." *Compare* Subcommittee Recommendation at 7 *with* Council's Decision at 9.

minimal. Based on historical survey data demonstrating a large abundance of soft-shell clams (*Mya aremaria*) in Segar Cove (Erkan and Gibson 2005). DMF staff initially had concerns regarding possible impacts to soft-shelled clam habitat within the lease area. Staff conducted a soft-shell clam and quahog survey on November 2, 2017 using both a bull rake and a suction device. No soft-shell clams and very few quahogs (<1 quahog/m2) were caught. Additionally, there is no submerged aquatic vegetation within or near the proposed lease area at present, or in historical data (Figure 1). As such, the DFW and DMF do not have objections to this application on the basis of impacts to benthic habitat is utilized by shellfish and/or finfish.'

"24. The CRMC Staff Report states, with regard to navigation, that 'includes boating, water skiing, tubing, kayaking, paddle boarding, etc. This site will have an effect on all of these activities. The significance of effect is debatable, as is the amount of navigational activity that occurs in Segar Cove.

"25. The CRMC Staff Report further states with regard to navigational activities, that 'Segar Cove in Potter Pond has recreational activities. Mr. Raso has observed that they are limited. Any aquaculture project in Segar Cove will affect the recreational activities. Some of those activities may occur on the site and others adjacent to the site. Will those activities be prohibited in Potter Pond if this site is approved? No, those activities will still occur in Potter Pond.'

"26. The Meeting Minutes of the February 1, 2018 meeting of the South Kingstown Waterfront Advisory Commission indicate that the South Kingstown Harbormaster 'noted that [three] acres of usable water obviously constricts the area however, there are no safety concerns or issues related to the boats and waterways ordinance. He also noted that the proposed site is not a common fishing area or an area where he has commonly seen people fishing.' (Council's Decision at 8-9.)

In their Recommendation, the Subcommittee provides a comprehensive rationale for why it believed that the Proposed Farm would result in significant conflicts with water dependent uses in Segar Cove. The Subcommittee stated:

"13. 650-RICR-20-00-[1.3.1(A)(1)(j)]:
"Applicant did not demonstrate that the alteration or activity will not result in significant conflicts with water dependent uses and

activities such as recreational boating, fishing, navigation, and commerce.

"First, the proposed project expands the legal barriers to water skiing and operation of personal water craft. South Kingstown Code of Ordinances Sec. 4-8 addresses '[w]ater skiing, swimming and personal water craft (jet skis, etc.).['] Sec. 4-8(a) states '[n]o water skier or his/her boat shall approach any stationary or moving object closer than two hundred (200) feet, except as may be incidental to starting or finishing a run nor shall any water skier ski within any designated channels.' Sec. 4-8(f) states '[n]o person shall operate a personal water craft within two hundred (200) feet of swimmers, divers, shore, or moored vessels, except at headway speed.' These ordinances create a legal barrier to using certain areas of the cove.

"The proposed project will necessarily extend the South Kingstown's legal barrier[,] as the propose[d] project increases statutory obstacles. While Segar Cove measures a total of 53.5 acres of watershed, the available area for towed water sports is 16.7 acres. The proposed project will reduce this space (through its own footprint and extension of the town ordinance) to 12.9 acres. This represents a 23 percent reduction in overall space for water sports. This is a significant reduction in space, particularly considering the constrained geography of the area that is available for towed water sports. Granted, while this space may be sufficient for one or two vessels engaged in towed water sports to operate safely, it prevents a third vessel from participating. Moreover, this constriction in space will reduce safety for other motor vessels, including those not engaged in towed water sports, and non-motor vessels, from safely navigating the cove.

"Second, the proposed project will conflict with water dependent uses because the proposed project will be a physical obstacle. The proposed project would exist in a segment of Segar Cove that has a demonstrated use as a recreational area. The public uses the area for fishing, swimming, sailing, boating, kayaking, paddle boarding, operating personal water craft and vessels, as well as towed water sports. The proposed project would displace those activities.

"In some cases, such displacement poses safety concerns for recreational activities. The site of the proposed project has been referred to as 'the slow lane,' the area of the cove that the public can use to traverse the cove when the center, 'the fast lane,' is used by a motor vessel and motor vessels engaged in water sports. The users of the 'slow lane' will now be forced to compete for space in 'the fast lane.' Consequently, dangerous conflict is likely.

"The contention that non-motor vessel users will be 'less-impacted,' because they can avoid high traffic areas by accessing the proposed farm and surrounding areas is insufficient to demonstrate that the proposed project will not result in significant conflicts. Recreational users may not feel welcome or safe to operate in, through, or around an area used for commercial purposes. As a result, it is likely that these users will either enter the center of the cove, which could prove dangerous, or forgo Segar Cove altogether.

"Moreover, motor and sailing vessels will not be able to traverse the farm, and in an effort to avoid the fray in the center of the cove, may attempt to go around the farm. However, if a recreational user decides to go around the farm (to avoid traffic in the center of the cove) they will be forced to . . . traverse a [ten] foot narrow (the space between the aquaculture farm and the shore, at the [farm's] closest point to shore). This is not a sufficient accommodation for recreational boaters. In fact, it is unclear whether this is an accommodation at all, as depth and structure may present an inhospitable passage for recreational vessels. As a result, it is likely that these users will either enter the center of the cove, which could prove dangerous, or avoid Segar Cove altogether.

"Third, the proposed project stands as a physical barrier to those that use the proposed area for finfishing and shellfishing. The area where the proposed project would be sited is known to be a productive finfishing spot. The fishers that fish there now, will be displaced. Also, residents demonstrated that they use the proposed site for shellfishing. Those users would be displaced.

"The contention that the proposed project will not impede fishing is insufficient to demonstrate that the proposed project will not result in significant conflicts. The proposed project will remove three (3) acres of fishing grounds. Those that are bold enough to fish in the aquaculture farm will have to contend with the constant threat of gear entanglement. Consequently, fishers may decide to fish towards the center of the cove, again concentrating water dependent uses into one area, or they may simply fish elsewhere.

"Regardless of whether or not there is dangerous conflict, the simple fact that more users will be forced into a smaller area demonstrates that there will be significant conflicts between the proposed project and water dependent uses.

"While Applicant has made efforts to accommodate the public's water dependent uses, the accommodations do not go far enough to

> avoid significant conflicts. There are too many activities, undertaken by too many members of the public, to justify the conclusion that the proposed project will not conflict with water dependent uses." (Subcommittee's Recommendation at 10-12.)

However, in CRMC's Decision, the Council disagreed with the Subcommittee and instead amended section 13 as follows:

> "13. 650-RICR-20-00-[1.3.1(A)(1)(j)]:
> "Applicant demonstrated that the alteration or activity will not result in significant conflicts with water dependent uses and activities such as recreational boating, fishing, navigation, and commerce based on the comments of the South Kingstown Harbormaster at a South Kingstown Waterfront Advisory Commission Meeting, and the CRMC Staff Report.
>
> "The meeting minutes of the South Kingstown Waterfront Advisory Commission Meeting indicate that the South Kingstown Harbormaster acknowledged that the Applicant's three (3) acre proposal would constrict Segar Cove. However, the South Kingstown Harbormaster also stated that 'there are no safety concerns or issues related to the boats and waterways ordinance.' The lack of any safety concerns tends to indicate that there would be a lack of significant conflict with recreational boating, fishing, navigation, and commerce.
>
> "Additionally, to the extent that there is conflict between navigation and the Applicant's project, such conflicts are reduced as a result of the Council's decision to modify the application by reducing the size of the project to 80,500 square feet (approximately 1.85 acres)." (Council's Decision at 12.)

This Court finds that the Council did not sufficiently set forth its rationale for rejecting the Subcommittee's findings of fact and conclusions of law. The Subcommittee articulated in detail that the Proposed Farm would result in a reduction of space for water sports and fishing, would be dangerous, and a physical obstacle in the pond, and would cause navigational conflicts. The Subcommittee came to this conclusion after hearing the testimony of experts, Plaintiffs, and more than forty members of the public throughout the course of seven hearings, and after reviewing memoranda from the intervenors. The Subcommittee also considered evidence submitted by Mr.

Raso, members of the public, CRMC staff, and other state agencies, including the Beutel Report and the South Kingstown Waterfront Advisory Commission (the WAC) Meeting Minutes.

However, notwithstanding the Subcommittee's detailed rationale, the Council rejected the Recommendation without properly articulating its reasons for doing so. The Council relied upon the South Kingstown Harbormaster's statement—which was made prior to the Subcommittee hearings and prior to Mr. Raso submitting a revised proposed lease area—that the Proposed Farm would "obviously [constrict] the area however, there [were] no safety concerns or issues related to the boats and waterways ordinance." *See* South Kingstown Waterfront Advisory Commission Meeting Minutes, Feb. 1, 2018. The Council also relied upon the Beutel Report, which was also written prior to the Subcommittee hearings and stated that "[i]t is staff opinion that [the A]pplication has met the requirements of the Rhode Island Coastal Resources Management Program, and is recommended for approval." (Beutel's Report at 4.) However, the Harbormaster's statement and the Beutel Report were both considered by the Subcommittee in making their recommendation. The Council did not articulate why these two pieces of evidence were more credible than the other evidence, nor did it explain why it thought the Subcommittee's Recommendation was clearly wrong.

In *Wolff*, the CRMC's decision "fail[ed] to give any explanation as to why its own Subcommittee lack[ed] credibility other than that of its own disbelief in the Subcommittee staff's calculations." *Wolff*, 2003 WL 1880125, at *6. Further, the *Wolff* court found that "[t]he CRMC's blanket statement that it finds its Subcommittee staff less credible than the applicant's experts, without referring to any legally competent evidence, does not overcome the deference which a full Council must afford to its Subcommittee." *Id.* Thus, the *Wolff* court held that the decision of the CRMC was arbitrary and capricious and clearly erroneous in view of the reliable, probative, and

substantial evidence on the whole record. *Id.* In the instant case, the Council did not give any explanation as to why the Subcommittee was wrong, nor did it state why it found the Beutel Report and the Harbormaster's statement more credible than the evidence relied upon by the Subcommittee. This lack of explanation "does not overcome the deference which a full Council must afford to its Subcommittee." *Id.*

Therefore, this Court finds that the Council did not sufficiently articulate its rationale for departing from the Subcommittee's Recommendation. Without articulating the reasons why the Subcommittee's findings of fact and conclusions of law were clearly wrong, the Council was required to give great deference to the Subcommittee's findings. In failing to do so, the Council's Decision is in violation of statutory provisions.

2

Modification of the Proposed Farm

The Latham Plaintiffs argue that "[t]he modified plan approved by the Council was not based on any reasoned discussion or decision-making[,]" and "the Council approved a 'modified' facility about which no member of the public nor the [Plaintiffs] had the opportunity to comment; on which no Council staff member ever opined as to compliance with CRMC regulations; and which the Council's Subcommittee never considered." (Latham's Br. at 62.)

Section 46-23-6(2)(ii)(B) states that "[t]he council shall be authorized to . . . modify . . . any . . . proposal." Further, § 46-23-20.4(a) states that "[t]he council may, in its discretion, . . . modify . . . the findings of fact and/or conclusions of law[.]"

The original Application was for a three-acre oyster and bay scallop farm using floating and suspended gear. *See* Appl. for State Assent. The aquaculture site was to include the use of twelve rows of fifty lantern nets for scallops and twelve rows of thirty floating cages for oysters.

Id. at 7. The Council modified the Application by decreasing the size of the project to 80,500 square feet and eliminating the use of floating devices for oysters so that the farm would only include suspended gear for scallops. (Council's Decision at 6-7.) Mr. Raso then submitted a revised proposal incorporating these modifications but also making further substantive changes. (Council's Decision at Ex. A.) Instead of the original plan to have twelve rows of fifty lantern nets, the modified plan included sixty-seven rows of nets, ranging from eighteen nets per line in the southernmost line, to forty-four per line in the center, and twenty-nine per line in the northernmost line. *Id.* Additionally, instead of each line holding 100 spat bags as originally proposed, the new plan stated that the southernmost lines would hold thirty-six spat bags, the center lines would hold up to eighty-eight, and the northernmost lines would hold a maximum of fifty-eight. *See id.*

The Council's modification to the Application—reduced size, new location, and omission of floating gear and oysters—constitutes a substantial change of the original Application that requires additional findings.[14] Likewise, Mr. Raso's subsequent changes to the placement of lantern nets and the number of spat bags, which were submitted to the Council months after it voted on the modifications and included changes that neither the Council nor the Subcommittee had contemplated, reflect a substantial change of the original Application.

CRMC argues that "[l]ogic suggests that if the CRMC Staff Report provides evidence supporting approval of a 130,680 square foot project, then that same report provides evidence supporting approval of an 80,500 square foot project that is inside of the originally proposed

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[14] It is noteworthy that during the Council's hearing on June 13, 2023, Mr. Willis stated that the Staff Report that he had been tasked with writing after the Council's motion to modify the Application "satisfies the motion[.] *It's not a substitute for the subcommittee's deliberations or recommendations, but it does satisfy the motion*[.]" (Semi-Monthly Meeting Tr. at 29:11-14, June 13, 2023) (emphasis added).)

footprint." (CRMC's Br. at 28.) However, this argument is without merit because the size of the project was not the only modification to the Application. During the Council's hearing, Councilwoman Robinson Hall stated:

> "And I just think that the idea that the ocean or the coast is sort of this flat, one-dimensional—it's just not how this works. There are impacts when you change gear in the water column and you put it in a new location. It's not about size, whether it's large or not. It's the fact that the ecosystem, there's an impact. There's a difference. And we don't know what it is because we don't have those facts. We don't know. We're just hearing now it's a different species than both species." (Semi-Monthly Meeting Tr. at 50:19-51:5, June 13, 2023.)

This Court agrees. Changing the size of the project alone would likely have an impact on the surrounding ecosystems. In this case, however, the reduction in size was not the only modification. The Council also changed the gear used, the species involved, and the location of the project, and Mr. Raso changed the placement of the lantern nets and the number of spat bags. These modifications require additional consideration and analysis on the surrounding ecosystems and the new impact on water dependent uses. Even if the Council had considered changes related to the size reduction, location, species, and gear, it would not have been able to vote and discuss the changes related to the placement of the lantern nets and spat bags because Mr. Raso did not submit his revised proposal until months after the Council's meeting. Thus, the modification to the Application reflects a substantial change requiring additional consideration.

During the June 13, 2023 meeting, the Council discussed whether *Easton's Point Association v. Coastal Resources Management Council*, No. 1984-3737, 1988 WL 1016803 (R.I. Super. Feb. 11, 1988) requires CRMC to hold a public hearing on applications that have been substantially modified. *See* Semi-Monthly Meeting Tr. at 37:22-39:2, 43:15-44:18, June 13, 2023. In *Easton's Point*, an application was filed with CRMC to construct a hotel. *Easton's Point*

Association, 1988 WL 1016803, at *1. The plan received approval from the local zoning board, which granted a special exception after numerous public hearings. *Id.* The same plan was submitted to CRMC, which approved it with modifications made to comply with state building code requirements. *Id.* The plaintiff argued that CRMC made substantial changes to the plan, which should have required resubmission to the local municipality for approval because the modified plan was different in appearance and height from the plan submitted to the zoning board. *Id.* They contended that CRMC's actions usurped the municipality's function and rendered public participation meaningless. *Id.* The defendant argued that the modifications were minor and that CRMC, as the final regulatory body for coastal construction, had the authority to impose conditions on plans. *Id.* at *2. The *Easton's Point* court concluded that CRMC's power to issue, modify, or deny permits does not preempt municipal zoning requirements, thus requiring a second notice and hearing if substantial changes are made to a plan after the initial public hearing. *Id.* at *6.

On appeal, our Supreme Court found that the trial justice's examination should have been limited to a review of CRMC's decision based upon the record before him, and as a result, he improperly compared the zoning board's approval and the CRMC's assent. *Easton's Point Association v. Coastal Resources Management Council*, 559 A.2d 633, 636 (R.I. 1989). However, our Supreme Court proceeded to decide the case on the merits and remanded the case with an approval of CRMC's findings. *Id.* The Supreme Court found that both the state and municipal requirements had been met, so there was no legal obstruction to the proposal. *Id.* at 637.

Although *Easton's Point* is distinguishable, and the judgment therein had been quashed, this Court finds its jurisprudence instructive. In *Easton's Point*, the court found that CRMC's modifications—difference in appearance and height—to be substantial. *Easton's Point*

Association, 1988 WL 1016803, at *8. The Court noted that the modifications to the building plan were significant enough to require a second notice and hearing by the municipality, and it stated that "[our] Supreme Court has unequivocally maintained that if 'substantial changes' are made to a proposed zoning ordinance revision after the public hearing, there must be a second notice to the public and a second hearing conducted." *Id.* at *2. The *Easton's Point* court applied this principle to the CRMC's modifications, thus indicating that the changes were substantial and required an additional hearing. *See id.* at *8.

The *Easton's Point* court also cited *DeLucia v. Town of Jamestown*, 107 R.I. 179, 265 A.2d 636 (1970), wherein our Supreme Court found that "'substantial alterations' to a map, proposed as part of an amendment to the zoning ordinance, were made after the public hearing" and were in excess of the town council's jurisdiction. *Easton's Point Association*, 1988 WL 1016803, at *2 (citing *DeLucia*, 107 R.I. at 187, 265 A.2d at 639-40). The Supreme Court stated in *DeLucia* that "an unwarranted alteration in a map is tantamount to an alteration in the ordinance; if the local legislature is free to make 'substantial alterations' in either, without again giving notice and conducting a public hearing, the holding of a hearing becomes meaningless." *Id.* Likewise, the *Easton's Point* court cited *Golden Gate Corporation v. Town of Narragansett*, 116 R.I. 552, 359 A.2d 321 (1976), wherein our Supreme Court found that "if 'substantial changes' are made to the pending proposal, the council must publish a second notice and conduct a second hearing." *Id.* (citing *Golden Gate Corporation*, 116 R.I. 552, 359 A.2d 321).

Even though the instant case involves neither an additional governmental body nor zoning ordinances, this Court finds that the substantial change to the Application in this case requires CRMC to conduct a public hearing on the substantially modified Application. The substantially changed Application was not examined by the Subcommittee, Plaintiffs, the public, or the MFC.

See G.L. 1956 § 20-10-5(b) ("No application shall be approved by the CRMC or a permit granted prior to the consideration of recommendations by both the director and the MFC."). As stated by Councilwoman Robinson Hall:

> "So if we learn nothing from our past, as far as transparency as a public agency reviewing applications, six years ago the public saw an application, it doesn't look like that now. And what's going to come out the other end isn't going to be what they thought was going in. And it wasn't what we spent seven weeks of hearings on. And it wasn't what they spent money and hearing witnesses and testimony and experts testifying to because it's different. And although we can change it, how much of a change do we really want to be responsible for that hasn't been reviewed? . . . So I'm concerned about that. (Semi-Monthly Meeting Tr. at 51:6-19, June 13, 2023.)

Ms. Robinson Hall further stated:

> "And that we've heard from the executive director that the gear itself has been changed relative to its location within this new area; that there is new gear in a new location that wasn't subject to the public notice that had gone out, it wasn't subject to the hearing; and that interested persons who might have acted on that modification or on that design were not able to participate in that hearing because that wasn't what was before us, and they're not able to be put on notice that that's the change. I think that is a substantial change.
>
> "So I think I just wanted to clarify, from legal counsel, that substantial is a standard, and it is applied to change. And that leaving it up to us, I guess my opinion, based on what I've heard and the facts, is that this is a substantial modification that I think should go back out to public notice." *Id.* at 60:23-61:17.

This Court agrees with the assertion that the Approved Application has been substantially changed such that the public is required to be put on notice of said changes. If CRMC is free to make "substantial changes" to the pending Application, without giving notice and conducting a public hearing on said changes, "the holding of a hearing becomes meaningless." *Easton's Point Association*, 1988 WL 1016803, at *2 (citing *DeLucia*, 107 R.I. at 187, 265 A.2d at 640). Because

the public was not afforded the opportunity to be heard on the "new" farm and the different impacts—if any—on water-dependent uses, the Council's Decision cannot stand.[15]

What is more, the Council discussed whether there was a prohibition on notifying the public of the revised farm and determined that there was not:

> "MR. GAGNON: Is there any prohibition from us sending this revised layout to public notice so we can get input from the applicant, [intervenors], or the public in general?
>
> "MR. HARTMANN: There would be no prohibition, but this has been before the subcommittee and as the executive director said, I believe it was seven hearings, give or take.
>
> "MR. GAGNON: Not on this layout.
>
> "MR. HARTMANN: Not on this particular layout.
>
> "CHAIRMAN COIA: But it's contained in—my opinion is it's contained within that which was originally depicted so they've already commented on a larger one." (Semi-Monthly Meeting Tr. at 37:7-21, June 13, 2023.)

The Approved Farm is not simply "contained within that which was originally depicted[.]" *See id.* Rather, the Approved Farm includes substantive changes not contemplated by either the Subcommittee or the Council and not properly noticed by the public or Plaintiffs. Thus, the Council's failure to send the Approved Farm back for public notice was in error. This Court finds

[15] CRMC argues in its brief that it retains expertise in the area of coastal resources and that this Court should defer to said expertise. *See* CRMC's Br. at 28-31. This Court notes, however, that this Decision does not discredit the expertise of CRMC. This Court makes no technical findings and instead finds that the Council erred procedurally. *See Save the Bay, Inc. v. Rhode Island Coastal Resources Management Council,* No. PC-2014-1685, 2014 WL 4956050, at *10 (R.I. Super. Sep. 29, 2014) ("[T]his Court recognizes its limitations—it does not purport to hold any nuanced expertise in coastal management nor is it able . . . to view the instant application in light of the CRMP holistically, especially considering the barrage of applications that CRMC staff must handle daily.").

that the Council's Decision is in violation of statutory provisions, made upon unlawful procedure, and affected by other error of law.

3

Sufficiency of the Evidence

CRMC argues that the Beutel Report and the Harbormaster's statement constitute legally competent evidence sufficient to support the Council's Decision. (CRMC's Br. at 21-23.) It also states that there is legally competent evidence in the whole record—testimony from Mr. Raso, his experts, and other members of the public—to support the Council's Decision. *Id.*

"Standing in an appellate role, this Court is 'limited to an examination of the record to determine whether 'some' or 'any' legally competent evidence exists to support' the agency decision." *Save the Bay, Inc.*, 2014 WL 4956050, at *9 (quoting *Mine Safety Appliances Co.*, 620 A.2d at 1259). "Legally competent evidence is 'more than a scintilla but less than a preponderance,' in essence, enough for a reasonable mind to make a conclusion." *Id.* (quoting *Arnold*, 822 A.2d at 167). Thus, "this Court may not reverse a decision unless it is 'totally devoid of competent evidentiary support in the record.'" *Id.* (quoting *Milardo v. Coastal Resources Management Council of Rhode Island*, 434 A.2d 266, 272 (R.I. 1981) (brackets omitted). This Court "shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Section 42-35-15(g).

This Court finds that the Council's Decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Id.* There is an abundance of evidence on the record to support the proposition that the Application would present conflicts with water-dependent uses, a fact that was agreed upon by Mr. Raso's expert witnesses. *See* Council's Decision at 2 ("Mr. Osgood agreed with Mr. Capizzo that the proposed project would compress

towed water sports, swimming and sailing towards the center of Segar Cove.") ("Objectors' attorney questioned Dr. Rice extensively on whether the proposed project would conflict with water dependent uses. During this line of questioning, Dr. Rice conceded that the proposed project would compress certain activities into the center of Segar Cove."). The Subcommittee and the WAC recommended denial of the Application, and Plaintiffs and approximately 150 members of the public objected to the Application because of said conflicts. *See* Subcommittee's Recommendation; South Kingstown Waterfront Advisory Commission Meeting Minutes, Feb. 14, 2018.

Additionally, the Harbormaster's statement and the Beutel Report, on which the Council bases their Decision, both indicate conflicts with water dependent uses. The Harbormaster stated, "[three] acres of usable water *obviously constricts the area* however, there are no safety concerns or issues related to the boats and waterways ordinance." South Kingstown Waterfront Advisory Commission Meeting Minutes, Feb. 1, 2018 (emphasis added). The Harbormaster specifically noted that the area would be constricted, but states that there are no safety concerns or issues related to the *boats and waterways ordinance*, which is distinct from safety concerns or issues related to recreation on the pond. *Id.* Further, the Beutel Report states that the Application "will have an effect on [boating, water skiing, tubing, kayaking, paddle boarding, etc.]" but that the significance of the effect is "debatable." (Beutel's Report at 2.) The report also states that "[s]wimming through an aquaculture site is not advisable." *Id.* at 3. Thus, both pieces of evidence upon which the Council relies demonstrate some conflict with water dependent uses on Segar Cove.

Without weighing the evidence, this Court finds that the Harbormaster's statement and the Beutel Report alone are insufficient to overcome the other reliable, probative, and substantial

evidence on the whole record. This Court is of the opinion that the Harbormaster's statement and the Beutel Report do not constitute "more than a scintilla" of evidence sufficient to support the Council's conclusion. Additionally, and importantly, both the Harbormaster's statement and the Beutel Report addressed the Application *in its original form*. This evidence is wholly insufficient to address the Application *as modified*. Thus, this Court finds that the Council's Decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

4

Appropriate Remedy

The Latham Plaintiffs argue that the appropriate remedy is to reverse the Council's Decision and require the Council to enter an order adopting the Subcommittee's Recommendation. (Latham's Br. at 63.) They contend that despite remand to the agency being the common judicial remedy, "when the agency proceedings demonstrate a total disregard toward constitutional and statutory requirements, the proper remedy is to reverse the CRMC's decision." *Id.* They cite various Rhode Island Supreme Court cases wherein the Supreme Court found a remand of the case to be ineffective. *See Sakonnet Rogers, Inc. v. Coastal Resources Management Council*, 536 A.2d 893, 897 (R.I. 1988) ("To delay the administrative process further by remanding the case to CRMC for additional consideration of a petition filed seven years ago would prejudice the right of the petitioner to a final adjudication of his petition within a reasonable period."); *Easton's Point Association*, 559 A.2d at 636; *Ratcliffe v. Coastal Resources Management Council*, 584 A.2d 1107, 1111 (R.I. 1991).

Although this case has been ongoing for many years, this Court will not simply reverse the Council's Decision and order that the Subcommittee's Recommendation be adopted. The Subcommittee's Recommendation is simply a recommendation, and the Council retains the

authority to issue the final decision. *See* § 46-23-20.4(a) ("[T]he [subcommittee] shall make written proposed findings of fact and proposed conclusions of law which shall be made public when submitted to the *council* for review. The *council* may, in its discretion, adopt, modify, or reject the findings of fact and/or conclusions of law . . . .") (emphasis added). Further, this Court cannot resolve the merits of this case because further proceedings are required. Consequently, the Council's Decision is vacated, and the case is remanded to CRMC for a public hearing before the Subcommittee specifically regarding the Council's modifications and Mr. Raso's substantially modified proposal dated January 15, 2024. Plaintiffs shall be given the opportunity to present new evidence, and Mr. Raso shall have the burden to present evidence to demonstrate that the modification meets the Category B requirements. CRMC shall comply with all notice and procedural requirements.

V

Conclusion

For the reasons stated herein, Plaintiffs' appeal is **DENIED in part and GRANTED in part**. Plaintiffs do not have standing to file the instant suit because (1) Plaintiffs have not alleged a particularized injury; (2) any potential injuries Plaintiffs *can* allege are not distinct from the public injury; (3) evidence presented by Plaintiffs to the Subcommittee does not set forth a specific injury in fact sufficient to establish standing; and (4) Plaintiffs' intervention into the proceedings before the Subcommittee has no bearing on their standing to file the instant suit.

However, in deciding this issue based on the substantial public interest in a resolution, the Council's Decision is vacated, and the case is remanded to CRMC for further proceedings, including a public hearing before the Subcommittee and subsequent recommendation by the

Subcommittee specifically regarding the Council’s modifications and Mr. Raso’s substantially modified proposal dated January 15, 2024.

Counsel shall submit an order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Wilkes, et al. v. Rhode Island Coastal Resources Management Council, et al.** **and** **Latham, et al. v. Rhode Island Coastal Resources Management Council, et al.**
CASE NO:	**PC-2024-05023 and PC-2024-05065**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 25, 2026**
JUSTICE/MAGISTRATE:	**Montalbano, J.**

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