

TOWN OF TIVERTON, RHODE ISLAND

OFFICE OF TOWN ADMINISTRATOR

May 26, 2023

Executive Director, Jefferey Willis
Coastal Resources Management Council
Stedman Government Center, Suite 116
4808 Tower Hill Road
Wakefield, RI 02879-1900

RE: Oyster Lease for Bowen brothers – application file# 2020-04-037

Dear Executive Director Jefferey Willis and CRMC Chair Raymond C. Coia,

The Town of Tiverton's Town Council voted on May 22, 2023 at their regular council meeting to send an objection letter regarding the above listed application for an oyster lease in the Sakonnet River near the Sapowet Marsh Management Area next to the Seapowet Bridge in Tiverton. There are numerous reasons for the objection, some of which have already been presented to CRMC. This letter will attempt to articulate the reasons for the Town Council decision to request that CRMC issue a denial.

First, the Tiverton Harbor and Coastal Waters Management Commission (THCWMC) has weighed in with the Town Council on 5/18/23 and they stated that said application would be detrimental to those stakeholders who utilize this area extensively. There are many users both recreational and commercial that use the area for both shell fishing and fin fishing as well as the numerous recreational uses such as wind surfing, kayaking, boating, paddleboarding and the like (some of these complaints were included in the 6/22/21 letter to CRMC from Council President DeMedeiros – Attachments 2 and 3 to this letter as well as attachments 11 and 12). The shell fish area will be impacted in approximately 40% of the lease area. There will also be significant impacts for recreational users for fishing, mooring access and riparian right issues. The THCWMC have submitted a letter to the CRMC office dated May 18, 2023 that includes these reasons and many more justifying the reason to deny said application. The application commentary/summary on file is replete with references that the THCWMC has granted its positive approval for the pending application but these comments are not stated within the contextual parameters offered

by the THCWMC. The letter dated 5/18/23 clearly negates the information in the applicant file that the local harbor commission is in agreement with the application. Please find the 5/18/23 letter as attachment 14 to this document.

Second, Mr. Michael Woods, Chair of the New England Chapter Board for the Backcountry Hunters and Anglers along with Dawn Filliatreault Wood, President of the RI Saltwater Anglers Association wrote to Director Terrance Gray of RIDEM on 5/22/23 to reject the application for the Bowen brother's application listed above citing various conflicts with between commercial oyster farming and the thousands of people who use the area for recreational purposes. Please see attachment 15 to this document. They further state in their correspondence that there are direct conflicts to 650-RICR-20-00-01 CRMC's Red Book code.

The summary information in the file suggests there are plenty of quahogs on the northern side of the creek with very few in the area to the south. CRMC discussed with a (one) local harvester to confirm the assertion yet no scientific information or published shellfish survey was ever introduced as evidence to support the CRMC claims in the file (see applicant file CRMC summary of information on the CRMC web page for application listed above 2020-04-037). It is well known that this area is frequented by recreational users to harvest both shell fish and finfish for their personal use.

The applicant states it is their intention to wade out to the leased area to perform maintenance and harvest the crops yet the leased area is 400 feet from the South West corner of the Seapowet Bridge to the nearest Northeast corner of the proposed lease and 260 feet from the Northeast and Southeast corners of the lease area to the shore yet there is no lease granting the applicant daily ability to traverse, haul, maintain or defoul the proposed 200 cages between the leased area and the shoreline. The daily wading throughout the non leased areas will clearly disrupt the sea bed, shellfish beds, eel grasses and ecosystems that fish and marine species utilize for sustenance for survival. Moreover, this constant disruption of the sea bed will clearly disrupt the spawning and ability for recreational fisher men and women to attain and harvest sport fish or shell fish. Please review attachment 12 pictures to gain an overview as to what the public will be faced with if said lease is approved. The applicant does not state how they will maintain and operate the oyster cages. Is it their intention to haul, drag and carry equipment to and from the residential lot they own? Will they be power washing the cages to remove excessive growth on the residential property and if so, how will they transport from lease to land? The application is devoid of any land use description for which any land abutter or the Town can comment on related to zoning issues.

In the application CRMC seeks answers of the applicant pursuant to Section 1.3.1(A) Category B requirements specifically to demonstrate all applicable zoning issues are in compliance. The applicant simply states permits will be required for proposed lease will be obtained through RI

CRMC. This does nothing with respect to responding to how their land (701 Seapowet Avenue, Tiverton, plat 703 Lot 105 owned and operated by the Bowens as Strait Landing LLC which is listed as a .125 acre lot which is approximately 20 foot wide by 100 foot long at best with the shorter side along the water front— property card attached as attachment 17) which they will access said lease is in conformance with local zoning with respect to operating a commercial operation of oyster farming on a piece of land that sits in the river not adjacent to their property that is zoned residential. As part and any hearing to be held, it is important to understand that the Town may not be able to dissuade CRMC from approving the propose lease for the applicant to perform oyster farming in the river but the CRMC has no jurisdiction to permit the land owner to somehow infer or use the residentially owned property as a commercial fishing operation, that which is not in conformance with the local zoning. To that end, it has been the position of the Town that these leased areas in Tiverton be at least 1000 feet (currently legislation pending in the RI General Assembly this session offered by local legislators, Representative John Edwards and Senator Lou DiPalma) from shore. The Town contends these leases should all require that they be accessed only via vessels that must use commercial ports/docks and or approved RIDEM boat ramps and that all products harvested are sold to commercially licensed retail seafood operations. The town maintains there are ample areas in the river that do not provide the excessive conflicts for recreational uses that the applicants proposed lease provides. The applicant and CRMC have failed to provide any rationale as to reconcile the public recreational uses, the funding allocated to purchase and support public access against the profits of a single commercial lease in light of the fact there are numerous non confliction areas where the lease could be granted.

Subsequent to the preliminary determination noted in the file CRMC had only received two letters citing potential interference with recreational shore fishing. The CRMC, RIDEM and the applicant met to discuss and decided to move the initial application lease to a more south west area to avoid the recreational shore fishing. This movement of the lease area generated a few issues. The first being they moved the leased area to now incorporate approximately 40% of the known shell fish beds (see attachment 14 and 15) to now be in the lease area. The second issue is there are thousands of people from all over New England who frequent this area yet have no knowledge of this proposed lease and the pending conflict with the recreational uses historically permitted in this area as they never received noticed of same. There are many people who come to the Sapowet Marsh Management Area each year and all year to recreate in this pristine public space. Allowing this applicant sole discretion to use the sea bed for a commercial operation in a heavily used publicly funded recreational area that will be further compounded by the disruption of soils, shellfish beds, eel grasses and the ecosystem the wildlife thrive on outside the leased area to the dismay of the many who come to fish recreationally for either shellfish and or finfish species to support their families well being would be not only tragic and unforgiven but a further waste of dedicated financial resources set forth by the Federal Government, RI DEM, the

Nature Conservancy, Open Space and many others to acquire and preserve this pristine area for public recreational uses.

According to the RIDEM online files the state has tendered upwards of \$2,254,145 in DEM funds alone to acquire nearly 408 acres of land for the enjoyment of all, not just Rhode Islanders to use the Sapowet Marsh Management Area (SMMA) (see attachments 4, 5, 6, 7, 8 and 9 all documents related to public access for the area).

Sapowet Marsh Management Area acquisitions:

1958	254.5 acres - project 5130 - Sapowet Marsh	\$	not listed
1960	25.4 acres – project 5200 – Hathaway property	\$	2,800
1997	43.4 acres – project 5062 – Lacerda property	\$	950,000
1997	11.1 acres – project 3052 – Peckham property	\$	80,345
1997	29.8 acres – project 3034 – Taradash property	\$	626,000
1999	33.0 acres – project 5074 – Babbitt property	\$	525,000
2001	11.1 acres – project 5147 – Durfee property	\$	70,000

This does not include the millions of matching funds authorized by the Federal Government, Nature Conservancy, Open Space, Save The Bay and many others to retain this area for public access specifically for hunting, fishing and all other recreational uses. It is the Town of Tiverton's along with many who use and or maintain (see attachment 4) these areas contention that many of these property acquisitions hold strict guidelines prohibiting or restricting the publics' right to use these areas as intended. The Town is requesting that CRMC hold a full public hearing in the Town of Tiverton and seek legal guidance from the RIDEM's property acquisition office regarding any lease that may restrict or limit the publics use of the intended uses set forth in the acquisition documents that were used to generate funding for this area. The application on file appears to have only sought comment from the DEM fisheries office but no other integral functional units related to this area within DEM. CRMC publishes extensive rules (see attachment 10) related to communicating with appropriate parties with respect to shoreline changes and Tiverton would expect similar discussions be required with all the stakeholders regarding this application. The Town of Tiverton finds any approved lease for a single commercial enterprise to benefit financially over the intended recreational uses for this area to be disheartening and wholly objectionable. Approval of the applicants proposed lease area would be misguided as it would benefit a sole lease for commercial gain over the thousands of recreational users for shell fishing and fin fishing not to mention bathing, kayaking, windsurfing, paddle boarding and boating.

The Town of Tiverton reserves the rights to all the documents previously submitted (attachments 1 and 2) along with any and all testimony provided at the SAMP hearings by Tiverton public officials held throughout the state over the past two years.

The Town is providing the following supporting attachments that substantiate the narrative above to reject the Bowen Application #2020-04-037:

1. Letter dated August 3, 2021 to Ben Goetsch, CRMC and Jennifer McCann URI from Christopher Cotta, Town Administrator (2 pages)
2. Letter dated June 22, 2021 to CRMC from Town Council President, Denise DeMedeiros with enclosures (6 pages)
3. Letter dated August 24, 2021 by Frank Carinii, News Staff for EcoRI (12 pages)
4. Article providing that grant funds along with RIDEM, Save The Bay and the Town of Tiverton worked to provide marsh restoration work for the benefit of the public (2 pages)
5. RIDEM file on Lacerda land purchase, Sapowet marsh Project, 1958 Sapowet Marsh federal aid project, 1958 Sapowet Marsh Cooke Project, 1956 Sapowet Marsh federal aid project, and 1949 Sapowet Marsh preliminary project documents (42 pages)
6. Land acquisition by RIDEM for the Town of Tiverton related to Sapowet Marsh management Area as well as all other RIDEM land acquisitions in Tiverton to date (4 pages)
7. October 15, 2015 letters to Town Administrator Matt Wojcek from Tricia Hilton regarding Seapowet Beach and its uses (3 pages)
8. Explore RI Blueways and Greenway description of Sapowet Point area (2pages)
9. Tiverton RI, rack card depicting recreational areas inclusive of Sapowet Marsh Management Area (13 pages)
10. RICRMC shoreline change SAMP document, Volume 1 (23 pages)
11. May 11, 2023 email from Jay Edwards to Town Administrator that includes an email from Kenny Mendez 5/10/23 to Town Councilor Jay Edwards describing his opposition to the lease area for the application discussed herein (2 pages)
12. May 23, 2023 email from Liz Kenny providing the measurements from the lease area to land along with numerous pictures that show clearly the distances and shorelines that clearly depict conflict areas for recreational fishing use (9 pages)

13. May 18, 2023 email from Bruce Cox, Chair of the Tiverton Harbor and Coastal Water Management Commission (THCWMC) to the Town Administrator and Council President addressing the commissions change from to reflect an outright denial for said lease from CRMC (2 pages)
14. May 18, 2023 letter from the THCWMC Chair, Bruce Cox to the Town Council President Denise DeMedeiros seeking CRMC to hold a full hearing on the matter of file #2020-040037 that includes a copy of the letter dated 5/18/23 to Executive Director Jefferey Wills at CRMC from the THCWMC seeking denial position for the lease area for this applicant (5 pages)
15. May 22, 2023 letter from the Backcountry Hunters and Anglers Association jointly with the RI Saltwater Anglers Association respectfully seeking denial of this application for their memberships. (12 pages)
16. May 12, 2023 email from Jeanne DeSouza to Tiverton Town Administrator depicting the conflict between neighboring community of Little Compton and the legal representative Anthony DeSisto who now represents the Town Council for Little Compton, who also represents CRMC. A link in the email can be followed that will clearly articulate her concerns (2 pages)
17. Tiverton plat and lot card for 701 Seapowet Avenue for map lot 703-105 which is .125 AC belonging to a limited liability corporation for the Bowens called Straight Landing LLC which is registered as a R80 residential lot (2 pages)

To be clear, this letter represents the Tiverton Town Council's concern that the proposed lease area is in direct conflict with numerous land-related and public access matters for the proposed area. The Town Council is not objectionable to oyster farming, they simply believe this lease is in direct conflict with the intent of the previously acquired parcels of land that not only created Sapowet Beach, but the entire Sapowet Marsh Management Area which is owned by the RIDEM. These properties provides public amenities for waterfront access to recreationally fish for both shellfish and finfish and provide hunting as well for all who want to partake in any of the non fishing related recreational activities this area offers to the public. Granting a sole commercial operation, the ability to conflict with the intent of millions in tax dollars used to acquire these lands and provide the necessary access that is unavailable elsewhere for recreational purposes would be totally misguided and an outright abuse of federal, state, local and private funded acquisitions to benefit a single commercial lease.

The only support for this lease that is found in the application comes direct from the applicant's personal friends in Little Compton and the Little Compton Town Council, none of whom have any direct relationship to the properties involved around the proposed lease area or understand the complexity of recreational offerings that are supported by the Federal, State, Local and private foundations for the benefit of public access versus the profit to one commercial lease. Little Compton's Town Council has blindly supported this lease via an approved resolution yet had this been in front of any of the recreational areas in their community and created a restriction for public access we doubt the resolution would have ever seen the light of day. There is no support for this lease from Tiverton residents, the Tiverton Harbor and Coastal Waters Management Commission, the Tiverton Town Council, the Tiverton Planning or Zoning Boards or the Tiverton Town Administrator based on all the arguments stated throughout this letter. Moreover, there has been no notification regionally to the thousands of public members throughout Southeastern New England who enjoy the access provided to them for recreational hunting and fishing through the well planned and financed acquisitions of hundreds of acres that provide recreational use for the public as a whole. Additionally, the CRMC has yet to weigh in on how or why these excessive recreational use conflicts should be entertained at the expense of public funded land acquisitions to benefit a single commercial user when there are other non-conflicted areas that the applicant should seek for their commercial venture.

Additionally, the Tiverton Town Council has reservations related to the legal representation of the RI CRMC as being the same legal representative for the Little Compton Town Council (attachment16). There is a clear representation conflict in this regard.

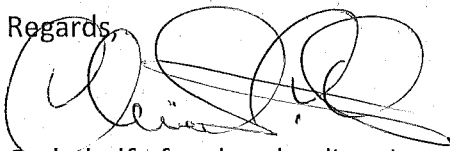
The Tiverton Town Council has many concerns about the nexus between the land lease in the river that is currently under the CRMC review for a commercial operation and the applicants desire to use residential property in a very quiet neighborhood through an implied use of said lot that has no primary use with no buildings situated there on. The applicants have never provided a clear use for the residential lot or connection to the application before CRMC. Granting a commercial lease for the oyster farm does not in any way shape or form allow the non-conforming lot to be considered an accessory use for the lease under consideration. Should CRMC grant the lease over the Town's objection the Town Council would request specific restrictions that access to and maintaining said lease must be done via a vessel that is required to use commercial docks and or approved DEM boat ramps and that any product harvested must be sold to commercially licensed seafood retailer and that the residential property owned by the Bowens either personally or through an LLC can not be used for the operational purposes of oyster farming so as to provide continued peaceful uses for all residential properties in the area.

For all of the above, including each of the attachments included with this memo, the Town of Tiverton request that CRMC provide, prior to any final vote for this application, a formal full hearing in the town of Tiverton (see attachment 13), the town that will be most affected by any

lease being granted for this application. The Town requests that CRMC seek opinions from each of the government and public agencies who funded land acquisitions for public recreational uses to weigh in on allowing a commercial lease to be approved in a public area used extensively for recreational purposes. And lastly the Town will seek, based on all the above, a full and complete denial to the applicant for a lease in this particular area due to the excessive recreational conflicts that said lease will create.

The recent CRMC decision extending this 2020 application comment period open to June 8, 2023 provides some pause as to the rationale related to a purported defect with this proposed lease application. A copy of this memorandum will be forwarded to the State Attorney General and Civil Division for review to ensure the public's right to access this area for recreational use is not infringed upon without a properly advertised public hearing and that any covenants and restrictions related to the property acquisitions that relate to the access for public use are properly maintained without restriction.

Regards,



On behalf of and at the direction of the Tiverton Town Council
Christopher Cotta, Town Administrator

Cc: Tiverton Town Council

Tiverton Harbor and Coastal Water Management Commission
Tiverton Town Clerk, Joan Chabot
Town Solicitor, Michael Marcello
Terence Gray, RIDEM Director
RI Attorney General, Peter Neronha