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February 10, 2025

Stephanie De La Rosa, Clerk
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No. D-13-51

Dear Stephanie,

As you know, our office represents Interstate Navigation Company d/b/a The Block Island Ferry (“Interstate”).

Enclosed for filing please find Interstate’s Objection to Rhode Island Fast Ferry’s Motion to Reconsider, or Alternatively, Motion for Relief from Order.

If you need any further information, please do not hesitate to contact me.

Very truly yours,



Leah J. Donaldson

Cc: Service List (via electronic mail)

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC. : DOCKET NO. D-13-51

**INTERSTATE NAVIGATION COMPANY D/B/A THE BLOCK ISLAND FERRY'S
OBJECTION TO RHODE ISLAND FAST FERRY'S MOTION TO RECONSIDER
OR ALTERNATIVELY, MOTION FOR RELIEF FROM ORDER**

Interstate Navigation Company d/b/a The Block Island Ferry (“Interstate”) submits this Objection to Rhode Island Fast Ferry’s (“RIFF”) Motion to Reconsider or Alternatively, Motion for Relief from Order¹ related to Division of Public Utilities and Carriers (“Division”) Order No. 25208 (“Rescission Order”). The Rescission Order rescinded RIFF’s authority to operate a seasonal ‘fast ferry’ between Quonset Point, North Kingstown and Old Harbor, Block Island, because “[m]ore than one year has passed since the Superior Court issued its decision affirming the Division’s September 22, 2016, Report and Order No. 22548, [(“CPCN Order”)], and as of the date of [the Rescission Order], RIFF has failed to satisfy the conditions precedent contained in Ordered Paragraph 2 of [the CPCN Order] or request an additional continuance from the Division.” Division Order No. 25208, at 6-7. This rescission constitutes “the nullification and voiding of the authority granted by the Division.” Id., at 6.

¹ Division Rule 1.31 (B) states:

B. Mistake, Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud, Other

1. On motion or *sua sponte*, and upon such terms as are just, the Administrator may relieve a party from a final order or proceeding for the following reasons:

- a. Mistake, inadvertence, surprise, or excusable neglect;
- b. Newly discovered evidence, which by due diligence could not have been discovered in time to move to reopen the proceedings under § 1.29 of this Part;
- c. Fraud, misrepresentation, or other misconduct of an adverse party;
- d. The order is void;
- e. A prior order on which the order is based has been reversed or otherwise vacated, or it is no longer equitable that the order should have prospective application; or
- f. Any other reason justifying relief from the operation of the order.

I. INTRODUCTION

RIFF was originally given one year to satisfy the CPCN Conditions. The first condition was demonstration of “access to suitable docking/landing facilities [...] on Block Island...” Division Order 25208, at 2. RIFF has never been able to satisfy this condition. Based on repeated representations from RIFF that it was pursuing a docking facility in Old Harbor for its proposed ferry, the Division granted additional extensions for RIFF to meet the CPCN Conditions. These extensions were granted based upon representations that RIFF was diligently pursuing a Block Island docking facility.

The final extension expired on October 10, 2024 – one year after the Superior Court Order affirming the Division’s CPCN Order. RIFF did not request an additional extension, and accordingly, over 11 years after RIFF filed its application with the Division, the Division issued the Rescission Order on December 3, 2024.

RIFF now seeks relief from the Rescission Order, coupled with another extension request of “approximately one to two years.”² But enough is enough. As the Advocacy Section made clear over six years ago, “the matter cannot linger in perpetuity.” (CPCN Order, at 6.) RIFF has failed to establish that sufficient reasons exist to justify this extraordinary relief from the Rescission Order. As detailed below, RIFF failed to satisfy the conditions precedent set forth in Division Order No. 22548 (“CPCN Conditions”), RIFF consistently misled the Division regarding RIFF’s efforts (or lack thereof) to secure a docking facility in Old Harbor, and despite having years to do so, RIFF has not filed new applications for the necessary permits with the Rhode Island Coastal Resources Management Council (“CRMC”) or the US Army Corps of Engineers (“ACOE”). All of RIFF’s previous CRMC and ACOE applications were soundly

² Affidavit of Paul Filippi, at 4, paragraph 23.

rejected.

II. ARGUMENT

A. Failure to Meet CPCN Conditions Precedent

Despite having had more than ample time and opportunity, RIFF and its partner Bluewater LLC ("Bluewater") have failed to meet the CPCN Conditions. The conditions required them to demonstrate access to suitable docking/landing facilities and obtain all necessary permits and approvals to commence ferry services. There have been no legal obstacles preventing them from meeting these requirements. Their failure to meet these foundational conditions demonstrates their inability to fulfill the repeated commitments they made to the Division.

Unsurprisingly, RIFF refuses to accept responsibility for its failure to take these necessary steps and instead blames Interstate. However, no stay of the Division CPCN Order was ever issued; therefore, the administrative appeals have never prevented RIFF from satisfying the CPCN Conditions. Well over a year has passed since the final court ruling on the appeals, yet RIFF took no action to satisfy the CPCN Condition No. 1 ("RIFF must demonstrate to the Division that: (1) it has access to suitable docking/landing facilities in Quonset and on Block Island...").

Importantly, the unsigned draft applications to ACOE and CRMC which were attached in support of RIFF's Motion were prepared over two years ago (in 2022) and **have never been finalized or filed with ACOE or CRMC.**³

The difficulties RIFF has faced in securing approvals from CRMC and ACOE are therefore unrelated to the administrative appeals. RIFF has always been completely free to move

³ The unfiled draft drawings prominently display the date 2022 at the bottom of each drawing.

forward with the steps required to meet the CPCN Conditions, but RIFF has simply failed to do so. The ACOE and CRMC decisions rejecting RIFF's earlier applications make it clear that RIFF/Bluewater simply do not have the right to build a docking facility in Old Harbor for many reasons, as detailed *infra*. Therefore, the Division should deny RIFF's Motion with prejudice.

B. Failure to Secure Necessary Permits

RIFF has failed to secure essential permits from critical regulatory bodies including the CRMC, and ACOE.⁴ The complete absence of these permits, despite repeated unsuccessful attempts to obtain them, confirms RIFF's inability to meet the conditions set forth in the Division's Orders relevant to commencing operations.

During the pendency of the appeals, RIFF submitted applications for necessary approvals for a ferry docking facility in Old Harbor on Block Island to the CRMC and ACOE. These applications were rejected by the CRMC (in 2018, 2019, and 2020) and by ACOE (in 2020) for many reasons.⁵

In a notice dated March 29, 2018 (attached hereto as Exhibit A), the Supervising Environmental Scientist of CRMC stated:

For projects affecting upland areas above [mean high water (MHW)], please be advised that all CRMC applications including those for "Preliminary Determinations" require proof of ownership be submitted for all areas affected by the work proposed. Proof of ownership, a valid lease, or a co-signature of affected property owners is required.

...

With regard to the Red Stone Breakwater, the CRMC granted the Town of New Shoreham a 50-year lease for the breakwater structure on April 1, 2012 (ref CRMC File No. 2012-09-062. Considering the CRMC lease granted to the Town,

⁴ In its responses to the Town's data requests dated November 22, 2017, RIFF admitted that permits or approvals would be required from ACOE, CRMC, and RI DEM in order to construct a docking facility in Old Harbor. See RIFF Response to I-22 and I-24.

⁵ See ACOE Permit Finder, <https://permits.ops.usace.mil/orm-public> (last visited February 8, 2025).

the applicant does not have riparian (littoral) rights to the tidal water area north of the town leased breakwater and therefore would require the consent of the Town for structures or activities in this area.

Based on the above, the CRMC concludes that the submitted Preliminary Determination application form signed by Paul Filippi for Ballard's Wharf Realty and Blue Water. LLC does not provide the necessary proof of ownership for upland work (above MHW) nor the necessary consent from the Federal Government and the Town of New Shoreham for tidal waters affected by the submitted proposal.

In a notice dated October 10, 2019 (attached hereto as Exhibit A), the Supervising Environmental Scientist of CRMC stated: "A prerequisite [ACOE] permit has not been obtained nor is there any information indicating that an application has been submitted to the [ACOE]."

In a letter dated January 30, 2020 (attached hereto as Exhibit B), the Deputy District Engineer for Programs and Project Management of ACOE wrote: "Based on our evaluation, the [ACOE] denies the request to alter the [Block Island Harbor of Refuge Federal Navigation Project (FNP)] because the construction of a structure (pile supported fixed pier and three dolphins) in the footprint of a portion of the Federal anchorages is not commensurate with the purpose of a congressionally authorized Federal anchorage. These types of structures are not allowed to occupy FNP anchorages which are intended for berthing vessels on single point moorings."

The ACOE letter of January 30, 2020 further states: "Because a Section 10 permit may not be issued without an accompanying Section 408 approval, your Section 10 permit application cannot be processed. As you are aware, no work should occur in waters of the United States at this site without written authorization from this office."

The ACOE's detailed supporting memorandum for the rejection, also dated January 30, 2020 (attached hereto as Exhibit C), states:

This memorandum is provided to 1) document Navigation Section's analysis of a request by Ballard's Wharf Realty, LLC (BWR) to alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI, and 2) to recommend to the Deputy District Engineer for Project Management (DDEPM) denial of the subject alteration request under provisions of 33 U.S.C. § 408 (S408) regarding impacts to the usefulness of the project, and 3) to document the DDEPM's concurrence or non-concurrence with Navigation Section's recommendation.

...

(4) Summary of Technical Review and Conclusions:

a. Background: BWR has submitted a Section 10 permit application and Section 408 permission request to reconstruct the existing Ballard's Wharf Marina floating pier with a pile supported, fixed pier that will extend into a portion of the Federal anchorage.

...

b. Alteration: The proposed work ... constitutes a permanent alteration/occupation by placing a pile supported fixed pier and three dolphins within the footprint of the Federal anchorage.

c. Impacts to Navigation: The proposed structures would be constructed within the limits of the FNP anchorage and would permanently occupy the FNP. It is noted that although the impacted portion of the FNP is designated as anchorage, **the area currently functions as a turning basin for all of the ferries landing at the harbor. Structures such as pile supported fixed piers and dolphins are not allowed to occupy FNP anchorages which are intended for berthing of vessels on single point moorings.**

d. Future Maintenance: **In addition to impacting navigation in the Federal anchorage, permanent occupation of the FNP with a fixed pier and dolphins would negatively impact the Corps' ability to perform future maintenance dredging of that portion of the FNP.**

e. Conclusion: It is the opinion of the Technical Review Team that the proposed permanent occupation of the Federal anchorage with a pile supported fixed pier and three dolphins is not commensurate with the purpose of a Federal anchorage. The proposed structures would have a negative impact on the usefulness of the project as it is currently authorized by Congress. ...

...

5. Based on information contained herein and the references in section 2 above, **the Navigation Section has made a preliminary determination that BWR's proposal would impair the usefulness of the FNP, and recommends denial of the proposed alteration to the Block Island Harbor of Refuge FNP.**

6. ...signature below will indicate concurrence or non-concurrence with Navigation Section's recommendation to deny BWR's proposed alteration to the Block Island Harbor of Refuge FNP.

(emphasis added). The DDEPM's signature appears on the "Concur" signature line.

In a letter dated April 17, 2020 (attached hereto as Exhibit D), the Executive Director of CRMC wrote:

Significant issues identified by the CRMC Preliminary Determination ... have not been addressed.

...

A prerequisite [ACOE] permit has not been obtained nor is there any information indicating that an application has been submitted to the [ACOE].

...

...now that a Section 408 denial has been issued by the [ACOE], **we must cancel the CRMC application** without prejudice.

(emphasis added).

The decisions by ACOE and CRMC present insurmountable obstacles to RIFF/Bluewater ever getting ACOE or CRMC permits for the proposed docking facility at the Red Breakwater. For example, they propose to build a dock along the Red Breakwater in Old Harbor, but only the Town has that right pursuant to its 50-year lease with CRMC.⁶ Under the lease, the State leased to the Town the "property in the Block Island Old Harbor known as the Red Breakwater" and

⁶ "Pursuant to State law and the CRMC's Regulations, any alterations to the Red Breakwater, including constructing a dock attached to it, or anchoring a dock to it, would require an Assent from the CRMC. The Town, as holder of the Lease, would have to consent to any such dock and would have to be a part to any request for such an Assent." Affidavit of Grover Fugate, Executive Director of CRMC, dated October 27, 2015, attached hereto as Exhibit E.

that “the Town shall hold the Red Breakwater with all the rights, privileges, and appurtenances thereof, for and during the term of fifty (50) years, beginning on April 1, 2012, and ending on April 1, 2062. The lease also provides that “the Town shall have the right to erect such signs, docks, and other structures on or near the Red Breakwater...” A copy of the lease is attached hereto as Exhibit E.

Furthermore, there have been no new applications filed with ACOE or CRMC since the rejections in 2020. However, even if they reapplied, the applications would simply be rejected again. Therefore, RIFF’s Motion should be denied with prejudice.

C. RIFF’s Misrepresentations to the Division

RIFF has repeatedly misrepresented its “progress” regarding securing suitable docking and the necessary permits. Despite RIFF’s assertions that they have been actively pursuing these permits, their efforts have been completely unsuccessful. The representations regarding their engagement with entities such as Bluewater to secure “suitable docking facilities” have repeatedly been proven to lack substance.

In November 2015, over 9 years ago, RIFF presented a timeline of 12 to 18 months for regulatory processing (including all related permits) plus 3 to 4 months for construction of its proposed docking facility. *See* Affidavit of Charles Donadio, Jr, dated November 15, 2015, at 2. This would have ended in April 2017. However, RIFF failed to meet its own estimated timeline.

In November 2017, Bluewater submitted a letter to the Division with a permitting timeline that promised the ACOE application would be complete by the end of November 2017. However, Bluewater failed to meet its own estimated timeline.

In April 2018, Bluewater committed to the Division that ACOE and CRMC applications would be made “within the next ten days to two weeks.” DPUC Hearing Transcript, April 4,

2018, Vol. II, at 211. Yet again, Bluewater failed to meet its own estimated timeline.

Additionally, the Division should place little to no weight on the statements of Bluewater owner, Paul Filippi, regarding efforts to obtain permits. The Division found, in Order 23283, that “Although Mr. Filippi has endeavored to explain the delays associated with Bluewater’s required filings and proceedings before the CRMC and ACOE, it is true that Mr. Filippi’s statements” in this docket “have proven to be unreliable. On this point, the Division must agree with the Town and Interstate.” *See* Division Order 23283, at 15 (Sept. 26, 2018).

The misrepresentations continue in this motion. RIFF has completely misrepresented the dredging permit it obtained. The permit is only a maintenance dredging permit for the small boat marina that Filippi operates. *See* Application for Marine Dredging and Associated Activities, dated December 14, 2020, attached hereto as Exhibit F (“Proposed maintenance dredge project is substantially the same volume and same footprint as previously permitted and performed by the owner.”). It is **not** a permit for the dredging to construct and operate a new dock for a large ferry.

RIFF (and Bluewater) should not be permitted to continue making empty promises and misleading statements to the Division. Interstate therefore urges the Division to deny RIFF’s Motion with prejudice.


III. CONCLUSION

WHEREFORE, Interstate respectfully requests that the Division deny RIFF’s Motion to Reconsider or Alternatively, Motion for Relief from Order with prejudice. The failure of RIFF and Bluewater to meet the CPCN conditions precedent, the misrepresentations to the Division, and the failure to secure essential permits in the over 11 years that this matter has been pending collectively compel the denial of the motion.

Respectfully submitted,

INTERSTATE NAVIGATION COMPANY

By its attorneys,



Michael R. McElroy, Esq. #2627

Leah J. Donaldson, Esq. #7711

McElroy & Donaldson

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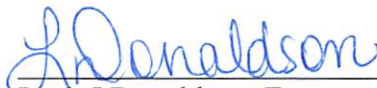
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CERTIFICATE OF SERVICE

I hereby certify that, on February 10, 2025, I served this document via email on the individuals listed on the service list for this docket.



Leah J Donaldson, Esq.

Exhibit A



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767

CRMC NOTICE OF DEFICIENT APPLICATION

Date: October 10, 2019
Owner: Ballard's Wharf Realty, LLC.
Location: Old Harbor
Town: New Shoreham
App #: 2019-09-065

Ballard's Wharf Realty, LLC.
P.O. Box 967
New Shoreham, RI 02807

Proposed Project: Construct pier facility to accommodate commercial vessels, modify CRMC approved Marina

Dear Mr. Filippi:

We wish to thank you for your recent submittal to the Coastal Resources Management Council application process. However, a preliminary review of your application indicates that it is deficient and processing cannot be initiated as submitted. On this basis, your application fee is being returned to you. **Due to the cost of postage, your application materials will not be returned. These materials will be held for thirty (30) days during which time they may be picked up by you or your authorized agent at our Wakefield office. If they are not picked up within this time frame, they will be disposed of.**

In order to process your application, you must retrieve your application to replace the information submitted with the newly requested information along with the appropriate application fee. All checks must have a current date. No checks back-dated more than 6 months will be accepted.

Please Note: Additional information regarding this notice may be obtained from William J. Mosunic, CRMC Application Coordinator, the CRMC Clerical staff, or the undersigned. **All correspondence regarding this deficiency letter (including phone calls) must reference the CRMC File No., the owner's name, location, town and date of this letter, as noted above. Please refer to CRMC web site at www.crmc.ri.gov to review applicable rules and regulations.**

Sincerely,

David Reis
CRMC Permitting Staff

/lat

cc: St. Jean Engineering LLC (with App Fee Check)

CRMC Notice of Deficient Application

Page 2 of 4

Date: October 10, 2019

Owner: Ballard's Wharf Realty, LLC.

Location: Ballard's Wharf - Water Street

Town: New Shoreham

For the application to be deemed Complete, and to begin processing your request, please PICK UP your deficient application and RE-SUBMIT with the following MINIMUM ADDITIONAL INFORMATION:

- () Four (4) Copies of Completed Application with site plans
- () A completed Building Officials Form (enclosed; to be filled-out by the building official at local town hall)
- (X) Proof of Property Ownership (see tax assessor at local town hall) – (Riparian Rights)**
- () Copy of other state permits as required, such as:
 - ___ RIDEM/ISDS (individual sewage disposal system)
 - ___ RIDEM/Water Quality/Groundwater Quality Certification
 - ___ RIDEM/Permit Discharge Elimination System
- () Correct application fee: \$ _____
- (X) Four (4) sets of Site Plans (minimum scale of 1" = 50'); and, Project Location map (See additional comments).**
- () Four (4) sets of Plans stamped by a Professional Engineer (P.E.) registered in the State of Rhode Island are required for this project.
- () The work proposed in this application is listed as "Category B" in the RICRMP (see Section 1.1.4(F)). As such, Section 1.3.1(A) of the RICRMP must be addressed in writing. Also coastal feature must be shown; and, all property lines must be shown on at least one plan view.
- () The work proposed in this application appears to require a variance(s) and/or a special exception(s) to applicable sections of the RICRMP. Please address, in writing, the Variance criteria (Section 1.1.5) and/or the Special Exception criteria (Section 1.1.6) for *each* of the RICRMP standards that your application does not meet.
- () The work proposed in this application is required to be advertised for public review. As such, site plans reduced to 8 ½" x 11" must *also* be provided (use of more than one sheet to delineate project is acceptable).
- () The application type that has been submitted - _____ - has been deemed inappropriate for this project. Please complete the enclosed application form and provide all information requirements noted on the enclosed checklist.

Please see the following page for additional informational needs.

Date: October 10, 2019

Owner: Ballard's Wharf Realty, LLC.

Location: Ballard's Wharf - Water Street

Town: New Shoreham

The following informational needs have been identified by staff to help with a more efficient review of your request. Supplying it along with the above minimum information requirements will ensure a timely processing of your application. Not supplying it at this time will not prevent your application from being accepted by the CRMC. However, this information will be needed to properly review your request. Staff may not be able to begin or complete its review until this information is received.

- () Please fill out all information as noted on the enclosed checklist.
 - () Please provide photographs of the area of work and shoreline feature(s) (in retrospect if possible).
 - () Where the applicant chooses not to meet any of the applicable RICRMP standards noted below, a written variance request must be submitted for each standard not met. The criteria for the consideration of a variance are provided in RICRMP Section 1.1.5. Each of the six criteria must be addressed in writing. Submitting a written variance request is required. It is advised that the written variance request is submitted at the time of application.
- (X) See additional information/comments as follows:
1. The project description contained on the CRMC application form request to modify an ACOE permit for which the CRMC has no jurisdiction. It does not request to modify the applicable CRMC permit (B2003-12-061). Please note the CRMC permit states:

L. Marina shall only allow privately owned recreational vessels to utilize the facility, any commercial vessel use is prohibited.

2. An agreement submitted with the application states:

"This agreement is between Bluewater LLC and T + C Holdings, LLC. In exchange for valuable consideration, T & C Holdings LLC assigns Bluewater LLC the riparian rights of lot 158 plat 6 in the Town of New Shoreham to build docks and wharf out into Old Harbor."

Yet, neither Bluewater LLC nor T & C Holdings are the applicants on the CRMC application form; rather, Ballard's Wharf Realty is the applicant specified on the CRMC form. Furthermore, the plans do not show any presumed/potential or previously determined riparian rights. "Potential riparian rights" are typically determined by a direct extension of property lines into tidal waters or in the case of a channel or navigation project, the property lines are typically extended to a point perpendicular to the navigation project (i.e., meet the navigation project boundaries at a 90 degree angle). And, in this case, the applicant is requesting that riparian rights be extended not directly from the property but from a marina located in tidal waters previously approved by the CRMC. Please further be advised that riparian rights are officially determined through a superior court proceeding.

CRMC Notice of Deficient Application

Page 4 of 4

Date: October 10, 2019

Owner: Ballard's Wharf Realty, LLC.

Location: Ballard's Wharf - Water Street

Town: New Shoreham

3. Town's Riparian Rights: Please be reminded that the Town of New Shoreham's riparian rights associated with the lease of the "Red Stone Breakwater" remains an issue to be determined between the Town and the Applicant. As previously noted by the CRMC, this may require a determination through superior court prior to CRMC permit consideration.
4. A Coastal Hazard Analysis has not been provided.
5. Significant issues identified by the CRMC Preliminary Determination (PD) requested by the applicant have not been addressed. (See letter submitted by Mary B. Shekarchi dated April 4, 2019.)
 - a. PD item 3 (USACE Section 408 Authorization): A prerequisite USACE permit has not been obtained nor is there any information indicating that an application has been submitted to the USACE.
 - b. PD Item 6 (Public Access Plan): No plan has been provided.
 - c. PD Item 7 (Crew Transfer Vessel): No location for the docking of the crew transfer vessel is shown on the plans as specifically requested in the PD.
 - d. PD Item 8 (Marina modification and use): A docking configuration for vessels docking at the existing marina has not been provided as specifically requested in the PD. Other information requested with regard to the marina was not provided. It is essential that marina use by vessels be clearly shown as approved by the CRMC pursuant to CRMC assent B2003-12-061 including locations of approved and installed tie-off piles.
 - e. PD Item 9 (Eelgrass): Eelgrass located by survey must be shown on the plan of proposed work.
 - f. PD Item 10 (Other Alternatives): The applicant has not addressed an alternative recommend by staff in the Preliminary Determination.

Need for full scale plans: The reduced scale plans (8 ½ x 11") are useful for public notice but are not adequate for CRMC review. Plans which show the proposed work at full scale relative to other structures in the harbor are required.

Exhibit B



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

January 30, 2020

Programs & Project Management Division
Civil Works/IIS Project Management Branch

Mr. Paul C. Filippi
Ballard's Wharf Realty, LLC
PO Box 967
Block Island, Rhode Island 02807

RE: Section 408 Permission, Ballard's Wharf Dock Expansion – Block Island Harbor of
Refuge Federal Navigation Project (FNP), Block Island, RI

Dear Mr. Filippi:

Pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 (Section 408) and in accordance with Engineer Circular (EC) 1165-2-216, the New England District of the U.S. Army Corps of Engineers (USACE) has performed an evaluation of your request to construct a pier and three dolphins in association with Ballard's Wharf Marina at the Block Island Harbor of Refuge FNP on Block Island, Rhode Island, a Congressionally-authorized project maintained by the USACE.

The subject proposal involves construction of a pile supported fixed pier and three dolphins in place of the existing Ballard's Wharf Marina floats. The new structures would serve to accommodate a new high speed ferry, as well as a Crew Transfer Vessel for servicing the Block Island Offshore Wind Farm. The structures are proposed to extend into and occupy a portion of the footprint of the FNP anchorage.

Based on our evaluation, the USACE denies the request to alter the FNP because the construction of a structure (pile supported fixed pier and three dolphins) in the footprint of a portion of the Federal anchorage is not commensurate with the purpose of a congressionally authorized Federal anchorage. These types of structures are not allowed to occupy FNP anchorages which are intended for berthing of vessels on single point moorings.

Because a Section 10 permit may not be issued without an accompanying Section 408 approval, your Section 10 permit application cannot be processed. As you are aware, no work should occur in waters of the United States at this site without written authorization from this office.

Be advised that you have the option to alter the design of your project and resubmit for Section 408 permission and Section 10 evaluation of the revised design.

If you have any questions regarding this denial, please feel free to contact Mr. Michael Walsh, who may be reached at 978-318-8586.

Sincerely,



Scott E. Acone
Deputy District Engineer for
Programs and Project Management

Exhibit C

MEMORANDUM FOR RECORD

SUBJECT: Section 408 (S408) Permission Request by Ballard's Wharf Realty, LLC to Alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI

1. This memorandum is provided to 1) document Navigation Section's analysis of a request by Ballard's Wharf Realty, LLC (BWR) to alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI, and 2) to recommend to the Deputy District Engineer for Project Management (DDEPM) denial of the subject alteration request under provisions of 33 U.S.C. § 408 (S408) regarding impacts to the usefulness of the project, and 3) to document the DDEPM's concurrence or non-concurrence with Navigation Section's recommendation.

2. References:

- a. US Army Corps of Engineers, North Atlantic Division, New England District, District Procedural Review Plan Pursuant to 33 USC § 408 for processing Section 408 requests.
- b. EC 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408
- c. CENAE-ZC Memorandum For the District, dated 09 March 2018, re: Delegation of (signature) Authority Pursuant to 33 U.S.C. 408.
- d. Draft Department of Army (DOA) Permit # NAE-2016-02604

3. Process: This S408 review is being processed in accordance with the procedures outlined in reference 2.b (the EC). Section G-4.b of the EC states that, "For cases in which the scope and jurisdiction between Section 10 and Section 408 align, appropriate district staff for Regulatory will review the information submitted for the purposes of environmental compliance and the public interest review. Appropriate district staff for the USACE Navigation project will review the information for the purposes of determining impacts to the usefulness of the USACE Navigation project." Additionally, section G-4.c of the EC states that "The district staff evaluating impacts to the usefulness of the USACE Navigation project will document their findings in a Memorandum for Record (MFR) that will be provided to the district Regulatory staff for their use in the Section 10 permit evaluation and determination."

4. Technical Review. In support of this MFR, a technical review of the subject proposal's impacts to the usefulness of the project has been conducted, and the following is provided to document the Technical Review Team's review and rationale for recommendations regarding the subject S408 request:

MFR: Section 408 (S408) Permission Request by Ballard's Wharf Realty, LLC to Alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI

- (1) **USACE Project Description and Authorization:** The Block Island Harbor of Refuge (BI-HOR) FNP was originally authorized by the River & Harbor Act of 11 July 1870. The FNP has then been modified by the River & Harbor Acts of 1876, 1880, 1882, 1884, 1886, 1888, 1890, 1896, 1903, 1912, the Water Resources Development Act of 1986, and the Consolidated Appropriations Act for Fiscal Year 2012. The FNP is located on the eastern shore of Block Island, and was created by the construction of the 1,600 foot long east breakwater and the 1,150 foot long dogleg shaped west breakwater. The FNP also consists of a 1,500 foot long by approximately 100 foot wide entrance channel, a 15-acre anchorage area and a two-acre basin, known as the inner basin. The FNP contains a large ferry terminal which provides all goods and services to the island, making BI-HOR the only subsistence harbor on the island. Authorized depths for the channel, anchorage, and inner basin are 15 feet below Mean Lower Low Water (MLLW). An aerial image of the FNP anchorage and inner is depicted on Figure 1.
- (2) **Brief Description of the Request:** The requester proposes to reconstruct and expand the existing Ballard's Wharf Marina pier (constructed of floats) with a fixed pier that would serve to accommodate a new high speed ferry, as well as a Crew Transfer Vessel for servicing the Block Island Offshore Wind Farm. The proposal also includes construction of three new dolphins. The proposed new pile supported fixed pier and three dolphins extend into, and would permanently occupy, a portion of, the Federal anchorage. Location of the proposed pier is indicated on Figure 1, and a drawing of the proposed pier is included as Figure 2.
- (3) **Review Plan:** The New England District Procedural Review Plan was approved by the North Atlantic Division and endorsed by the USACE Risk Management Center in January and April of 2015. The Procedural Review Plan provides the review guidelines associated with alteration requests pursuant to 33 USC 408 (Section 408) and covers alterations that are similar in nature, routine, and that have a low impact (e.g. navigation project changes, utility crossings, recreation modifications, etc.) that are proposed by a requestor.
- (4) **Summary of Technical Review and Conclusions:**
 - a. **Background:** BWR has submitted a Section 10 permit application and Section 408 permission request to reconstruct the existing Ballard's Wharf Marina floating pier with a pile supported, fixed pier that will extend into a portion of the Federal anchorage. Figure 1 shows the location of the proposed pier reconstruction/expansion, and Figure 2 shows the proposed layout of the new structure.

MFR: Section 408 (S408) Permission Request by Ballard's Wharf Realty, LLC to Alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI

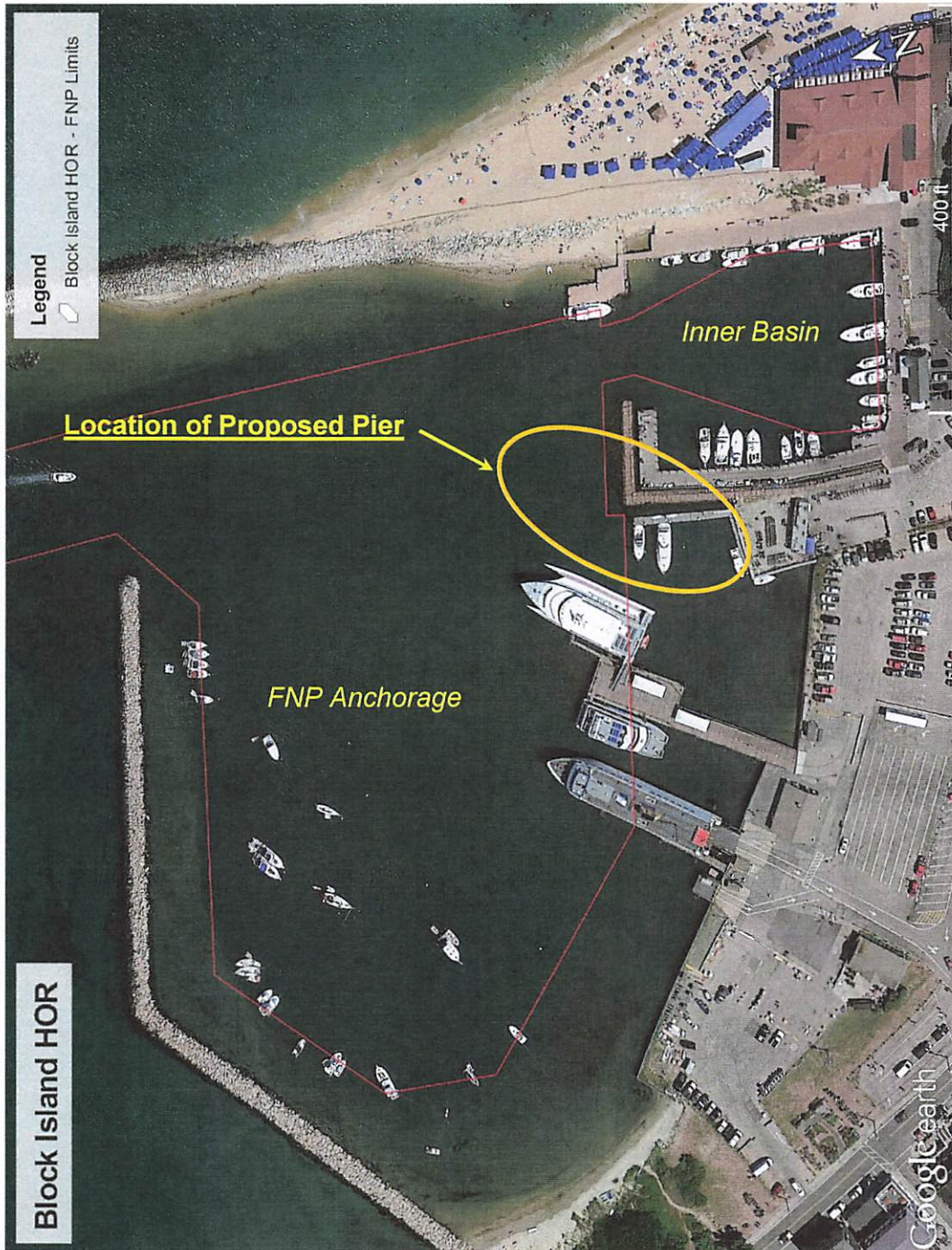


Figure 1 – Block Island HOR Federal Navigation Project

MFR: Section 408 (S408) Permission Request by Ballard's Wharf Realty, LLC to Alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI

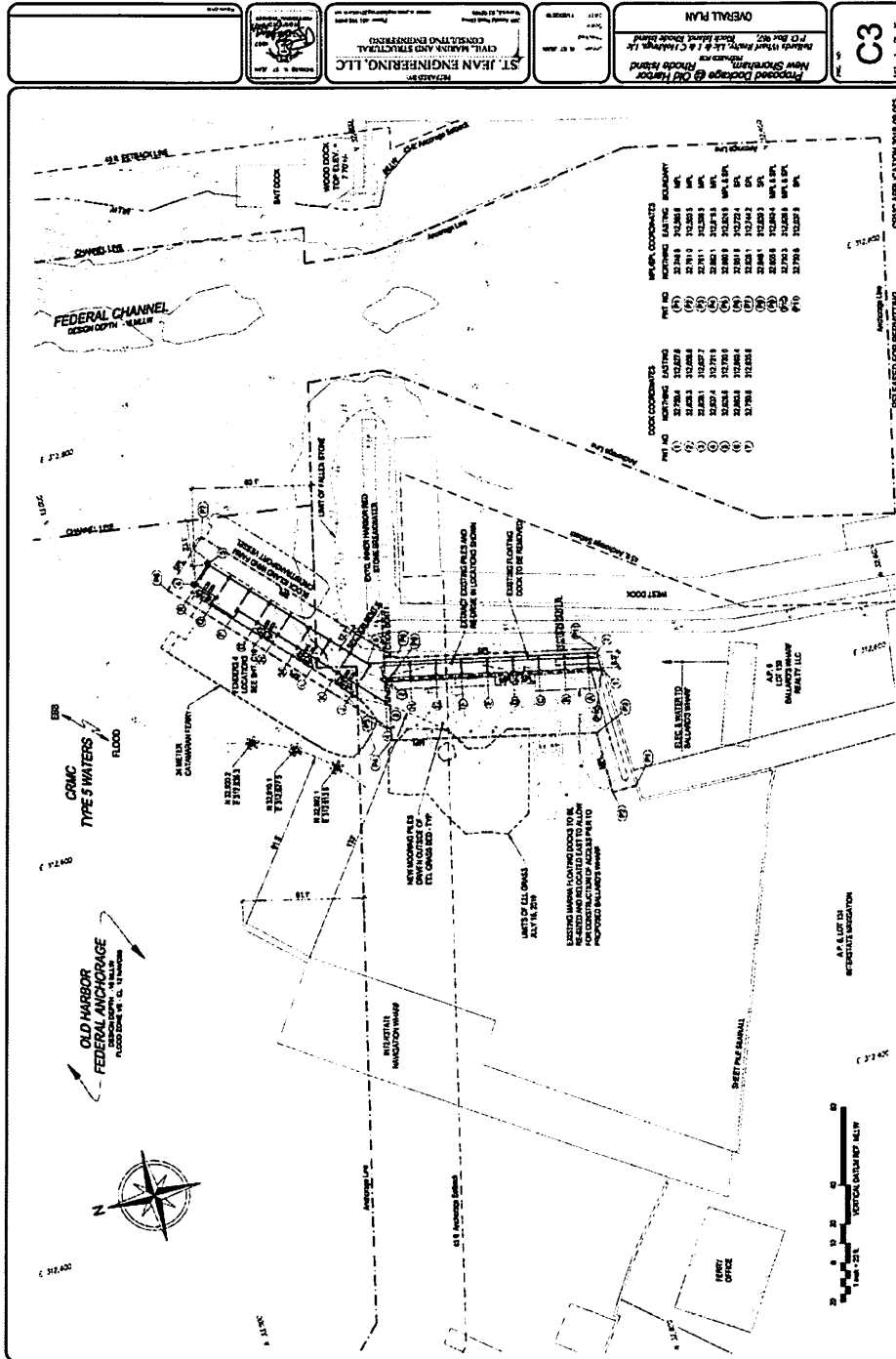


Figure 2: Proposed Ballard's Wharf Pier – Shown in Grey

MFR: Section 408 (S408) Permission Request by Ballard's Wharf Realty, LLC to Alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI

- b. **Alteration**: The proposed work described in Section (2) above constitutes a permanent alteration/occupation by placing a pile supported fixed pier and three dolphins within the footprint of the Federal anchorage.
 - c. **Impacts to Navigation**: The proposed structures would be constructed within the limits of the FNP anchorage and would permanently occupy the FNP. It is noted that although the impacted portion of the FNP is designated as anchorage, the area currently functions as a turning basin for all of the ferries landing at the harbor. Structures such as pile supported fixed piers and dolphins are not allowed to occupy FNP anchorages which are intended for berthing of vessels on single point moorings.
 - d. **Future Maintenance**: In addition to impacting navigation in the Federal anchorage, permanent occupation of the FNP with a fixed pier and dolphins would negatively impact the Corps' ability to perform future maintenance dredging of that portion of the FNP.
 - e. **Conclusion**: It is the opinion of the Technical Review Team that the proposed permanent occupation of the Federal anchorage with a pile supported fixed pier and three dolphins is not commensurate with the purpose of a Federal anchorage. The proposed structures would have a negative impact on the usefulness of the project as it is currently authorized by Congress. Therefore the Technical Review Team recommends denial of the subject Section 408 request as proposed.
- (5) **Legal Sufficiency**: Legal sufficiency is not required for denial of a Section 408 request.
 - (6) **Real Estate Certification**: Not applicable as there is no Real Property associated with this FNP.
 - (7) **Related Ongoing USACE Studies**: There are no ongoing USACE studies being conducted in the area of the Block Island HOR Federal Navigation Project.
 - (8) **Input From Non-Federal Sponsor (NFS)**: In accordance with section 11.a of the EC, a written "Statements of No Objection" from the non-federal sponsor(s) is required if the requester is not the NFS. The Block Island Harbor of Refuge FNP does not have a NFS associated with the Federal anchorage portion of the project. Therefore, a Statement of No Objection is not required for this review.
 - (9) **Required Changes to the O&M Manual**: Not applicable.
 - (10) **Rationale for Assuming O&M Responsibilities**: Not applicable.

MFR: Section 408 (S408) Permission Request by Ballard's Wharf Realty, LLC to Alter the Block Island Harbor of Refuge Federal Navigation Project (FNP) on Block Island, RI

(11) **NEPA Compliance:** Not Applicable. Because the Technical Review Team is recommending denial of the subject Section 408 request, there is no Federal action taking place that would require NEPA compliance.

(12) **Additional Conclusions or Information:** None.

5. Based on information contained herein and the references in section 2 above, the Navigation Section has made a preliminary determination that BWR's proposal would impair the usefulness of the FNP, and recommends denial of the proposed alteration to the Block Island Harbor of Refuge FNP.

6. In accordance with the EC and reference 2.c, signature below will indicate concurrence or non-concurrence with Navigation Section's recommendation to deny BWR's proposed alteration to the Block Island Harbor of Refuge FNP.

Digitally signed by
ACONE.SCOTT.E.12285
74593
Date: 2020.01.31
12:57:08 -05'00'



Non-Concur

Concur

SCOTT E. ACONE, P.E.
Deputy District Engineer for
Programs and Project Management

SCOTT E. ACONE, P.E.
Deputy District Engineer for
Programs and Project Management

Copy Furnished:

Mike Walsh, CENAE-PPC

Exhibit D



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-2069

April 17, 2020

Mr. Paul Filippi
Ballards Wharf Realty, LLC & T&C Holdings
PO Box 967
251 Spring Street
Block Island, RI 02807

RE: CRMC File No. 2019-09-065 - *Modify marina approved by CRMC Assent B2003-12-061 and construct a commercial pier to serve as a ferry landing and dockage for the BI Wind Farm crew transfer vessel (CTV).* Site Location: Ballard's Wharf - Water Street, New Shoreham; Plat(s): 6, Lot(s): 159

Dear Mr. Filippi,

The CRMC is in receipt of a January 30, 2020 US Army Corps of Engineers (USACE) letter denying alteration of the Federal Navigation Project (FNP) for the commercial pier project noted above. As specified in a CRMC preliminary determination (PD) letter for CRMC file number 2018-11-043 dated April 29, 2019; a USACE Section 408 authorization is prerequisite to CRMC application.

The following statement was provided in the PD:

USACE Section 408 Authorization: The proposed project is located with a Federal Anchorage Area and thereby requires a Section 408 authorization from the US Army Corps of Engineers (as well as a section 401 permit). Considering the project cannot go forward without an USACE authorization to work in a Federal Project Area, the 408 authorization must be obtained prior to a CRMC Assent. Accordingly, it is important that section 1.4.2(F) of CRMC's Management Procedures be followed which states: "Applicants shall further be required to obtain and certify that they have in their possession current approvals from all other agencies which are otherwise required for the proposed action."

This issue was again raised in a CRMC deficiency letter issued for this same project dated October 10, 2019 which stated:

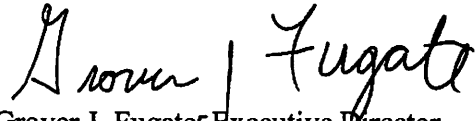
"Significant issues identified by the CRMC Preliminary Determination (PD) requested by the applicant have not been addressed. (See letter submitted by Mary B. Shekarchi dated April 4, 2019.)

Ballard's Wharf Realty, LLC.
CRMC File No.: A2019-09-065
April 17, 2020
Page Two

a. PD item 3 (USACE Section 408 Authorization): A prerequisite USACE permit has not been obtained nor is there any information indicating that an application has been submitted to the USACE.”

However, during a meeting at CRMC offices on November 12, 2019, the CRMC agreed to accept the application with the condition that CRMC review would not be undertaken until the prerequisite USACE Section 408 authorization had been obtained. Please consider that the CRMC attempted to accommodate this project as best we could by accepting this application absent the Section 408 authorization. But, now that a Section 408 denial has been issued by the USACE, we must cancel the CRMC application without prejudice. If you have any questions regarding this cancellation, you may contact me or Dave Reis of this office.

Sincerely,



Grover J. Fugate Executive Director
Coastal Resources Management Council

/ajt

cc: Jeffrey M. Willis, CRMC Deputy Director
Anthony DeSisto, CRMC Legal Counsel
Kathy Merolla, Town of New Shoreham Legal Counsel
Mike Wierbonics, USACE
Dave Reis, CRMC

Exhibit E



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767

RE: CRMC/New Shoreham Lease of Breakwater in Old Harbor

To Whom It May Concern:

I, Grover Fugate, under oath and penalty of perjury, state as follows:

1. I am the Executive Director of the State of Rhode Island Coastal Resources Management Council (CRMC).
2. Attached as Exhibit A to this Affidavit is a true and accurate copy of the Lease between the CRMC and the Town of New Shoreham (Town) for the breakwater/jetty identified with an "X" on the attached Exhibit B. The leased property is sometimes known as the "Red Breakwater" or the "Northern Ell" within Old Harbor, Block Island.
3. Originally constructed at the direction of the Army Corps of Engineers in the waters of the State of Rhode Island, the Red Breakwater is now the property of the State of Rhode Island managed and controlled by the Town pursuant to the Lease.
4. The term of the Lease is from May 2012 through April 2062. The Town is responsible for maintaining the Red Breakwater during the Lease term.
5. Pursuant to State law and the CRMC's Regulations, any alterations to the Red Breakwater, including constructing a dock attached to it, or anchoring a dock to it, would require an Assent from the CRMC. The Town, as holder of the Lease, would have to consent to any such dock and would have to be a party to any request for such an Assent.

Case Number: PC-2016-4758
Filed in Providence/Bristol County Superior Court
Submitted: 3/10/2017 1:03:00 PM
Envelope: 962708
Reviewer: Carol G.



Grover J. Fugate
Executive Director
Coastal Resources Management Council
Date: October 27, 2015

State of Rhode Island)
County of Providence)

On this 27th day of October 2015, before me, the undersigned notary public, personally appeared Grover Fugate, personally known to the notary to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to the notary that the contents of the document are truthful and accurate to the best of his knowledge and belief.



John T. Longo
Notary Public
My Commission Expires: 12/4/17



State of Rhode Island and Providence Plantations
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

(401) 783-3370
Fax (401) 783-3767

A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of the 1st day of April, 2012, by and between the State of Rhode Island by and through the Coastal Resources Management Council ("CRMC") (hereinafter referred to as "the State" or "CRMC"), and the Town of New Shoreham (hereinafter referred to as the "Town").

I. LEASED PREMISES

The State hereby leases to Town the following described property in the Block Island Old Harbor known as the Red Breakwater which is further described as follows:

That portion of the project for navigation, Block Island Harbor of Refuge, Rhode Island adopted by the Rivers and Harbors Act of July 11, 1870, consisting of the cut-stone breakwater lining the west side of the Inner Basin; beginning at a point with coordinates N32579.55, E312625.53, thence running northerly about 76.59 feet to a point with coordinates N32655.92, E312631.32, thence running northerly about 206.81 feet to a point with coordinates N32858.33, E312673.74, thence running easterly about 109.00 feet to a point with coordinates N32832.15, E312779.54.

The above-described property is referred to in this Lease Agreement as the "Red Breakwater."

II. TERM

The Town shall hold the Red Breakwater with all the rights, privileges, and appurtenances thereof, for and during the term of fifty (50) years, beginning on April 1, 2012, and ending on April 1, 2062.



III. RENT

The annual rent is one dollar (\$1.00) per year. Payment of the rent for the term of the lease shall be made upon execution of this Agreement by one, lump-sum payment of fifty dollars (\$50.00).

IV. COVENANTS OF TOWN

The Town hereby covenants with the State as follows:

- A. The Town will maintain the Red Breakwater in good order and repair;
- B. The Town will pay the rent in the manner aforesaid;
- C. The Town will use and occupy the Red Breakwater in a careful and proper manner;
- D. The Town will not use or occupy the Red Breakwater for any unlawful purpose, and will conform to and obey all present and future laws and ordinances and all rules, regulations, requirements, and orders of all governmental authorities or agencies pertaining thereto.
- E. The Town will quietly and peaceably surrender up possession of the Red Breakwater to the State at the expiration of this Lease Agreement subject to all reasonable wear and tear.

V. MUTUAL COVENANTS

It is mutually agreed by and between the CRMC and Town that:



A. The Town shall have the right to erect such signs, docks, and other structures on or near the Red Breakwater at its own expense as the Town shall deem desirable in accordance with applicable laws and regulations, and shall maintain all such structures in good order and repair.

B. All fixtures, structures and/or equipment as shall have been installed by the Town during the term of this Lease Agreement on or near the Red Breakwater shall become the property of the Town at the termination of this Lease Agreement. At the end of the lease period the Town shall be renewal of the lease all fixtures, structures and/or equipment shall be removed.

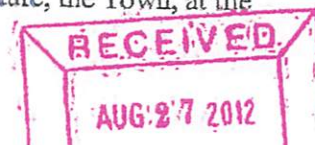
C. The Town shall peaceably and quietly have, hold, and enjoy the Red Breakwater for the term aforesaid.

D. This Lease Agreement and all the covenants, provisions, conditions, hereinbefore contained shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

E. The execution and performance by the Town of the terms and provisions of this Lease Agreement have been duly authorized by all requisite action and this Lease Agreement constitutes a valid and binding obligation of the Town. The execution and performance of this Lease Agreement will not violate any provision of law, any order of any court, or other agency of government, or any other instrument to which the Town is a party or by which Town is bound. The Town has full power and authority to enter into this Lease Agreement and to consummate the transactions herein contemplated.

E. The execution and performance by the CRMC of the terms and provisions of this Lease Agreement have been duly authorized by all requisite action and this Lease Agreement constitutes a valid and binding obligation of the CRMC. The execution and performance of this Lease Agreement will not violate any provision of law, any order of any court, or other agency of government, or any other instrument to which the CRMC is a party or by which CRMC is bound. The CRMC has full power and authority to enter into this Lease Agreement and to consummate the transactions herein contemplated.

F. Notwithstanding anything herein contained to the contrary, in the event that the Red Breakwater shall be materially damaged by flood, fire, or any act of nature, the Town, at the



Town's option, may cancel this Lease Agreement upon written notice to the CRMC, and the Town shall be under no obligation to repair or replace the Red Breakwater. For purposes of this Lease Agreement, material damage shall be damage which costs one-hundred-and-fifty thousand dollars (\$150,000) or more to repair or replace.

VI. ENTIRE AGREEMENT

This Lease Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the lease of the Red Breakwater, and cancels all previous oral and written negotiations, agreements and, commitments, in connection therewith.

VII. CONSTRUCTION

This Lease Agreement shall be construed pursuant to the laws of the State of Rhode Island.

VIII. CONTROVERSIES AND CLAIMS SUBJECT TO ARBITRATION

All disputes between the parties hereto arising under this Lease Agreement may, with the mutual consent of the parties, be resolved by binding arbitration in Rhode Island pursuant to the rules then prevailing of the American Arbitration Association. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Notwithstanding the foregoing, each party (hereinafter, the "initiating party") specifically reserves the right (i) to seek equitable remedies in a court of competent jurisdiction; and (ii) to bring a third party action against any other party in any proceeding to which the initiating party is a party under circumstances in which the basis of the initiating party's claim against the other party is that such other party is liable, in whole or in part, for any claim or counterclaim being asserted against the initiating party in such proceeding. Notwithstanding the foregoing, each party specifically reserves the right to seek equitable remedies in a court of competent jurisdiction including, without limitation, the right to seek injunctive relief to preserve the *status quo* during the period of arbitration under the terms of this paragraph.



IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed by their duly authorized representatives as of the day and date first written above.

WITNESS:

Lisa A. Turner
Lisa A. Turner

STATE OF RHODE ISLAND:
by and through the
Coastal Resources Management Council

Grover J. Fugate
Grover J. Fugate, Executive Director

WITNESS:

Shirlyne J. Gobern
Shirlyne J. Gobern

TOWN OF NEW SHOREHAM:

Nancy O. Dodge
Nancy O. Dodge, Town Manager



Case Number: PC-2016-4758
Filed in Providence/Bristol County Superior Court
Submitted: 3/10/2017 1:03:00 PM
Envelope: 962708
Reviewer: Carol G.

10/28/2015

Google Maps Google Maps



Google Maps



gls.com/maps/@41.1742329,-71.5552784,409m/data=!3m1!1e3

Imagery ©2015 Google, Map data ©2015 Google 200 ft

Exhibit F



Rhode Island Coastal Resources Management Council
 Oliver H. Stedman Government Center
 Wakefield, RI 02879
 (401) 783-3370



Rhode Island Department of Environmental Management
 235 Promenade Street
 Providence, RI 02908-5767
 (401) 222-6820

APPLICATION FOR MARINE DREDGING AND ASSOCIATED ACTIVITIES pursuant to the Marine Infrastructure Maintenance Act of 1996 and the Marine Waterways and Boating Facilities Act of 2001, Chapter 46-6.1 of the Rhode Island General Laws.

PURPOSE OF APPLICATION

- Application for Dredging and Disposal of Dredged Material
- Request Renewal of RIDEM Dredge Permit File # _____
- Request Renewal of CRMC Dredge Permit File # _____
- Request Modification of RIDEM Dredge Permit File # _____
- Request Modification of CRMC Dredge Permit File # _____

Agency Use Only File Number
2020-12-040
Date Received

(Please Type or Print)

APPLICANT INFORMATION

Applicant Name: Ballard's Wharf Realty LLC

(NOTE: Applicant must be the owner of the property on which the activity is proposed)

Applicant Address: PO Box 298 Telephone No. 401-744-2231
 City/Town: Block Island State: RI Zip: 02807

PROJECT INFORMATION

Project Address: Water Street
 City/Town: Block Island State: RI Zip: 02807
 Tax Assessor's Plat(s) and Lot Number(s): AP 6, lot 159
 Project Consultant/Engineer Name: Warren Hall, Civil Engineer
 Consultant/Engineer Address 63 Elmwood Ave. Middletown RI 02842
 Consultant/Engineer Telephone No. 401-849-5905



ACTIVITIES ASSOCIATED WITH THE PROPOSED DREDGE PROJECT (check all that apply)*

- Filling of Waters of the State
- Marinas – New construction or expansion
- Site Disturbances
 - Residential Development: six (6) or more dwellings
 - Commercial, Industrial, State or Municipal Development
 - Any project ≥ five (5) acres of disturbance
- Flow Alterations
- Point Source Discharge of Pollutants

GENERAL INFORMATION

Identify program and associated application number for any other RIDEM applications filed for this project

- Freshwater Wetlands Application Number _____
- RIPDES Application Number _____
- Individual Sewage Disposal System Application Number _____
- Other (*Water Quality Cert.*) Application Number _____

If you have any questions, please contact the RIDEM at 222-7500 or CRMC at 783-3379.

CERTIFICATION OF APPLICANT

I hereby certify that I have requested and authorized the investigation, compilation, and submission of all the information, in whatever form, contained in this Application; that I have personally examined and am familiar with the information submitted herein; and that such information is true, accurate and complete to the best of my knowledge.

Signature of Applicant: *Paul Filipponi* Date: *11/22/20*

Please return this completed application form and all supporting information, as indicated on the accompanying Submittal Checklist to:

Rhode Island Coastal Resources Management Council
Oliver H. Stedman Government Center
Wakefield, RI, 02879

and

Rhode Island Department of Environmental Management
Office of Technical & Customer Assistance
235 Promenade Street
Providence, RI 02908

* Water Quality Certification required for these activities pursuant to Section 401 of the CWA and the Rhode Island Water Quality Rules may be incorporated into an approval issued as part of this application.

Office Use Only:

Suitable for Public Notice _____ Date: _____

Approved
 Denied
 Withdrawn



TO: Coastal Resources Management Council
4808 Tower Hill Road Suite 3
Wakefield, RI 02879
Phone: (401) 783-3370 / Fax: (401) 783-2069



FROM: Building Official MARC TILLSON DATE: DECEMBER 3, 2020

SUBJ: Application of: BALLARDS WHARF REALTY LLC

Location: WATER STREET, OLD HARBOR, BLOCK ISLAND

Address: _____

Plat(s): 0 Lot(s): 159

To Construct: MAINTENANCE DREDGE

I hereby certify that I have reviewed _____ foundation plan(s).
 plan(s) for entire structure
 site plans

Titled: PROPOSED MAINTENANCE DREDGE FOR BALLARDS WHARF REALTY LLC, APLU LOT 159, BY WARREN HALL, CIVIL ENGINEER

Date of Plan (last revision): DECEMBER 2, 2020 (5 SHEETS)

YES and find that the issuance of a local building permit is not required as in accordance with Section _____ of the Rhode Island State Building Code.

NO and find that the issuance of a local building permit is required. I hereby certify that this permit shall be issued once the applicant demonstrates that the proposed construction/activity fully conforms to the applicable requirements of the RISBC, and all other local, state and federal regulations are met.

N/A and find that a Septic System Suitability Determination (SSD) must be obtained from the RI Dept. of Environmental Management.

N/A and find that a Septic System Suitability Determination (SSD) need not be obtained from the RI Dept. of Environmental Management.

YES and find NO structural or non-structural fill is proposed in a FEMA-designated V-Zone or Coastal A-zone.

N/A and find that the proposed fill is considered non-structural fill and meets FEMA NFIP guidelines.

YES and find that said plans conform with all elements of the zoning ordinance, and that if said plans require zoning board approval, that the applicant has secured such approval and that the requisite appeal period has passed with no appeal filed or appeal is final. The Zoning Board approval shall expire on: _____

Marc A. Tillson
Building Official's Signature Date DEC. 3, 2020

YES and find that said plans conform with all elements of the zoning ordinance, and that if said plans require zoning board approval, that the applicant has secured such approval and that the requisite appeal period has passed with no appeal filed or appeal is final.

Marc A. Tillson
Zoning Officer's Signature Date DEC. 3, 2020



Warren Hall, Civil Engineer
PE # 5114, PLS # 1917, 63 Elmwood Ave.
Middletown, RI 02842
401-849-5905

December 10, 2020

Army Corps of Engineers, New England Division
696 Virginia Rd.
Concord, MA. 01742-2751

Re: Ballards Wharf Realty, LLC, Maintenance Dredge, AP 6, Lot 159, Block Island, RI,

Request for permission in accordance section 408; finding of consistency

Dear Sirs / Madam,

On behalf of applicants: Ballards Wharf Realty, LLC, owner of AP 6, Lot 159, please consider this letter a request for a finding of consistency with section 408 of the Army Corps, stating the proposed work will not injurious to the public interest and will not impair the usefulness of such work. We base this request on the following:

1. Maintenance dredge project has been permitted in the past; reference army corps permit 2004-436, CRMC 2011-10-103, RIDEM DP 11-111, RIDEM water quality certification 11-053. (all attached to application)
2. Proposed maintenance dredge project is substantially the same volume and same footprint as previously permitted and performed by the owner.
3. Disposal of the dredged material will be used beneficially for beach nourishment on adjacent near shore Crescent Beach.

This request is necessary due to the permitted existing marina and now proposed maintenance dredge project are within the required 3 x authorized depth, or 45' of the federal navigation project. All of this work is within the approved marina perimeter line.

If you have any questions please feel free to call me at 401-849-5905.

Respectfully Submitted,



Warren Hall, PE, PLS

RECEIVED

DEC 14 2020