STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COASTAL RESOURCES MANAGEMENT COUNCIL
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IN RE: SEMIMONTHLY MEETING
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Date: March 23, 2010
Time: 6:00 p.m.
Place: Administration Building
One Capitol Hill
Conference Room A
Providence, RI

MEMBERS PRESENT
Michael Tikoian, Chairman
Paul E. Lemont, Esquire, Vice Chairman
Raymond Coia
David Abedon
Michael Sullivan
Donald T. Gomez
Bruce Dawson
Robert Driscoll

Brian Goldman, Esquire, Legal Counsel

STAFF PRESENT
Grover Fugate, Executive Director
Jeffrey Willis, CRMC Deputy Director
Jim Boyd, Coastal Policy Analyst
Laura Miguel, CRMC Enforcement Officer
Brian Harrington

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(COMMENCED AT 6:00 P.M.)

CHAIRMAN TIKOIAN: If we can bring the Coastal Resources Management meeting of March 23rd, 2010 to order.

During the course of the hearing this evening an applicant may represent themselves or may be represented by legal counsel. In the event that the applicant is not present, the legal counsel must have the authority to bind the applicant.

An attorney's comments during the course of a presentation will not be considered evidence or testimony before the Council and attorneys should recognize that this is a quasi judicial body and should act accordingly. All parties giving testimony or statements this evening will be sworn. Some applications on tonight's agenda may have recommendations of approval by the Council staff and there may not be anyone here objecting to these applications. Prior to tonight's meeting, all of the Council members have had an opportunity to review those files, review the staff reports and comments, all of which are part of the record. On those applications the Council may after public comment move for approval and, in fact, approve
those applications without the necessity of taking any testimony. Approval of an application does not mean you can start work tomorrow. You must wait until you receive your Assent, an orange Assent card.

The Assent is your permit from the Council stating that you have the right to undertake the activity in accordance with all of the conditions placed on that Assent. The orange Assent card must be placed in a conspicuous location on the site of the activity during all times of construction.

The first item is to approve the minutes of the previous meeting.

VICE CHAIRMAN LEMONT: Mr. Chairman, before there is an approval I would like to amend it such that on page three of three it notes that after the Council entered executive session, we left executive session and entered the opening meeting and then adjourned the open meeting, because I think that's a true statement of what we did.

MR. SULLIVAN: We returned to open session.

MR. GOLDMAN: The minutes that are on the Secretary of State's website reflect that.
VICE CHAIRMAN LEMONT: With that, I move approval.

MR. COIA: Second.

CHAIRMAN TIKOIAN: Motion made and seconded. Discussion?

(NO RESPONSE)

CHAIRMAN TIKOIAN: Hearing none all in favor signify by saying aye?

(VOICE VOTE TAKEN)

(UNANIMOUS)

CHAIRMAN TIKOIAN: Opposed?

(NO RESPONSE)

CHAIRMAN TIKOIAN: So carried.

Subcommittee reports?

(NO RESPONSE)

VICE CHAIRMAN LEMONT: None. I'm sorry.

CHAIRMAN TIKOIAN: Vice Chair Lemont.

VICE CHAIRMAN LEMONT: Sorry. You got me confused with all of the pictures here. The Planning & Procedures Subcommittee met on March 16, 2010, and we are reporting out rule making the following, under the Red Book, Section 210.3.C.4,
Coastal Wetlands, and the purpose is to revise the prohibition policy on alterations to salt marshes and contiguous freshwater wetlands abutting Type 2 waters such that the construction of new structural shoreline protection facilities is not permitted.

Section 300.1.4, Maintenance of Structures, to revise Table 4A such that it clarifies how maintenance activities that are located on barriers and within the 50-foot dune setback zone are to be reviewed.

Section 3.3.5.C.2, protection and enhancement of public access to the shore. The purpose is to clarify existing policy to require applicants to provide on-site access of a similar type and level to that which is being impacted as a result of the proposed activity or development project. And, last, the maps of water type designations, the purpose is to revise the presentation of the existing water type maps to a set of GIS generated Town-based maps from the current set of USGS quadrangle base maps.

CHAIRMAN TIKOIAN: If there are objections, we will accept those items that are voted out by the subcommittee and place it out for
public notice and brought back for consideration by the Council.

Hearing no objections, so ordered.

Any staff reports?

MR. FUGATE: Mr. Chairman, there is a presentation that's going to be put on next week by two European researchers that have been working on the Ocean SAMP. One of them is from SEFIS, which is the equivalent of England's NOAA, and the other one is from Research Institution. They will be presenting their work on both marine mammals and fisheries and fishery impacts that they've been doing to essentially look at the entire European arena in terms of renewable energy, particularly wind farms, and see what the impacts have been in those areas. Europeans have well over 20 years on us in terms of their actual in-water structures with these and dealing with those impacts and so they will be presenting that information at a public forum down at the University.

Tiffany, do you have the time and date for that?

MS. SMYTHE: Wednesday, March 31st at 7:00, I believe, in the Coastal Institute, the
big auditorium.

MR. FUGATE: Yes.

CHAIRMAN TIKOIAN: 7:00?

MS. SMYTHE: 7:00.

CHAIRMAN TIKOIAN: Any other subcommittee reports?

MR. GOLDMAN: Yesterday, Mr. Chairman, the Federal District Court handed down a favorable decision to the Council in the Downing/Salt Pond case. As the Council members would either have read in the paper or were aware of the fact that Downing filed, and this is the case that is going to subcommittee, in the interim last August Downing filed a multi-million dollar takings case against CRMC and the State of Rhode Island in Federal District Court alleging a regulatory taking and a number of other constitutional deprivations. When the case was filed by my office, as well as the Attorney General's office working with Mike Rubin filed a Motion to Dismiss in Federal Court arguing that the matter wasn't right for review because the Council had yet to act on their assent extension request, and that in any event the Federal Court was inappropriate to bring a takings claim against the
State of Rhode Island. We had oral argument in January in front of Judge Smith, and yesterday Judge Smith agreed with our position and dismissed the case in Federal Court, and so, I don't know, that case is dismissed, it just came out yesterday, there is an appeal period running whether or not Downing will go up to the First Circuit, but, obviously, a very favorable ruling for us and the State of Rhode Island, and I would like to thank the Attorney General's office for working with us on that case. I think it was a very helpful and a very successful case for us.

CHAIRMAN TIKOIAN: I would like to state for the record that I would like to also pay praise to Brian Goldman for doing a fantastic job on that case and realizing its dismissal and also thank the Attorney General's office for their work in connection with that case and how well the Attorney General's office and Brian Goldman worked so well together to establish a great legal team for the State of Rhode Island. Hat's off to you, Brian. Thank you.

Any other questions or comments on that?

(NO RESPONSE)
There are two items. There are some policy changes and two items, one was Gunter Hafer, which was 2006-04-062, that's being continued, and that continued request came in in a timely fashion.

The second case is 07-0028, Harris Marina, enforcement matter. I suspect Mr. Harris is represented here?

MR. HARRISON: Yes.
CHAIRMAN TIKOIAN: Your name, sir?
MR. HARRISON: Casby Harrison on behalf of Ken Harris.
CHAIRMAN TIKOIAN: Harrison?
MR. HARRISON: Yes.
CHAIRMAN TIKOIAN: Thank you. Any witnesses, sir?
MR. HARRISON: No witnesses.
CHAIRMAN TIKOIAN: Anyone here wish to speak for that application?
(NO RESPONSE)
Anyone here, for that enforcement matter, anyone opposed?

MR. HARRISON: There are people here in support of the applicant, and I think may decide that they have something to say after they've heard
other comments.

CHAIRMAN TIKOIAN: Okay. Thank you.

Mr. Boehnert?

MR. BOEHNERT: Mr. Chairman, I'm here to support the enforcement action.

CHAIRMAN TIKOIAN: Anyone else here?

MR. CLARKIN: My name is Peter Clarkin. I'm the East Greenwich Town Solicitor. I would just be here to answer any questions the board may have one way or the other.

CHAIRMAN TIKOIAN: Okay. Thank you for coming. Anyone else? Okay. There is one reconsideration decision on the Providence Quadrangle and then also the chapter on Ocean SAMP Marine Transportation.

I think, if the members of Harris Marina don't mind, if you can just take this a little out of order, and I think it can facilitate the evening, and if you can start off with the reconsideration of the Providence Quadrangle. And, is there a staff member that's going to speak on this? I know that we voted this for reconsideration this evening. Does staff or a Council member want to start? Director.
MR. SULLIVAN: I just made the comment, Mr. Chairman, to thank the members for supporting the move to reconsider. I think, based on a late, but more, I think thoughtful review of the proposal that was made by Vice Chairman Lemont and then supported by the full Council, I think we acted in haste. I don't believe the action was appropriate. I think we caused an adversity, and perhaps damages to ongoing commercial operation. I would reconsider, and, frankly, I would urge we adopt the recommendation of the staff, as it was made that evening, and I do believe Jim Boyd has prepared a visual and some other comments that to, again, assert the staff's position.

CHAIRMAN TIKOIAN: Mr. Boyd, do you want to highlight?

MR. BOYD: I'll provide a little background, Mr. Chairman. As you know, we went out to public notice with water type changes, and this was what the Council reviewed back on January the 27th, and the staff recommendation at that point was for Type 6 waters to remain as is at Bold Point and Wilkes-Barre Pier.

On a motion by Mr. Lemont and approved by the
Council, as just mentioned by Council Member Sullivan, the Council revised Type 6 waters to Type 5 waters along the so-called Green Shoals, and so staff prepared this visual aid, it was forwarded to the City of East Providence as well as Capital Terminal Corporation, Todd Turcotte is president and he's present here tonight, and then I believe Jeanne Boyle is here, also, from the City. So, this is the staff's representation of what we believe the Council to have approved that evening, and, again, just for application, this was an area 100 feet out from the shoreline, starting at Bold Point, down to the CTC property. Now, whether or not the City of East Providence or Capital Terminal agrees with our representation, or the Council members agree with our representation of what we believe the Council to approve, obviously, it's up for debate this evening. However, the staff recommendation still holds, that we maintain that these waters should stay Type 6 to protect this regional use, a use that's important, and regional benefit not only to the State but to New England as a whole, and just for further explanation, the image that you see here beyond just the yellow of the Type 5 waters is a CAD file that
we received from CTC representing the improvements for dredging maintenance as well as improvement dredging that was done on approval by the CRMC, and the magenta lines here running parallel with the shore, it's your understanding that that represents the product pipe lines as well as I believe a 40-foot wide easement, that CTC maintains across this parcel of which Type 5 waters has been approved by the Council.

CHAIRMAN TIKOIAN: When you say you believe, is it or is it not -- is it an easement?

MR. BOYD: We don't know the exact boundary lines of where we believe this to be an accurate representation of what the Council approved.

CHAIRMAN TIKOIAN: No, no. You were talking about the easement. You said we believe there is an easement. Is there an easement or not?

MR. BOYD: Our understanding is that CTC does have an easement across that parcel, yes, because they have a pipeline that runs almost two miles up Dexter Road where the tanks are located.

CHAIRMAN TIKOIAN: This Council does
not approve an easement.

MR. BOYD: Correct. That's a private land matter, that's correct, Mr. Chairman. So, this is, again, this is just a representation to assist the Council in deliberations this evening on the motion.

VICE CHAIRMAN LEMONT: Mr. Chairman, can I lay in a little bit. I'm really, frankly, quite bothered by it.

CHAIRMAN TIKOIAN: You may, Mr. Lemont.

VICE CHAIRMAN LEMONT: I'm quite bothered by the tone of what I see here. The City of East Providence came to this Council and they are in comport with their comprehensive plan. Their comprehensive plan calls for redevelopment of the shoreline, not on an industrial basis, it calls for mixed usage, and they requested that the CRMC change the Type 6 to Type 5 for this particular parcel, bearing in mind that there's going to be substantial development in the area including Tockwotton.

At the meeting two weeks ago, I guess it was, I asked the City Planner from East Providence if a 100-foot area along the front of the area that's
shown on this map is Type 5 would be sufficient for them, and I was given a yes answer. Accordingly, I made the motion. Now, if we're going to change this tonight, I will tell you right now I will not vote on it, I'll back out and you will not vote on it, you won't have a quorum to vote on it. This is what I wanted, this is what the Town wanted, and anything different we're going to have to have another public hearing, and I don't think we need that. This gives the City what it wants, and the area still has plenty of room for the Type 6 to move the ships around. So, I don't know what game is being played here, but I do not like it.

CHAIRMAN TIKOIAN: Any other comments?

MR. SULLIVAN: While I perhaps should sit silent, I cannot, with the suggestion that a Council member would walk from the table because he perhaps doesn't get his way.

VICE CHAIRMAN LEMONT: We had our way, Mr. Chairman. We voted --

MR. SULLIVAN: I have the floor, Mr. Chairman, if you can reign him in.

If you look at just the simple rendering, the
Type 5 clearly enters into the immediate facility of the pier, and, at a minimum, we should reconcile that error as to changing what is a commercial site, and I would accept that a set of commercial pipelines and an associated commercial activity, the site is commercial/industrial, and the Type 5 is a bit of window dressing, but at a minimum what I would be looking for would be to -- and while I personally could support the staff's full recommendation, at a minimum we need to adjust the original motion to move the Type 5 classification entirely out of this commercial facilities waters and I think that could be perfected, and I will quit there.

CHAIRMAN TIKOIAN: If I may, to move it out of these waters is that the little pieces that are inside the magenta lines, is that what we're referring to?

MR. SULLIVAN: That is what I believe.

CHAIRMAN TIKOIAN: So, those are, in contrast to this entire area, and you're talking at both ends, is that at both ends or just at the southerly end? Right here where this one magenta
line crosses, right, that is what you are referring to, that little piece?

MR. SULLIVAN: I think that is where we have definitely encroached on commercial.

CHAIRMAN TIKOIAN: How about here, when you're referring to the magenta line at the top, is that what you are referring to as well? What is that line?

MR. BOYD: I have no idea what that line represents. Again, it came in a file that we did not alter, it's just a file that we received, an electronic computer assisted drawing file that we imported into our view strictly for visual purposes. We're not representing that that's a property line boundary or anything else, other than for display purposes.

CHAIRMAN TIKOIAN: So just, and I think, I thought I understood that when this was changed it wasn't going to necessarily encroach into the area that is commercial, so, that's how I understood it when it was originally voted on it, and I know that there was more of a technical issue as to exactly where that Type 5 would end.

MR. BOYD: That is the question,
Mr. Chairman.

CHAIRMAN TIKOIAN: Well, if that little, I don't know, it looks pretty small, this little piece in comparison to this entire Type 5, are we all on the same page on that? Yes? No? Director.

MR. SULLIVAN: I think you have identified in part the potential resolution. I would offer you a multitude of little angular changes, whether you take and run, and because it is a little tougher, you know, lining up a ship, I would rather take the line parallel to the pier and parallel to the dredge and bring it to landside.

CHAIRMAN TIKOIAN: Like that?

MR. SULLIVAN: Yes. Than create a boxed corner, you know, on the other, and --

CHAIRMAN TIKOIAN: Well, you know, is there a mechanism perhaps we can -- I'll send this back to Policy & Planning and probably have them maybe meet with the Town people in the interest of the parties, and maybe see if we can come to some resolve on this. I mean, is there a resolve on this? I mean --

MR. GOMEZ: As I remember, and I
don't know exactly, we don't have the minutes in
front of us, you know, who was in attendance that
night relative to the Council, but we had a pretty
extensive discussion, I thought it was a good
discussion, and it was just a matter of trying to
help out the Town of, or the City of East Providence
with some commercialization or use of this property
as per their plan, that City plan, and when we got
all said and done, Mr. Lemont had suggested this
100-foot setback from the Coastal feature, from the
shore, East Providence was in agreement with that,
and the Council was in agreement with that and we
voted that as an afterthought. After the vote, we
said, gee, we shouldn't, exactly as Director
Sullivan has discussed, we shouldn't be encroaching
on that dock, and it appears to me that all of that
discussion, good discussion, we voted on it, and we
just wanted to do a little cleanup action, and
whether that's a line parallel to the dock or
whether it forms a 90 back to the shoreline, you
know, we just need to give some easement into that
commercial property, and I think that's what we
should be doing tonight, just to clean that up so
that there is no problem in the future with that
Type 5 water encroaching in onto that, the physical
dock space, and how much relief you give that when
you come back. I don't know, you know, pick a
number. I think your suggestion was a line parallel
to the dock coming back to the shore?

MR. SULLIVAN: Yes. I think, if I'm
correct, I think the lines that you see there to the
north side of the pier represent the record within
CRMC with regard to dredge, am I correct there,
Jeffrey?

MR. WILLIS: Yes.

MR. FUGATE: Yes, the green lines
represent the dredge lines.

MR. SULLIVAN: So, if you, you know,
to me, they're -- if you took the, let's call it the
first line north of the representation of the ship,
which shorelinewise is most obvious to the east,
this one here, if you just simply extended that
linear to land fall, it resolves the preponderance,
the majority of --

CHAIRMAN TIKOIAN: One second, Jim,
do you have a scale?

MR. WILLIS: Yes, we do.

VICE CHAIRMAN LEMONT: Mr. Chairman.
CHAIRMAN TIKOIAN: Vice Chair

Lemont.

VICE CHAIRMAN LEMONT: Jim, the area that you got marked Type 5, if you go down here where Director Sullivan is talking about, what is the depth of that water?

MR. BOYD: I don't know, Mr. Chairman.

VICE CHAIRMAN LEMONT: It's all shoal, isn't it?

MR. BOYD: I believe that it is shoal there.

MR. LEM: Then if it's all shoal, what good is it to extend it for a ship?

MR. BOYD: Mr. Lemont, I don't know the answer to that. I don't know what kind of water depth is out in front of the improved dredge area.

VICE CHAIRMAN LEMONT: I do know. I do know. I've been there.

MR. HUNTER: Mr. Chairman, is public comment going to be taken on this?

CHAIRMAN TIKOIAN: Yes, I just wanted the Council to have an opportunity to ask questions of the staff.
VICE CHAIRMAN LEMONT: I would support that move, but not running parallel with the out of ship line.

CHAIRMAN TIKOIAN: Any other questions?

MR. SULLIVAN: I don't know what you referred to as that. Can you?

CHAIRMAN TIKOIAN: Any other questions of staff? We're going to allow public comment and then we'll see where this goes. If we can't resolve it tonight, we'll push it back to P and P to look at it again. Any other questions of staff? If someone from the public would like to speak. Yes, sir, can you stand up and identify yourself.

MR. TURCOTTE: Yes. Todd Turcotte from Capital Terminal Company. Just to give some clarification of what this drawing that was provided to staff at CRMC. The line that I believe we're talking about that is north of the ship line, that corner is off the berth, that is our deeded right of 150-foot ship berth from the corner of the pier. So, that area that Councilman Lemont is discussing, that is a shoaled area, yes, it's about a three-foot
depth over there, it's four feet at low tide, which we actually use as construction equipment when we're doing work on the pier. Further, that is also our right that we could --

CHAIRMAN TIKOIAN: Can I ask you a question, deeded from who?

MR. GOLDMAN: That is tidal water, isn't it?

MR. TURCOTTE: We have the rights, and the deeds from the ship are, as far as what we can be doing in that, we have 150-foot wide ship berth in that area from the end of the pier.

CHAIRMAN TIKOIAN: From who?

MR. TURCOTTE: From the State. I don't know. I have to look at that. That's what we have the right to be able to berth and do our ship activity alongside that pier.

CHAIRMAN TIKOIAN: Do you have documents to show that?

MR. TURCOTTE: Yes, we have that.

CHAIRMAN TIKOIAN: Can you provide those to us?

MR. TURCOTTE: Yes, that's how we were able to dredge.
CHAIRMAN TIKOIAN: Do those documents have lat/long coordinates on them?

MR. TURCOTTE: I don't know. I would have to look. This pier was built back in the late 1800's.

CHAIRMAN TIKOIAN: I understand that, but we have to be factual. When you are making the assertion that you have the deeded right to do so, we want to make sure.

MR. TURCOTTE: Absolutely. We will provide that to the Council.

CHAIRMAN TIKOIAN: Can you send that to Brian Goldman?

MR. TURCOTTE: Sure. And we have a 40-foot ship berth at that location. It goes to, from 40 feet it goes up to about three feet at a standard slope from that, in that distance, but we use that for construction vessels, and we could, if operations change at all, could actually get a second ship berth if there for two barges at once if we needed to for different activities.

VICE CHAIRMAN LEMONT: Have you seen this, what I just drew?

MR. TURCOTTE: What you just drew,
no, I haven't.

VICE CHAIRMAN LEMONT: Come here a second. Right there, does that meet your objectives? This piece out. That's yours.

CHAIRMAN TIKOIAN: Actually, I want everything on the record. I just want him to show you what he's talking about, and then you can.

MR. TURCOTTE: That's fine. No, I understand what you are talking about. I am not saying that's fine, that we're okay with that. I understand that's a resolution possible for this situation. There are accesses in that area that could hinder our operation. I don't know them all at this point, but that being that close to the Type 5, residential, kayak launching, those types of things, that's going into our ship berth, that has security requirements by Homeland Security, that could be in the future a problem for us. That was our concern in the beginning, which is why we supported staff.

CHAIRMAN TIKOIAN: Mr. Turcotte, I would assume that they have riparian rights, that your rights don't extend into the riparian rights of the owner of this property.
MR. TURCOTTE: They actually overlap because the owner of that property used to own rights to that pier. They sold those rights to our successor, P & W. There is a long history as far as ownership and use of that pier. The Unical property used to utilize that pier for receiving property.

CHAIRMAN TIKOIAN: Can staff provide us with another map that shows the boundary lines of the properties on and how those boundary lines interact with what's offshore, and then once we get this information as to the documentation of what riparian rights they have or don't have, we can cross-reference that to see and to make sure that all of our facts are aligned. Are there any other comments or questions? Yes, there is a gentleman before you. Yes, sir.

MR. HUNTER: Chris Hunter representing the Providence Waterfront Alliance in the Port of Providence, concerned with similar conflicts to what's being discussed here. We testified at the last hearing. I just wanted to reiterate two points.

First, is that CRMC is required under the Coastal Zone Management Act to protect uses of
regional benefit. An oil terminal clearly falls within the Coastal Zone Management Act, definition of a use of regional benefit. If we can't protect an oil terminal with Type 6 waters, then what is the point of water type zoning? What is the type of the water type sheets? We need to have those Type 6 waters for our industrial users. That's the point.

Secondly, I would note that to allow this precedent, what could be a dangerous precedent going forward, and I would say this both from the perspective of marine industrial users and also from environmentalists, environmental concerns, regarding water sheath, the use of water type designations, and if you allow a 100-foot buffer around any property to be different from the prevailing water type, that is spot zoning of that property.

CHAIRMAN TIKOIAN: We're not talking about properties. We are talking offshore.

MR. HUNTER: I'm talking offshore, but it allows the landside development to be contrary with.

CHAIRMAN TIKOIAN: I understand that, and this Council is not here setting any precedents, and this Council is standing here having
a public hearing.

MR. HUNTER: I'm merely making

public comment at this point.

CHAIRMAN TIKOIAN: It's trying in a

rational, professional manner to try to discuss this
topic.

MR. HUNTER: I am as well trying to
give public comment to inform that debate. Can I
proceed?

CHAIRMAN TIKOIAN: You may.

MR. HUNTER: Okay. Thank you. So,
I would just say that you're going to -- it obviates
the point of water type changes -- excuse me, of
water type designations if you start picking away at
it parcel by parcel, as we're seeing here, that it
takes away the point of Type 6 waters to protect an
industrial area, or, for that matter, or it could
take away the point of Type 1 waters to protect
habitat that you want to protect if a property owner
on Great Salt Pond or some other area wants to put
in a pier or something for recreational use. I just
mention this as a point to consider broadly, in
regards to water type designations and concerns spot
zoning of that water type. Thank you.
CHAIRMAN TIKOIAN: I know there are two people that wanted to speak. I think we are leaning towards, table this so this could be discussed in a different forum, but if you still want to speak, we're more than willing. Wendy and Jeanne. Wendy, do you want to go first?

MS. WALLER: Wendy Waller from Save the Bay. Save the Bay would like to submit that this has not been publicly noticed and maybe it would be a good idea. Not even from the agenda on the 27th or tonight's agenda have these lines listed in, so anyone in the public could reasonably understand this was on the agenda. So, thank you.

CHAIRMAN TIKOIAN: Jeanne.

MS. BOYLE: My name is Jeanne Boyle. I am the Planning Director for the City of East Providence. I would like to comment, too. I didn't realize that this issue was being revisited. I know it was listed as a reconsideration. I thought this was simply a clarification of a vote that was taken by the board at its previous meeting. I have had the opportunity to discuss this with Mr. Turcotte from Capital Terminals today. We did talk about the impingement of Type 5 waters on the area that's
associated with the Capital Terminal's pier, and the
City of East Providence certainly would support
taking out that corner. It's about 500 square feet
that actually is Type 5 waters and that's part of
that area that I believe you referred to as being
deeded. We are certainly fine with that, if the
Council was interested in making that adjustment to
the Type 5 waters. I have actually kind of sketched
that, and I would be willing to share that sketch
with the Council members. We're fine with that. We
haven't had an opportunity to talk about other
things. We feel very strongly, though, that the
Type 5 designation that the Council voted to approve
at its last meeting is one that supports the land
use changes that we had in place since 2004, and we
really would like to see the Council maintain a vote
that it made almost a month ago. So, if you would
like, I can share this sketch.

CHAIRMAN TIKOIAN: I would
recognize, if I may, and I hope the Council agrees,
the Council is being placed in the middle of a
situation between a few parties that have their own
opinions, which are good opinions and their own
thoughts on this, and I was just wondering if these
parties can get together with Jim Boyd to try to reconcile these issues. We certainly understand our responsibilities to protect certain areas of commercial development, we understand our responsibilities for assuring that these areas are maintained for fuel capacity. We understand our responsibilities for economic development. I think what we want to do is to make sure that it's done properly and it's done to the best we can with everybody in agreement, so if there is a way or mechanism, if someone would make a motion to table this and allow this to be vetted out in a forum where our staff can and those parties can talk, discuss it. Director.

MR. SULLIVAN: Yes, Mr. Chairman. I already publicly disagreed with the Vice Chair. I might as well disagree with the chair publicly as well. I don't think we're stuck in the middle. I think we created the conundrum, and because of some of the language tonight with regard to claim of right and the concern about the notice, I would move we table this for at least a month while those who claim legal right can provide documentation to Mr. Goldman, and, at the same time, if there is an
opportunity for the two poles in this to achieve,
with working with staff, to come to a consensus
resolution, I would support that.

VICE CHAIRMAN LEMONT: Second the
motion.

CHAIRMAN TIKOIAN: Any discussion?
(NO RESPONSE)

CHAIRMAN TIKOIAN: All in favor
signify by saying aye?

(VOICE VOTE TAKEN)

(UNANIMOUS)

CHAIRMAN TIKOIAN: Opposed?
(NO RESPONSE)

CHAIRMAN TIKOIAN: So carried.

Thank you. Just for point of order, a motion to
table. Next item is Harris Marina, 07- 0028.

Mr. Harrington is going to start.

MR. GOLDMAN: I will put them all
under oath. Would you all raise your right hand,
please. Do you solemnly swear the testimony you'll
give here this evening is the truth, the whole truth
and nothing but the truth so help you God?

MR. FUGATE: I do.

MR. HARRINGTON: I do.
MS. MIGUEL: I do.

MR. GOLDMAN: Affirmative response from all.

CHAIRMAN TIKOIAN: Who is going first?

MR. HARRINGTON: This matter regards an unauthorized marina located at the terminus of Rocky Hollow Road in East Greenwich, Rhode Island. On April 12, 2007, CRMC Cease & Desist Order 07-0028 was issued to Kenneth Harris for an unauthorized marina.

CRMC staff has been unable to identify prior authorization for a marina at this site. It has been unable to locate a CRMC assent, Harbors, Boats & Rivers permit or a Corps of Engineers permit.

Staff has also reviewed aerial photographs and has been unable to find any photographic evidence of a marina at this location prior to 1981.

It is CRMC staff's recommendation that they issue an order of removal and reinstallation of a marina at this site unless prior authorization from the CRMC is obtained.

MS. MIGUEL: I guess I could add that we were called out to this site on a separate
matter, and Brian issued the C & D after going back
to the office and looking through all the records as
well as some of the historical records. We found no
evidence of a marina whatsoever, any documentation.
Mr. Harris has been into the office trying to
comply, but he hasn't been able to because -- well,
you can let him say, but he hasn't been able to
provide us with proof of property ownership. There
are also issues with the Town on this site.

At this point, we're going on, I think the
third year, third season for this marina operating
without authorization and are being aware of that.
So, we're hoping to address the matter this spring
so that it can be resolved by the summer.

CHAIRMAN TIKOIAN: Staff?

Mr. Goldman.

MR. GOLDMAN: Mr. Chairman, just for
the members and so the record is clear, the items in
the package which are dated and labeled page 1
through 20, there are a series of photographs,
aerial photographs that the staff included in the
report, and I think when we look at the '72, there's
nothing there, and we go to '81, there's a marina
there. So, obviously, the question is, there's
nothing in the record indicating that we ever got a 
CRMC permit and there is nothing in the record that 
indicates that he gave it to the Council because the 
first evidence being, I think Grover can address the 
policy issue, but it seems the first evidence of 
this being here was in 1981, or thereabouts, circa 
1981, which was after the formation of the Council 
in 1971, thereby, would have required a permit, and 
the staff and Grover have gone through the records 
and can't find no record of a permit. So, unless 
they can come up with an Army Corps permit, I think 
what staff is asking before, subject to how this 
hearing goes, is that an order removing any 
structures that are still in the water and an order 
prohibiting the marina from being reinstalled this 
spring in that area unless they can get a CRMC 
permit, which I'll it turn over to Grover because I 
think there is problems with that.

MR. FUGATE: Yes. This situation 
emanated out of a series of enforcement actions that 
have been occurring in Greenwich Cove. There's been 
several marinas that have actually been cited and 
had to go through a process which Mr. Goldman has 
just outlined. Typically, we would look for any
evidence of any permit. Our permits and our permit history go well back into -- in some cases we have permits going back into the 1700s from the General Assembly, but certainly from the predecessor agencies. If they are unsuccessful in producing either a Harbors & Rivers permit or current Council permit from this timeframe, then another alternative forum is the Army Corps, which several marinas have to do, have a grandfather process that stems from 1961. So, if a marina could prove that they have evidence of being in the water prior to 1961, the Army Corps will issue a permit, we will then recognize that permit as part of our permit chain so that we can move forward with this.

As I said, there were a number of marinas that have been through this process in Greenwich. We've also been on a task working with illegal quahog marinas throughout that area, which we've also been working to try to deal with, and Jim has been working with Craig on that along with Danny, and there are several that are in process that are working to try to clean that up.

Mr. Harris, when he first attempted to comply with this marina, to legalize it, the problem that
we have is the marina emanates off a Town right-of-way, which is also a CRMC designated right-of-way, and the first thing that we require for any application, obviously, is proof of ownership. We requested that either a lease or some other sort of permissive document be produced, that the Town acknowledges that the marina exists and that they're willing to allow that marina to be there within its riparian right, which would be a much smaller facility than actually exists, as this marina has encroached over other riparian areas.

So, the situation is, is that Mr. Harris has been able to work with the Town to produce that document and can't move forward on an application process. There has been a legal marina in the waters, the staff has indicated for the last several years, and we're asking that we order removal of this particular structure until Mr. Harris can either enter the Town and get the proper documents to proceed with the marina application or not, having unsuccessfully to reinstall the marina.

CHAIRMAN TIKOIAN: Mr. Fugate, can you just clarify for the record, when you say it's the Town's right-of-way and the CRMC designated
right-of-way, designated right-of-way for the record means what?

MR. FUGATE: A designated right-of-way is a right-of-way that's been heard by the Council, gone through, in fact, in this particular right-of-way there has been a survey done on it, the Town held a -- I mean, the Council held a hearing on this matter, and after hearing all the evidence presented, found that there was a right-of-way to the shore for the public to utilize to get to the shore and to the waters. The Council designated that right-of-way some years ago, back in '80's, I believe.

CHAIRMAN TIKOIAN: Mr. Fugate, the decision, you are correct, the decision of the Council is dated October 4, 1984, was when the CRMC written decision designated this a right-of-way and it was 1984, Mr. Chairman.

MR. FUGATE: Right. And when the Council designated, took a vote on it, the Council's decision is then sent out for appeal. If it is not appealed, its decision becomes final and binding and then registered with the Secretary of State's office as a designated right-of-way, so it carries the
protection of the Council, also beyond just the fact that it's a legal marina.

CHAIRMAN TIKOIAN: So, then why is it a Town right-of-way?

MR. FUGATE: The Town actually owns the property that the marina emanates from.

CHAIRMAN TIKOIAN: Mr. Harrison.

MR. SULLIVAN: I was going to say, Mr. Chairman, just one other agency in relevant fact, in June of last year DEM's Office of Compliance & Inspection conducted an investigation alleging that there was an illegal discharge from the cesspool on the site. An investigation was conducted, a die test was conducted, the allegation was affirmed, Mr. Harris was compliant and removed all the pictures, the sink, the shower, capped them, and so our compliance issue is then set aside, but the water quality certification from DEM would be a predicate condition on, and the infrastructure at the site would be of concern to us servicing any potential marina, so there is further need for compliance with our State.

CHAIRMAN TIKOIAN: But there are no pending issues with DEM on this site?
MR. SULLIVAN: Not at this time.

CHAIRMAN TIKOIAN: Mr. Harrison.

MR. HARRISON: Thank you. Good evening. As many of you know, Kenneth Harris is 75 years old. He was born on Rocky Hollow Road, which is the road that ends with the right-of-way providing access to the public to the shore here. So, he spent his entire life in those waters of Greenwich Cove. He has been utilizing docking space and interacting with fishermen down there all his life. In 1979 he purchased this shanty. The shanty had been constructed in the 1930's. So, at the time that the CRMC subcommittee met in 1984 to determine whether or not Rocky Hollow would remain a right-of-way, that structure was there to be seen and had been for many years before the 1984 hearing. The subcommittee considered five different sites for right-of-ways. Three out of those five sites had been declared by the Town to be right-of-ways, but at the time the subcommittee in 1984, three of those sites had structures constructed blocking those right-of-way. Two of the owners, two out of the three had owners who were present at the subcommittee hearing in 1984, and those two who were
present, because their structures were on the right-of-way blocking public access, they were no longer declared rights-of-way. The third was Mr. Harris. Mr. Harris did not have notice of the 1984 subcommittee hearing. He wasn't present to bring it to anyone's attention. The record of the 1984 subcommittee hearing gives no indication that anyone was aware that a structure was present at the time the subcommittee declared and recommended to the full committee to declare that a right-of-way. Even though the regulations that talk about the evidence that should be considered when declaring a right-of-way talks about making sure, you know, looking at the land evidence records also talks about looking at domain over parcels, such as maintenance, construction and upkeep. Now, there was testimony given on the other two, access to right-of-way properties. There was no testimony at all on Ken Harris' property. I've read a number of other CRMC cases where, in the course of deciding whether there's a public right-of-way, public comment is taken, and there's a lot of anecdotal evidence about people saying I have used this right-of-way since my grandfather took me here 50
years ago, and 25-30 people testify that, yes, they consider this a public right-of-way. In Ken Harris' situation there's no such testimony. There's no evidence of any kind that the general public has generally used this as a right-of-way. There's also some confusion about where the right-of-way actually is.

In 1888 the Town of East Greenwich said that it's going to run downhill on Rocky Hollow Road until the road ends and meets at the shore. But, today the water does not, Rocky Hollow Road does not end at the shore, because Mr. Harris applied and received permission to fill in the land between his structure, which is actually below the high water mark. And so now, today, if you go to Rocky Hollow Road, the road ends and it's 50 feet before you get to Mr. Harris' structure and then an additional feet to the water.

Also, the 1984 marker that marks the right-of-way is actually 29 feet to the right, if you're facing the water, 29 feet to the right of Mr. Harris' structure. So, there's some question about whether or not the point of access is really through his structure or not.
In any event, one thing that Mr. Harris has always done, and there's plenty of residents who are willing and able to corroborate this, Mr. Harris has always provided the public access. The public has always been invited to come to his shanty, sit on the front porch, fish if they want to, whittle, whatever. He's never denied the public. The CRMC regulations talk about the Council being authorized to issue assents for pre-existing residential boating facilities constructed prior to January 1 of 1985. There was an overwhelming amount of anecdotal evidence available.

MR. GOLDMAN: Mr. Harrison, can I make just one correction. This is a marina, not a residential boating facility, so that would not apply?

MR. HARRISON: Well, your regulations do say that marinas as defined in the Coastal Resources Management Program effective as of June 1, 1987 are deemed to be one of the uses consistent with the public trust, and Mr. Harris says that he has maintained his structure, his marina consistent with the public trust. He has provided low-income docking space for the general
public. He has an overwhelming amount of support from neighbors and residents in East Greenwich who utilize his low cost docking space. He provided a service. He has a lot of support in the community. We think that he should -- in fact, he was told by the head of the Army Corps of Engineers, a Mr. Elliott some years ago, face to face, that he was eligible to be grandfathered under the Army Corps of Engineers' program. We think that he should have been eligible to apply for an assent to operate his marina had he received actual notice of the 1984 subcommittee hearing.

CHAIRMAN TIKOIAN: Mr. Harrison, I'm concerned with the hearsay. Mr. Elliot is not here to confirm that comment. We don't have a letter saying that that happened. So, just, I would appreciate if the hearsay side of this say, unless you have the actual evidence or the witness here to testify to exactly that occurrence, if you don't mind.

MR. HARRISON: I understand. So, Mr. Harris is prepared to testify that he has been operating this marina since 1979 officially. Unofficially he was doing that even before that
then. We think that he qualifies to be eligible to receive an assent, and we're mindful that the regulations say that in order for an applicant to be eligible to apply for an assent they had to apply before January of 1999, but we think that an exception ought to be made in light of the fact that he had no actual notice of the 1984 subcommittee hearing or the full Council's designation of that right-of-way. He had no opportunity to appeal it because he didn't know anything about it. He has been operating openly, you know, publicly for a very long time, and it was only because, you know, a neighboring -- I mean, there's actually marinas to his left and to his right, so what he's doing is consistent. It's good for those to his left and to his right. I don't think there has been any public clamoring to use the bottom of Rocky Hollow Road as a point of public access, any more than there's been in the public clamoring to use the other two rights, designated rights-of-way that are obstructed now because of the Harborside Restaurant and the Fins Seafood Warehouse. And there are actually plenty of places to access the water. There's a new dump.

CHAIRMAN TIKOIAN: I think we have
to talk about your marina. Actually, are you
prepared to produce a permit or some type of
document from the Army Corps that says that this
marina is legitimate, a legal marina in that area,
can you produce any document of such?

MR. HARRISON: What I can say is
that I've been in this case for about 20 days, all
right. When I asked Mr. Harris about that, he said
that he went to the CRMC, he asked for the
application papers to apply for an assent for his
marina to be approved in the same manner that
Anderson Marina right next door applied in 2006 and
received their assent, and he was told, it won't do
you any good to apply because you need to have some
agreement with the Town of East Greenwich before you
can apply. So, he was not given the application
papers, and he walked away confused. I think that
he should be entitled to apply and that he should be
granted the assent, and that having been there for
well over 25 years, operating, making all kinds of
friends in East Greenwich, this is the kind of
facility that should be approved, just like
Anderson's Boatyard can be approved right next door,
there is no reason why he shouldn't be approved,
too.

CHAIRMAN TIKOIAN: Do you want to put on a witness?

MR. HARRISON: Pardon?

CHAIRMAN TIKOIAN: Are you going to put a witness on?

MR. HARRISON: Well, I think that Mr. Harris would only corroborate the things I have said. So, I think that we've pretty much made our presentation.

MR. FUGATE: The basic crux of the problem, obviously, is that the first thing you're going to have to show to get into the door for a permit is some sort of proof of ownership or some sort of agreement with the Town, either in a lease, or some permissive document that the Town agrees that that structure can be there. Without that, we cannot begin to entertain an application for a permit. The Corps process has been an open process for Mr. Harris to go for. He doesn't need our permission to go and try to prove their case to the Corps, but I would just warn you that the Corps is probably going to ask you the same question, is we need some sort of proof of ownership or some sort of
document from the Town indicating that there is a use that can be permitted on that property, or that they're in agreement with the use that's proposed.

One other correction I would like to say is that, I've seen a survey for this property, that is in the rights-of-way file. It does recognize Mr. Harris's structure was on there because I've seen that structure on the survey plan itself. So, the structure was noted at the time that the Town Council designated the right-of-way with this, and I know that he had done that in other instances in East Greenwich and they've had to actually accommodate the right-of-way on the property in East Greenwich where the structure is. So, that's the basic issue that we have, is that we have no permissive use of this property by the Town at this point.

MR. HARRISON: I think that Mr. Clarkin, the Town solicitor for East Greenwich, had something to say about the Town's position.

CHAIRMAN TIKOIAN: Before you get there, we want to get the record square.

MR. GOLDMAN: I just want to clarify, Mr. Harrison, for you and as well as for
the Council members, there are two issues associated with this issue. One is the alleged blocking of the right-of-way. The second is the in-water marina, which appears not to have any type of permit from either CRMC or the Army Corps. What I have been dealing, and this, the rights-of-way issue in front of the rights-of-way subcommittee, I have spoken to, reached out to the Town on a number occasions to attempt to deal with the right-of-way issue, and I think -- it was my opinion, and I think talking with Grover, that one thing that we have exclusive jurisdiction over is the right-of-way issue. I think Mr. Harrison would recognize that there is some res judicata and collateral estoppel issues with not appealing a 1984 decision and trying to relitigate that. That's a separate issue that the Council is going to have to address subsequent to tonight, but the issue in front of the Council tonight relates solely to the in-water structure because we have exclusive jurisdiction for that in-water structure, and unless a permit can be demonstrated for that, it is an illegal marina, and under the statute the Council has to order it to be removed. That's one order that the staff is
recommending that you do tonight. After that is done, then we're going to, at another time we're going to have to get into this issue of the structure blocking the right-of-way, but I think until such time, and Mr. Clarkin is here, and maybe he can clarify, but I had spoken to Mr. Clarkin in the past, and I think before we go forward on the right-of-way issue, that's something that we would have to coordinate, I think with the Town to do that, and at least on my last discussion with Mr. Clarkin, I am not sure that the Town's position was solidified on that issue. So, my recommendation as to why it came here tonight is, we can proceed on this issue tonight without really the Town being able to exercise any jurisdiction one way or the other because this relates to activities below the mean high water mark, which the case law is clear is we have exclusive jurisdiction over and the Town does not, so to me it was the cleanest way to start this process, to take care of the structure in the water, and then, we at a later point we can get into the issue of the right-of-way. They're two separate and distinct issues.

CHAIRMAN TIKOIAN: Mr. Harrison, if
I may, just to make sure this is clear, you said your client purchased this in 1979, correct?

MR. HARRISON: Correct.

CHAIRMAN TIKOIAN: That's after the CRMC was formed. Number two, I think you had also indicated that you had permission to fill? Where did you get permission to fill? Who did that come from?

MR. HARRISON: I'll let Mr. Harris explain that to you.

CHAIRMAN TIKOIAN: We'll have to put him under oath.

MR. GOLDMAN: Would you raise your right hand, please.

Do you solemnly swear the testimony you'll give here this evening is the truth, the whole truth and nothing but the truth so help you God?

MR. HARRIS: I do.

MR. GOLDMAN: Identify yourself for the record, please.

MR. HARRIS: Yes, I do. That's all I know, is the truth.

MR. GOLDMAN: State your name for the record.
MR. HARRIS: Kenneth Harris.

MR. GOLDMAN: If you can just --

CHAIRMAN TIKOIAN: Can you give it to your attorney and we'll pass it out. Give it to Mr. Harrison and he'll give it to us.

MR. HARRIS: Okay.

MR. HARRISON: Why don't you stand right here and you can explain it from here, is what they want.

MR. HARRIS: This is the marker for the right-of-way.

CHAIRMAN TIKOIAN: Actually, my question is only on the filling. Can you answer the question on it? Had, your attorney said you had, yes, you had received permission to fill?

MR. HARRIS: Fill.

MR. GOLDMAN: Mr. Harrison, can you do direct examination for me, or?

MR. HARRISON: Showing you a Coastal Resource Management Council application for the State assent to perform work regulated by the provisions of Chapter 279 of the Public Laws of 1971. Is that your signature at the bottom?

MR. HARRIS: That's mine.
MR. HARRISON: Okay.

MR. HARRISON: And describe accurately the work proposed. Construct and maintain 24-inch diameter drainage pipe that discharged into East Greenwich Cove, is that right?

MR. HARRIS: That's correct.

MR. HARRISON: That's what you described?

MR. HARRIS: Yes.

MR. HARRISON: And you identified the adjacent property owners as Clint Anderson and Andrew Craig?

MR. HARRIS: Yes.

MR. HARRISON: And you paid, I think you said an estimated cost of the project, is that 9,800?

MR. HARRIS: Uh-hum.

MR. HARRISON: And then was this application approved by the Council?

MR. HARRIS: It's stamped. It's stamped right there.

CHAIRMAN TIKOIAN: That application is to put a drainage pipe in, correct?

MR. HARRIS: Correct.
CHAIRMAN TIKOIAN: It is not to fill?

MR. HARRIS: Yes. I am going to show you what I filled in here.

MR. HARRISON: Okay. So, explain what you did.

MR. HARRIS: I went and got a pipe and filled in those drains.

CHAIRMAN TIKOIAN: Can you give that to the Executive Director, please.

MR. GOLDMAN: Mr. Chairman, for the record I'll mark these as Harris 1, 2 and 3. You want to separate them. Mr. Harrison, do you want them separate? Harris 1, 2 and 3.

(Whereupon Harris Exhibits 1, 2 and 3 are marked.)

CHAIRMAN TIKOIAN: Okay. That's the fill you were referring to, I guess. I just want to clarify that?

MR. HARRIS: Yes.

CHAIRMAN TIKOIAN: Okay. Are there any other questions of the attorney? If there are none, I think Mr. Clarkin was here. Mr. Clarkin.

MR. GOLDMAN: Mr. Chairman,
Mr. Fugate would like to respond.

CHAIRMAN TIKOIAN: After Mr. Fugate responds.

MR. FUGATE: Yes. Mr. Chairman, what this is is an application, it was to the Council's old address, 60 Davis Street, there is an application, there is a received stamp by the CRMC that you can see that has shown through the back of it. So, it was received by the Council, but if it had been acted upon --

CHAIRMAN TIKOIAN: By the Council or the staff?

MR. FUGATE: By the staff at the Council. If it had been --

CHAIRMAN TIKOIAN: Was it at the --

MR. FUGATE: The CRMC staff.

CHAIRMAN TIKOIAN: Offices?

MR. FUGATE: Right. It had been acted upon by the Council, there should have been a permit issued, and, presumably, within our database. I personally have, myself and the staff that were on in 1987 went through literally hundreds of these, sent out 30-day notices on them and discharged many of these because they were not a valid application...
before the CRMC, that's the case, in this situation I don't know, but if a permit had been issued for it, it would show up somewhere within our records.

CHAIRMAN TIKOIAN: Just for the record, this application was submitted by the staff, the staff acted on it?

MR. FUGATE: The staff didn't act on it. It was merely received.

CHAIRMAN TIKOIAN: It was received, but they acted by saying it was received?

MR. FUGATE: Yes.

CHAIRMAN TIKOIAN: It never came to this Council by any organization?

MR. FUGATE: That's what I can tell from the records.

CHAIRMAN TIKOIAN: Mr. Clarkin.

MR. CLARKIN: Just briefly, I pretty much agree with what Mr. Goldman has said. The Town really has never conducted a full-blown hearing on permitting this structure to remain. It is Town land, and Mr. Harris really has just been permitted to utilize that shanty on the Town land. He did purchase the building at some point in the past, way before I came on board, but, as far as ownership of
the land is concerned, he does not own the land. The Town is basically leaving it to this committee to determine the marina and the use of the marina and the appropriateness of the marina. Down the road if it is determined that Mr. Harris can come back at some point to request, you know, the installation of a new marina, the Town would want to have a full hearing before the Town Council on the use of that structure because the Town certainly has some issues, building code issues, and, you know, septic system issues which were addressed earlier. So, as far as that's concerned, the Town, you know, is open to a request for Mr. Harris, but, quite frankly, the Town recognizes and it's up for you to determine first and foremost the use of this marina.

CHAIRMAN TIKOIAN: Mr. Clarkin, there are two letters from the Town, Wayne Pimental, one dated April 24, 2007, one dated August 24, 2007. In both of those letters they cite a violation.

MR. CLARKIN: Yes.

CHAIRMAN TIKOIAN: In both of those letters they cite that the first one you gave Mr. Harris 60 days to respond, the next one 30 days to respond, and I assume the Town dropped those
violations by saying that you're leaving this up to us.

MR. CLARKIN: Basically, that's what happened with the various notices that came from the CRMC, we were not quite sure what to do, so we kind of decided to step back. The Town certainly has no objection to Mr. Harris continuing to operate a marina at that site as long as it complies with all the applicable rules and regulations.

CHAIRMAN TIKOIAN: Does it comply with all the applicable rules and regulations of the Town of East Greenwich?

MR. CLARKIN: No. There are building code issues and there is ownership. There is no lease in place. There is no permissible use. It's just, quite frankly, nobody in any position in the Town was present when all of this began. Nobody can recall how the use started, when it started. You know, the Town Manager has been there longer than anybody and he doesn't know, so that is an issue for the Town. So, there are issues for the Town one would certainly be willing to address, but certainly it's your jurisdiction as to whether the marina is appropriate or not.
MR. SULLIVAN: A question of the Council. Mr. Clarkin, did I hear you correctly, in that did you state for the record that the Town would entertain a use agreement with Mr. Harris subject to his structure obtaining compliance with local building code matters?

MR. CLARKIN: The Town would entertain a request. It would be for the Town Council to decide whether it would grant that or not, so.

MR. SULLIVAN: Let me try it another way. Would you be in a position to recommend approval to the Town of a use agreement should the structure be brought into compliance?

MR. CLARKIN: That I can't say because I really don't know what the five-member Town Council, how they would view this and whether they would be in favor of it or not. Their position, I can't --

MR. SULLIVAN: I didn't ask about the Council. I asked were you prepared to make a recommendation to the Council that answered the specific question of if his structure were to comply with the applicable zoning ordinances, would you be
prepared to make a recommendation of the Council to approve?

MR. CLARKIN: That's not my job. That's not my place. I advise the Town Council of the legal ramifications. I do not tell them what to do.

MR. SULLIVAN: I think what we have here, Mr. Chairman and members, is a pretty damn dumb fair situation where Mr. Harris is somewhat held hostage by the Town. I don't think, with all due respect to the Town's counsel, I know CRMC cannot consider this a legal marina until such time as we have an established legal right of use. I don't believe we can do it. I don't believe the Corps can consider it. And, while I endeavor to ask the Council could he recommend, at least when I sat on the Council I expected my legal counsel to make a recommendation on findings of law, I would suggest we send a specific letter to the Town Council asking them that question then of, if Mr. Harris' structure were to comply with local building codes, zoning matters, would they then enter an agreement so that we might at least give them an opportunity to pitch his case before the Corps or before the Council?
MR. CLARKIN: Can I just respond for a second. Mr. Harris is not being held hostage by the Town. This all started with notices from this Court, from some entity within the CRMC. The Town basically, from sitting on the sidelines, Mr. Harris was operating his marina. We did not have an objection to him operating his marina and then this all began. So, for Mr. Sullivan to suggest that it's our fault, I disagree with completely. It is not by any stretch. We have said we would be willing to entertain a request from Mr. Harris, but we also recognize that there's a jurisdictional issue here as far as the marina operating, and that's your jurisdiction.

CHAIRMAN TIKOIAN: The concerns I have is that you sent two letters saying he's in violation and then you decided to drop the ball and say, he is not in violation, we'll drop this hot potato in your lap.

MR. CLARKIN: The concern we have is that the initial letter that came from CRMC started this whole dilemma. It was not initiated by the Town. It was initiated by the Council.

MR. SULLIVAN: So, the Town was
sitting blindly by recognizing the marina was there, saying, huh, not my job.

MR. FUGATE: The unfortunate thing for Mr. Harris is he can't even get into our door without an agreement from the Town. So, without that we can't process the application, so the Town needs to take an action whether they're going to give him an agreement or not give him an agreement just so that we can even consider the matter. The problem that we have is this is Type 1 waters. Without some pre-application or recognition of the Corps that he was grandfathered in, Mr. Harris is, quite frankly, dead in the water to use --

MR. SULLIVAN: Don't use that metaphor.

MR. FUGATE: Because in today's regulatory environment he can't qualify for a marina in Type 1 waters.

MR. HARRISON: I feel as though Mr. Harris has a very real prospect of getting a grandfather document from the Corps of Army Engineers. I think that he has a very real opportunity to get a lease from the Town of East Greenwich, and I am aware that there are some
hearsay discussions along those lines, that it's not beyond the realm of possibility, and so I would ask that the status quo be maintained while we pursue those options diligently, and that recognizing that the marina has been in operation for over 25 years is the primary source of income for someone in his twilight years, that the status quo be maintained while we pursue these options.

MR. SULLIVAN: Mr. Chairman, I would just ask a follow-up question of our counsel. Mr. Harris' counsel used the term status quo. My view is status quo is this marina is an illegal marina and should not be in operation.

MR. GOLDMAN: Status quo, Mr. Sullivan, is the floats have been removed for the winter. One of the reasons why I think we scheduled this like we did is it was okay. I mean, this thing has been percolating for a while. I think the sense was at the end of the season last year those floats get removed, let's get our action so they don't go back in in the spring. That's what the timing of this is.

MR. SULLIVAN: So, you would concur that with my conclusion that a marina should not
open in 2010 because it is a noncompliant, illegal marina.

MR. GOLDMAN: Unless before the season they can work something out with the Town and come in with an application.

MR. FUGATE: They need to go to the Corps first, if he is to stand any chance at all.

MR. GOLDMAN: The special exception is going to be problematic.

MR. SULLIVAN: Move we table until the documents are affirmed and we can consider.

MR. FUGATE: Hold the Cease & Desist until the agreement.

CHAIRMAN TIKOIAN: Before you table, can you hold that motion?

MR. DRISCOLL: Just wondering, along the same lines, I would think that your request from staff is to order prohibiting the reinstallation of a marina. I would think we would at least agree to that, pending whatever efforts that we use to maintain.

MR. SULLIVAN: The intent of my motion to table was, part of that was factored in with Bob. I think that's why I asked about the
status quo label. To me the status quo is the marina is dormant, the floats have been removed, the floats should not be reinstalled. It is at this point in time an illegal marina.

MR. DRISCOLL: I'd second your motion.

CHAIRMAN TIKOIAN: By the way, before we do a motion and a second, I know there was other parties that wanted to speak. So, if we may, Mr. Boehnert. Just to give an opportunity.

Mr. Boehnert.

MR. BOEHNERT: Thank you, Mr. Chairman. My name is Jon Boehnert. I am here representing Anderson's boatyard, is an abutter to the south and Andrew Craig who is an abutter to the north of the Harris Marina. First, I want to pick up on a couple of things that Mr. Goldman said. I think he is absolutely right, that you can't reopen after 26 years a closed right-of-way proceeding and try and relitigate that before this Council tonight.

Mr. Harris certainly had notice of CRMC regulations and requirements throughout the term of his operation of the marina and he apparently chose to ignore them.
The issue here is not, as Mr. Goldman said, the immediate issue here is not a right-of-way proceeding, although that's something the Council may well want to address at some point. The issue here is very simple. This gentleman does not have a permit to operate a marina and he has been operating the marina without a permit since perhaps 1979. He certainly has been a operating marina without a permit since you issued a Cease & Desist and told him to stop it and he has ignored that. Mr. Harrison indicated that there's no interference with abutters by this marina. That's not, in fact, correct. The marina goes out from property lines in this manner, so that, for example, many of the docks and boats are in front of Mr. Craig's property, impinging on his riparian rights and some are in front of Anderson's boatyard and impinging on his riparian rights. The property at issue in terms of his boundaries are a fairly small narrow piece of property, and the dockage and boating that he's operating his marina extend in front of the two abutter's properties' rights and interfere with their riparian rights. So, we would ask that, as the director has suggested and another Council
member suggested, that, in fact, because it is an illegal marina, he doesn't to have a permit to operate while he tries to do whatever he needs to do with the Town to pursue grandfather rights, that the floats not be installed and it cannot be allowed to operate.

I'd also note, and I think in discussions with the Town there should be some discussions as precisely what this structure is, my understanding is that is permitted for a residence. I don't know how it can be a residence when it doesn't have sanitary facilities because the Director noted the DEM inspection and tests revealed that they were discharging directly into the cove. I know the facility is used for entertainment and gatherings and so forth. I don't know how they can do that under both the zoning and building code when they have no sanitary facilities there.

MR. HARRIS: The same as Anderson, because I had the same when I opened my docks. Now, what else do you want to know?

MR. BOEHNERT: If I may continue?

MR. HARRIS: You may continue, and I want you to say it right. I have been down to CRMC
more times than you have hair on your head. Ask that fellow right there. It isn't that I wasn't ready to make a permit right along. I see these two people down there.

CHAIRMAN TIKOIAN: Mr. Harris, we'll give you a chance.

MR. BOEHNERT: Thank you very much, Mr. Chairman. I'm simply asking on behalf of the two abutters that the Council not allow the docks to be installed this spring, pending confirmation of a permit.

CHAIRMAN TIKOIAN: I do want to allow, I notice there were one or two hands up, but if someone wants to speak from the public, please note, this is an enforcement matter targeted to the in-water structure. The existence of it, it's the legality of it, not making reference to anything else. So, I would ask you to respect that request, yes.

MS. WALSH: I am a resident of East Greenwich.

MR. GOLDMAN: You're going to have to come up and testify. Raise your right hand, please.
Do you solemnly swear the testimony you'll give here this evening is the truth, the whole truth and nothing but the truth so help you God?

MS. WALSH: I do.

MR. GOLDMAN: Identify yourself for the record, please.

MS. WALSH: Mallorie Walsh. I'm a resident of East Greenwich. I also know Ken Harris, and I have to say a couple of things. I was at the Town Council meeting last night. Of course, there are issues that needs to be addressed, but the general sense that I got, and I think Mr. Clarkin would agree, is that they are willing to work with Mr. Harris to get this organized. I would be interested in having some of his comments qualified as hearsay. He is saying there are parties and entertainment. We actually, some of the boat owners, occasionally, yes, do get together and have a potluck, but there's no entertainment, and if he doesn't know for a fact that that's what's going on, he shouldn't say that.

CHAIRMAN TIKOIAN: We understand that, but we're not taking any of that into deliberations.
MS. WALLER: You know what, I brought it up, so, I'd like to answer it.

CHAIRMAN TIKOIAN: We'll take it for what it's worth.

MS. WALSH: Well, you need to get the facts straight. The other issue that I would say is that Mr. Harris never had any reason to question the right-of-way marker, which was placed on Mr. Anderson's property. He had no reason to say, what's this marker doing here. It wasn't on his property. CRMC has never clarified that issue. They have never gone back and figured out if, in fact, the marker was placed incorrectly or not, and that's certainly something that needs to be addressed, and I had totally agree with Mr. Goldman on that.

CHAIRMAN TIKOIAN: Okay. Thank you. I'll give you closing marks on this.

MR. SULLIVAN: Clarification. The witness just said that Mr. Harris' property, didn't we establish that this was Town property?

MR. GOLDMAN: We did. I believe that the records are very clear that the upland is owned by the Town, and I don't believe Mr. Harris
owns anything other than the structure.

MR. SULLIVAN: Okay.

MR. HARRIS: What's that? That I don't --

CHAIRMAN TIKOIAN: If I may, I just want to ask one question that came to mind. One second, Mr. Harris. Mr. Clarkin, is it true there was a Council meeting last night and there was talk about that in public.

MR. CLARKIN: Yes. The Town would be willing to entertain a request from Mr. Harris.

MS. WALSH: And the sense was positive to me.

MR. HARRIS: And show me where the land was on that paper.

MR. CLARKIN: I would add very quickly of the Town does own the land. Mr. Harris is taxed. He's taxed for tangible property only, not real property.

CHAIRMAN TIKOIAN: Okay. Now, the floors is yours.

MR. HARRISON: Of course.

Mr. Harris maintains that his structure is in the water, not on land, and that when he went to Town
Council -- I mean, when I went to the Town Clerk, the Town Clerk had no evidence that where his structure is located is owned by the Town. So, there is some confusion about, you know, the ownership of the land underneath, but, in any event.

MR. HARRIS: Black and white. There it is.

MR. HARRISON: Now, the comments of Mr. Boehnert are on behalf of the clients who are direct economic competitors of Mr. Harris, who arrived at that location after Mr. Harris was already there, seeing where his marinas and where his docks are, and I think that you have to take those comments for what they're worth. They're not motivated by any desire to protect the general public, protect the right-of-way.

The fact that there is no clamoring for the general public to get to water from this site, the fact that the marina has existed for so many years without any calamitous adverse effects justifies, in my opinion, that it continue to operate, especially in light of the fact that the likelihood of obtaining all the necessary permits is very good. This is the reason why for the last three years,
since 2007, you haven't shut him down, and I think that it makes absolutely no sense right now at this juncture to shut him down because there's no harm, all right. If you're a doctor and you're looking at a patient and hipocratic oath, do no harm, by you allowing him to operate right now you are doing no harm. All right. There's been no adverse consequences for the last three years of allowing him to continue until such time as we all know with absolute certainty that permitting cannot be obtained. I think that it's a wrong decision to shut Mr. Harris down from his own, his primary source of income in his twilight years after all the years of operating there.

CHAIRMAN TIKOIAN: Well, I know there was a motion. Mr. Director, do you want to?

MR. SULLIVAN: I renew the motion.

CHAIRMAN TIKOIAN: Is there a second?

MR. GOLDMAN: Can we clear what the motion is?

MR. SULLIVAN: The motion was to table until such time as we see the adequate and necessary documentation from the Town that a use
agreement of some kind empowers Mr. Harris to come before the Council and then also the necessary information from the Corps of Engineers, and until such time the actions and the recommendations of staff as far as the Cease & Desist should stand.

MR. GOLDMAN: So, that the Cease & Desist would be in effect, so that prohibits him from reinstalling those floats.

MR. SULLIVAN: Yes.

MR. HARRIS: You mean after three years, if you let me put those back in thereafter those complaints, now you're going to shut me down until I get it straightened out? You see the problem that I've been having, ask that fellow there, I've been down there for more than a dozen times.

CHAIRMAN TIKOIAN: Is there a second?

MR. COIA: I just have a question.

CHAIRMAN TIKOIAN: Yes.

MR. COIA: Before us, is it staff's looking to enforce the Cease & Desist, or is this gentleman asking that the Cease & Desist not be enforced? I just need that clarification for the
MR. GOLDMAN: This was put on as an enforcement matter by the staff to enforce the Cease & Desist. Well, to go beyond the Cease & Desist and Order and have the Council issue a permanent order that he is prohibited from reinstalling the docks and ordering removal of any docks?

MR. COIA: So, if we're tabling it we are not ordering that he remove anything.

MR. GOLDMAN: But there is still a Cease & Desist order that's outstanding that was issued.

MR. HARRISON: There's been a Cease & Desist order outstanding for three years.

MR. COIA: So, he can at his peril open it?

VICE CHAIRMAN LEMONT: No, because I think the intent of the motion that he cannot establish a marina, that in the intervening period of time he can come back before us.

MR. COIA: That's not what I'm hearing in the motion.

CHAIRMAN TIKOIAN: That's what he said.
MR. SULLIVAN: Again, the intent, the language of the motion, the staff I think appropriately issued a Cease & Desist based on what's known, that that same condition continues to exist, and until such time as we get a curative action by Mr. Harris, I think the Council's only appropriate action is to enforce the Cease & Desist.

MR. COIA: So, you are not tabling anything, you're enforcing the Cease & Desist. That's why, in my mind, he is saying two done things. Table means you don't act on it.

MR. SULLIVAN: Yes.

CHAIRMAN TIKOIAN: Okay.

MR. SULLIVAN: We could pick it off the table at any point in time, from a parliamentary procedure, if he came back with a curative document, there's no need to readvertise, you pick it back off the table.

CHAIRMAN TIKOIAN: Any other discussion before we vote? Mr. Clarkin, can you just give this Council some guidance as to how long do you think it will take for your Town Council to address this situation?

MR. CLARKIN: Understanding, if
Mr. Harris makes a request, he will be put on a Town Council agenda, you know, within a month.

MS. WALSH: There is a meeting in two weeks.

CHAIRMAN TIKOIAN: If he sent in a request tomorrow, it could be on when?

MR. CLARKIN: There are two meetings in the month of April. It would either be the first or the second meeting, so they meet the second and fourth Monday of each month. It could certainly be by the end of the month of April.

MR. DRISCOLL: I would suggest that we review this in 60 days.

CHAIRMAN TIKOIAN: I think my request would be, and I think I'm hearing this from Council, we would like this to be on the Town Council -- I don't want to dictate the Town Council in East Greenwich, but I think we would, like, see it at the first meeting so in the event this goes down the path to allow this gentleman to get the appropriate permits, he doesn't miss the season.

MR. CLARKIN: That's fine, as long as he's requesting that.

CHAIRMAN TIKOIAN: That way we can
bring it back say in 45 days and by the time they
get an answer, this gentleman can go to the Army
Corps and do whatever he has to do there.

MR. CLARKIN: That would be the
second Monday of April, whatever the date would be.

MR. SULLIVAN: The purpose of the
table was to leave counsel with as much flexibility
to respond with an appropriate document.

CHAIRMAN TIKOIAN: But, in the
meantime the docks remain out of the water until
this is rectified. Any other clarifying points or
questions?

(NO RESPONSE)

CHAIRMAN TIKOIAN: Hearing none, all
in favor signify by saying aye?

(VOICE VOTE TAKEN)

(UNANIMOUS)

CHAIRMAN TIKOIAN: Opposed?

(NO RESPONSE)

MR. HARRISON: Thank you.

CHAIRMAN TIKOIAN: One item left on
the agenda which is we will open up the public
hearing for the Ocean Special Area Management Plan,
Chapter 7. Can we take a five-minute break.
(RECESSED AT 7:39 P.M.)

(RESUMING AT 7:48 P.M.)

CHAIRMAN TIKOIAN: We'll bring the Council meeting back to order. I guess we will start off with the public hearing on Chapter 7. Tiffany and Michele, Mr. Fugate, and I guess we'll open up the public hearing with a presentation and allow people to ask questions and comment.

MR. FUGATE: Okay. Mr. Chairman, this is Chapter 7, it's Marine Transportation, Navigation & Infrastructure Chapter.

This, as the Council members are aware, goes through a fairly lengthy process to get here. It has been through that process. In fact, as part of the rule making process, what we have done at the request of Save the Bay is incorporated a public workshop in between the public notice period and the written comment period closing, that public workshop was conducted, nobody showed up to the public workshop, so it appears that the writing team here has done a very good job of dealing with all the comments from the stakeholders at least through the process. The one thing that I will note, and we can get into this later, is that there are some
suggested changes that appear in some of the policy documents. Those were actually -- there were several, actually many iterations that went back and forth between NOAA and the team before we finally reached agreement with NOAA that the changes that have been suggested here will constitute enforceable possible policies under the Federal program.

So, anyhow, with that I will let Tiffany give the overview of the chapter.

MS. SMYTHE: Thanks, Grover, and I am Tiffany Smythe, and my colleague, Michele Armsby and I wrote the Marine Transportation, Navigation & Infrastructure Chapter, and I will give you a brief presentation of tonight.

So, the Marine Transportation, Navigation and Infrastructure Chapter has a long title and so to breakdown what's actually included in that chapter, the bulk of it is really focused on the nation's marine transportation system and the part of it that is in the Ocean SAMP area. The marine transportation system is a national network of ships and infrastructure that enable the movement of goods and people by sea. It includes cargo ships, passenger ferries, government and support vessels.
We also include military vessels which are operating in this area. The marine transportation system relies heavily on navigational infrastructure, which is really the system of sort of the invisible roadway on the water, the network of shipping lanes and precautionary areas that enable the safe transit of these ships through that area. We also cover that in this chapter, and, finally, we cover infrastructure, which is really a catch all term to cover all of the human made things that's out there in the SAMP area right now. These things include submarine cables as well as some other items that I'll get into shortly.

So, to hit right now the major findings of this chapter we were found that the marine transportation, navigation and infrastructure provide very valuable goods to the region. The marine transportation and navigational uses take place in and rely on very specific parts of the SAMP area, and these areas and uses should be considered when evaluating future projects.

To give a quick overview of how we develop this chapter, we first reviewed key documents, which, of course, started with past SAMP documents,
but because of the offshore focus of the Ocean SAMP and the possibility of offshore renewable energy we also looked at the Cape Wind, EIS, other environmental impacts statements for offshore construction, as well as the Mineral Management Service Guideline and documents for offshore renewable energy. We then identified a series of stakeholders and experts, marine transportation individuals in the State, or in the region who have expertise and knowledge in this area. We sought out those people, interviewed them and gathered a lot of their knowledge here in this document. After that we then conducted an extensive literature and data search. Our goal was to consolidate here the best available existing information about the subject, but this provides a solid baseline of the current status of this area, and then, finally, we did a bit of data analysis and mapping, and I'll show you some of that, too. And, of course, we all know the Ocean SAMP is focused on the offshore environment. We're not looking at uses in the bay, however, because marine transportation in this area is connected to courts that are in the bay we do highlight those ports in the chapter.
The chapter starts off with some context on maritime uses of offshore environment. Just as Rhode Island has a really rich maritime history, so does the Ocean SAMP area. For over 400 years it has been actively used by ships for exploration, then for trade and naval operations and what's been here is that this area has a really long legacy of human uses and also has been key to Rhode Island's economic growth for a really long time, even before Rhode Island was a State of the union.

As I mentioned, marine transportation is really about the movement of goods and services, goods and people by sea, and so much of this chapter is really focused on commercial shipping or the movement of cargo, and what's important of the SAMP area that we highlight in this chapter is that area is really a shipping crossroads, it's at the center of the multiple heavily used waterways, and much of that traffic that is passing out in the SAMP area is actually headed up here into Narragansett Bay, it's delivering products to the ports of Providence, Quonset, Davisville and Fall River, Massachusetts. Much of those products are actually energy-related products. They are coal and petroleum that's headed
to Providence and to Fall River. Much of that
traffic is also bringing cars to Quonset,
Davisville. However, there is a lot of traffic in
the SAMP area that's actually not headed into
Narragansett Bay. It's actually headed passing
costwise east to west, and much of that traffic is
also the transport of energy-related petroleum
product passing largely between Boston and New York.

Now, there's a great deal of other maritime
activity going on offshore as well. There are pilot
boats that provide escort to these cargo ships to
get up into bays, the ports. There are Navy vessels
operating out there, which we'll discuss more
shortly. There are government vessels engaged in a
variety of activities, enforcement and search and
rescue, research, and then there are passenger
ferries, which is passenger vessels, which is
ferries and cruise ships, and we'll highlight those
more shortly. As I mentioned, we analyze as much
data as we can get our hands on to highlight the
spacial aspect of this activity in the offshore
environment. So, this map here, it shows commercial
shipping traffic represented by AIS data. AIS is
Automatic Identification System. It is a
transponder-based vessel tracking system. What you see here is an analysis of a bunch of those data, individual points representing ships, and on this map the colored areas represent areas where there is a concentration of ship activity. The darker the area, the more intense the activity. You can see there is a great deal of activity heading coastwise, as well as a great deal heading right there into the bay. However, the AIS data does not capture everything. It doesn't capture fishing vessels, which is another chapter. It doesn't capture passenger ferries. So, we made a separate map that shows passenger ferry routes, and I do want to highlight passenger ferries are a very important use of the SAMP area. In some cases they provide really critical mainland access to island communities, especially in the Cape and Block Island. The Block Island Ferry is essential to Block Islanders as their means of connecting to the mainland. We did look at naval operations in the SAMP area, and as many of you know the Navy has a longstanding presence here in Newport. The Navy still has a strategic presence now with Naval Station Newport and the Naval Undersea Warfare Center and NUWC in
particular conduct training and testing activities out here in the SAMP area. The gray that you see in that map represents what the Navy calls the Narragansett Bay Operating Area. The orange and red on that map indicates two testing areas that are used by NUWC, one for torpedo testing and the other for mine testing. There's also a good deal of naval activity out here that's not directly connected to Rhode Island, but that's submarine traffic headed to and from Groton. Submarines that are out passing through this area will enter it through that triangular shape there on the bottom of the map, and they will surface after exiting that channel and transit the rest of the way from Groton on the surface. We couldn't find more detailed information about submarines because it's classified. We did, as I mentioned, look at navigation features of the SAMP area. Navigational features include things like shipping lanes, precautionary areas, buoys, these features are really important in that they create this traffic management system for the SAMP area, which is designed to minimize the risk of collision, maximize safety. These features are normally shown on NOAA nautical charts for mariners.
We just pulled out a couple of key ones here to draw them to your attention.

There are other features that facilitate safe navigation well. This particular feature is the right well seasonal management area. It's a rule that applies to that pink-shaped polygon, and the rule is meant to reduce the risk of mariners hitting right whales, and it is really a speed restriction that's in effect during a certain part of the year for certain size ships.

Now, as I mentioned earlier, the focus of this chapter is offshore, but because much of the traffic passing offshore is connected to ports here in the bay we do highlight them in the chapter. Providence is one of the key ports connected to ships passing through the SAMP area. Ships headed to Providence, as many of you know, bring really important petroleum products. Those products serve not only much of Rhode Island but also parts of Connecticut and Massachusetts, and Providence is really an energy lifeline to the region because of that.

Secondly, there are many ships passing through the SAMP area that visit Quonset/Davisville bringing auto imports. Davisville is actually the fourth
largest auto import port in the nation. If you
drive a Subaru or an Audi, you may have had your car
come on a vessel through the SAMP area and into
Davisville.

And, finally, the third major port in the bay
served by ships passing through the SAMP area is
Fall River, and many of the vessels found there are
carrying energy-related products as well, primarily
coal used in power stations.

In the chapter we also tried to highlight the
economic significance of these uses to Rhode Island.
We gathered a bunch of available data on marine
transportation activities and ports and included it
here. This included looking at recent economic
impact studies that's been done of the ports of
Providence and of Quonset-Davisville. We have also
included some information about the economic impact
of the Naval Undersea Warfare Center, and really the
key point out of all those numbers, the off-shore
environment is very connected to Rhode Island's
economy, it provides for jobs at ports, it provides
for the support of marine-related businesses, in
addition to the products that it applies us all
with.
Finally, the third part of the chapter, as I mentioned, is related to human made infrastructure out there in the SAMP area. That human made infrastructure includes really two main sets of things, one is submarine telecommunication cables, which we have shown here on the map, all the colored lines. Some of those cables are active, some of them are inactive, regardless, they are a concern in terms of State navigation as well as in planning for future developments of the SAMP area.

And, the other key category here of infrastructure there are -- actually, there's two, one is you have an offshore dredge disposal site, which you show on this map, we have an inactive disposal site, we also showed here the third category, perhaps the most interesting, is we have unexploded ordinance in the SAMP area. This includes unexploded bombs and dep charges left over from World War II. These features are mapped on a nautical chart so that fishermen don't drag their net over them and so mariners won't anchor on them. That's the major safety concern, and these are features that are common in coastal areas. Not really any chance of them being removed any time
sooner.

MR. SULLIVAN: Fishermen do occasionally pick them up.

MS. SMYTHE: I bet. So, finally, we conclude the chapter with, we developed some set of policies and standards, these policies are previously presented to the CRMC Ocean SAMP subcommittee, and when we conclude we can go over the recent changes made to those policies. The policies were designed to address four key issue areas, one is the value of the marine transportation and navigation to the State. The second is these important areas that are really key for navigational uses. We address navigational safety and access, and then, finally, the possibility of offshore construction. And, as Grover mentioned, this chapter has undergone an extensive review process thus far. Before it was issued to the public for the two public comment periods, it was reviewed by a Marine Transportation, Navigation & Infrastructure Technical Advisory Committee, which included many of these maritime experts I mentioned before, as well as our Federal and State agency partners, and that brings me to the end of our presentation. Thank
you, and I think we'll now talk about some of the
changes that we made recently.

MR. FUGATE: The changes, actually, as I indicated, came out of several discussions with the Federal consistency coordinator and also our program person out of NOAA, and, basically, NOAA has changed the standards recently relative to policies that they considered enforceable, and so what we're getting caught in in this change, what they are recognizing is enforceable policies. It took many iterations before we finally got to the point that NOAA would indicate that they would approve these as an enforceable policy, but what is clear is that many of our -- our typical way of writing policies would not pass current muster with NOAA at this point. So, anyhow, the changes that have been suggested have been suggested by NOAA in order to facilitate them approving these enforceable policies under our program for Federal consistency purposes.

CHAIRMAN TIKOIAN: Any questions, comments from the public?

(NO RESPONSE)

MR. GOLDMAN: Can I ask Grover, when did NOAA make those comments?
MR. FUGATE: They made them actually after the public comment period had closed. There was a series of discussions that were ongoing with them relative to this, and there is just about a week, week-and-a-half ago that we finalized. What it is is just restructuring the way that this is said, and not so much substantive changes in the policies themselves, but a restructuring of the way that it was said so that they can support it.

MR. GOLDMAN: Because I am just wondering about whether, you know, it has been out in public domain sufficiently and whether --

MR. FUGATE: They wanted the language more forceful, if you want, rather than, so the policy content hadn't changed but they wanted the language structure so that it was more forceful.

MR. GOLDMAN: And, actually, Mr. Chairman, taking it through, the fact that we're going to take up all the factors through at the end, I think would take care of it. I think the fact we're going take those up at the end, again, people can comment on those chapters, so, I'm comfortable.

MR. SULLIVAN: Out of an abundance of caution, Mr. Goldman, would you suggest that you
know, and I think these things would likely continue
to exist because it's a huge volume of information
flowing, that we were to have at the end of, here is
the update and other changes that occurred outside
the public, you know, on the chapter specific bases,
out of an abundance of caution.

MR. GOLDMAN: Like, a separate
document you mean?

MR. SULLIVAN: No. Have them
highlighted in some way, shape or form, have staff,
when we do the final one, just use them in whatever
we do.

MR. GOLDMAN: I think we would do
that now, but I think the comments, there is a
spreadsheet with the comments and whether they've
been incorporated into it. So, I think, as long as
it's out there the public domain.

CHAIRMAN TIKOIAN: These most recent
changes you are referring to, are they summarized on
one and two sheets and on the website?

MR. FUGATE: Yes.

CHAIRMAN TIKOIAN: Which website?

MR. FUGATE: They would be on the
Ocean SAMP website, and then those are forwarded on
typically to Laura, who then backs it up also on the website.

MR. GOLDMAN: Yes, I'm comfortable.

MR. GOMEZ: That was a question that we had at one of the subcommittee meetings I think.

MR. FUGATE: It was a different policy. What's happening now, what we have been doing is pushing NOAA to comment. Typically, the way this Council works is the Council goes through and then goes to NOAA for adoption into the Federal program. NOAA would then go back after that point, after the Council adopted it and said, needs to make changes in order for us to accept this as an enforceable policy, then we have to go back into the rule making process and make those changes again. What we have been doing is pushing NOAA to get that input up front so we don't have to go back and make changes at a later point in time, and this is what NOAA is doing now, is they're trying to work with us to comment directly on the policies, so.

CHAIRMAN TIKOIAN: Any other questions or comments?

(NO RESPONSE)

CHAIRMAN TIKOIAN: Well, thank you
again. Another job well done. Another chapter
done. I guess it's a little bit more work to do.
But, the Council likes the progress. So, with that,
no objection, we'll close the public hearing.

MR. GOLDMAN: You can take all the
comments.

CHAIRMAN TIKOIAN: I asked that
already. Public comment. So, we'll close the
public hearing. Motion to approve this chapter?

MR. SULLIVAN: So moved.

MR. COIA: Second.

CHAIRMAN TIKOIAN: Motion made and
seconded. Any discussion?

(NO RESPONSE)

CHAIRMAN TIKOIAN: All in favor?

(VOICE VOTE TAKEN)

(UNANIMOUS)

CHAIRMAN TIKOIAN: Opposed?

(NO RESPONSE)

CHAIRMAN TIKOIAN: So carried.

Thank you. Any questions on the Category A list?

(NO RESPONSE)

CHAIRMAN TIKOIAN: If there are
none, motion to adjourn.
MR. COIA: So moved.

VICE CHAIRMAN LEMONT: Second.

CHAIRMAN TIKOIAN: All in favor?

(VOICE VOTE TAKEN)

(UNANIMOUS)

(HEARING ADJOURNED AT 8:08 P.M.)
CERTIFICATE

I, Rebecca J. Forte, a Notary Public in and for the State of Rhode Island, hereby certify that the foregoing pages are a true and accurate record of my stenographic notes that were reduced to print through computer-aided transcription.

In witness whereof, I hereunto set my hand this 25th day of March, 2010.

[Signature]

REBECCA J. FORTE, NOTARY PUBLIC

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My Commission (MA) Expires on 2/18/11
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