

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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ORIGINAL

I N D E X

APPLICATION PAGE NUMBER

2006-04-062 Gunter Hafer (Continued)
07-0028 Harris Marina.....33

Reconsideration of Council Decision --
Changes to RICRMP, 11

Public Hearing, Ocean Special Area Management Plan,
Chapter 7, Marine Transportation, Navigation and
Infrastructure, 80

1 (COMMENCED AT 6:00 P.M.)

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

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

10 An attorney's comments during the course of a
11 presentation will not be considered evidence or
12 testimony before the Council and attorneys should
13 recognize that this is a quasi judicial body and
14 should act accordingly. All parties giving
15 testimony or statements this evening will be sworn.
16 Some applications on tonight's agenda may have
17 recommendations of approval by the Council staff and
18 there may not be anyone here objecting to these
19 applications. Prior to tonight's meeting, all of
20 the Council members have had an opportunity to
21 review those files, review the staff reports and
22 comments, all of which are part of the record. On
23 those applications the Council may after public
24 comment move for approval and, in fact, approve

1 those applications without the necessity of taking
2 any testimony. Approval of an application does not
3 mean you can start work tomorrow. You must wait
4 until you receive your Assent, an orange Assent
5 card.

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

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

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

21 MR. SULLIVAN: We returned to open
22 session.

23 MR. GOLDMAN: The minutes that are
24 on the Secretary of State's website reflect that.

1 VICE CHAIRMAN LEMONT: With that, I
2 move approval.

3 MR. COIA: Second.

4 CHAIRMAN TIKOIAN: Motion made and
5 seconded. Discussion?

6 (NO RESPONSE)

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

9 (VOICE VOTE TAKEN)

10 (UNANIMOUS)

11 CHAIRMAN TIKOIAN: Opposed?

12 (NO RESPONSE))

13 CHAIRMAN TIKOIAN: So carried.

14 Subcommittee reports?

15 (NO RESPONSE)

16 VICE CHAIRMAN LEMONT: None. I'm
17 sorry.

18 CHAIRMAN TIKOIAN: Vice Chair
19 Lemont.

20 VICE CHAIRMAN LEMONT: Sorry. You
21 got me confused with all of the pictures here. The
22 Planning & Procedures Subcommittee met on March 16,
23 2010, and we are reporting out rule making the
24 following, under the Red Book, Section 210.3.C.4,

1 Coastal Wetlands, and the purpose is to revise the
2 prohibition policy on alterations to salt marshes
3 and contiguous freshwater wetlands abutting Type 2
4 waters such that the construction of new structural
5 shoreline protection facilities is not permitted.

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

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

22 CHAIRMAN TIKOIAN: If there are
23 objections, we will accept those items that are
24 voted out by the subcommittee and place it out for

1 public notice and brought back for consideration by
2 the Council.

3 Hearing no objections, so ordered.

4 Any staff reports?

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

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

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

1 big auditorium.

2 MR. FUGATE: Yes.

3 CHAIRMAN TIKOIAN: 7:00?

4 MS. SMYTHE: 7:00.

5 CHAIRMAN TIKOIAN: Any other
6 subcommittee reports?

7 MR. GOLDMAN: Yesterday,
8 Mr. Chairman, the Federal District Court handed down
9 a favorable decision to the Council in the
10 Downing/Salt Pond case. As the Council members
11 would either have read in the paper or were aware of
12 the fact that Downing filed, and this is the case
13 that is going to subcommittee, in the interim last
14 August Downing filed a multi-million dollar takings
15 case against CRMC and the State of Rhode Island in
16 Federal District Court alleging a regulatory taking
17 and a number of other constitutional deprivations.
18 When the case was filed by my office, as well as the
19 Attorney General's office working with Mike Rubin
20 filed a Motion to Dismiss in Federal Court arguing
21 that the matter wasn't right for review because the
22 Council had yet to act on their assent extension
23 request, and that in any event the Federal Court was
24 inappropriate to bring a takings claim against the

1 State of Rhode Island. We had oral argument in
2 January in front of Judge Smith, and yesterday Judge
3 Smith agreed with our position and dismissed the
4 case in Federal Court, and so, I don't know, that
5 case is dismissed, it just came out yesterday, there
6 is an appeal period running whether or not Downing
7 will go up to the First Circuit, but, obviously, a
8 very favorable ruling for us and the State of Rhode
9 Island, and I would like to thank the Attorney
10 General's office for working with us on that case.
11 I think it was a very helpful and a very successful
12 case for us.

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

23 Any other questions or comments on that?

24 (NO RESPONSE)

1 There are two items. There are some policy
2 changes and two items, one was Gunter Hafer, which
3 was 2006-04-062, that's being continued, and that
4 continued request came in in a timely fashion.

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

8 MR. HARRISON: Yes.

9 CHAIRMAN TIKOIAN: Your name, sir?

10 MR. HARRISON: Casby Harrison on
11 behalf of Ken Harris.

12 CHAIRMAN TIKOIAN: Harrison?

13 MR. HARRISON: Yes.

14 CHAIRMAN TIKOIAN: Thank you. Any
15 witnesses, sir?

16 MR. HARRISON: No witnesses.

17 CHAIRMAN TIKOIAN: Anyone here wish
18 to speak for that application?

19 (NO RESPONSE)

20 Anyone here, for that enforcement matter,
21 anyone opposed?

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

1 other comments.

2 CHAIRMAN TIKOIAN: Okay. Thank you.
3 Mr. Boehnert?

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

6 CHAIRMAN TIKOIAN: Anyone else here?

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

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

16 I think, if the members of Harris Marina don't
17 mind, if you can just take this a little out of
18 order, and I think it can facilitate the evening,
19 and if you can start off with the reconsideration of
20 the Providence Quadrangle. And, is there a staff
21 member that's going to speak on this? I know that
22 we voted this for reconsideration this evening.
23 Does staff or a Council member want to start?
24 Director.

1 MR. SULLIVAN: I just made the
2 comment, Mr. Chairman, to thank the members for
3 supporting the move to reconsider. I think, based
4 on a late, but more, I think thoughtful review of
5 the proposal that was made by Vice Chairman Lemont
6 and then supported by the full Council, I think we
7 acted in haste. I don't believe the action was
8 appropriate. I think we caused an adversity, and
9 perhaps damages to ongoing commercial operation. I
10 would reconsider, and, frankly, I would urge we
11 adopt the recommendation of the staff, as it was
12 made that evening, and I do believe Jim Boyd has
13 prepared a visual and some other comments that to,
14 again, assert the staff's position.

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

17 MR. BOYD: I'll provide a little
18 background, Mr. Chairman. As you know, we went out
19 to public notice with water type changes, and this
20 was what the Council reviewed back on January the
21 27th, and the staff recommendation at that point
22 was for Type 6 waters to remain as is at Bold Point
23 and Wilkes-Barre Pier.

24 On a motion by Mr. Lemont and approved by the

1 Council, as just mentioned by Council Member
2 Sullivan, the Council revised Type 6 waters to Type
3 5 waters along the so-called Green Shoals, and so
4 staff prepared this visual aid, it was forwarded to
5 the City of East Providence as well as Capital
6 Terminal Corporation, Todd Turcotte is president and
7 he's present here tonight, and then I believe Jeanne
8 Boyle is here, also, from the City. So, this is the
9 staff's representation of what we believe the
10 Council to have approved that evening, and, again,
11 just for application, this was an area 100 feet out
12 from the shoreline, starting at Bold Point, down to
13 the CTC property. Now, whether or not the City of
14 East Providence or Capital Terminal agrees with our
15 representation, or the Council members agree with
16 our representation of what we believe the Council to
17 approve, obviously, it's up for debate this evening.
18 However, the staff recommendation still holds, that
19 we maintain that these waters should stay Type 6 to
20 protect this regional use, a use that's important,
21 and regional benefit not only to the State but to
22 New England as a whole, and just for further
23 explanation, the image that you see here beyond just
24 the yellow of the Type 5 waters is a CAD file that

1 we received from CTC representing the improvements
2 for dredging maintenance as well as improvement
3 dredging that was done on approval by the CRMC, and
4 the magenta lines here running parallel with the
5 shore, it's your understanding that that represents
6 the product pipe lines as well as I believe a
7 40-foot wide easement, that CTC maintains across
8 this parcel of which Type 5 waters has been approved
9 by the Council.

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

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

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

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

24 CHAIRMAN TIKOIAN: This Council does

1 not approve an easement.

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

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

10 CHAIRMAN TIKOIAN: You may, Mr.
11 Lemont.

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

22 At the meeting two weeks ago, I guess it was, I
23 asked the City Planner from East Providence if a
24 100-foot area along the front of the area that's

1 shown on this map is Type 5 would be sufficient for
2 them, and I was given a yes answer. Accordingly, I
3 made the motion. Now, if we're going to change this
4 tonight, I will tell you right now I will not vote
5 on it, I'll back out and you will not vote on it,
6 you won't have a quorum to vote on it. This is what
7 I wanted, this is what the Town wanted, and anything
8 different we're going to have to have another public
9 hearing, and I don't think we need that. This gives
10 the City what it wants, and the area still has
11 plenty of room for the Type 6 to move the ships
12 around. So, I don't know what game is being played
13 here, but I do not like it.

14 CHAIRMAN TIKOIAN: Any other
15 comments?

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

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

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

24 If you look at just the simple rendering, the

1 Type 5 clearly enters into the immediate facility of
2 the pier, and, at a minimum, we should reconcile
3 that error as to changing what is a commercial site,
4 and I would accept that a set of commercial
5 pipelines and an associated commercial activity, the
6 site is commercial/industrial, and the Type 5 is a
7 bit of window dressing, but at a minimum what I
8 would be looking for would be to -- and while I
9 personally could support the staff's full
10 recommendation, at a minimum we need to adjust the
11 original motion to move the Type 5 classification
12 entirely out of this commercial facilities waters
13 and I think that could be perfected, and I will quit
14 there.

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

19 MR. SULLIVAN: That is what I
20 believe.

21 CHAIRMAN TIKOIAN: So, those are, in
22 contrast to this entire area, and you're talking at
23 both ends, is that at both ends or just at the
24 southerly end? Right here where this one magenta

1 line crosses, right, that is what you are referring
2 to, that little piece?

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

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

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

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

24 MR. BOYD: That is the question,

1 Mr. Chairman.

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

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

14 CHAIRMAN TIKOIAN: Like that?

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

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

24 MR. GOMEZ: As I remember, and I

1 don't know exactly, we don't have the minutes in
2 front of us, you know, who was in attendance that
3 night relative to the Council, but we had a pretty
4 extensive discussion, I thought it was a good
5 discussion, and it was just a matter of trying to
6 help out the Town of, or the City of East Providence
7 with some commercialization or use of this property
8 as per their plan, that City plan, and when we got
9 all said and done, Mr. Lemont had suggested this
10 100-foot setback from the Coastal feature, from the
11 shore, East Providence was in agreement with that,
12 and the Council was in agreement with that and we
13 voted that as an afterthought. After the vote, we
14 said, gee, we shouldn't, exactly as Director
15 Sullivan has discussed, we shouldn't be encroaching
16 on that dock, and it appears to me that all of that
17 discussion, good discussion, we voted on it, and we
18 just wanted to do a little cleanup action, and
19 whether that's a line parallel to the dock or
20 whether it forms a 90 back to the shoreline, you
21 know, we just need to give some easement into that
22 commercial property, and I think that's what we
23 should be doing tonight, just to clean that up so
24 that there is no problem in the future with that

1 Type 5 water encroaching in onto that, the physical
2 dock space, and how much relief you give that when
3 you come back. I don't know, you know, pick a
4 number. I think your suggestion was a line parallel
5 to the dock coming back to the shore?

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

11 MR. WILLIS: Yes.

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

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

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

23 MR. WILLIS: Yes, we do.

24 VICE CHAIRMAN LEMONT: Mr. Chairman.

1 CHAIRMAN TIKOIAN: Vice Chair
2 Lemont.

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

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

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

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

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

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

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

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

22 CHAIRMAN TIKOIAN: Yes, I just
23 wanted the Council to have an opportunity to ask
24 questions of the staff.

1 VICE CHAIRMAN LEMONT: I would
2 support that move, but not running parallel with the
3 out of ship line.

4 CHAIRMAN TIKOIAN: Any other
5 questions?

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

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

16 MR. TURCOTTE: Yes. Todd Turcotte
17 from Capital Terminal Company. Just to give some
18 clarification of what this drawing that was provided
19 to staff at CRMC. The line that I believe we're
20 talking about that is north of the ship line, that
21 corner is off the berth, that is our deeded right of
22 150-foot ship berth from the corner of the pier.
23 So, that area that Councilman Lemont is discussing,
24 that is a shoaled area, yes, it's about a three-foot

1 depth over there, it's four feet at low tide, which
2 we actually use as construction equipment when we're
3 doing work on the pier. Further, that is also our
4 right that we could --

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

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

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

13 CHAIRMAN TIKOIAN: From who?

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

18 CHAIRMAN TIKOIAN: Do you have
19 documents to show that?

20 MR. TURCOTTE: Yes, we have that.

21 CHAIRMAN TIKOIAN: Can you provide
22 those to us?

23 MR. TURCOTTE: Yes, that's how we
24 were able to dredge.

1 CHAIRMAN TIKOIAN: Do those
2 documents have lat/long coordinates on them?

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

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

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

12 CHAIRMAN TIKOIAN: Can you send that
13 to Brian Goldman?

14 MR. TURCOTTE: Sure. And we have a
15 40-foot ship berth at that location. It goes to,
16 from 40 feet it goes up to about three feet at a
17 standard slope from that, in that distance, but we
18 use that for construction vessels, and we could, if
19 operations change at all, could actually get a
20 second ship berth if there for two barges at once if
21 we needed to for different activities.

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

24 MR. TURCOTTE: What you just drew,

1 no, I haven't.

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

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

8 MR. TURCOTTE: That's fine. No, I
9 understand what you are talking about. I am not
10 saying that's fine, that we're okay with that. I
11 understand that's a resolution possible for this
12 situation. There are accesses in that area that
13 could hinder our operation. I don't know them all
14 at this point, but that being that close to the Type
15 5, residential, kayak launching, those types of
16 things, that's going into our ship berth, that has
17 security requirements by Homeland Security, that
18 could be in the future a problem for us. That was
19 our concern in the beginning, which is why we
20 supported staff.

21 CHAIRMAN TIKOIAN: Mr. Turcotte, I
22 would assume that they have riparian rights, that
23 your rights don't extend into the riparian rights of
24 the owner of this property.

1 MR. TURCOTTE: They actually overlap
2 because the owner of that property used to own
3 rights to that pier. They sold those rights to our
4 successor, P & W. There is a long history as far as
5 ownership and use of that pier. The Unical property
6 used to utilize that pier for receiving property.

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

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

23 First, is that CRMC is required under the
24 Coastal Zone Management Act to protect uses of

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

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

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

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

22 CHAIRMAN TIKOIAN: I understand
23 that, and this Council is not here setting any
24 precedents, and this Council is standing here having

1 a public hearing.

2 MR. HUNTER: I'm merely making
3 public comment at this point.

4 CHAIRMAN TIKOIAN: It's trying in a
5 rational, professional manner to try to discuss this
6 topic.

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

10 CHAIRMAN TIKOIAN: You may.

11 MR. HUNTER: Okay. Thank you. So,
12 I would just say that you're going to -- it obviates
13 the point of water type changes -- excuse me, of
14 water type designations if you start picking away at
15 it parcel by parcel, as we're seeing here, that it
16 takes away the point of Type 6 waters to protect an
17 industrial area, or, for that matter, or it could
18 take away the point of Type 1 waters to protect
19 habitat that you want to protect if a property owner
20 on Great Salt Pond or some other area wants to put
21 in a pier or something for recreational use. I just
22 mention this as a point to consider broadly, in
23 regards to water type designations and concerns spot
24 zoning of that water type. Thank you.

1 CHAIRMAN TIKOIAN: I know there are
2 two people that wanted to speak. I think we are
3 leaning towards, table this so this could be
4 discussed in a different forum, but if you still
5 want to speak, we're more than willing. Wendy and
6 Jeanne. Wendy, do you want to go first?

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

14 CHAIRMAN TIKOIAN: Jeanne.

15 MS. BOYLE: My name is Jeanne Boyle.
16 I am the Planning Director for the City of East
17 Providence. I would like to comment, too. I didn't
18 realize that this issue was being revisited. I know
19 it was listed as a reconsideration. I thought this
20 was simply a clarification of a vote that was taken
21 by the board at its previous meeting. I have had
22 the opportunity to discuss this with Mr. Turcotte
23 from Capital Terminals today. We did talk about the
24 impingement of Type 5 waters on the area that's

1 associated with the Capital Terminal's pier, and the
2 City of East Providence certainly would support
3 taking out that corner. It's about 500 square feet
4 that actually is Type 5 waters and that's part of
5 that area that I believe you referred to as being
6 deeded. We are certainly fine with that, if the
7 Council was interested in making that adjustment to
8 the Type 5 waters. I have actually kind of sketched
9 that, and I would be willing to share that sketch
10 with the Council members. We're fine with that. We
11 haven't had an opportunity to talk about other
12 things. We feel very strongly, though, that the
13 Type 5 designation that the Council voted to approve
14 at its last meeting is one that supports the land
15 use changes that we had in place since 2004, and we
16 really would like to see the Council maintain a vote
17 that it made almost a month ago. So, if you would
18 like, I can share this sketch.

19 CHAIRMAN TIKOIAN: I would
20 recognize, if I may, and I hope the Council agrees,
21 the Council is being placed in the middle of a
22 situation between a few parties that have their own
23 opinions, which are good opinions and their own
24 thoughts on this, and I was just wondering if these

1 parties can get together with Jim Boyd to try to
2 reconcile these issues. We certainly understand our
3 responsibilities to protect certain areas of
4 commercial development, we understand our
5 responsibilities for assuring that these areas are
6 maintained for fuel capacity. We understand our
7 responsibilities for economic development. I think
8 what we want to do is to make sure that it's done
9 properly and it's done to the best we can with
10 everybody in agreement, so if there is a way or
11 mechanism, if someone would make a motion to table
12 this and allow this to be vetted out in a forum
13 where our staff can and those parties can talk,
14 discuss it. Director.

15 MR. SULLIVAN: Yes, Mr. Chairman. I
16 already publicly disagreed with the Vice Chair. I
17 might as well disagree with the chair publicly as
18 well. I don't think we're stuck in the middle. I
19 think we created the conundrum, and because of some
20 of the language tonight with regard to claim of
21 right and the concern about the notice, I would move
22 we table this for at least a month while those who
23 claim legal right can provide documentation to
24 Mr. Goldman, and, at the same time, if there is an

1 opportunity for the two poles in this to achieve,
2 with working with staff, to come to a consensus
3 resolution, I would support that.

4 VICE CHAIRMAN LEMONT: Second the
5 motion.

6 CHAIRMAN TIKOIAN: Any discussion?

7 (NO RESPONSE)

8 CHAIRMAN TIKOIAN: All in favor
9 signify by saying aye?

10 (VOICE VOTE TAKEN)

11 (UNANIMOUS)

12 CHAIRMAN TIKOIAN: Opposed?

13 (NO RESPONSE)

14 CHAIRMAN TIKOIAN: So carried.

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

17 Mr. Harrington is going to start.

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

23 MR. FUGATE: I do.

24 MR. HARRINGTON: I do.

1 MS. MIGUEL: I do.

2 MR. GOLDMAN: Affirmative response
3 from all.

4 CHAIRMAN TIKOIAN: Who is going
5 first?

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

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

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

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

23 MS. MIGUEL: I guess I could add
24 that we were called out to this site on a separate

1 matter, and Brian issued the C & D after going back
2 to the office and looking through all the records as
3 well as some of the historical records. We found no
4 evidence of a marina whatsoever, any documentation.
5 Mr. Harris has been into the office trying to
6 comply, but he hasn't been able to because -- well,
7 you can let him say, but he hasn't been able to
8 provide us with proof of property ownership. There
9 are also issues with the Town on this site.

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

15 CHAIRMAN TIKOIAN: Staff?

16 Mr. Goldman.

17 MR. GOLDMAN: Mr. Chairman, just for
18 the members and so the record is clear, the items in
19 the package which are dated and labeled page 1
20 through 20, there are a series of photographs,
21 aerial photographs that the staff included in the
22 report, and I think when we look at the '72, there's
23 nothing there, and we go to '81, there's a marina
24 there. So, obviously, the question is, there's

1 nothing in the record indicating that we ever got a
2 CRMC permit and there is nothing in the record that
3 indicates that he gave it to the Council because the
4 first evidence being, I think Grover can address the
5 policy issue, but it seems the first evidence of
6 this being here was in 1981, or thereabouts, circa
7 1981, which was after the formation of the Council
8 in 1971, thereby, would have required a permit, and
9 the staff and Grover have gone through the records
10 and can't find no record of a permit. So, unless
11 they can come up with an Army Corps permit, I think
12 what staff is asking before, subject to how this
13 hearing goes, is that an order removing any
14 structures that are still in the water and an order
15 prohibiting the marina from being reinstalled this
16 spring in that area unless they can get a CRMC
17 permit, which I'll it turn over to Grover because I
18 think there is problems with that.

19 MR. FUGATE: Yes. This situation
20 emanated out of a series of enforcement actions that
21 have been occurring in Greenwich Cove. There's been
22 several marinas that have actually been cited and
23 had to go through a process which Mr. Goldman has
24 just outlined. Typically, we would look for any

1 evidence of any permit. Our permits and our permit
2 history go well back into -- in some cases we have
3 permits going back into the 1700s from the General
4 Assembly, but certainly from the predecessor
5 agencies. If they are unsuccessful in producing
6 either a Harbors & Rivers permit or current Council
7 permit from this timeframe, then another alternative
8 forum is the Army Corps, which several marinas have
9 to do, have a grandfather process that stems from
10 1961. So, if a marina could prove that they have
11 evidence of being in the water prior to 1961, the
12 Army Corps will issue a permit, we will then
13 recognize that permit as part of our permit chain so
14 that we can move forward with this.

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

23 Mr. Harris, when he first attempted to comply
24 with this marina, to legalize it, the problem that

1 we have is the marina emanates off a Town
2 right-of-way, which is also a CRMC designated
3 right-of-way, and the first thing that we require
4 for any application, obviously, is proof of
5 ownership. We requested that either a lease or some
6 other sort of permissive document be produced, that
7 the Town acknowledges that the marina exists and
8 that they're willing to allow that marina to be
9 there within its riparian right, which would be a
10 much smaller facility than actually exists, as this
11 marina has encroached over other riparian areas.
12 So, the situation is, is that Mr. Harris has been
13 able to work with the Town to produce that document
14 and can't move forward on an application process.
15 There has been a legal marina in the waters, the
16 staff has indicated for the last several years, and
17 we're asking that we order removal of this
18 particular structure until Mr. Harris can either
19 enter the Town and get the proper documents to
20 proceed with the marina application or not, having
21 unsuccessfully to reinstall the marina.

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

1 right-of-way, designated right-of-way for the record
2 means what?

3 MR. FUGATE: A designated
4 right-of-way is a right-of-way that's been heard by
5 the Council, gone through, in fact, in this
6 particular right-of-way there has been a survey done
7 on it, the Town held a -- I mean, the Council held a
8 hearing on this matter, and after hearing all the
9 evidence presented, found that there was a
10 right-of-way to the shore for the public to utilize
11 to get to the shore and to the waters. The Council
12 designated that right-of-way some years ago, back in
13 '80's, I believe.

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

19 MR. FUGATE: Right. And when the
20 Council designated, took a vote on it, the Council's
21 decision is then sent out for appeal. If it is not
22 appealed, its decision becomes final and binding and
23 then registered with the Secretary of State's office
24 as a designated right-of-way, so it carries the

1 protection of the Council, also beyond just the fact
2 that it's a legal marina.

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

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

7 CHAIRMAN TIKOIAN: Mr. Harrison.

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

23 CHAIRMAN TIKOIAN: But there are no
24 pending issues with DEM on this site?

1 MR. SULLIVAN: Not at this time.

2 CHAIRMAN TIKOIAN: Mr. Harrison.

3 MR. HARRISON: Thank you. Good

4 evening. As many of you know, Kenneth Harris is 75
5 years old. He was born on Rocky Hollow Road, which
6 is the road that ends with the right-of-way

7 providing access to the public to the shore here.

8 So, he spent his entire life in those waters of

9 Greenwich Cove. He has been utilizing docking space

10 and interacting with fishermen down there all his

11 life. In 1979 he purchased this shanty. The shanty

12 had been constructed in the 1930's. So, at the time

13 that the CRMC subcommittee met in 1984 to determine

14 whether or not Rocky Hollow would remain a

15 right-of-way, that structure was there to be seen

16 and had been for many years before the 1984 hearing.

17 The subcommittee considered five different sites for

18 right-of-ways. Three out of those five sites had

19 been declared by the Town to be right-of-ways, but

20 at the time the subcommittee in 1984, three of those

21 sites had structures constructed blocking those

22 right-of-way. Two of the owners, two out of the

23 three had owners who were present at the

24 subcommittee hearing in 1984, and those two who were

1 present, because their structures were on the
2 right-of-way blocking public access, they were no
3 longer declared rights-of-way. The third was
4 Mr. Harris. Mr. Harris did not have notice of the
5 1984 subcommittee hearing. He wasn't present to
6 bring it to anyone's attention. The record of the
7 1984 subcommittee hearing gives no indication that
8 anyone was aware that a structure was present at the
9 time the subcommittee declared and recommended to
10 the full committee to declare that a right-of-way.
11 Even though the regulations that talk about the
12 evidence that should be considered when declaring a
13 right-of-way talks about making sure, you know,
14 looking at the land evidence records also talks
15 about looking at domain over parcels, such as
16 maintenance, construction and upkeep. Now, there
17 was testimony given on the other two, access to
18 right-of-way properties. There was no testimony at
19 all on Ken Harris' property. I've read a number of
20 other CRMC cases where, in the course of deciding
21 whether there's a public right-of-way, public
22 comment is taken, and there's a lot of anecdotal
23 evidence about people saying I have used this
24 right-of-way since my grandfather took me here 50

1 years ago, and 25-30 people testify that, yes, they
2 consider this a public right-of-way. In Ken Harris'
3 situation there's no such testimony. There's no
4 evidence of any kind that the general public has
5 generally used this as a right-of-way. There's also
6 some confusion about where the right-of-way actually
7 is.

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

19 Also, the 1984 marker that marks the
20 right-of-way is actually 29 feet to the right, if
21 you're facing the water, 29 feet to the right of
22 Mr. Harris' structure. So, there's some question
23 about whether or not the point of access is really
24 through his structure or not.

1 In any event, one thing that Mr. Harris has
2 always done, and there's plenty of residents who are
3 willing and able to corroborate this, Mr. Harris has
4 always provided the public access. The public has
5 always been invited to come to his shanty, sit on
6 the front porch, fish if they want to, whittle,
7 whatever. He's never denied the public. The CRMC
8 regulations talk about the Council being authorized
9 to issue assents for pre-existing residential
10 boating facilities constructed prior to January 1 of
11 1985. There was an overwhelming amount of anecdotal
12 evidence available.

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

17 MR. HARRISON: Well, your
18 regulations do say that marinas as defined in the
19 Coastal Resources Management Program effective as of
20 June 1, 1987 are deemed to be one of the uses
21 consistent with the public trust, and Mr. Harris
22 says that he has maintained his structure, his
23 marina consistent with the public trust. He has
24 provided low-income docking space for the general

1 public. He has an overwhelming amount of support
2 from neighbors and residents in East Greenwich who
3 utilize his low cost docking space. He provided a
4 service. He has a lot of support in the community.
5 We think that he should -- in fact, he was told by
6 the head of the Army Corps of Engineers, a
7 Mr. Elliott some years ago, face to face, that he
8 was eligible to be grandfathered under the Army
9 Corps of Engineers' program. We think that he
10 should have been eligible to apply for an assent to
11 operate his marina had he received actual notice of
12 the 1984 subcommittee hearing.

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

21 MR. HARRISON: I understand. So,
22 Mr. Harris is prepared to testify that he has been
23 operating this marina since 1979 officially.
24 Unofficially he was doing that even before that

1 then. We think that he qualifies to be eligible to
2 receive an assent, and we're mindful that the
3 regulations say that in order for an applicant to be
4 eligible to apply for an assent they had to apply
5 before January of 1999, but we think that an
6 exception ought to be made in light of the fact that
7 he had no actual notice of the 1984 subcommittee
8 hearing or the full Council's designation of that
9 right-of-way. He had no opportunity to appeal it
10 because he didn't know anything about it. He has
11 been operating openly, you know, publicly for a very
12 long time, and it was only because, you know, a
13 neighboring -- I mean, there's actually marinas to
14 his left and to his right, so what he's doing is
15 consistent. It's good for those to his left and to
16 his right. I don't think there has been any public
17 clamoring to use the bottom of Rocky Hollow Road as
18 a point of public access, any more than there's been
19 in the public clamoring to use the other two rights,
20 designated rights-of-way that are obstructed now
21 because of the Harborside Restaurant and the Fins
22 Seafood Warehouse. And there are actually plenty of
23 places to access the water. There's a new dump.

24 CHAIRMAN TIKOIAN: I think we have

1 to talk about your marina. Actually, are you
2 prepared to produce a permit or some type of
3 document from the Army Corps that says that this
4 marina is legitimate, a legal marina in that area,
5 can you produce any document of such?

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

1 too.

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

4 MR. HARRISON: Pardon?

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

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

11 MR. FUGATE: The basic crux of the
12 problem, obviously, is that the first thing you're
13 going to have to show to get into the door for a
14 permit is some sort of proof of ownership or some
15 sort of agreement with the Town, either in a lease,
16 or some permissive document that the Town agrees
17 that that structure can be there. Without that, we
18 cannot begin to entertain an application for a
19 permit. The Corps process has been an open process
20 for Mr. Harris to go for. He doesn't need our
21 permission to go and try to prove their case to the
22 Corps, but I would just warn you that the Corps is
23 probably going to ask you the same question, is we
24 need some sort of proof of ownership or some sort of

1 document from the Town indicating that there is a
2 use that can be permitted on that property, or that
3 they're in agreement with the use that's proposed.

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

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

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

23 MR. GOLDMAN: I just want to
24 clarify, Mr. Harrison, for you and as well as for

1 the Council members, there are two issues associated
2 with this issue. One is the alleged blocking of the
3 right-of-way. The second is the in-water marina,
4 which appears not to have any type of permit from
5 either CRMC or the Army Corps. What I have been
6 dealing, and this, the rights-of-way issue in front
7 of the rights-of-way subcommittee, I have spoken to,
8 reached out to the Town on a number occasions to
9 attempt to deal with the right-of-way issue, and I
10 think -- it was my opinion, and I think talking with
11 Grover, that one thing that we have exclusive
12 jurisdiction over is the right-of-way issue. I
13 think Mr. Harrison would recognize that there is
14 some res judicata and collateral estoppel issues
15 with not appealing a 1984 decision and trying to
16 relitigate that. That's a separate issue that the
17 Council is going to have to address subsequent to
18 tonight, but the issue in front of the Council
19 tonight relates solely to the in-water structure
20 because we have exclusive jurisdiction for that
21 in-water structure, and unless a permit can be
22 demonstrated for that, it is an illegal marina, and
23 under the statute the Council has to order it to be
24 removed. That's one order that the staff is

1 recommending that you do tonight. After that is
2 done, then we're going to, at another time we're
3 going to have to get into this issue of the
4 structure blocking the right-of-way, but I think
5 until such time, and Mr. Clarkin is here, and maybe
6 he can clarify, but I had spoken to Mr. Clarkin in
7 the past, and I think before we go forward on the
8 right-of-way issue, that's something that we would
9 have to coordinate, I think with the Town to do
10 that, and at least on my last discussion with
11 Mr. Clarkin, I am not sure that the Town's position
12 was solidified on that issue. So, my recommendation
13 as to why it came here tonight is, we can proceed on
14 this issue tonight without really the Town being
15 able to exercise any jurisdiction one way or the
16 other because this relates to activities below the
17 mean high water mark, which the case law is clear is
18 we have exclusive jurisdiction over and the Town
19 does not, so to me it was the cleanest way to start
20 this process, to take care of the structure in the
21 water, and then, we at a later point we can get into
22 the issue of the right-of-way. They're two separate
23 and distinct issues.

24 CHAIRMAN TIKOIAN: Mr. Harrison, if

1 I may, just to make sure this is clear, you said
2 your client purchased this in 1979, correct?

3 MR. HARRISON: Correct.

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

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

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

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

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

18 MR. HARRIS: I do.

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

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

23 MR. GOLDMAN: State your name for
24 the record.

1 MR. HARRIS: Kenneth Harris.

2 MR. GOLDMAN: If you can just --

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

6 MR. HARRIS: Okay.

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

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

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

16 MR. HARRIS: Fill.

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

19 MR. HARRISON: Showing you a Coastal
20 Resource Management Council application for the
21 State assent to perform work regulated by the
22 provisions of Chapter 279 of the Public Laws of
23 1971. Is that your signature at the bottom?

24 MR. HARRIS: That's mine.

1 MR. HARRISON: Okay.

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

6 MR. HARRIS: That's correct.

7 MR. HARRISON: That's what you
8 described?

9 MR. HARRIS: Yes.

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

13 MR. HARRIS: Yes.

14 MR. HARRISON: And you paid, I think
15 you said an estimated cost of the project, is that
16 9,800?

17 MR. HARRIS: Uh-hum.

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

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

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

24 MR. HARRIS: Correct.

1 CHAIRMAN TIKOIAN: It is not to
2 fill?

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

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

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

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

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

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

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

20 MR. HARRIS: Yes.

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

24 MR. GOLDMAN: Mr. Chairman,

1 Mr. Fugate would like to respond.

2 CHAIRMAN TIKOIAN: After Mr. Fugate
3 responds.

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

11 CHAIRMAN TIKOIAN: By the Council or
12 the staff?

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

15 CHAIRMAN TIKOIAN: Was it at the --

16 MR. FUGATE: The CRMC staff.

17 CHAIRMAN TIKOIAN: Offices?

18 MR. FUGATE: Right. It had been
19 acted upon by the Council, there should have been a
20 permit issued, and, presumably, within our database.
21 I personally have, myself and the staff that were on
22 in 1987 went through literally hundreds of these,
23 sent out 30-day notices on them and discharged many
24 of these because they were not a valid application

1 before the CRMC, that's the case, in this situation
2 I don't know, but if a permit had been issued for
3 it, it would show up somewhere within our records.

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

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

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

11 MR. FUGATE: Yes.

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

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

16 CHAIRMAN TIKOIAN: Mr. Clarkin.

17 MR. CLARKIN: Just briefly, I pretty
18 much agree with what Mr. Goldman has said. The Town
19 really has never conducted a full-blown hearing on
20 permitting this structure to remain. It is Town
21 land, and Mr. Harris really has just been permitted
22 to utilize that shanty on the Town land. He did
23 purchase the building at some point in the past, way
24 before I came on board, but, as far as ownership of

1 the land is concerned, he does not own the land.
2 The Town is basically leaving it to this committee
3 to determine the marina and the use of the marina
4 and the appropriateness of the marina. Down the
5 road if it is determined that Mr. Harris can come
6 back at some point to request, you know, the
7 installation of a new marina, the Town would want to
8 have a full hearing before the Town Council on the
9 use of that structure because the Town certainly has
10 some issues, building code issues, and, you know,
11 septic system issues which were addressed earlier.
12 So, as far as that's concerned, the Town, you know,
13 is open to a request for Mr. Harris, but, quite
14 frankly, the Town recognizes and it's up for you to
15 determine first and foremost the use of this marina.

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

20 MR. CLARKIN: Yes.

21 CHAIRMAN TIKOIAN: In both of those
22 letters they cite that the first one you gave
23 Mr. Harris 60 days to respond, the next one 30 days
24 to respond, and I assume the Town dropped those

1 violations by saying that you're leaving this up to
2 us.

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

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

13 MR. CLARKIN: No. There are
14 building code issues and there is ownership. There
15 is no lease in place. There is no permissible use.
16 It's just, quite frankly, nobody in any position in
17 the Town was present when all of this began. Nobody
18 can recall how the use started, when it started.
19 You know, the Town Manager has been there longer
20 than anybody and he doesn't know, so that is an
21 issue for the Town. So, there are issues for the
22 Town one would certainly be willing to address, but
23 certainly it's your jurisdiction as to whether the
24 marina is appropriate or not.

1 MR. SULLIVAN: A question of the
2 Council. Mr. Clarkin, did I hear you correctly, in
3 that did you state for the record that the Town
4 would entertain a use agreement with Mr. Harris
5 subject to his structure obtaining compliance with
6 local building code matters?

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

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

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

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

1 prepared to make a recommendation of the Council to
2 approve?

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

7 MR. SULLIVAN: I think what we have
8 here, Mr. Chairman and members, is a pretty damn
9 dumb fair situation where Mr. Harris is somewhat
10 held hostage by the Town. I don't think, with all
11 due respect to the Town's counsel, I know CRMC
12 cannot consider this a legal marina until such time
13 as we have an established legal right of use. I
14 don't believe we can do it. I don't believe the
15 Corps can consider it. And, while I endeavor to ask
16 the Council could he recommend, at least when I sat
17 on the Council I expected my legal counsel to make a
18 recommendation on findings of law, I would suggest
19 we send a specific letter to the Town Council asking
20 them that question then of, if Mr. Harris' structure
21 were to comply with local building codes, zoning
22 matters, would they then enter an agreement so that
23 we might at least give them an opportunity to pitch
24 his case before the Corps or before the Council?

1 MR. CLARKIN: Can I just respond for
2 a second. Mr. Harris is not being held hostage by
3 the Town. This all started with notices from this
4 Court, from some entity within the CRMC. The Town
5 basically, from sitting on the sidelines, Mr. Harris
6 was operating his marina. We did not have an
7 objection to him operating his marina and then this
8 all began. So, for Mr. Sullivan to suggest that
9 it's our fault, I disagree with completely. It is
10 not by any stretch. We have said we would be
11 willing to entertain a request from Mr. Harris, but
12 we also recognize that there's a jurisdictional
13 issue here as far as the marina operating, and
14 that's your jurisdiction.

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

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

24 MR. SULLIVAN: So, the Town was

1 sitting blindly by recognizing the marina was there,
2 saying, huh, not my job.

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

14 MR. SULLIVAN: Don't use that
15 metaphor.

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

19 MR. HARRISON: I feel as though
20 Mr. Harris has a very real prospect of getting a
21 grandfather document from the Corps of Army
22 Engineers. I think that he has a very real
23 opportunity to get a lease from the Town of East
24 Greenwich, and I am aware that there are some

1 hearsay discussions along those lines, that it's not
2 beyond the realm of possibility, and so I would ask
3 that the status quo be maintained while we pursue
4 those options diligently, and that recognizing that
5 the marina has been in operation for over 25 years
6 is the primary source of income for someone in his
7 twilight years, that the status quo be maintained
8 while we pursue these options.

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

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

23 MR. SULLIVAN: So, you would concur
24 that with my conclusion that a marina should not

1 open in 2010 because it is a noncompliant, illegal
2 marina.

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

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

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

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

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

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

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

22 MR. SULLIVAN: The intent of my
23 motion to table was, part of that was factored in
24 with Bob. I think that's why I asked about the

1 status quo label. To me the status quo is the
2 marina is dormant, the floats have been removed, the
3 floats should not be reinstalled. It is at this
4 point in time an illegal marina.

5 MR. DRISCOLL: I'd second your
6 motion.

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

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

21 Mr. Harris certainly had notice of CRMC
22 regulations and requirements throughout the term of
23 his operation of the marina and he apparently chose
24 to ignore them.

1 The issue here is not, as Mr. Goldman said,
2 the immediate issue here is not a right-of-way
3 proceeding, although that's something the Council
4 may well want to address at some point. The issue
5 here is very simple. This gentleman does not have a
6 permit to operate a marina and he has been operating
7 the marina without a permit since perhaps 1979. He
8 certainly has been a operating marina without a
9 permit since you issued a Cease & Desist and told
10 him to stop it and he has ignored that.

11 Mr. Harrison indicated that there's no interference
12 with abutters by this marina. That's not, in fact,
13 correct. The marina goes out from property lines in
14 this manner, so that, for example, many of the docks
15 and boats are in front of Mr. Craig's property,
16 impinging on his riparian rights and some are in
17 front of Anderson's boatyard and impinging on his
18 riparian rights. The property at issue in terms of
19 his boundaries are a fairly small narrow piece of
20 property, and the dockage and boating that he's
21 operating his marina extend in front of the two
22 abutter's properties' rights and interfere with
23 their riparian rights. So, we would ask that, as
24 the director has suggested and another Council

1 member suggested, that, in fact, because it is an
2 illegal marina, he doesn't to have a permit to
3 operate while he tries to do whatever he needs to do
4 with the Town to pursue grandfather rights, that the
5 floats not be installed and it cannot be allowed to
6 operate.

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

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

22 MR. BOEHNERT: If I may continue?

23 MR. HARRIS: You may continue, and I
24 want you to say it right. I have been down to CRMC

1 more times than you have hair on your head. Ask
2 that fellow right there. It isn't that I wasn't
3 ready to make a permit right along. I see these two
4 people down there.

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

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

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

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

22 MR. GOLDMAN: You're going to have
23 to come up and testify. Raise your right hand,
24 please.

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

4 MS. WALSH: I do.

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

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

22 CHAIRMAN TIKOIAN: We understand
23 that, but we're not taking any of that into
24 deliberations.

1 MS. WALLER: You know what, I
2 brought it up, so, I'd like to answer it.

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

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

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

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

22 MR. GOLDMAN: We did. I believe
23 that the records are very clear that the upland is
24 owned by the Town, and I don't believe Mr. Harris

1 owns anything other than the structure.

2 MR. SULLIVAN: Okay.

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

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

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

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

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

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

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

22 MR. HARRISON: Of course.
23 Mr. Harris maintains that his structure is in the
24 water, not on land, and that when he went to Town

1 Council -- I mean, when I went to the Town Clerk,
2 the Town Clerk had no evidence that where his
3 structure is located is owned by the Town. So,
4 there is some confusion about, you know, the
5 ownership of the land underneath, but, in any event.

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

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

17 The fact that there is no clamoring for the
18 general public to get to water from this site, the
19 fact that the marina has existed for so many years
20 without any calamitous adverse effects justifies, in
21 my opinion, that it continue to operate, especially
22 in light of the fact that the likelihood of
23 obtaining all the necessary permits is very good.
24 This is the reason why for the last three years,

1 since 2007, you haven't shut him down, and I think
2 that it makes absolutely no sense right now at this
3 juncture to shut him down because there's no harm,
4 all right. If you're a doctor and you're looking at
5 a patient and hipocratic oath, do no harm, by you
6 allowing him to operate right now you are doing no
7 harm. All right. There's been no adverse
8 consequences for the last three years of allowing
9 him to continue until such time as we all know with
10 absolute certainty that permitting cannot be
11 obtained. I think that it's a wrong decision to
12 shut Mr. Harris down from his own, his primary
13 source of income in his twilight years after all the
14 years of operating there.

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

17 MR. SULLIVAN: I renew the motion.

18 CHAIRMAN TIKOIAN: Is there a
19 second?

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

22 MR. SULLIVAN: The motion was to
23 table until such time as we see the adequate and
24 necessary documentation from the Town that a use

1 agreement of some kind empowers Mr. Harris to come
2 before the Council and then also the necessary
3 information from the Corps of Engineers, and until
4 such time the actions and the recommendations of
5 staff as far as the Cease & Desist should stand.

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

9 MR. SULLIVAN: Yes.

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

17 CHAIRMAN TIKOIAN: Is there a
18 second?

19 MR. COIA: I just have a question.

20 CHAIRMAN TIKOIAN: Yes.

21 MR. COIA: Before us, is it staff's
22 looking to enforce the Cease & Desist, or is this
23 gentleman asking that the Cease & Desist not be
24 enforced? I just need that clarification for the

1 motion.

2 MR. GOLDMAN: This was put on as an
3 enforcement matter by the staff to enforce the Cease
4 & Desist. Well, to go beyond the Cease & Desist and
5 Order and have the Council issue a permanent order
6 that he is prohibited from reinstalling the docks
7 and ordering removal of any docks?

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

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

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

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

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

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

23 CHAIRMAN TIKOIAN: That's what he
24 said.

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

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

12 MR. SULLIVAN: Yes.

13 CHAIRMAN TIKOIAN: Okay.

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

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

24 MR. CLARKIN: Understanding, if

1 Mr. Harris makes a request, he will be put on a Town
2 Council agenda, you know, within a month.

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

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

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

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

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

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

24 CHAIRMAN TIKOIAN: That way we can

1 bring it back say in 45 days and by the time they
2 get an answer, this gentleman can go to the Army
3 Corps and do whatever he has to do there.

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

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

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

13 (NO RESPONSE)

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

16 (VOICE VOTE TAKEN)

17 (UNANIMOUS)

18 CHAIRMAN TIKOIAN: Opposed?

19 (NO RESPONSE)

20 MR. HARRISON: Thank you.

21 CHAIRMAN TIKOIAN: One item left on
22 the agenda which is we will open up the public
23 hearing for the Ocean Special Area Management Plan,
24 Chapter 7. Can we take a five-minute break.

1 (RECESSED AT 7:39 P.M.)

2 (RESUMING AT 7:48 P.M.)

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

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

12 This, as the Council members are aware, goes
13 through a fairly lengthy process to get here. It
14 has been through that process. In fact, as part of
15 the rule making process, what we have done at the
16 request of Save the Bay is incorporated a public
17 workshop in between the public notice period and the
18 written comment period closing, that public workshop
19 was conducted, nobody showed up to the public
20 workshop, so it appears that the writing team here
21 has done a very good job of dealing with all the
22 comments from the stakeholders at least through the
23 process. The one thing that I will note, and we can
24 get into this later, is that there are some

1 suggested changes that appear in some of the policy
2 documents. Those were actually -- there were
3 several, actually many iterations that went back and
4 forth between NOAA and the team before we finally
5 reached agreement with NOAA that the changes that
6 have been suggested here will constitute enforceable
7 possible policies under the Federal program.

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

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

15 So, the Marine Transportation, Navigation and
16 Infrastructure Chapter has a long title and so to
17 breakdown what's actually included in that chapter,
18 the bulk of it is really focused on the nation's
19 marine transportation system and the part of it that
20 is in the Ocean SAMP area. The marine
21 transportation system is a national network of ships
22 and infrastructure that enable the movement of goods
23 and people by sea. It includes cargo ships,
24 passenger ferries, government and support vessels.

1 We also include military vessels which are operating
2 in this area. The marine transportation system
3 relies heavily on navigational infrastructure, which
4 is really the system of sort of the invisible
5 roadway on the water, the network of shipping lanes
6 and precautionary areas that enable the safe transit
7 of these ships through that area. We also cover
8 that in this chapter, and, finally, we cover
9 infrastructure, which is really a catch all term to
10 cover all of the human made things that's out there
11 in the SAMP area right now. These things include
12 submarine cables as well as some other items that
13 I'll get into shortly.

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

22 To give a quick overview of how we develop
23 this chapter, we first reviewed key documents,
24 which, of course, started with past SAMP documents,

1 but because of the offshore focus of the Ocean SAMP
2 and the possibility of offshore renewable energy we
3 also looked at the Cape Wind, EIS, other
4 environmental impacts statements for offshore
5 construction, as well as the Mineral Management
6 Service Guideline and documents for offshore
7 renewable energy. We then identified a series of
8 stakeholders and experts, marine transportation
9 individuals in the State, or in the region who have
10 expertise and knowledge in this area. We sought out
11 those people, interviewed them and gathered a lot of
12 their knowledge here in this document. After that
13 we then conducted an extensive literature and data
14 search. Our goal was to consolidate here the best
15 available existing information about the subject,
16 but this provides a solid baseline of the current
17 status of this area, and then, finally, we did a bit
18 of data analysis and mapping, and I'll show you some
19 of that, too. And, of course, we all know the Ocean
20 SAMP is focused on the offshore environment. We're
21 not looking at uses in the bay, however, because
22 marine transportation in this area is connected to
23 courts that are in the bay we do highlight those
24 ports in the chapter.

1 The chapter starts off with some context on
2 maritime uses of offshore environment. Just as
3 Rhode Island has a really rich maritime history, so
4 does the Ocean SAMP area. For over 400 years it has
5 been actively used by ships for exploration, then
6 for trade and naval operations and what's been here
7 is that this area has a really long legacy of human
8 uses and also has been key to Rhode Island's
9 economic growth for a really long time, even before
10 Rhode Island was a State of the union.

11 As I mentioned, marine transportation is
12 really about the movement of goods and services,
13 goods and people by sea, and so much of this chapter
14 is really focused on commercial shipping or the
15 movement of cargo, and what's important of the SAMP
16 area that we highlight in this chapter is that area
17 is really a shipping crossroads, it's at the center
18 of the multiple heavily used waterways, and much of
19 that traffic that is passing out in the SAMP area is
20 actually headed up here into Narragansett Bay, it's
21 delivering products to the ports of Providence,
22 Quonset, Davisville and Fall River, Massachusetts.
23 Much of those products are actually energy-related
24 products. They are coal and petroleum that's headed

1 to Providence and to Fall River. Much of that
2 traffic is also bringing cars to Quonset,
3 Davisville. However, there is a lot of traffic in
4 the SAMP area that's actually not headed into
5 Narragansett Bay. It's actually headed passing
6 coastwise east to west, and much of that traffic is
7 also the transport of energy-related petroleum
8 product passing largely between Boston and New York.

9 Now, there's a great deal of other maritime
10 activity going on offshore as well. There are pilot
11 boats that provide escort to these cargo ships to
12 get up into bays, the ports. There are Navy vessels
13 operating out there, which we'll discuss more
14 shortly. There are government vessels engaged in a
15 variety of activities, enforcement and search and
16 rescue, research, and then there are passenger
17 ferries, which is passenger vessels, which is
18 ferries and cruise ships, and we'll highlight those
19 more shortly. As I mentioned, we analyze as much
20 data as we can get our hands on to highlight the
21 spacial aspect of this activity in the offshore
22 environment. So, this map here, it shows commercial
23 shipping traffic represented by AIS data. AIS is
24 Automatic Identification System. It is a

1 transponder-based vessel tracking system. What you
2 see here is an analysis of a bunch of those data,
3 individual points representing ships, and on this
4 map the colored areas represent areas where there is
5 a concentration of ship activity. The darker the
6 area, the more intense the activity. You can see
7 there is a great deal of activity heading coastwise,
8 as well as a great deal heading right there into the
9 bay. However, the AIS data does not capture
10 everything. It doesn't capture fishing vessels,
11 which is another chapter. It doesn't capture
12 passenger ferries. So, we made a separate map that
13 shows passenger ferry routes, and I do want to
14 highlight passenger ferries are a very important use
15 of the SAMP area. In some cases they provide really
16 critical mainland access to island communities,
17 especially in the Cape and Block Island. The Block
18 Island Ferry is essential to Block Islanders as
19 their means of connecting to the mainland. We did
20 look at naval operations in the SAMP area, and as
21 many of you know the Navy has a longstanding
22 presence here in Newport. The Navy still has a
23 strategic presence now with Naval Station Newport
24 and the Naval Undersea Warfare Center and NUWC in

1 particular conduct training and testing activities
2 out here in the SAMP area. The gray that you see in
3 that map represents what the Navy calls the
4 Narragansett Bay Operating Area. The orange and red
5 on that map indicates two testing areas that are
6 used by NUWC, one for torpedo testing and the other
7 for mine testing. There's also a good deal of naval
8 activity out here that's not directly connected to
9 Rhode Island, but that's submarine traffic headed to
10 and from Groton. Submarines that are out passing
11 through this area will enter it through that
12 triangular shape there on the bottom of the map, and
13 they will surface after exiting that channel and
14 transit the rest of the way from Groton on the
15 surface. We couldn't find more detailed information
16 about submarines because it's classified. We did,
17 as I mentioned, look at navigation features of the
18 SAMP area. Navigational features include things
19 like shipping lanes, precautionary areas, buoys,
20 these features are really important in that they
21 create this traffic management system for the SAMP
22 area, which is designed to minimize the risk of
23 collision, maximize safety. These features are
24 normally shown on NOAA nautical charts for mariners.

1 We just pulled out a couple of key ones here to draw
2 them to your attention.

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

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

22 Secondly, there are many ships passing through
23 the SAMP area that visit Quonset/Davisville bringing
24 auto imports. Davisville is actually the fourth

1 largest auto import port in the nation. If you
2 drive a Subaru or an Audi, you may have had your car
3 come on a vessel through the SAMP area and into
4 Davisville.

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

10 In the chapter we also tried to highlight the
11 economic significance of these uses to Rhode Island.
12 We gathered a bunch of available data on marine
13 transportation activities and ports and included it
14 here. This included looking at recent economic
15 impact studies that's been done of the ports of
16 Providence and of Quonset-Davisville. We have also
17 included some information about the economic impact
18 of the Naval Undersea Warfare Center, and really the
19 key point out of all those numbers, the off-shore
20 environment is very connected to Rhode Island's
21 economy, it provides for jobs at ports, it provides
22 for the support of marine-related businesses, in
23 addition to the products that it applies us all
24 with.

1 Finally, the third part of the chapter, as I
2 mentioned, is related to human made infrastructure
3 out there in the SAMP area. That human made
4 infrastructure includes really two main sets of
5 things, one is submarine telecommunication cables,
6 which we have shown here on the map, all the colored
7 lines. Some of those cables are active, some of
8 them are inactive, regardless, they are a concern in
9 terms of State navigation as well as in planning for
10 future developments of the SAMP area.

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

1 soon.

2 MR. SULLIVAN: Fishermen do
3 occasionally pick them up.

4 MS. SMYTHE: I bet. So, finally, we
5 conclude the chapter with, we developed some set of
6 policies and standards, these policies are
7 previously presented to the CRMC Ocean SAMP
8 subcommittee, and when we conclude we can go over
9 the recent changes made to those policies. The
10 policies were designed to address four key issue
11 areas, one is the value of the marine transportation
12 and navigation to the State. The second is these
13 important areas that are really key for navigational
14 uses. We address navigational safety and access,
15 and then, finally, the possibility of offshore
16 construction. And, as Grover mentioned, this
17 chapter has undergone an extensive review process
18 thus far. Before it was issued to the public for
19 the two public comment periods, it was reviewed by a
20 Marine Transportation, Navigation & Infrastructure
21 Technical Advisory Committee, which included many of
22 these maritime experts I mentioned before, as well
23 as our Federal and State agency partners, and that
24 brings me to the end of our presentation. Thank

1 you, and I think we'll now talk about some of the
2 changes that we made recently.

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

20 CHAIRMAN TIKOIAN: Any questions,
21 comments from the public?

22 (NO RESPONSE)

23 MR. GOLDMAN: Can I ask Grover, when
24 did NOAA make those comments?

1 MR. FUGATE: They made them actually
2 after the public comment period had closed. There
3 was a series of discussions that were ongoing with
4 them relative to this, and there is just about a
5 week, week-and-a-half ago that we finalized. What
6 it is is just restructuring the way that this is
7 said, and not so much substantive changes in the
8 policies themselves, but a restructuring of the way
9 that it was said so that they can support it.

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

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

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

23 MR. SULLIVAN: Out of an abundance
24 of caution, Mr. Goldman, would you suggest that you

1 know, and I think these things would likely continue
2 to exist because it's a huge volume of information
3 flowing, that we were to have at the end of, here is
4 the update and other changes that occurred outside
5 the public, you know, on the chapter specific bases,
6 out of an abundance of caution.

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

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

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

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

21 MR. FUGATE: Yes.

22 CHAIRMAN TIKOIAN: Which website?

23 MR. FUGATE: They would be on the
24 Ocean SAMP website, and then those are forwarded on

1 typically to Laura, who then backs it up also on the
2 website.

3 MR. GOLDMAN: Yes, I'm comfortable.

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

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

21 CHAIRMAN TIKOIAN: Any other
22 questions or comments?

23 (NO RESPONSE)

24 CHAIRMAN TIKOIAN: Well, thank you

1 again. Another job well done. Another chapter
2 done. I guess it's a little bit more work to do.
3 But, the Council likes the progress. So, with that,
4 no objection, we'll close the public hearing.

5 MR. GOLDMAN: You can take all the
6 comments.

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

10 MR. SULLIVAN: So moved.

11 MR. COIA: Second.

12 CHAIRMAN TIKOIAN: Motion made and
13 seconded. Any discussion?

14 (NO RESPONSE)

15 CHAIRMAN TIKOIAN: All in favor?

16 (VOICE VOTE TAKEN)

17 (UNANIMOUS)

18 CHAIRMAN TIKOIAN: Opposed?

19 (NO RESPONSE)

20 CHAIRMAN TIKOIAN: So carried.

21 Thank you. Any questions on the Category A list?

22 (NO RESPONSE)

23 CHAIRMAN TIKOIAN: If there are
24 none, motion to adjourn.

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MR. COIA: So moved.

VICE CHAIRMAN LEMONT: Second.

CHAIRMAN TIKOIAN: All in favor?

(VOICE VOTE TAKEN)

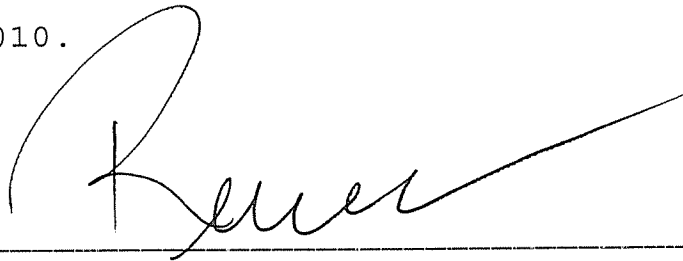
(UNANIMOUS)

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

C E R T I F I C A T E

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.



REBECCA J. FORTE, NOTARY PUBLIC

My Commission (RI) Expires on 7/15/13

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

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