

# *Schacht & McElroy*

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*21 Dryden Lane  
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Providence, RI 02940-6721*

*(401) 351-4100  
fax (401) 421-5696*

October 10, 2017

Luly E. Massaro  
Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: Block Island Power Company

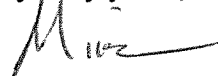
Dear Luly:

As you know, this office represents the Block Island Power Company.

Enclosed for filing are an original and nine copies of Block Island Power Company's Appeal Pursuant to R.I.G.L. § 39-1-30, and request for a stay.

If you have any questions, please feel free to call.

Very truly yours,



Michael R. McElroy

MRMc/tmg

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: BLOCK ISLAND POWER COMPANY : DOCKET No.: \_\_\_\_\_

**APPEAL BY BLOCK ISLAND POWER COMPANY**  
**PURSUANT TO R.I.G.L. § 39-1-30**

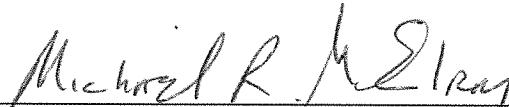
1. Block Island Power Company (BIPCo) is a company under the supervision of this Commission.
2. BIPCo must remove and replace its main fuel tanks by December, 2017. No extensions will be granted by the Department of Environmental Management (DEM).
3. On August 4, 2017, BIPCo explained the tank replacement project to the Town Building Inspector, Marc Tillson, and demonstrated that the work was allowed under the Block Island Zoning Ordinances as a continuing non-conforming use. (See Exhibit 1).
4. On August 16, 2017, the Building Inspector/Official of the Town of New Shoreham rendered a decision claiming that a special use permit was needed for the work. (See Exhibit 2).
5. On September 26, 2017, BIPCo asked the Building Inspector to reconsider his decision. (See Exhibit 3).
6. On October 4, 2017, the Building Inspector issued a decision refusing to reconsider. (See Exhibit 4).
7. Pursuant to R.I.G.L. § 39-1-30, "Every ruling, decision, and order of . . . a building . . . inspector of any municipality affecting the placing, erection, and maintenance of any plant, building, wires, conductors, fixtures, structures, equipment, or apparatus of any company under the supervision of the commission, shall be subject to the right of appeal by any aggrieved party to the commission within ten (10) days from the giving of notice of the ruling, decision, or order."
8. In addition, under this statute, "The commission, after hearing, upon notice to all parties in interest, shall as speedily as possible determine the matter in question, weighing the consideration of public convenience, necessity, and safety against the consideration of public zoning, and shall have jurisdiction to affirm or revoke or modify the ruling, decision, or order to make any order in substitution thereof."

9. BIPCo believes that in light of considerations of public convenience, necessity, and safety, the ruling of the Building Inspector set forth in Exhibit 4 attached hereto should be revoked or modified by this Commission.

10. Moreover, upon information and belief, BIPCo has been informed that the Building Inspector may be preparing a Notice of Violation because the concrete pads are in place for the new tanks. Therefore, BIPCo also requests that the Commission immediately issue a stay against any enforcement action by the Building Inspector.

WHEREFORE, BIPCo respectfully requests that the Commission (1) immediately stay any enforcement action by the Building Inspector, and (2) expeditiously determine the matter in question, weigh the considerations of public convenience, necessity, and safety against the consideration of public zoning, and revoke or modify the ruling.

Respectfully submitted,  
Block Island Power Company  
By its attorney



Michael R. McElroy, Esq. #2627

Leah J. Donaldson, Esq. #7711

Schacht & McElroy

21 Dryden Lane

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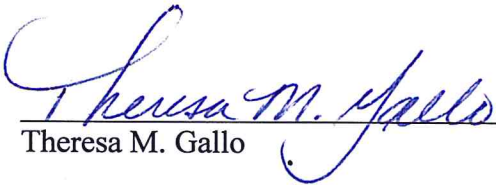
Dated: October 10, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of October, 2017, I mailed a true copy of the foregoing by first class mail to the following:

Katherine A. Merolla, Esq.  
Solicitor for the Town of New Shoreham  
Merolla & Accetturo  
469 Centerville Road – Suite 206  
Warwick, R.I. 02886

Leo Wold, Esq.  
Christy Hetherington, Esq.  
Attorney General's Office  
150 South Main Street  
Providence, RI 02903

  
\_\_\_\_\_  
Theresa M. Gallo

BIPCo/Tank Removals

To: Marc Tillson

From: Nancy Dodge, President of Board of Directors, BIPCo

Re: Removal and partial replacement of underground fuel storage tanks.

Date: August 4, 2017

The Block Island Power Company currently has five underground fuel storage tanks, each with a capacity of 20,000 gallons, located on Plat 17, Lot 37, the main property for the Power Company. These underground tanks are under an Environmental Protection Agency directive, in conjunction with the Rhode Island Department of Environmental Management (DEM Regulation Sec.8.04) to be removed from the ground no later than December 31, 2017. This order has been extended once (from a deadline of Dec. 31, 2015) but BIPCo has been advised that no further extensions will be granted.

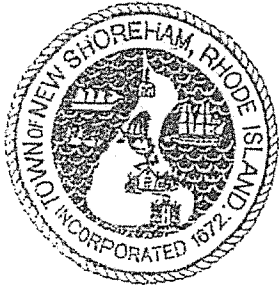
Attached to this memo is a Zoning Certificate you issued in 2008 as to Lot 37. This Zoning Certificate sets forth your findings that there exists a "...lawful prior existing, legal, nonconforming use of a Utility Facility (Section 417)" and "There exists on the property a prior existing, legal, nonconforming underground storage tank facility for the storage of petroleum products."

What the Block Island Power Company has planned is to reduce the number of tanks and the attendant gallonage of fuel stored and place two 12,000 gallon tanks above ground on LOT 37 as mandated by the EPA and Sec. 8.04 of the Department of Environmental Management. This activity is, in our opinion, clearly allowed under the provisions of Sec. 105 (Relationship to Other laws) and Sec. 113 (Non Conformance) of the New Shoreham Zoning Ordinances.

Specifically, BIPCo plans to put two above ground EPA certified tanks, each with a capacity of 12,000 gallons, in place once the underground tanks are removed this fall. An RFP was put out and a contract has been executed for the removal of the underground tanks and the required testing of the ground to assure contaminated soil, if any is found to exist, is removed from the site. The existing underground tanks will be pumped out and any fuel in them will be stored in temporary, above ground tanks until the permanent tanks are put in place. Once all the tanks are out and the soil testing complete, two above ground tanks will be placed on the site for the use of BIPCo. This is under a mandate to be completed by December 2017.

In addition, a third above ground tank will be placed on what is now known as Lot 38, originally a part of Lot 37 until it was transferred to the Estate of Marjorie McInnes in 2008. This third tank will contain fuel which is owned by Ballard Oil Company. This fuel has always been stored within the BIPCO underground storage facility with usage payments made to BIPCo, and is now planned to be contained within its own Ballard's Oil tank in an area off BIPCo property. Because this area was originally part of the Lot 37 that was grandfathered for five tanks, it would seem that this activity is also allowed under the above cited provisions. However, we ask that the two tank placement for BIPCo and the one tank location for Ballard's Oil be treated as separate requests if you disagree with that assertion.

Please contact me if you have any questions or require any additional information at this time. As you can see, time is of the essence as we work towards the state and federal mandates for December 2017.



TOWN of NEW SHOREHAM  
DEPARTMENT of BUILDING INSPECTION  
OFFICE of BUILDING OFFICIAL

MARC A. TILLSON  
TELEPHONE (401) 466-3206  
FAX (401) 466-3219  
TTY (800) 745-5555

Elliot Taubman, Esq.  
Taubman Law Offices  
P.O. Box 277  
Block Island, RI 02807

Re: Assessors Plat 17, Lot 37  
Block Island Power Company

ZONING CERTIFICATE

The Property is located in the Town of New Shoreham and is designated as Lot 37 on Assessors Plat 17, being the Plat as of August 2005, in the office of the Tax Assessor of the Town.

I reviewed the following information in rendering this opinion:

1. A letter from Taubman Law Offices, Ltd., dated October 18, 2007 requesting a Zoning Certificate for the above entitled property. The Taubman letter describes the current uses on the property and his understanding of the history of prior uses on Lot 37.
2. An affidavit signed by Andrew Transue, president of A. Transue & Company<sup>1</sup>, dated 18 September 2007, stating that he has leased a portion of Lot 37 since 1987.

In the affidavit Mr. Transue stated that A. Transue & Company built a four bay garage on Lot 37 on 1987. The use of the building was for storage and repair of his company's construction equipment.

3. A building permit number 4953, dated 8 July 1987, issued to A. Transue Corporation to "erect barn on existing foundation with 12x28 cement block foundation 74'x30'- 2220 sq. ft. to be used for storage only."
4. A building plan attached to building permit number 4953 showing the elevations of the building and a floor plan with the intended use listed as "truck storage".
5. A self serving affidavit from Clifford R. McGinnes Sr., Vice President and Chief Operating Officer of Block Island Power Company, which owns Lot 37. In the affidavit Mr. McGinnes describes the history of some of the uses on Lot 37, in particular the garbage building which was built and used by A. Transue & Company and other subsequent sub lessees.

1. In Mr. Taubman's letter he references A. Transue & Company, the actual name of the business is A. Transue Corporation.

The purpose of this Zoning Certificate is to provide guidance and clarification regarding whether the intended or existing uses, buildings and structures conform to the permit(s) issued and comply with, or are legally non-conforming under the provisions of the Zoning Ordinance.

Mr. Taubman requested this office, "to issue a Zoning Certificate as to Assessors Plat 17, Lot 38 and a portion of Lot 37, which is leased to the Marjorie G. McGinnes Estate". Zoning Certificates are not issued for portions of a lot. The two lots are under separate ownership. A Zoning Certificate is issued for an individual lot or parcel of land. This Zoning Certificate is for Lot 37.

I find that:

1. The Property is located entirely within the Service Commercial Zoning District.
2. The Property is a conforming lot of record.
3. The Property is serviced by municipal sewer and water.
4. There exists on The Property a lawful prior existing, legal, non-conforming use of a Utility Facility ( Section 417), operated by the Block Island Power Company (BIPCO).
5. There exists on The Property three (3) one story buildings for housing electric generating equipment and associated equipment storage.
6. The three (3) buildings are legally non-conforming by location.
7. There exists on The Property a prior existing, legal, nonconforming underground storage tank facility for the storage of petroleum products.
8. There exists on The Property an area for equipment and propane storage, allowed by a Zoning Special Use Permit, for Hull Suburban Propane Company.
9. There exists on The Property a cellular antenna tower facility, allowed by a Zoning Special Use Permit and five (5) associated one-story equipment buildings.
10. There exists in The Property a radio station allowed by a Zoning Special Use Permit and associated equipment building at the base of the cellular antenna tower.
11. There exists on The Property a one story five (5) bay garage building, allowed by a Zoning Special Exception, for the storage and repair of equipment associated with a construction and excavation business.
12. There exists on The Property an outside area for the storage of stone and gravel material associated with the construction and excavation business.
13. There exists on The Property a portion of an electrical substation allowed by a Zoning Special Use Permit.
14. There currently exists on the property the following additional uses:
  - A large storage trailer, used for the storage of equipment associated with the construction and excavation business.
  - An automotive services and repair business located within two of the work bays of the five (5) bay garage building.
  - Three additional businesses are using the other three (3) bays of the five (5) bay garage for warehousing and storage of equipment.



In 1987, the Zoning Board granted a Special Exception to A. Transue Corporation to operate a construction and excavation business on Lot 37. A. Transue Corporation obtained the required building permit to construct the five (5) bay garage for the storage and repair of heavy equipment associated with the business. A five (5) bay garage was constructed in the area approved by the Special Exception. At no time was A. Transue Corporation in the business of automobile service and repair. A. Transue Corporation vacated the garage building but continued operating the construction and excavating business outdoors in the area specified by the 1987 Special Exception and continues that lawful construction and excavating business today.

After A. Transue Corporation vacated the garage building, new businesses operated out of or warehoused equipment in the garage building. Four (4) businesses are currently using the garage building. I found no building or occupancy permits for the new businesses which occupied the garage building.

If you should feel aggrieved by this decision you may appeal to the Zoning Board of Review within twenty (20) days of the date of this Zoning Certificate.

Dated this 28<sup>th</sup> day of January, 2008, at New Shoreham, Rhode Island.

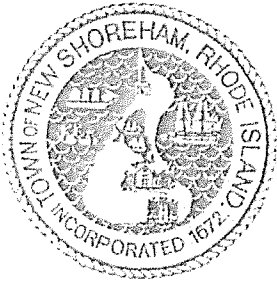


Marc A. Tillson  
Building Official  
Town of New Shoreham

Cc: Nancy O. Dodge, Town Manager  
Jennifer Brady Brown, L.U.A.O.

RECEIVED FOR RECORD IN  
NEW SHOREHAM, R.I.  
DATE: 1-28-08 TIME: 10:02  
BY: FIONA FITZPATRICK TOWN CLERK

MARC A. TILSON  
TELEPHONE (401) 466-3206  
FAX (401) 466-3219  
TTY (800) 745-5555



TOWN of NEW SHOREHAM  
DEPARTMENT of BUILDING INSPECTION  
OFFICE of BUILDING OFFICIAL

August 16, 2017

Nancy O. Dodge  
President of Board of Directors, BIPCO  
PO Box 1438  
Block Island, RI 02807

RE: Assessors Plat 17 Lot 37

Dear Nancy:

Thank you for your letter dated 4 August 2017 concerning local Zoning implications for the removal of the five (5) underground fuel storage tanks (UST) on the Block Island Power Company Property (BIPCO) and the installation of two new twelve thousand (12,000) gallon above ground fuel tanks on the BIPCO property.

In your letter you stated "The activity is, in our opinion, clearly allowed under the provisions of Sec. 105, Relationships to Other Laws and Sec 113, Non-Conformance of the New Shoreham Zoning Ordinances."

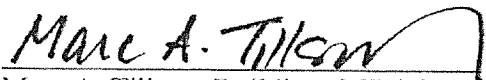
No one will argue that the removal of the UST as directed by DEM is welcomed by our community for the protection of the islands environment. In applying Section 105, the Town by requiring local Zoning review and approval for the new fuel storage facility is in no way limiting the authority of the RIDEM and the EPA to carry out their regulatory responsibilities.

You are correct that in the January 2008 Zoning Certificate for BIPCO, I found the UST Facility to be a lawful, non-conforming use. Zoning Section 113, Non-Conformance, (B), Non-Conforming Use, (4), Relocation, states; "a Non-Conforming use shall not be moved in whole or in part to any portion of the land other than that occupied by such use at the time of adoption of the ordinance unless granted a Special Use Permit under the provisions of Article 7 of this Ordinance." BIPCO's proposal to remove the UST's and move the fuel storage for their backup generators into two above ground storage tanks 60 to 80 feet from where the UST are currently located is clearly a relocation of the Non-Conforming use requiring a Special Use Permit from the Zoning Board.

Please also address Section 505, Uses Involving Toxic or Hazardous Materials in your application to the Zoning Board. As the Zoning approval process may take four to six months I recommend the board of directors make application under Section 112, for a Special Temporary Permit. As you are aware the Town Council has the authority to grant the Special Temporary

Permit so that BIPCO may proceed with the removal of the UST and installation of the above ground storage tanks.

As for Ballard's Oil Company, they are applying to the Town Council for a Special Temporary Permit for their above ground fuel storage tank. Ballards Oil is making separate application to the Zoning Board for a Special Use Permit to allow a Utility Facility on Lot 38. When the owner, The Marjorie McGinnes Estate, created the new lot (38) from Lot 37, they abandoned, by their own action, the Non-Conforming fuel storage use for Ballards Oil Company on the new lot.



Marc A. Tillson, Building Official  
Town of New Shorcham

Cc: Shirleyne Gobern, Town Manager  
Jennifer Brady, L.U.A.O  
Jeff Wright, Chief Executive BIPCo.

To: Marc Tillson

From: Nancy Dodge, President of Board of Directors, BIPCo

Re: Removal and partial replacement of underground fuel storage tanks.

Date: September 26, 2017

The Block Island Power Company currently has five underground fuel storage tanks, each with a capacity of 20,000 gallons, located on Plat 17, Lot 37, the main property for the Power Company. These underground tanks are under an Environmental Protection Agency directive, in conjunction with the Rhode Island Department of Environmental Management (DEM Regulation Sec.8.04) to be removed from the ground no later than December 31, 2017. This order has been extended once (from a deadline of Dec. 31, 2015) but BIPCo has been advised that no further extensions will be granted.

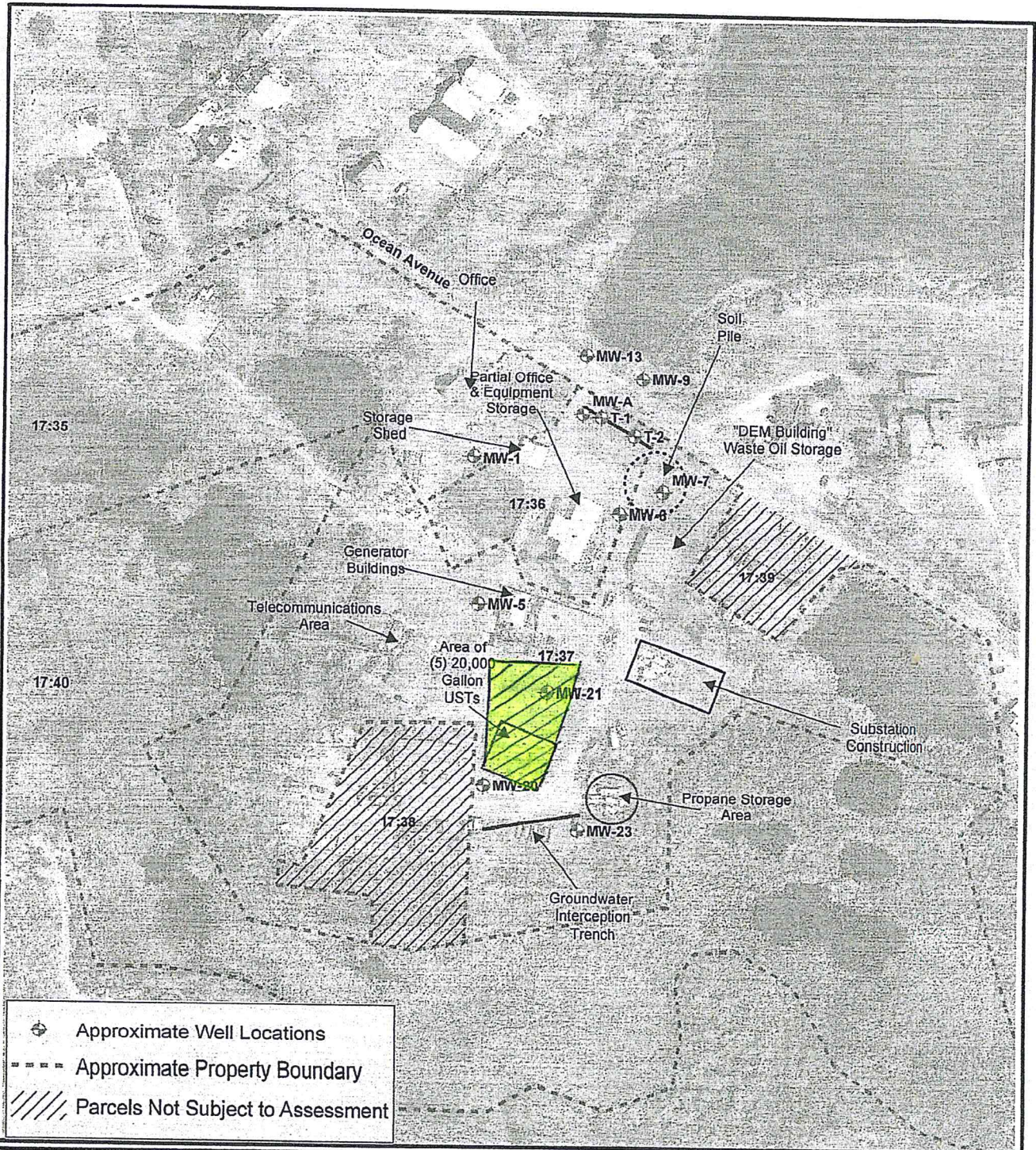
Attached to this memo is a Zoning Certificate you issued in 2008 as to Lot 37. This Zoning Certificate sets forth your findings that there exists on the property a "...lawful prior existing, legal, nonconforming use of a Utility Facility (Section 417)" and "There exists on the property a prior existing, legal, nonconforming underground storage tank facility for the storage of petroleum products."

What the Block Island Power Company has planned is to further reduce the number of tanks and the attendant gallonage of fuel stored and place two 12,000 gallon tanks above ground in the same area of LOT 37 that has historically been the site of up to 64 underground tanks. ( above ground placement mandated by the EPA and Sec. 8.04 of the Department of Environmental Management. )

This activity is, in our opinion, clearly allowed under the provisions of Sec. 105 (Relationship to Other laws) and Sec. 113 (Non Conformance) of the New Shoreham Zoning Ordinances. As per Section 113 (B) (4), this action is not a 'relocation' requiring a Special Use Permit because it is not moving fuel tanks to "any portion of the land other than that occupied by such use ...". The attached map, prepared by SAGE Environmental shows where the five remaining tanks were located on Lot 37 and the circled area is the historical location of the non conforming tank farm. The placement of the above ground tanks is well within the land occupied by the nonconforming use and creates no change or effect on the neighborhood—a factor numerous cases on nonconforming use relocations consider. In addition, this state and federally mandated action furthers one of the stated purposes of the New Shoreham Zoning Ordinances, to protect against groundwater pollution.

Since your original letter did find that the proposed action was a relocation that would place the above ground tanks "60 to 80 feet from where the UST are currently located " I am asking that you review that finding at this time.

Please contact me if you have any questions or require any additional information at this time.



SAGE Environmental, Inc.

Figure

	<p>★ Site Location</p>	<b>Site Sketch</b> Plat 17 / Lots 35, 36, 37 & 40 Block Island, Rhode Island	
		DATE: 9/08/16 CREATED BY: ALM	JOB #: S2671 DRAWING: sitesketch.mxd
Not to Scale			

Cross-hatch on Plat 17 Lot 37 = Approximate area of original tank farm.  
 MW-20 = Area of 5 remaining tanks from the tank farm to be removed.  
 MW-21 = Approximate area where new replacement tanks will be located.



TOWN of NEW SHOREHAM  
DEPARTMENT of BUILDING INSPECTION  
OFFICE of BUILDING OFFICIAL

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Nancy O. Dodge  
President of Board of Directors, BIPCO  
PO Box 1438  
Block Island, RI 02807

Re: Assessors Plat 17 Lot 37

October 4, 2017

Dear Nancy,

This is in reply to your communication dated September 26, 2017. You write "Since your original letter did find that the proposed action was a relocation that would place the above ground tanks "60 to 80 feet from where the UST are currently located" I am asking that you review that finding at this time."

I see nothing that causes me to reconsider the decision that I already rendered on this issue on August 16, 2017.

Marc A. Tillson, Building Official  
Town of New Shoreham

Cc: Shirleyne Govern, Town Manager  
Jennifer Brady, L.U.A.O