

**October 9, 2015**

**Ms. Lulu Massaro  
Division of Public Utilities and Carriers  
89 Jefferson Boulevard  
Warwick, RI 02888**

RE: IN RE: RHODE ISLAND FAST FERRY, INC.: Docket No.: D-13-51

Ms. Massaro,

Enclosed are an original and five copies of Bluewater, LLC's Response and Objections to First Request For Production.

If you have any questions please feel free to call me at 718-530-5564.

Thank you very much.

Best,

Steve Overturf, Esq.  
Member New York State Bar  
Admitted Pro Hac Vice in Rhode Island

STATE OF RHODE ISLAND

DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:                      Docket No.: D-13-51

**BLUEWATER, LLC RESPONSE AND OBJECTIONS TO  
REQUEST FOR FIRST PRODUCTION**

The Division’s September 21, 2015 Order allowed the Town of New Shoreham “additional discovery to fully explore the veracity and efficaciousness of Bluewater’s plans to construct a new dock in Old Harbor.” The division further stated that, Bluewater, LLC may file an appropriate objection if any of the documents requested by the Town either exceed its authority or are irrelevant to the case” *Division email September 23, 2015*. In compliance with this Order, Mr. Filippi now produces information to satisfy the production burden required by the Division for potential dock site developers, and makes specific objections to the Town’s request based on the same.

Through the discovery process, Rhode Island litigants have the ability to obtain information “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Super. R. Civ. P. 26(b)(1). *Brokaw v Davol Inc*, C.A. No. PC 07-5058 at 3 R.I. Super. (2011). In granting or denying discovery orders, a justice of the Superior Court has broad discretion. *Id.* at 3 *citing Corvese v. Medco Containment Servs.*, 687 A.2d 880, 881 (R.I. 1997). Thus, “the test to be applied is whether the material sought is relevant to the subject matter of the suit, not whether it is relevant to the pleadings.” *Id.* at 3 *citing DeCarvalho v. Gonsalves*, 106 R.I. 620, 627, (1970). In addition, while Rule 34 requires that a party produce discoverable documents in its “possession, custody or control”, the burden of demonstrating requisite materiality under Rule 34 rests on the party seeking production. *Id.* at 3.

In the context of CPCN applications before the Division, discovery is utilized for the dual purpose of evaluating if public convenience and necessity support the issuance of the CPCN and if the applicant is, “fit, willing, and able to provide the service.” *IN Re Aquidneck Ferry & Charter, Inc. Application For Authority to Operate As A Water Carrier Docket No. D-10-01.*

*P.67.* Rhode Island Fast Ferry, the applicant in this matter, has dutifully filed evidence of fitness, and willingness on the record with the Division for evaluation at hearing. Turning to the “ability” prong of the test, the Division considers many factors including the present issue of the applicant’s “ability to construct and/or lease suitable dock locations for its proposed ferry service” *A&R Marine Corporation for Water Carrier Authority Docket D-13-105 (2014).*

Therefore, in order to determine the correct scope of production required to satisfy the “ability to construct and/or lease suitable dock locations for proposed ferry service” provision, we rely upon this Division’s precedent water carrier application cases, *In Re: Application by A&R Marine Corporation for Water Carrier Authority Docket D-13-105 (2014)* and *IN Re Aquidneck Ferry & Charter, Inc. Application For Authority to Operate As A Water Carrier Docket No. D-10-01 (2010).*

### **Condition Subsequent Standard**

In *A&R Marine*, the applicant sought to run a ferry from Bristol to Prudence Island. PFI, the existing ferry operator, challenged A&R Marine’s “ability to provide service without proof that it already possesses suitable docks and a vessel” *A&R Marine P.54.* Counsel for A&R Marine, Attorney Michael McElroy, argued that, “there are rarely CPCN’s that are granted with boats in place, dock, leases signed, et cetera” stating that, “it is the usual practice of the Division to enter an Order stating that the applicant has shown that it is fit, willing, and able, and that the public necessity public convenience and necessity would be served by the application being

granted, but that the CPCN would not be issued by the Motor Carrier section until certain conditions had been met.” *Id.* at P.39-40.

The Division agreed with A&R Marine, stating that, “possessing docks and a vessel at the time of application filing is economically impractical and contrary to Division precedent.” *A&R Marine* P.54. The Division clarified that, “the critical element for regulatory purposes is that the applicant who’s application has been granted is subject to various conditions subsequent (i.e. the availability of docks and a vessel, consistent with the applicants business plan and/or the Division’s Report and Order; proof of insurance; satisfaction of applicable Coast Guard and municipal permitting requirements; and a Division inspection) as a prerequisite before the Division actually issues a CPCN and before services may legally begin.” *Id.* at 54.

Therefore, based on this condition-subsequent standard, the Division granted a CPCN to A&R Marine predicated upon monitored compliance with the aforementioned requirements. The record shows that the following information was produced regarding respective dock sites availability and viability.

First, the Town of Bristol, “presented testimony that it **would be willing** to lease a dock on the Bristol waterfront to the applicant starting on June 14, 2014.” *A&R Marine* P.46 This dock was already constructed and had been used by the previous ferry owner, so the Division had little reason to be concerned about the sites viability as a dock site.

Yet as to the Prudence Island, the dock site was unselected and the dock was unconstructed. The Division granted approval based on a record which demonstrated that, “Portsmouth presented evidence indicating that it **would be willing** to lease dock space on Prudence Island to the Applicant, and that it had already expended funds to conduct surveys of this property and adjacent waters to facilitate the construction of a ferry dock.” *A&R Marine*

P.38. As evidence of this intention, Portsmouth stated that it had met twice with the operator of the potential ferry to discuss the plan, and had expended approximately \$18,000 for an initial survey of the proposed site. *A&R Marine* P. 26, 53

As further proof of the viability and flexibility of the site, the Division cited A&R counsel's statement that A&R, "was committed to obtaining all the necessary permits and docking locations as quickly as possible in order to begin service. It also reiterated that it is prepared to use a landing craft until permanent docking facilities and its planned vessel are available." *A&R Marine* P.38

Therefore, in the A&R case, the Division applied the condition-subsequent standard and approved the CPCN despite the applicant owning none of proposed dock sites, nor the riparian rights to any of these sites. In addition, the site certain on Prudence Island had not yet been zoned, permitted, or approved by the Army Corps. Finally as to CRMC, the waters surrounding Prudence Island are CRMC Type 2 waters, requiring special variances versus those of CRMC Type 5 commercial waters, as in Old Harbor. Further highlighting the flexible nature of the process, the plan even allowed for the possibility that a landing craft may be required until a permanent dock site was built as evidence for, not against, issuance of the CPCN.

More importantly, upon expression of their intention to work with A&R, Portsmouth and Bristol were not subject to subpoena and documentary production orders examining the veracity of their past and future plans. The proposed dock site developers Bristol and Portsmouth, were only required to express a willingness to lease a space to the potential applicant in the future and conduct preliminary discussions regarding the plan. Furthermore, A&R cited no rules detailing the differing production scope required for a municipal dock developer and a private dock

developers in application proceedings. The Division effectively applied the condition-subsequent standard and ordered compliance with those conditions within a reasonable time.

In fact, another CPCN application case, *Aquidneck*, demonstrates that the Division evenly applies the exact same condition-subsequent standard to both private and municipal dock site developers, even if they are State of Rhode Island Regulatory Agencies. *IN Re Aquidneck Ferry & Charter, Inc. Application For Authority to Operate As A Water Carrier Docket No. D-10-01 P.75 (2010)*. In *Aquidneck* the applicant was seeking to run a ferry in Newport between four locations- Goat Island, Perotti Park, Ann Street Dock, and Fort Adams. *Aquidneck* P.2 The applicant in the case had to change his filed route with the Division several times after being denied access by various site owners. *Id.* at 2. In addition, The Rhode Island Department of Environmental Management submitted a letter flatly stating that it would not grant rights to the Fort Adams dock site proposed. *Id.* P.10

Once again applying the condition-subsequent standard, “the Division found that the Applicant has shown himself to be fit willing and able”, noting that the Aquidneck Ferry, “will have to secure landing rights from the appropriate agency or landowner on each of the termini of its route.” *Aquidneck* P.75.

Therefore in *Aquidneck*, the applicant once again had no formal agreements in place regarding any of his four proposed docking spaces, the rights to one of which were explicitly denied by an administrative agency of the State of Rhode Island.

Yet similar to *A&R*, the seven potential dock site developers in *Aquidneck* were not required to produce their communications with the applicant. Nor were any of them subpoenaed by an intervening party to produce communications with their respective attorneys and business partners regarding the dock site concept. The site developers in this case were only required to

demonstrate an intent to discuss using the potential dock site with the applicant. In fact, the CPCN was approved even though one site owner, the DEM, expressed its intent to deny docking. The Division consistently applied the condition-subsequent standard, issued CPCN approval, and required compliance prior to commencement of operations in accordance with its timetable.

### **Bluewater Production**

With this production scope as a guide, Bluewater, LLC provides the following information to satisfy the condition-subsequent standard set forth in *A&R* and *Aquidneck*.

Contrary to the Town's cursory claim, Bluewater, LLC is in fact a very real company, which over the course of the past two years, has expended significant cost and effort to evaluate the viability of the Lot 158 and Mount Hope dock sites. Specifically, Mr. Filippi has retained top marine industry experts regarding the Army Corps of Engineers processes, site engineering, cost assessments, and construction. Furthermore, Mr. Filippi already has financing committed to the project once permitting is complete.

### **Kelly, Drye & Warren, LLP Army Corps of Engineers USACE 408 Permitting Process**

Mr. Corrigan and Attorney Frulla from Kelly, Drye & Warren worked in conjunction with Mr. Paul Filippi and Bluewater, LLC for approximately one year to evaluate the Army Corps of Engineers 408 permitting process in relation to the viability of both the Lot 158 and Mount Hope sites. KDW's review of the project indicates that the proposal by Bluewater likely meets the USACE's requirements for authorization. The KDW letter attesting to their work with Bluewater, and their findings are attached as Exhibit A.

As to Mr. Corrigan's experience, he is a career Army officer, served in multiple assignments with the Army Corps of Engineers including tours with the Gulf Region Division in

Iraq, as well as with the Mobile, Honolulu, and New York districts. In addition, Mr. Corrigan served as the Army's key point person on Capitol Hill for Base Realignment and Closure (BRAC), land conveyances, and Army leasing programs. Mr. Corrigan routinely assist clients with Army Corps of Engineers permitting as well as advocacy on behalf of municipalities or companies in Corps of Engineers civil works projects.

Attorney David Frulla is a partner in Kelly Dryer's Washington, D.C. office focusing on areas of government relations, public policy, campaign finance, political law, litigation, and environmental law. His cumulative experience includes legislative and regulatory counseling, advocacy, and client representation before the Executive Branch, the United States Congress, and various administrative agencies and interstate compact commissions. In addition, Attorney Frulla has represented clients in dozens of Federal and state cases involving application of federal and state environmental laws and regulations. As a result of his exemplary work Attorney Frulla has been selected as one of The Best Lawyers in America© in the Government Relations Practice area from 2010-2016. In addition, Attorney Frulla has also been recognized as a leading attorney in Government, Cities, Municipalities and Environment practice areas by Washington D.C. Super Lawyers, 2011-2015.

KDW informed Bluewater that, "pursuant to section 14 of the Rivers and Harbors Act of 1899, as codified in 33 U.S.C. § 408 (Section 408), the Corps is authorized to grant permission for the temporary or permanent alteration or occupation of civil works projects built by the United States." *KDW Letter*. This, "law authorizes the Secretary of the Army, upon a recommendation from the Chief of Engineers, to grant permission for the temporary or permanent occupation or use of a civil works project, provided such occupation or use will not be injurious to the public interest nor impair the usefulness of the civil works project." *Id.* The,

“Corps’ authority to grant an authorization under Section 408 extends to all lands encompassed by the proposed project in the Old Harbor, including lands available to the Corps project under the federal navigational servitude. ***Based on this authority, the USACE maintains control of the submerged lands under Block Island’s federal harbor without having a deeded real estate interest.***” *Id.*

In addition, site engineering plans (*discussed infra*) demonstrate the, “the boundaries of the Corps’ project and the location of the proposed docks. Neither dock has any physical contact with the Corps’ structures (breakwaters) which is often a concern for the Corps.” *Id.* The, “drawing shows that the proposed docks are entirely within the footprint of the Corps’ project. . ***Therefore, the Corps has the authority to grant permission to build structures including the two docks in the Old Harbor.***” *KDW Letter*

Consequently, KDW concluded that the project, “proposed by Bluewater qualifies for a permit under Section 408 because it is not injurious to the public interest, nor will it impair the usefulness of the Corps’ project.”*Id.* Furthermore, as to timing, KDW informed Bluewater that the USACE 408 process takes up to eighteen months to complete. In addition, riparian rights are not needed at the initiation of the 408 permitting and construction process. Upon completion of the USACE 408 permitting process, the usual construction time for a dock of this type by a certified marine contractor would be approximately eight to ten months.

As evidence of their support, Mr. Corrigan and Attorney Frulla organized a presentation of the collective findings with the New England Division of the Army Corps of Engineers on September 8<sup>th</sup>, 2015 in which the findings of KDW, MMCNV / Anaconda Ltd and Mr. Rick St. Jean were presented to the Army Corps of Engineers. For all the foregoing reasons, KDW concluded that, "Lot 158" and "Mount Hope" are viable sites for Army Corps of Engineers’

permitting and approval. In KDW's estimation, the proposed project appears to be in the public interest and will not adversely impact the Corps' federal project."

### **Old Harbor Marine Site Engineering St. Jean Engineering**

In order to fully understand the site specifics of Lot 158 and the Mount Hope site, Bluewater, retained Mr. Richard St. Jean PE. Mr. St Jean's company SJE is a fully licensed engineering firm specializing in design of docks and marine structures for private, municipal and State agencies. In addition, Mr. St Jean has unique knowledge of the sites as SJE has engineered several marine projects in Old Harbor, Block Island. In fact Mr. St Jean has done work for the Town of New Shoreham within Old Harbor, including designing a proposed dock in the same Lot 158 site they now claim is unviable. A letter attesting to Mr. St Jean's work with Bluewater, LLC and his findings is attached as Exhibit B.

Bluewater conducted over a year of planning and marine design work with SJE to verify that Lot 158 and Mount Hope were viable sites for the Army Corps of Engineers 408 permitting process. As part of this process, SJE constructed a engineering site plan that clearly demonstrates the viability of both the Lot 158 and Mount Hope sites.

As discussed, this work was presented to the New England District of the US Army Corps of Engineers on September 8, 2015 and based on the positive results of that meeting, SJE concluded that, "the sites are a viable solution to the lack of docking opportunities in Old Harbor." *SJE's Letter*

### **Dock Design, Construction, and Economic Viability MMCNV / Anaconda Ltd.**

Mr. Jeff and Boyd Mr. Tom Delotto of MMCNV / Anaconda Ltd., worked in conjunction with Mr. Paul Filippi for approximately two years to evaluate the design,

construction, and economic viability of both Bluewater, LLC pier sites located on "Lot 158" and "Mount Hope" sites. MMCNV / Anaconda Ltd. letter attesting to their work with Bluewater, LLC and their findings are attached as Exhibit C

As to their credentials, Mr. Boyd is Managing Director MMCNV / Chairman Anaconda Ltd., a company that has operated exclusively in the marina, shipyard, and mega yacht business arena for a span exceeding 30 years. MMCNV has successfully completed various phases of design, construction, marketing and management for the following Caribbean Marinas; Princess Yacht club – Port de Plaisance, the Yacht Club at Isle de Sol , the Yacht Club at Porto Cupe Coy, and Portofino Marina.

Mr. Delotto is VP Marina Management & Development. He too has spent his entire career operating in the marina industry, with over 35 years of experience as senior operations manager overseeing in excess of 40 operations including boatyards, shipyards, service departments, marinas and resorts. Mr. Delotto has extensive background in many areas including complex budgeting, capital construction, and yard service operations.

After extensive evaluation and analysis, MMCNV/ Anaconda concluded that the Lot 158 and Mount Hope locations provide a viable spot for the successful construction and operation of a dock. As further evidence of their support for this project, MMCNV/ Anaconda have pledged financing once applicable permitting is complete.

**Preliminary Environmental  
Natural Resources Services, Inc.**

Before initiating the Section 408 process, Bluewater retained Natural Resources Services, Inc., a wetland permitting consultant, to conduct a submerged aquatic vegetation survey. Natural Resources Services worked in conjunction with CRMC to establish the requirements needed for the assessment. The survey, which is attached as Exhibit D, found that there was no eelgrass at

either the Mount Hope or Lot 158 sites. Furthermore, as Mr Corrigan stated, “the proposed project is also environmentally benign. The area proposed for both docks has been previously disturbed by construction activity. The Mount Hope dock site replaces the Mount Hope dock that was used for more than a half century until it was destroyed by a hurricane in 1938. Because both sites were previously disturbed, KDW’s position is that there are unlikely to be cultural resources at the site that would prevent the permitting of the project.” *KDW Letter*.

All of these substantial efforts culminated in a meeting with the Army Corps of Engineers held on meeting September 8<sup>th</sup>, 2015 in which the findings of Kelly Dryer, MMCNV / Anaconda Ltd and Mr. Rick St. Jean were presented to the Army Corps of Engineers. The result of the presentation was that the Army Corps agreed with the initial findings and found both sites to be viable in order to initiate the USACE 408 process.

Consequently, the facts demonstrate that the Bluewater, LLC sites are a far more researched and developed project than the unidentified, unconstructed site in Prudence Island Ferry. Furthermore, while an initial site survey conducted for \$18,000 was offered as indicia of the Prudence Island site availability, by contrast Mr. Filippi has expended nearly \$50,000 in research and development costs to determine that these sites are viable. *A&R Marine* P.53

Therefore, we believe that with this production, Bluewater has met and far exceeded the threshold required by *Aquidneck* and *A&R* to demonstrate that the applicant, RIFF, has the, “ability to construct and/or lease suitable dock locations for proposed ferry service.” Furthermore, it is our request that this extensive production should fully satisfy any remaining reasonable reservations as to the “veracity and efficaciousness of Bluewater’s plans to construct a new dock in Old Harbor.” These plans have been reviewed and validated by experts far more

experienced than the Town Manager in these matters. Consequently, we object to any further production of information or deposition on this matter.

Any remaining reservations by the Town are patently irrelevant, outside the scope of these proceedings, and intended to delay. Moreover, these illusory objections have become so convoluted as to strain logic. We now address these issues in turn.

### **Ownership & Riparian Rights**

First as to the issue of site ownership and riparian rights, as stated, neither are required in either the USACE 408 or CPCN condition subsequent process. Second, as to ownership, the simple fact is the Town does not own the Mount Hope site or Lot 158. As stated by Mr. Corrigan, “the USACE maintains control of the submerged lands under Block Island’s federal harbor without having a deeded real estate interest.” *KDW Letter*. Therefore, the USACE is the sole party, “able to grant permission for the temporary or permanent occupation or use of a civil works project, provided such occupation or use will not be injurious to the public interest nor impair the usefulness of the civil works project.” *Id.* The, “Corps’ authority to grant an authorization under Section 408 extends to all lands encompassed by the proposed project in the Old Harbor, including lands available to the Corps project under the federal navigational servitude” Simply put the area of both proposed dock sites is all Federal land, completely controlled by the Army Corps of Engineers.

Likewise, the Town has now created a new condition precedent that Bluewater hold riparian rights to the Mount Hope site, even indicating that we had somehow “taken it off the table” in our latest pleadings, while citing no credible authority for such a claim. First as a procedural note, Bluewater has filed no pleadings in this matter. Bluewater, LLC was improperly subpoenaed into these proceedings, necessitating a Motion to Quash to prevent an improper and

overbroad discovery request. This is Bluewater's first full production of information in this action, aside from the initial materials submitted by Mr. Filippi on September 11, 2015 at the request of this Division.

Second, the Town cannot require anything regarding the Mount Hope site that Federal guidelines do not require as, once again only, "the Corps has the authority to grant permission to build structures including the two docks in the Old Harbor." *KDW Letter* Simply put the USACE holds the riparian rights and is not going to provide them outside of the Federal process established to construct or improve docks on Federal land. Requiring Bluewater to possess these rights at this point is a logical impossibility. Yet this is exactly the type of condition precedent reasoning the Town has been attempting to employ to slow these proceedings.

In addition, we fail to see how the Town can seriously assert that they have concerns about the viability of the Mount Hope site, while using their completely viable "bait dock" directly adjacent to the site. Especially given that, "the Mount Hope dock site replaces the Mount Hope dock that was used for more than a half century until it was destroyed by a hurricane in 1938". Yet the Town seeks to delay and obfuscate these proceedings with whatever argument of convenience needs to be made.

Furthermore, while wholly irrelevant to these proceedings, the record shows that, in fact it is Mr. Filippi's family that owns the title to Lot 158. The Town is merely a leaseholder, with a lease from the Director of the CRMC, which ostensibly allows them to keep their viable operating dock on the Filippi's property. In addition, once again, we fail to see how the Town can seriously claim that they have concerns about Lot 158 viability as a dock site, when they have a viable functioning dock on Lot 158.

This is especially true in light of the fact that as proof of the viability of the site during the Army Corps meeting on September 8<sup>th</sup>, Rick St. Jean indicated that he had already designed a viable dock for the Town of New Shoreham in the exact same site on Lot 158 proposed by Bluewater. Yet the Town somehow doubts the viability of the site now that Mr. Filippi intends to develop it. The glaring logical inconsistency exposes the Town's true motives as abutting leaseholders/landholders to the respective sites.

Consequently, the Town's invented condition into ownership and riparian rights are completely outside the scope of their authority and unnecessary to the USACE 408 or condition subsequent process.

### **Ingress/ Egress**

As to the Mount Hope site, the latest condition invented by the Town is that the Mount Hope site is not viable because the Town will not allow passenger ingress/egress across the very viable "bait dock." Once again no analysis of the ingress/egress from the dock site was conducted in *Aquidneck* or *A&R*. In addition, any analysis of ingress and egress from the proposed dock site is conducted via the USACE 408 process at the appropriate time.

Specifically, in *Aquidneck*, among many other objections to the proposed dock sites, the Rhode Island Department of Environmental Management stated its intent to deny docking rights at Fort Adams, placing the whole route in jeopardy. *Id.* P.10. In addition, the proposed dock sites were busy sites in Newport with the attendant easement, property, and disembarking safety concerns. Moreover, in *A&R*, the dock site on Prudence Island had not yet been identified yet.

Yet the condition subsequent-standard did not require the potential dock site owners to demonstrate how passengers would disembark from the ferry which may or may not receive approval. The CPCN was approved condition subsequent standard that placed the burden on the

applicant to, “secure landing rights from the appropriate agency or landowner on each of the termini of its route.” *Aquidneck* P.75. We assert this case should be no different, as this proceeding is not a Block Island property litigation. The Town cannot defeat the viability of two sites, validated by top marine experts, by simply expressing an intent to deny ingress/egress over an adjacent property.

Yet while the Town’s argument is legally meritless, in order to further demonstrate Bluewater’s commitment to the project and viability of the site, SJE has prepared an alternate access plan which completely circumvents the Town “Bait Dock”. This plan thereby eliminates their connection to the matter. This route is marked as “alternate access” in Exhibit B. In addition, as to Lot 158, Bluewater has also submitted a viable plan for ingress and egress over the public right of way granted to CRMC. These to proposed plans meet and exceed the condition subsequent standard, and do not need to meet the illusory condition precedent standard of the Town.

Consequently, all of the Town’s invented conditions are irrelevant, outside the scope of their rights and authority with regard to the USACE 408 and the condition subsequent process. The contradictory nature of the Town’s ever-evolving arguments expose them for what they are, the self-serving claims of adjacent leaseholders or landholders on both sites. Therefore, we respectfully request an Order concluding discovery in this matter.

In the alternative, if the Division decides to allow further discovery and depositions in this matter. Then we request an Order significantly limiting the scope of the Town’s discovery. In addition, we will notice intention to depose Town Manager Nancy Dodge to determine the remaining factual basis, if any, for the Town’s continued opposition to the availability of Bluewater’s sites. Finally as to documentary production, as per Rule 34, the Town as the party

seeking production bears the burden of demonstrating requisite materiality. Consequently, if the Town makes any further requests they should be required to state why the request is relevant to this extremely narrow and preliminary inquiry. To this end, our specific objections to their document request are contained in Exhibit E.

### **Closing**

The Town has conflated its role as municipality, intervening party, adjacent lease/land holder into an overbroad and irrelevant inquiry which far exceeds that imposed upon any other potential dock site developer in a CPCN application hearing. Contrary to all of the Towns unfounded and cursory claims, Bluewater, LLC is a fully informed and committed company. A company that has expended significant time and capital to retain top experts who have validated the Lot 158 and Mount Hope sites. We therefore respectfully request an Order from the Division closing further discovery in this matter on the grounds that Bluewater has produced sufficient information to evince the veracity and efficaciousness of their plans to construct a dock on the Lot 158 and Mount Hope sites in Old Harbor, thereby meeting the condition subsequent standard of this Division.

**Respectfully Submitted,  
Bluewater, LLC**

**By and through their Attorneys,**

A handwritten signature in black ink, appearing to read "Steve Overturf". The signature is written in a cursive, slightly slanted style.

**Steve Overturf, Esq.  
Admitted New York State Bar  
Admitted Pro Hac Vice in Rhode Island**

A handwritten signature in black ink, appearing to read "Lauren T. Balkcom". The signature is written in a cursive, slightly slanted style.

**Lauren T. Balkcom  
Member Rhode Island State Bar**

**CERTIFICATION OF SERVICE**

I Steve Overturf, Esq. hereby certify that on October 9<sup>th</sup>, 2015 I sent this filing to the service distribution list and had an original and five (5) original copies mailed to the Division.

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOSEPH W. CORRIGAN

DIRECT LINE: (202) 342-8577

EMAIL: jcorrigan@kelleydrye.com

NEW YORK, NY  
LOS ANGELES, CA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

State of Rhode Island  
Public Utilities Commission  
Division of Public Utilities and Carriers  
Hearing Officer Mr. Sprito

Re: RIFF Application For CPCN D-13-51

Hearing Officer Sprito,

Kelley, Drye & Warren LLP (KDW)<sup>1</sup> is assisting Bluewater, LLC (Bluewater) to obtain permits from the U.S. Army Corps of Engineers (USACE or the Corps) for additional dock space in the Old Harbor at Block Island. Bluewater is seeking authorization for two docks designated as the "Lot 158" site and the "Mount Hope" site in the enclosed sketch (enclosure 1). KDW's review of the project indicates that the proposal by Bluewater likely meets the USACE's requirements for authorization.

Pursuant to section 14 of the Rivers and Harbors Act of 1899, as codified in 33 U.S.C. § 408 (Section 408), the Corps is authorized to grant permission for the temporary or permanent alteration or occupation of civil works projects built by the United States. This law authorizes the Secretary of the Army, upon a recommendation from the Chief of Engineers, to grant permission for the temporary or permanent occupation or use of a civil works project, provided such occupation or use will not be injurious to the public interest nor impair the usefulness of the civil works project. The Corps' authority to grant an authorization under Section 408 extends to all lands encompassed by the proposed project in the Old Harbor, including lands available to

---

<sup>1</sup> KDW Senior Government Relations Advisor Joseph Corrigan is a retired USACE Officer who served in the U.S. Army for more than 22 years. His Corps assignments include service in the Corps' New York, Honolulu, and Mobile Districts. He also led the stand-up of the Gulf Regional Division in Baghdad, Iraq. Since retiring from the USACE, Mr. Corrigan has represented numerous companies and municipalities before the Corps involving regulatory issues such as crossing navigable waterways, constructing marinas on Corps projects, dredging harbors, renourishing beaches, and other related matters. KDW Partner David Frulla is resident in KDW's Washington D.C. office and maintains a regulatory and litigation practice involving environmental and marine issues.

the Corps project under the federal navigational servitude. Under the Commerce Clause of the U.S. Constitution, Art. 1, § 8, cl. 3, the federal government derives a navigational servitude that gives the government the power to interfere with the ownership of riparian or submerged lands without paying compensation. Based on this authority, the USACE maintains control of the submerged lands under Block Island's federal harbor without having a deeded real estate interest.

The sketch at enclosure 1 shows the boundaries of the Corps' project and the location of the proposed docks. Neither dock has any physical contact with the Corps' structures (breakwaters) which is often a concern for the Corps. The drawing shows that the proposed docks are entirely within the footprint of the Corps' project. The Corps will likely also have to permit the project under its regulatory program with appropriate involvement of other regulators. Therefore, the Corps has the authority to grant permission to build structures including the two docks in the Old Harbor.

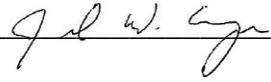
It is our understanding that the project proposed by Bluewater qualifies for a permit under Section 408 because it is not injurious to the public interest, nor will it impair the usefulness of the Corps' project. The project will enhance public use of the harbor by alleviating the shortage of available dock space for ferry boats at the Old Harbor at Block Island. Bluewater recognizes that the inner harbor is congested. Consistent with this understanding, Bluewater has proposed locations for the docks that minimize impacts on traffic in the inner harbor. Finally, the Mount Hope dock will provide a handicapped accessible route for people to access watercraft including ferry boats.

The proposed docks also do not impair the Corps' projects in the Old Harbor. The proposed docks are set back from the federal channel as required by Corps' manuals and the Block Island project-specific setbacks. This setback permits the Corps to dredge the federal channel. The proposed docks also do not impact the Corps' structures, including the federal breakwater. Both docks are accessible directly from the shore, and neither dock requires the crossing of Corps' structures, such as the breakwater, to reach the dock. Indeed, neither dock even touches the Corps' structures in the Old Harbor.

The proposed project is also environmentally benign. The area proposed for both docks has been previously disturbed by construction activity. The Mount Hope dock site replaces the Mount Hope dock that was used for more than a half century until it was destroyed by a hurricane in 1938. Because both sites were previously disturbed, it is our experience that there are unlikely to be cultural resources at the site that would prevent the permitting of the project. Before initiating the Section 408 process, Bluewater retained Natural Resources Services, Inc., a wetland permitting consultant, to conduct a submerged aquatic vegetation survey. The survey, which is attached (enclosure 2), found that there was no eelgrass at either the Mount Hope or Lot 158 sites.

For the foregoing reasons, "Lot 158" and "Mount Hope" are viable sites for Army Corps of Engineers' permitting and approval. In KDW's estimation, the proposed project appears to be in the public interest and will not adversely impact the Corps' federal project.

Sincerely,



Joseph W. Corrigan  
Senior Advisor



David E. Frulla  
Partner

# St. Jean Engineering, LLC

*Structural, Marine & Civil Engineering*

*Licensed In: Rhode Island  
Massachusetts  
Connecticut  
Maine  
U.S. Virgin Islands  
New Jersey*

October 8, 2015

State of Rhode Island  
Public Utilities Commission  
Division of Public Utilities and Carriers  
Hearing Office Mr. Sprito

Re: RIFF Application for CPCN D-13-51

Hearing Office Sprito,

Please accept this letter as confirmation that St. Jean Engineering, LLC (SJE) has advised Rhode Island Fast Ferry (RIFF) and Bluewater, LLC as to the suitability of the proposed dockage for the Fast Ferry shown on the attached plan. SJE is a fully licensed engineering firm specializing in design of docks and marine structures for private, municipal and State agencies. We have engineered several marine projects in Old Harbor, Block Island and are familiar with the proposed project area. It is our understanding that RIFF is seeking to bring Ferry service from their terminal in Quonset Point, North Kingstown to Old Harbor, Block Island and seeks to construct a fixed dock to serve as a ferry landing for its high speed aluminum hulled catamaran.

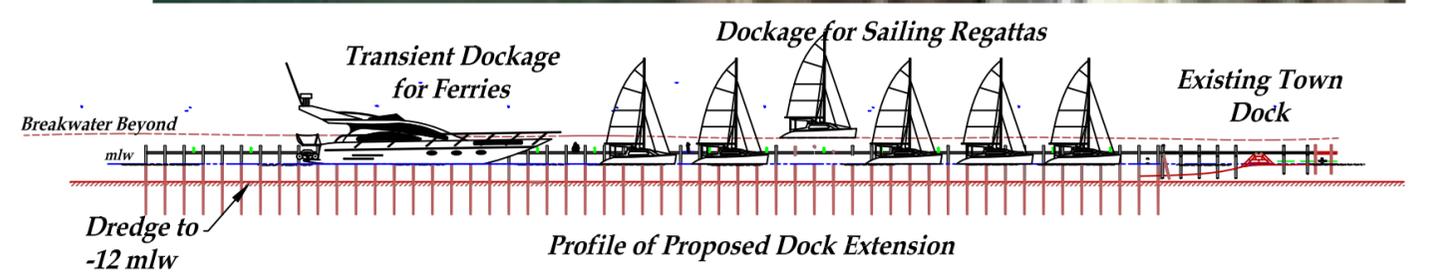
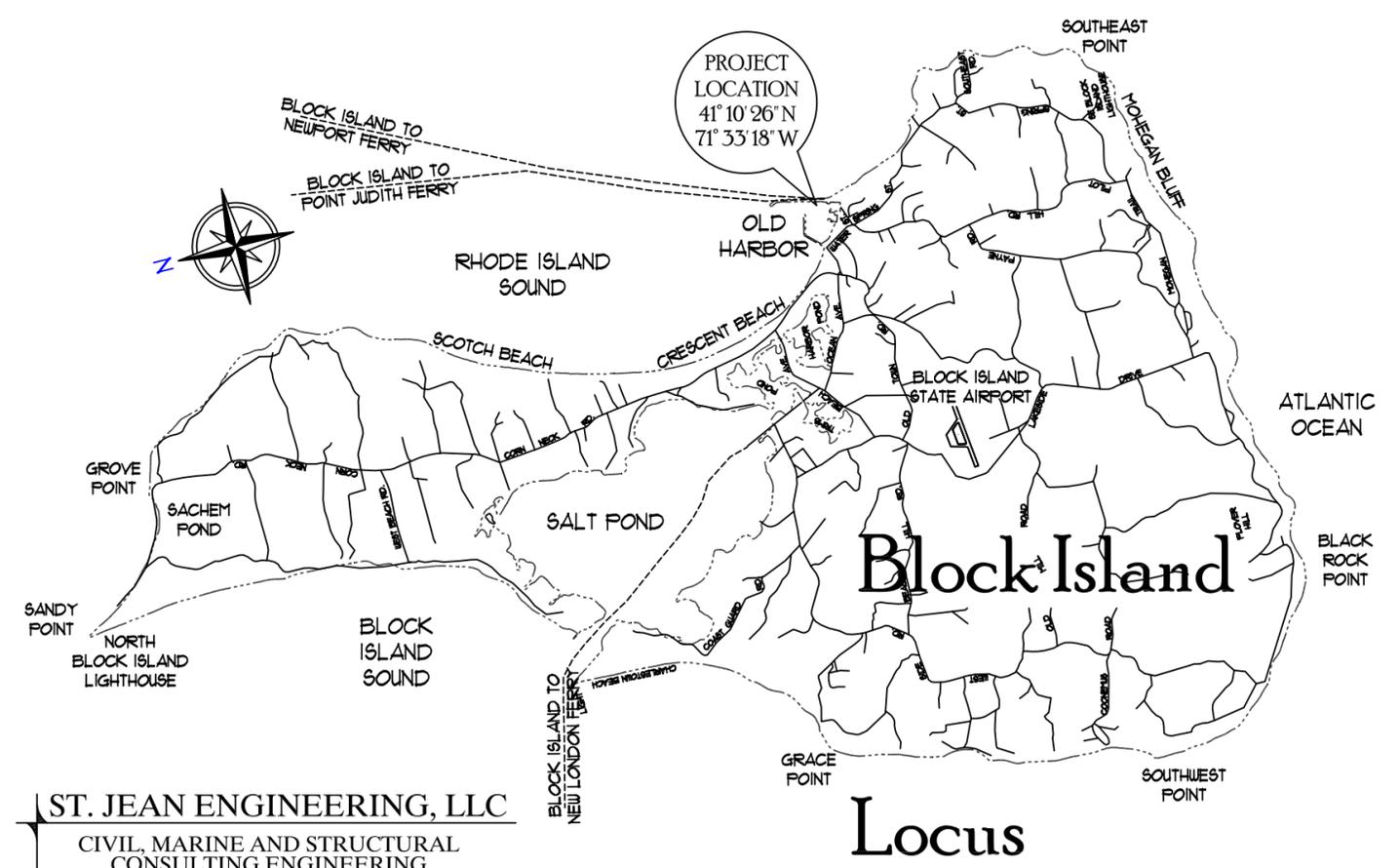
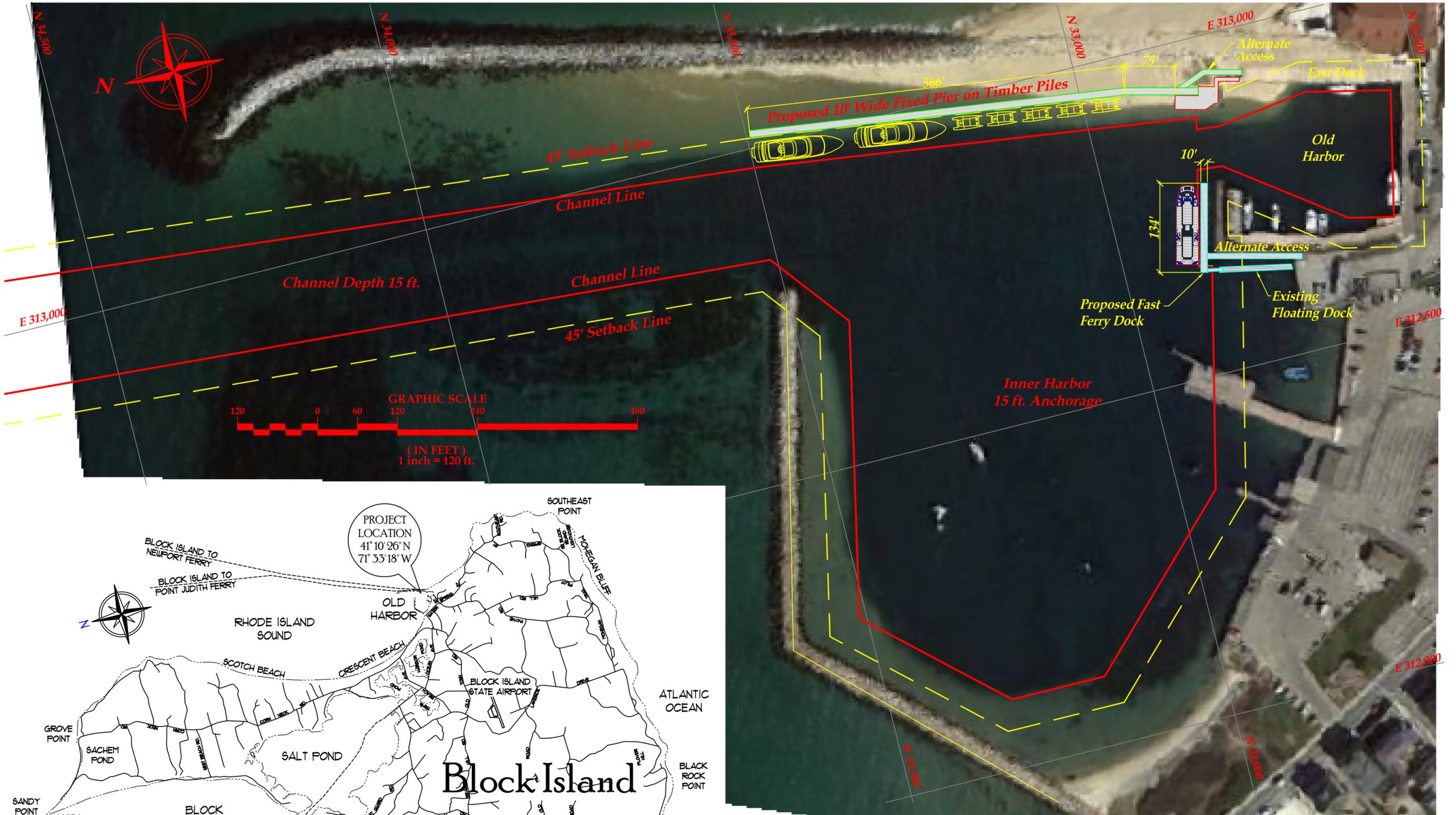
Please be advised the construction of the proposed dock(s) will require State and Federal permits. The proposed dock is located in CRMC Type 5 Waters, which is properly classified for this type of in-water structure. SJE and Bluewater, LLC met with the New England District of the US Army Corps of Engineers on September 8, 2015 to discuss Bluewater's interest in seeking a permit for the project. Based on that meeting we feel that the project is a viable solution to the lack of docking opportunities in Old Harbor for the Rhode Island Fast Ferry.

Sincerely,



Richard St. Jean, PE  
President, St. Jean Engineering, LLC

Cc: Charles Donadio, RIFF  
Paul Filippi, Bluewater, LLC



**ST. JEAN ENGINEERING, LLC**  
 CIVIL, MARINE AND STRUCTURAL  
 CONSULTING ENGINEERING  
 1145 Middle Road  
 East Greenwich, RI 02818  
 Phone: 401.398.0999  
 st.jean.engineering@verizon.net



State of Rhode Island  
Public Utilities Commission  
Division of Public Utilities and Carriers  
Hearing Officer Mr. Sprito

Re: RIFF Application For CPCN D-13-51

Hearing Officer Sprito,

This letter confirms that both myself and Mr. Tom Delotto worked in conjunction with Mr. Paul Filippi for approximately two years to evaluate the design, construction, and economic viability of both Bluewater, LLC pier sites located on "Lot 158" and "Mount Hope" sites. After extensive analysis, it is our professional opinion that both of these locations provide a viable spot for the successful construction and operation of a dock. As further evidence of our support for this project, we also stand ready to offer financing once applicable permitting is complete.

As to my credentials, I am the Managing Director MMCNV / Chairman Anaconda Holdings LLC, and have operated exclusively in the marina, shipyard and mega yacht business arena for a span exceeding 30 years. During the period 1999 to 2004 MMCNV successfully completed various phases of design, construction, marketing and management for the following Caribbean Marinas; Princess Yacht club – Port de Plaisance, the Yacht Club at Isle de Sol , the Yacht Club at Porto Cupe Coy and Portofino Marina.

Mr. Delotto serves as our VP Marina Management & Development. He too has spent his entire career operating in the marina industry, with over 35 years of experience as senior operations manager overseeing in excess of 40 operations including boatyards, shipyards, service departments, marinas and resorts. Mr. Delotto carries the designation of Certified Marina Manager (AMI # 50 of 265) globally. In addition, Mr. Delotto has extensive background in many areas including complex budgeting, capital construction, and yard service operations. He also maintains a 100 Ton USCG Master Mariner license and has shipboard experiences with pleasure craft to 80 feet as well as commercial vessels, with 25 plus years on the open ocean.

In closing, it is our professional opinion that the Bluewater, LLC pier sites of Lot 158 and Mount Hope are viable sites to construct and operate a dock and we stand ready to move forward with the project once applicable permitting is completed.

Thank you very much for your time and consideration,

Mr. Jeff Boyd  
Managing Director MMCNV  
Chairman Anaconda Holdings LLC

#21 Sister Modesta Road, Simpson Bay, St. Maarten, Netherlands Antilles  
Office: 721-545-2500 Fax: 721-545-2501  
Email: [jboyd@mmcnv.com](mailto:jboyd@mmcnv.com) [www.mmcnv.com](http://www.mmcnv.com)



## Natural Resource Services, Inc.

**Submerged Aquatic Vegetation Survey**  
Blue Water, LLC  
New Shoreham, RI



Prepared for  
Blue Water, LLC  
42 Water Street  
PO Box 1818  
Block Island, RI 02807

Survey and Report Prepared by:

Edward J. Avizinis  
Wetland Biologist/Soil Scientist

September 11, 2015

NRS File #15-233

## Introduction

Natural Resource Services, Inc. (NRS) has completed a Submerged Aquatic Vegetation (SAV) survey along the requested areas of the above referenced property. This survey was performed in accordance with the standards established within Section 300.18 E.4 (a-e) of the RI Coastal Resources Management Program (CRMP). This report and the enclosed graphic and data tables can be used for any submission to the CRMC requiring proof of an SAV survey. An SAV survey is considered valid for up to three (3) years (section 300.18 E.3).

The primary purpose of this SAV survey is to identify and map existing Eelgrass (*Zostera marina*) and Widgeon Grass (*Ruppia maritima*) beds, substrate within the survey area, mean height of eelgrass shoots, and depth of water (at time of sampling) at each quadrat location. Eelgrass and Widgeon Grass are perennial, rooted, submerged, aquatic plants that occupy shallow, estuarine waters in sheltered bays and coves. These vegetated beds provide habitat and cover for various shellfish and fin fish species, while subsequently providing food for waterfowl species. Eelgrass also plays an important role in protecting the shorelines from sedimentation and erosion by stabilizing bottom sediments. It is for these functions and values that the CRMC requires a survey of Eelgrass habitats.

## Methodology

The SAV Survey was performed on September 10, 2015, with all work occurring between 11:15 a.m. - 2:00 p.m. in a portion of Old Harbor classified as Type 5 Waters. Type 5 waters are defined as recreational and commercial harbors that are adjacent to waterfront areas supporting tourist, recreational, and commercial activities. The survey was designed to gather as much data for as possible within the physical limitations which are present.

Transects were established to encompass a long stretch of the west side of the rock jetty at Ballard's beach. Transect A was established at the southern extent of the rock wall where it meets Ballard's dock. Subsequent transects (B-Z, AA-ZZ, AAA-FFF) were established north of transect A, established successively every ten feet. Measurements began from the shoreline (shoreline determined at 11:30 a.m., 10 September, 2015) and ran perpendicular to the shore. The nearby ocean low tide was recorded to be at 12:17 p.m. (EDT) on September 10, 2015.

Due to constraints regarding the dock positioning, the proposed fast ferry dock site (west of the rock jetty) did not have transects established for an SAV survey. The area was fully surveyed from the water, however, and determined to have no Eelgrass or Widgeon Grass present.

The survey extended at its furthest point approximately 130 feet seaward from the established transects. A one meter square sampling station was established every 10 feet along most transects. As there was no Eelgrass or Widgeon Grass present at the site, and

due to the length and relative consistency of the shoreline at this site, some of the transects were not fully sampled. Data from adjacent transects and visual observations at the site are sufficient proof that there is no Eelgrass or Widgeon Grass growing along these transects. At each of the established sampling stations, the water depth, substrate characteristics, percent cover of *Zostera marina* and/or *Ruppia maritima*, and mean shoot height (n/a) was recorded.

### Findings and Conclusion

Upon completion of the NRS site investigation, it was determined that there are no Eelgrass or Widgeon Grass beds in the area. There is a coarse sand substrate at the site which transitions to mucky sand approximately 50-70 feet seaward. The area has historically been maintained as a harbor and has ample water depth (10'+/-) past the limits of this SAV survey. The full survey data are depicted on the attached graphic and attached data tables.



### Ballards Dock SAV Survey

Performed on 9/10/15

New Shoreham, RI

2014 USGS Digital True  
Color Orthophotography

- Approximate Site Locations
- — Transects
- Sampling points

**Natural Resource Services, Inc.**  
 PO Box 311 p (401) 568 7300  
 190 Tinkham Lane f (401) 568 7499  
 Harroville, RI 02830 (c) RIGIS

**RIGIS**



Positions GPS located with  
Trimble Geoexplorer 6000 series

**EXHIBIT E**  
**SPECIFIC OBJECTIONS TO TOWN REQUEST FOR DOCUMENT PRODUCTION**  
1-3

“All Documents by and between RIFF and Bluewater pertaining to the Lease Option Agreement. the Paul Filippi Affidavit and Bluewater pertaining to the Proposed Piers.” We object pursuant to R.Civ.P.26 and 45, as to relevance and that such material requires disclosure of a trade secret or other confidential research, development, or commercial information. As to relevance, dock site developers under the condition subsequent standard are not required to produce their communication with applicants. In addition the information is simply chronologically irrelevant to the sites availability now, the scope of this inquiry.

4-6

All Documents by and between Bluewater and the Army Corps pertaining to the Lease Option pertaining to the Paul Filippi Affidavit and the Proposed Piers. We object pursuant to R.Civ.P.26

and 45, as to relevance and that such material requires disclosure of a trade secret or other confidential research, development, or commercial information Bluewater has produced all documents relevant to the sites viability and has met and exceeded the production standard required in the condition subsequent process. In addition, once again the documents are chronologically irrelevant to the sites current viability, the scope of this inquiry. Furthermore, any communications between Bluewater, LLC and the Army Corps are privileged pursuant to attorney client privilege, as they were shared in conjunction with Attorney David Frulla and Mr. Corrigan.

7-9

All Documents by and between Bluewater and the Ballard's Companies pertaining to the Lease Option, Paul Filippi Affidavit, and the Proposed Piers. We object pursuant to R.Civ.P.26 and 45, as to relevance and that such material requires disclosure of a trade secret or other confidential research, development, or commercial information. This is wholly irrelevant, as issues of ownership and riparian rights are not examined at this stage of the proceedings under the condition subsequent standard nor under the USACE 408 process. In addition, no documents exist. Town counsel themselves submitted a letter from Mr. Steven Filippi, President of Ballard's stating that he had nothing to do with the project.

10-12.

All Documents by and between Bluewater and the Steven Filippi, and Attorney Blake Filippi, Esq. pertaining to the Lease Option, Paul Filippi Affidavit, and the Proposed Piers. Once again this wholly irrelevant. We object pursuant to R.Civ.P.26 and 45, as to relevance and that such material requires disclosure of a trade secret or other confidential research, development, or

commercial information. This is wholly irrelevant, as issues of ownership and riparian rights are not examined at this stage of the proceedings under the condition subsequent standard nor under the USACE 408 process. We restate our objections put forth as to Mr. Steven Filippi above. As to Blake Filippi, Esq he is a licensed attorney and the Filippi family attorney. As such, any and all communications requested are subject to attorney client privilege, work product, and or confidential business communications.

13.

All Documents by and between Bluewater and St. Jean Engineering, LLC pertaining to the Proposed Piers. We object pursuant to R.Civ.P.26 and 45, as to relevance and that such material requires disclosure of a trade secret or other confidential research, development, or commercial information. Bluewater has produced all documents relevant to the sites viability and has met and exceeded the production standard required in the condition subsequent process. In addition, once again the documents are chronologically irrelevant to the sites current viability, the scope of this inquiry.

14-15

All Documents by and between Bluewater and the Rhode Island Coastal Resources Management Council, Rhode Island Department of Environmental Management, pertaining to the Proposed Piers. We object pursuant to R.Civ.P.26 and 45, as to relevance and that such material requires disclosure of a trade secret or other confidential research, development, or commercial information. Bluewater has produced all documents relevant to the sites viability and has met and exceeded the production standard required in the condition subsequent process. Furthermore, an environmental assessment of the site prior to CPCN issuance is not required. However, as

further demonstration of his commitment to the project Bluewater has produced a preliminary grass study. Other than this production no documents exist.

16.

All Documents pertaining to the alleged rights to "wharf out at two locations" as referenced in paragraph. Bluewater has produced all relevant and detailed information regarding the potential sites.

17.

All Documents not previously produced pertaining to the Lease Option Agreement. Duplicative, irrelevant for the aforementioned reasons, and overbroad

18.

All Documents not previously produced pertaining to the Paul Filippi Affidavit.  
Duplicative, irrelevant for the aforementioned reasons, and overbroad

19.

All Documents not previously produced pertaining to the Proposed Piers  
Duplicative, irrelevant for the aforementioned reasons, and overbroad