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Matthew T. Oliverio
Raymond A. Marcaccio

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All attorneys admitted in RI and MA

January 13, 2021

Via Electronic Mail

Lisa A. Turner
Office Manager
Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road, Room 116
Wakefield, RI 02879
lturner@crmc.ri.gov

**Re: *Ballard's Wharf, LLC Maintenance Dredge Application, AP 6, Lot 159
Block Island, RI 02807
CRMC File No. 2020-12-040***

Dear Ms. Turner:

In accordance with the objection filed on December 22, 2020 by Intrastate Nav. Company, enclosed please find my entry of appearance.

Thank you.

Sincerely,



Raymond A. Marcaccio

Enclosure

STATE OF RHODE ISLAND
COASTAL RESOURCES MANAGEMENT COUNCIL

In Re: Ballard's Wharf, LLC Maintenance Dredge Application
AP6, Lot 159
Block Island, RI 02807

CRMC File No. 2020-12-040

ENTRY OF APPEARANCE

I, Raymond A. Marcaccio, Esquire, hereby enter my appearance on behalf of the
Objector, Intrastate Nav. Company, in the above-referenced matter.

/s/ Raymond A. Marcaccio
Raymond A. Marcaccio, Esquire (#3569)
OLIVERIO & MARCACCIO LLP
55 Dorrance Street, Suite 400
Providence, RI 02903
(401) 861-2900
(401) 861-2922 Fax
ram@om-rilaw.com

Dated: January 13, 2021

Lisa Turner

From: Nadine Hendrickson <nh@om-rilaw.com>
Sent: Tuesday, December 22, 2020 2:27 PM
To: dgoulet@crmc.ri.gov
Cc: lturner@crmc.ri.gov; Raymond Marcaccio
Subject: Ballard's Wharf, LLC Maintenance Dredge Application
Attachments: Intrastate's Objection (D. Goulet) 12-22-20.pdf; Exhibit 1.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Goulet, attached please find correspondence from Raymond Marcaccio regarding the above-referenced matter.

Thank you.

Nadine Hendrickson, Legal Assistant
OLIVERIO & MARCACCIO LLP
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December 22, 2020

Via Electronic Mail

Dan Goulet, PE, Dredge Coordinator
CRMC
4808 Tower Hill Road
Wakefield, RI 02879
dgoulet@crmc.ri.gov

**Re: *Ballard's Wharf, LLC Maintenance Dredge Application, AP 6, Lot 159,
Block Island, RI 02807***

Dear Mr. Goulet:

I represent Intrastate Nav. Company, which is the owner of real estate located immediately adjacent to a marina owned and operated by Ballard's Wharf, LLC ("Ballard's").

Ballard's recently submitted an application to conduct dredging at the marina site, ostensibly to maintain it and "provide safe transit through the marina for its owners, members and guests to the federal navigable harbor or refuge and onto Block Island Sound." Application, Sheet 1 of 6. For the reasons set forth below, the Application should be denied, or, alternatively, not considered until all violations at the marina site have been terminated and remediated.

The use of this marina is governed by CRMC Assent B 2003-12-061 ("Assent") which restricts Ballard's activity at the marina. Pursuant to Marina Perimeter Certification Stipulation E, 1 the marina consists of 7 slips off of the Red Breakwater, which is owned by CRMC and leased to the Town of New Shoreham. The marina may include a maximum of 8 boats and the 2 seaward vessels cannot exceed 26 feet in length. All vessels are to be perpendicular to the Red Breakwater.

Dan Goulet, PE
December 22, 2020
Page Two

Ballard's has been noncompliant with the terms of the Assent since its very inception. Indeed, CRMC has cited Ballard's for numerous and repeated violations, even before the marina was completed. *See*, July 5, 2006 Cease and Desist Order Nos. 06-0072, 06-0090 (opening of marina in nonconformance with Assent); August 4, 2006 Order No. 06-0103 (for opening of marina in nonconformance to cease & desist order and *with finding boats illegally tied up at marina* 3 \$2500 Notice of Administrative Fines); Revised Consent Agreement, June 15, 2007 (unauthorized opening of marina, Cease & Desist Order 07-0058 due to unauthorized construction, with bulkhead cap constructed higher than approved, failure to use turbidity curtain, failure to remove sunken barge, creation of dump site near wetland with debris being burned on beach, materials allowed to wash into wetlands with \$2500 administrative fee and \$100 for each day of non-compliance); and October 12, 2016 Finding & Notice of Violation of Marina Perimeter Certification Stipulation E (2 seaward boats in excess of 26 feet).

The violations continue, unabated, and raise serious questions as to the purpose for the dredging and - given its previous history of flagrant noncompliance - the likelihood that Ballard's will exceed the scope of the proposed dredging work at the marina. It is possible, if not likely, that the dredging is intended to accommodate the illegally moored vessel located off of the bulkhead described more fully below.

As soon as it became operational, Ballard's illegally converted the marina from an 8-vessel marina to 9 vessels, adding a vessel that is permanently moored off the southwest side of its bulkhead. This vessel does not move throughout the entire summer. It often tethers a motored dingy from its stern, thereby adding a 10th vessel at the marina. Ballard's conduct is both notorious and flagrant. Indeed, the vessel is clearly displayed in Ballard's own photograph introduced with application 2019-09-065 to CRMC.

Intrastate has notified CRMC of these violations to no avail. We filed complaints in both 2019 and 2020, setting forth the ongoing violations and noting that Ballard's conduct impedes both Intrastate's access to navigable waters and obstructs its littoral rights. A copy of those letter complaints and supporting exhibits are attached hereto as Exhibit 1 and incorporated by reference.

Over this past summer, Ballard's illegally – and without prior notice and consent from CRMC – modified its bulkhead in federal navigable waters by placing wooden structures along the southwest side of the bulkhead. The purpose for the modification appears to further accommodate its illegally moored vessel(s) during tidal changes.

Dan Goulet, PE
December 22, 2020
Page Three

Intrastate respectfully requests that the dredging application be denied – or that it not be considered – until Ballard’s fully redresses each of its ongoing violations, including:

- the removal of the additional wooden structures recently added to the southwest side of its bulkhead,
- removal of the vessels that exceed 26 feet in length in slips 1 and 2,
- orientation of vessels in slips 1 and 2 to be perpendicular to the Red Breakwater,
- permanent removal of all vessels that have been moored on the southwest side of its bulkhead,
- permanent removal of all vessels that exceed the size number permitted by the CRMC Assent,
- entry of a consent order with CRMC that ensures full compliance with all terms of its Assent, including the terms of Marina Perimeter Certification Stipulation E.

Intrastate remains available to answer any questions or provide any further information or testimony that may assist you.

Sincerely,



Raymond A. Marcaccio

Enclosures

EXHIBIT 1



Oliverio &
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Matthew T. Oliverio
Raymond A. Marcaccio

Santiago H. Posas

All attorneys admitted in RI and MA

September 13, 2019

Via Electronic Mail

Brian Harrington, Senior Environmental Scientist

bharrington@crmc.ri.gov

Jeffery Willis, Deputy Directory

jwillis@crmc.ri.gov

Laura Miguel, Enforcement

lmiguel@crmc.ri.gov

Coastal Resources Management Council

Oliver H. Stedman Government Center

4808 Tower Hill Road, Suite 3

Wakefield, RI 02879-1900

Re: *Marion C. Filippi, Ballards Wharf Realty, LLC*
CRMC File No. 2003-12-061
CRMC Assent No. B2003-12-061
Request for Records Pursuant to Access to Public Records Act
R.I. Gen. Laws § 38-2-1 et seq.

Dear Messieurs Harrington and Willis and Ms. Miguel:

I represent Intrastate Nav. Company and Block Island Ferry Services, LLC, owners of abutting property to the above-referenced Ballards Wharf. Consistent with prior complaints filed by Attorney Kelly Sheridan on behalf of our clients, I bring to your attention once again what are continuing, persistent and flagrant violations of the terms and conditions of Assent No. B2003-12-061 (the "Assent") by the owners of Ballards Wharf ("Ballards"). This is now the fourth such formal complaint submitted by my clients in which it has provided unrefuted evidence of Ballards' knowing violation of the conditions of the Assent. As the attached photos reveal, throughout the summer of 2019 and as recent as September 1, 2019, Ballards has permitted vessels in excess of the prescribed size to use its dock; has invited boats to dock south of the permitted marina area and docking vessels; has allowed vessels to dock aside each other; and has

Brian Harrington
Jeffery Willis
Laura Miguel
September 13, 2019
Page Two

docked boats in excess of the prescribed number. These actions have been ongoing since the issuance of the Assent, all of which have been thoroughly documented with your office. I attach for your reference the prior complaints filed by Mr. Sheridan.

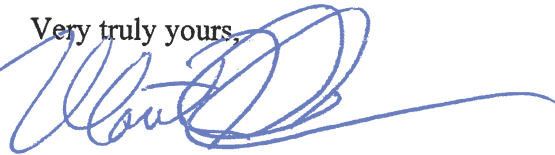
These unauthorized and prohibited actions have interfered with my clients' riparian and navigational rights. Given that there has been no prior enforcement action, Ballards apparently feels empowered to continue its aggressive and unyielding course of action, resulting in congestion and the creation of the navigational hazards in the harbor. These actions interfere with and restrict my clients' ferry service. Ballards' complete indifference to my clients' vested rights to the Old Harbor area, which also extend to all individuals, ferry passengers and entities who use the Old Harbor, has created a nuisance and safety concerns. These violations occur on an almost daily basis and it appears evident to my clients that CRMC has failed to enforce the conditions of the Assent accordingly. For these reasons, we are requesting an immediate investigation and enforcement action through the issuance and prosecution of a notice of violation. Also, pursuant to the Access to Public Records Act, we ask that you provide the following public records within ten (10) days of receipt of this request so that we may evaluate the manner in which CRMC has responded to these serious concerns.

- 1) Any and all complaints received by CRMC for alleged violations of the Assent from the issuance of the Assent to present;
- 2) any and all documents reflecting any investigation undertaken by CRMC staff for alleged violations of the Assent from the issuance of the Assent to present;
- 3) any and all communications directed to Ballards following receipt of any such complaints;
- 4) any and all notices of violation issued against Ballards since the issuance of the Assent;
- 5) any and all enforcement actions undertaken against Ballards since the issuance of the Assent;
- 6) any and all fines assessed, or other sanctions issued against Ballards since the issuance of the Assent; and
- 7) any and all internal electronic communications by and between CRMC staff following the receipt of complaints filed on behalf of my clients or any other person or entity since the issuance of the Assent.

Brian Harrington
Jeffery Willis
Laura Miguel
September 13, 2019
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We respectfully demand that CRMC take immediate enforcement action to penalize Ballards and to ameliorate and abate all these violations. We are happy to assist CRMC in enforcement proceedings, but we ask that you please pursue these violations and keep us informed of the progress of the enforcement.

Very truly yours,



Matthew T. Oliverio

MTO/nh
Enclosures
C: Adam Wronowski, Secretary
Lisa Turner, Office Manager (*w/enclosures*)
lturner@crmc.ri.gov

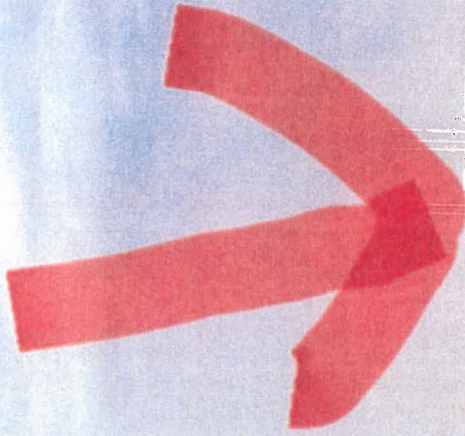
**NEW LONDON
FERRY PARKING**

ONLY

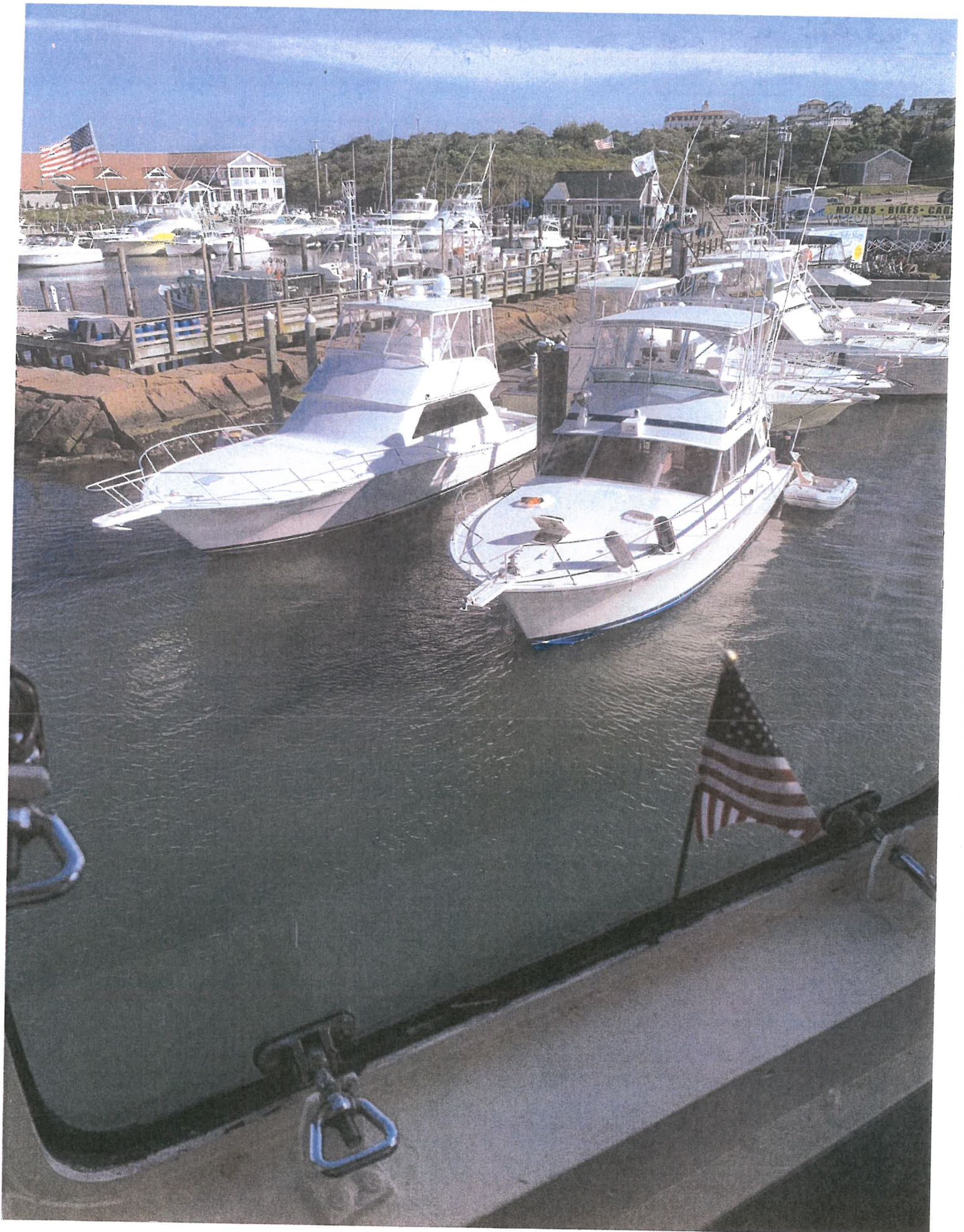
PERMIT REQUIRED

Violators will be towed
Or booted

Inquire at New London Ferry
Ticket Booth for details









September 17, 2013

Brian Harrington
Senior Environmental Scientist
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

**Re: Marion C. Filippi, Ballards Wharf Realty, LLC
CRMC File No. 2003-12-061
CRMC Assent No. B2003-12-061**

Dear Mr. Harrington:

I am writing on behalf of Intrastate Nav Co. and Block Island Ferry Services, Inc. to file a formal complaint against Marion Filippi and Ballards Wharf Realty, LLC for violating the terms and conditions of Assent B2003-12-061 (the "Assent")(attached). The Assent authorizes the owner to construct and maintain an 8 slip marina for recreational boats. The Assent requires boats to be docked perpendicular to the approved float and prohibits the storing or dockage of vessels outside the approved marina perimeter limit. The Assent clearly limits the length of the two seaward boats to 26 feet. These restrictions were included, in part, in response to testimony which was presented to the Council regarding the potential hazards this marina will present to navigation in Old Harbor, particularly the ferries operated by my client and Interstate Navigation Co.

Enclosed is a photograph taken on September 14, 2013 which documents numerous, clear violations of the Assent. The length of the vessel clearly exceeds the Assent limit; indeed, it appears to be over *twice* as long as the permitted length of 26 feet. In addition, it is docked parallel to the float in a manner which caused it to protrude far beyond the approved marina perimeter limit. The size and location of this vessel required one of my client's ferries to abort an attempted docking. Also enclosed is a second photograph taken at approximately 5:00 pm on September 15, 2013 from inside one of my client's ferries. The photograph gives some sense of the proximity of the offending vessel and the extent to which it impeded navigation.

This is not the first time the marina owner has violated Assent requirements. There have been numerous instances where vessels over 26' were docked at the facility and other instances where vessels were rafted in contravention of a clear prohibition in the Assent.

We would ask the Council to take such action as the Council deems appropriate to penalize these violations and to assure they do not reoccur. We are prepared to assist the Council in enforcement proceedings in whatever manner the Council may require. Thank you.

Very truly yours,

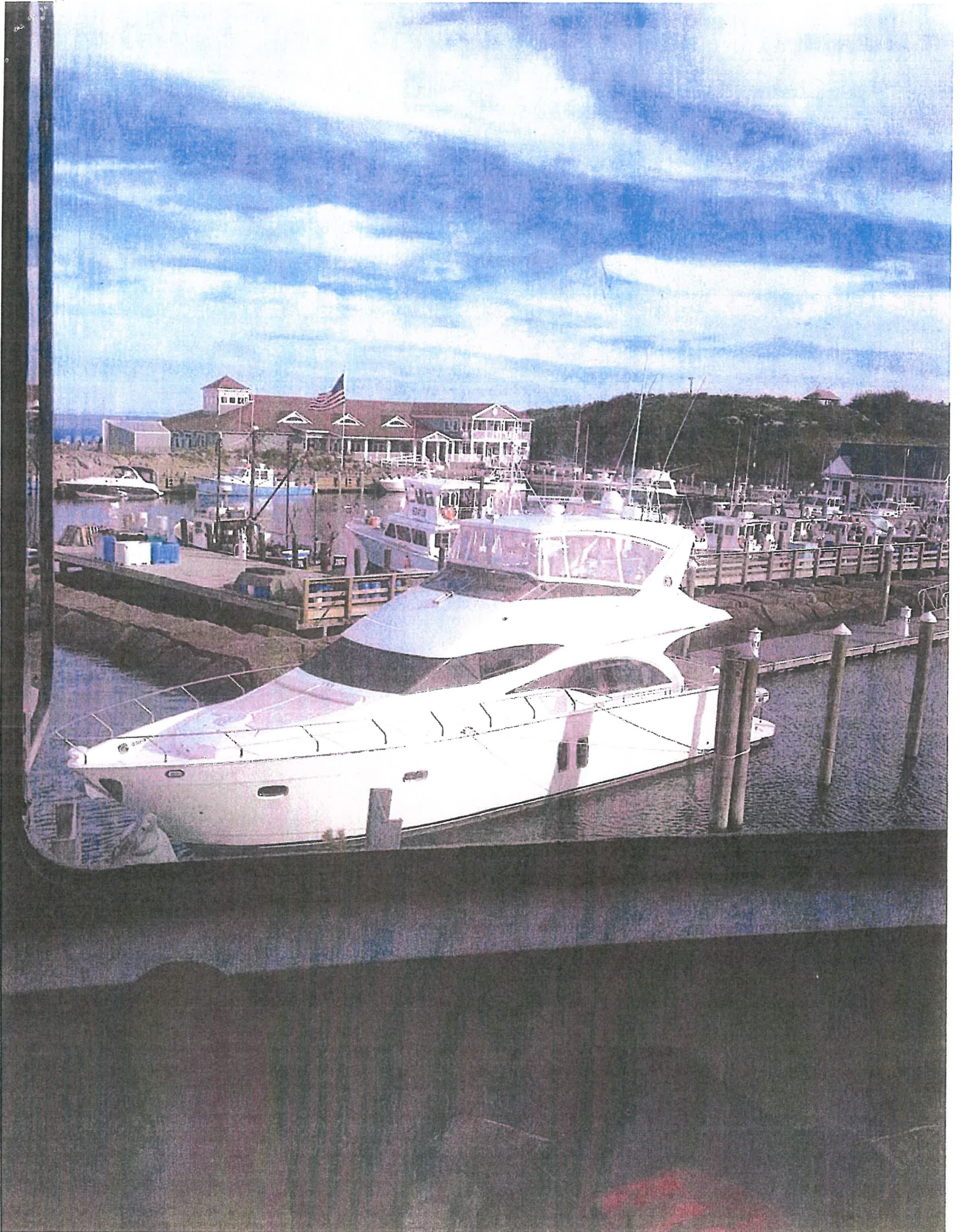


R. Kelly Sheridan

cc: Adam Wronowski

RKS/kz
3978-3/779660





October 7, 2013

Brian Harrington
Senior Environmental Scientist
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

Re: Marion C. Filippi, Ballards Wharf Realty, LLC
CRMC File No. 2003-12-061
CRMC Assent No. B2003-12-061

Dear Mr. Harrington:

I am writing (again) on behalf of Intrastate Nav Co. and Block Island Ferry Services, Inc. to file a formal complaint against Marion Filippi and Ballards Wharf Realty, LLC for violating the terms and conditions of Assent B2003-12-061 (the "Assent")(attached). As you may recall from my earlier complaint dated September 17, 2013 (attached), the Assent requires boats to be docked perpendicular to the approved float and, significantly, clearly limits the length of the two seaward boats to 26 feet.

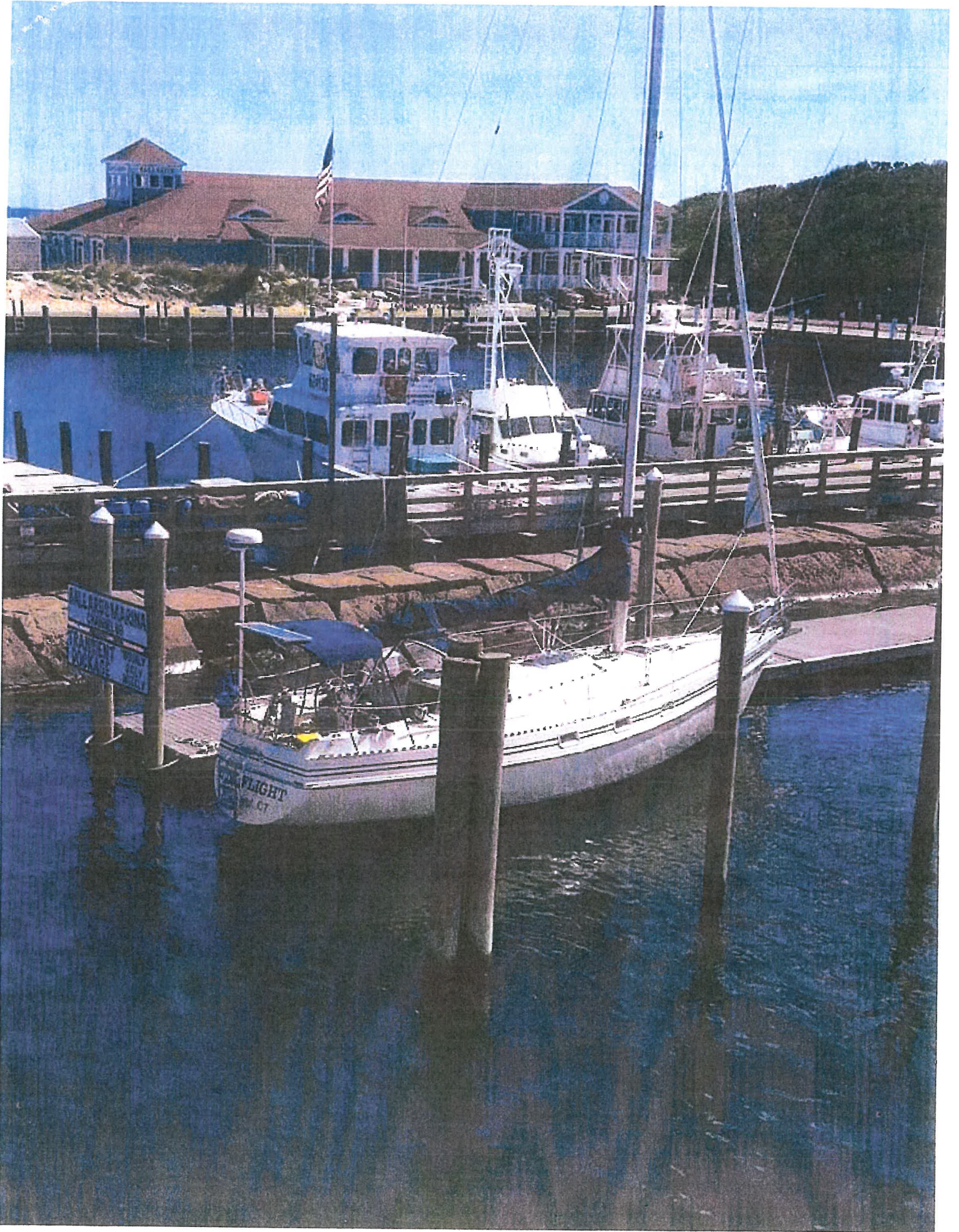
Enclosed is another photograph, this one taken on September 25, 2013 which documents another clear violation of the Assent. The photograph shows a sailboat, estimated to approximately 40 feet in length, docked parallel to the Filippi float.

We would ask the Council to take such action as the Council deems appropriate to penalize these violations and to assure they do not reoccur. We are prepared to assist the Council in enforcement proceedings in whatever manner the Council may require and would appreciate receiving notice from the Council with respect to the final resolution with the holder of the Assent. Thank you.

Very truly yours,


R. Kelly Sheridan

3978-3/785189



September 26, 2016

Brian Harrington
Senior Environmental Scientist
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

Re: Marion C. Filippi, Ballards Wharf Realty, LLC
CRMC File No. 2003-12-061
CRMC Assent No. B2003-12-061

Dear Mr. Harrington:

I am writing once again on behalf of Intrastate Nav Co. and Block Island Ferry Services, Inc. to file a formal complaint against Marion Filippi and Ballards Wharf Realty, LLC for violating the terms and conditions of Assent B2003-12-061 (the "Assent"). As you may recall from my earlier complaints dated September 17, 2013 and October 7, 2013 (attached), the Assent requires boats to be docked perpendicular to the approved float and, significantly, clearly limits the length of the two seaward boats to 26 feet.

Attached is yet another photograph depicting a large (approximately 32 foot) boat in the first slip. Proof that this vessel exceeds the 26 foot permit limitation can be established from the permit application. The application documents that the exterior or outer pylons would be spaced 26 feet from the interior pylons.

A second photograph shows a sailboat docked on the westerly side of the Filippi dock to the south of the permitted marina. The Council's Assent does not permit any vessels to be docked in that area.

We would again urge the Council to take action against the Assent owner for these violations. I must stress that the Assent violations shown in these photographs are not isolated events. My clients observe these and similar violations of the Assent limitations on almost a daily basis. Finally, I would appreciate receiving copies of any prior communication the Council has had with the marina owners regarding these ongoing violations.

Brian Harrington
September 26, 2016
Page 2

Please feel free to contact me if you have any questions or if I can provide any further information.

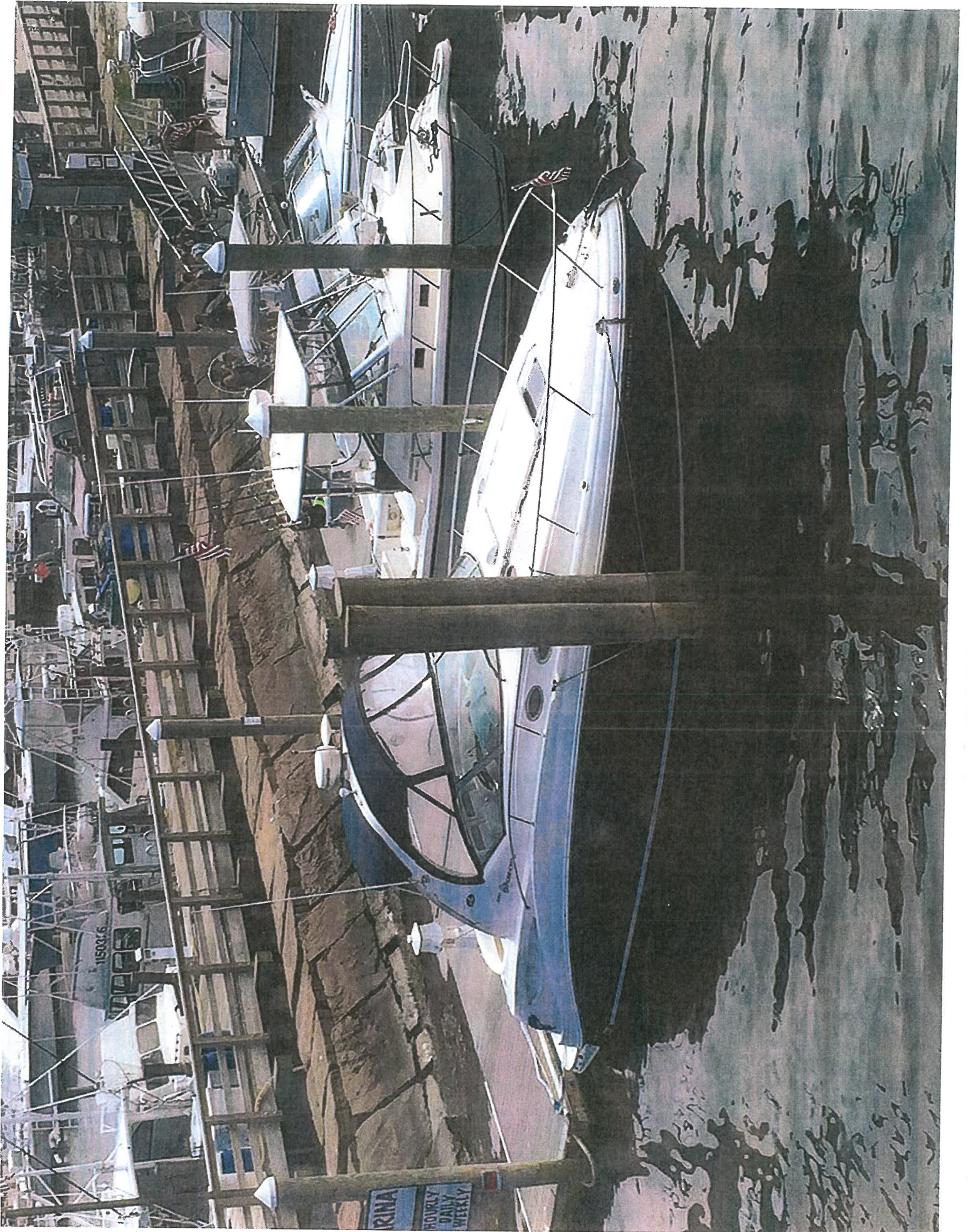
Very truly yours,



R. Kelly Sheridan

Enclosure

3978-3/3105452



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Matthew T. Oliverio
Raymond A. Marcaccio

Santiago H. Posas

All attorneys admitted in RI and MA

August 28, 2020

Via Electronic Mail

Brian Harrington
Senior Environmental Scientist
bharrington@crmc.ri.gov
Jeffrey Willis, Deputy Directory
jwillis@crmc.ri.gov
Laura Miguel, Enforcement
lmiguel@crmc.ri.gov
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, RI 02879-1900

Re: *Ballard's Wharf Realty LLC*
CRMC File Number 2003-12-061
CRMC Assent Number B 2003-12-061

Dear Messrs. Harrington and Willis and Ms. Miguel:

Please accept this letter as a formal complaint by my client, Intrastate Nav. Company, against Ballard's Wharf Realty, LLC ("Ballard's"), due to its continuing violations of the terms and conditions of Assent B 2003- 12-061 (hereinafter "Assent") and its interference with the navigational rights of my client.

As you are aware, the Assent requires, in pertinent part, that: 1) no more than 8 boats be docked in designated slips at this marina, 2) the seaward boat(s) must not exceed 26 feet in length, and 3) the marina shall be subject to the public rights-of-way existent at the site.

Beginning in 2007, this property has been the subject of various Cease and Desist Orders and Consent Agreements by your Office. On October 12, 2016, CRMC issued a Cease and Desist Order that found that Ballard's was docking boats in violation of the Assent. This conduct continues, unabated, in violation of your Office's Order and the express terms of the Assent. Ballard's conduct can only be described as a flagrant disregard of the terms and orders of the State of Rhode Island.

Brian Harrington
Jeffrey Willis
Laura Miguel
August 28, 2020
Page Two

The photograph below displays the dock on Friday, August 21, 2020. The non-conforming use demonstrated in this photograph is consistent with the activity and improper use at this location throughout the entire summer of 2020, as well as in each of the previous years since this dock was established.



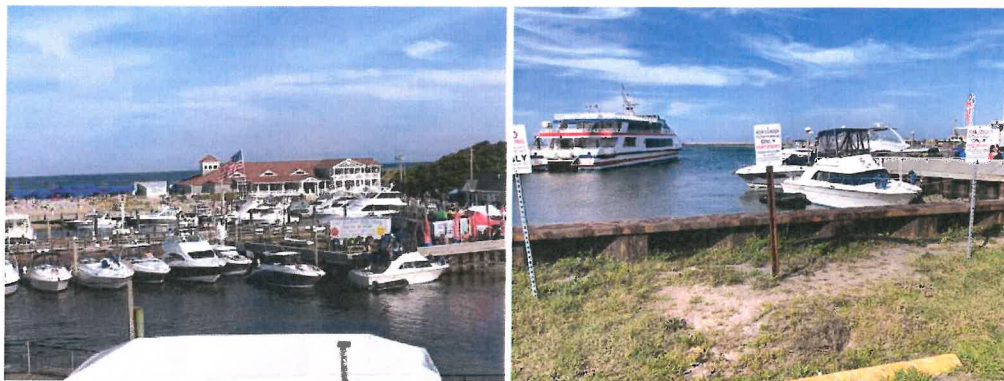
You can observe the seaward facing vessel at the northern end of the dock. To the southern end, a ninth vessel is visible, tethered and outside of any designated slip, again in violation of the requirements of the Assent.

The following two photographs provide a closer view of the seaward facing vessel, which clearly exceeds 26 feet in length, in violation of the Assent.



Brian Harrington
Jeffrey Willis
Laura Miguel
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Page Three

The below photographs depict the ninth boat, which is not located in one of the permitted slips. Ballard's has consistently allowed a ninth vessel to tether in this manner.



In addition to its continued, intentional disregard of the terms of the Assent, Ballard's conduct has further congested Old Harbor, imperiling the safe passage and navigation of my client's ferry vessel, thereby adversely impacting ferry passengers and all other people and vessels who use the Old Harbor area.

The conduct can only be described as a flagrant violation of both the Assent terms and the Orders and Consents previously entered by CRMC. It is also a manifest disregard for the CRMC's authority and for the safety of the public. It must stop. Such conduct can only be remedied with the imposition of a significant fine and a per diem fine of \$500 for each day that these violations continue. I urge you to investigate and address this matter immediately.

I remain available to answer any questions, and my client is likewise available to provide any additional information or testimony.

Thank you.

Sincerely,

Raymond A. Marcaccio

C: Anthony DeSisto, Esq., CRMC Legal Counsel