

Before the Rhode Island Coastal Resources Management Council

In the Matter of: The applicability of a water-type 3 classification in Jamestown

PETITION FOR A DECLARATORY RULING

Petitioner, The Dumplings Association, Incorporated, is a Rhode Island non-profit corporation located in the Town of Jamestown, County of Newport. As the neighborhood association for the part of Jamestown known as The Dumplings, it is the trustee of a stone pier and swimming dock facility, dating back to the 1880s, which local residents use for swimming and other low-intensity recreational activities.

The Petitioner's Request

Petitioner, The Dumplings Association, Incorporated, requests a Declaratory Ruling regarding the applicability of the Type-3 water classification extending approximately 1.35 miles on the easterly side of Jamestown, southward from the commercial waterfront district, this being the stretch of coast along which the above-mentioned neighborhood facility is located. The applicability of this existing classification can be assessed in terms of four factors:

- A. The CRMP definitions of Type-1, Type-2, and Type-3 waters.
- B. Consistency with how similar shorelines in Rhode Island are classified.
- C. Compatibility with Jamestown's municipal zoning ordinance.
- D. Compatibility with the CRMC's intent to protect waters abutting residential and undisturbed, scenic, natural coastlines from detrimental commercial development.

The Relevant Facts

A. The existing Type-3 classification does not conform to the CRMP's definitions.

(1) The Water-Type Definitions:

The Coastal Resources Management Program (CRMP) defines its six water-type classifications according to the characteristics of the shoreline, based on the principle that the activities on shore are the primary determinants of the uses to which adjacent waters are put (CRMP 1.2.1.A). Types 1, 2, and 3 are relevant to this petition. Their CRMP definitions are as follows:

“Type 1 waters abut shorelines in a natural undisturbed condition, where alterations, including the construction of docks and any dredging, are considered by the Council as unsuitable.”(CRMP 1.2.1.A) ... “Included in this category are one or more of the following:

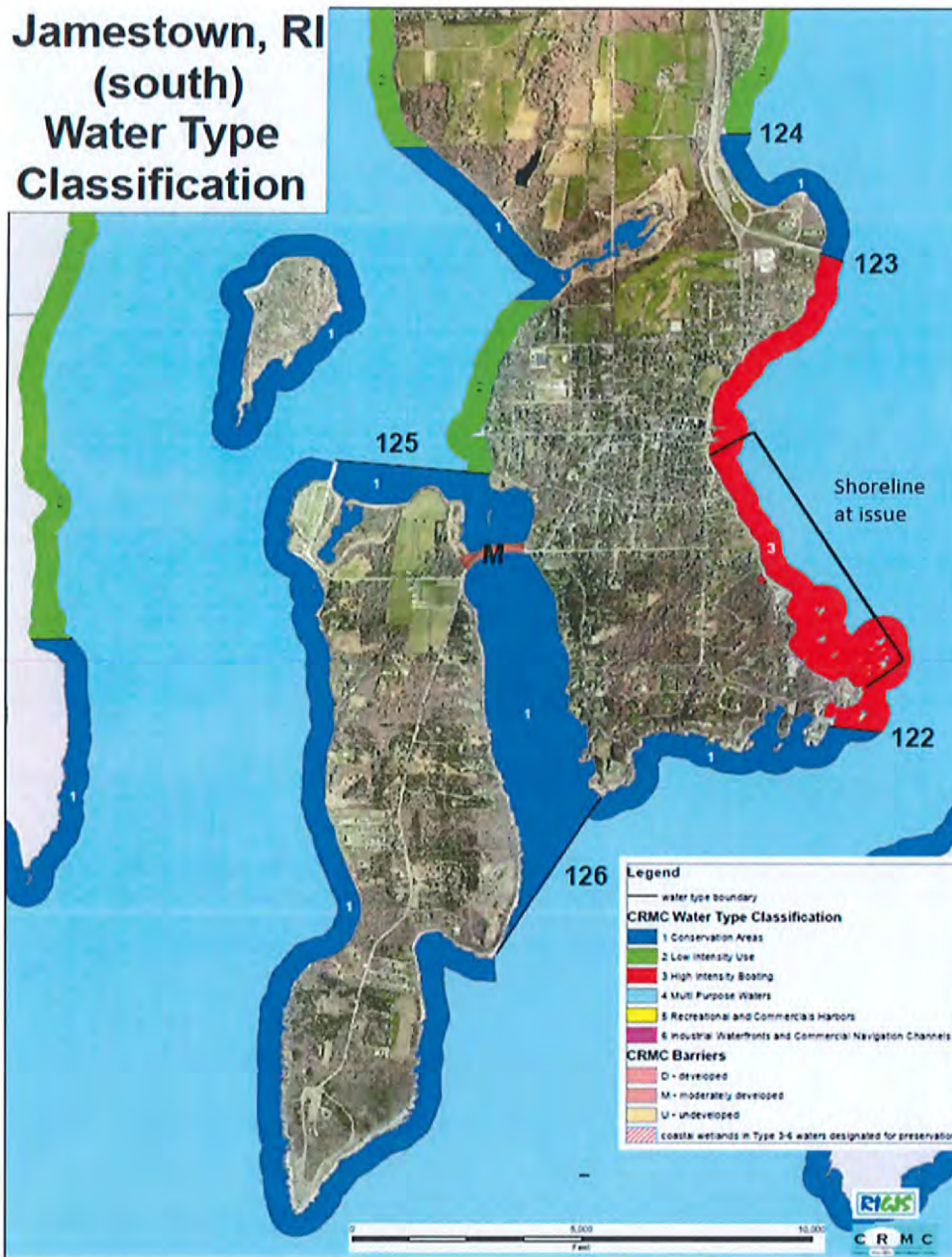
- a. Water areas that are within or adjacent to the boundaries of designated wildlife refuges and conservation areas;
- b. Water areas that have retained natural habitat or maintain scenic values of unique or unusual significance; and
- c. Water areas that are particularly unsuitable for structures due to their exposure to severe wave action, flooding, and erosion.”(CRMP 1.2.1.B.1.a-c)

“Type 2 waters are adjacent to predominantly residential areas, where docks are acceptable, but more intense forms of development, including more marinas and new dredging projects (but not maintenance dredging), would change the area's character and alter the established balance among uses. Alterations such as these would bring more intensive uses and are therefore prohibited in Type 2 waters.”(CRMP 1.2.1.A) ... “This category includes waters in areas with high scenic value that support low-intensity recreational and residential uses. These waters include seasonal mooring areas where good water quality and fish and wildlife habitat are maintained.”(CRMP 1.2.1.C.1)

“Type 3 waters are dominated by commercial facilities that support recreational boating. Here, marinas, boatyards, and associated businesses take priority over other uses, and dredging and shoreline alterations are to be expected.”(CRMP 1.2.1.A) ... “This category includes intensely utilized water areas where recreational boating activities dominate and where the adjacent shorelines are developed as marinas, boatyards, and associated water-enhanced and water-dependent businesses.”(CRMP 1.2.1.D.1)

(2) *The Shoreline at Issue:*

The shoreline at issue lies on the easterly side of Jamestown and extends southward from the town's commercial waterfront district for approximately 1.35 miles to the tip of Bull Point at the eastern entrance to Narragansett Bay. The waters bordering this entire stretch of coast have been designated Type 3, defined as having an adjacent shoreline developed as marinas, boatyards, and other water-dependent commercial businesses that support recreational boating (CRMP 1.2.1.A & 1.2.1.D.1.). On the CRMP water-type classification map below, these Type-3 waters in question are colored red and lie within the bracketed area.



(3) *The Nature of this Shoreline:*

The vast majority of this shoreline at issue does not conform to a Type-3 definition. Along these 1.35 miles of coast, as the photos below clearly indicate, only about 450 linear feet are occupied by two grandfathered, nonconforming boatyards, Safe Harbor Jamestown Boat Yard and Clark Boat Yard. Together, these two account for approximately 6% of the whole. The remaining 94% is either residential, low-density rural residential (with two-acre minimum zoning), or highly scenic, undisturbed, and undevelopable natural habitat along Old Salt Works Beach and the freshwater wetland it borders, as well as along the bedrock shore on the northeastern side of the Bull Point headland. In this same undeveloped part of the coast, the offshore dumplings, too, are both uniquely scenic and important habitats for marine birds, one of these rocky outcroppings being an avian refuge belonging to the Audubon Society of Rhode Island.



Coastline at issue looking southeast.



Coastline at issue looking northwest.

(4) Legitimate Type-3 Areas:

These facts and photos make clear that most of this lengthy stretch of coast (all of it that lies outside the two boatyard perimeters) does not in any way meet the Type-3 definition of being dominated by commercial businesses that support recreational boating. Nor could it ever because no part of this shore is zoned commercial. Only the quite narrow waterfronts of the two grandfathered, nonconforming boatyards can therefore be legitimately called Type 3. Otherwise, this coast meets the definitions of Type 2 and Type 1.

(5) Type-2 Shoreline:

The CRMP Type-2 definition – low-intensity recreational and residential uses, including seasonal moorings and natural-habitat areas (CRMP 1.2.1.C.1) – applies to the northern end of this 1.35-mile stretch. Here there are widely spaced homes, a number of which date back to the 1880s and have historical significance in Jamestown. Today, many of these homes have residential docks, which are permissible in Type-2 waters. The photo below shows a typical section of this coast.



The northern end of the coastline at issue contains widely spaced homes, such as these.

(6) Type-1 Shoreline:

Moving further toward East Passage, the CRMP's Type-1 definition – uniquely scenic, undisturbed, and undevelopable conservation areas and natural habitat (CRMP 1.2.1.B.1.a &b) – aptly applies to the southern end of this 1.35-mile-long stretch of shoreline. As the photo below shows, this area contains a highly scenic beach known as Old Salt Works, a freshwater wetland behind it, and a long strip of bedrock outcroppings surrounding Bull Point.



Old Salt Works Beach and the Bull Point headland.

B. This Type-3 classification is inconsistent with how similar shorelines in RI are classified.

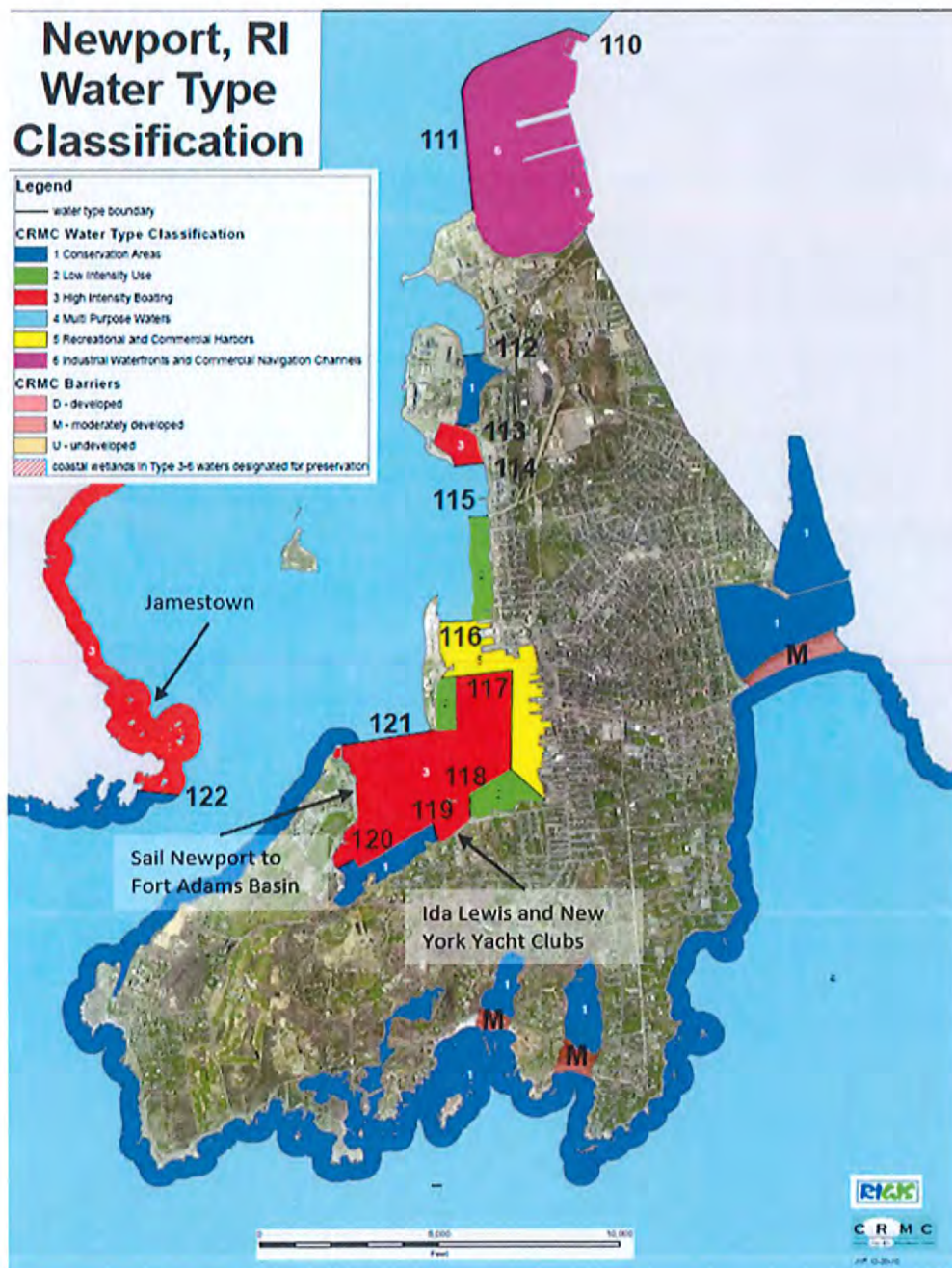
(1) Similar Newport Coastline Is Classified Type 1:

It is difficult to find a shoreline anywhere else in Rhode Island that so clearly fits the definition of Type 1 or Type 2 but instead is classified Type 3. If one looks across East Passage in the photo above, the Newport shoreline opposite Jamestown's Bull Point is classified Type 1 all the way from Fort Adams to Castle Hill. This is the case even though this stretch of the Newport shoreline is no more scenic, undisturbed, and undevelopable natural habitat than the nearby Jamestown coast. In fact, much of this Type-1 Newport coastline consists of widely-spaced residences, as is also true of the northern part of the Jamestown coast at issue.

(2) Type-3 Classifications Are Much More Limited in Newport:

It is not the case that the Newport shoreline has no boating facilities. In the vicinity of the East Passage, there are three such facilities in Newport – Ida Lewis Yacht Club, the New York Yacht Club, and Sail Newport. However, the presence of these facilities does not cause extensive stretches of the Newport coast to be classified Type 3. Instead, the Type-3 designation is given to

the areas within those facilities' boundaries, not also far beyond them along coastline that clearly meets the definitions of Type 1 or Type 2, not Type 3. This can be seen in the CRMP water-type map for Newport (shown below) in which there is a small stretch of Type-3 shoreline corresponding to Ida Lewis Yacht Club and the New York Yacht Club, and another longer stretch corresponding to the boat storage and dock portions of Sail Newport up to and including the Fort Adams basin (all marked in red). Other than these well-defined Type-3 sections, the rest of the neighboring shoreline is all Type 1 (marked in blue) except for a small section of Type 2 along the eastern end of Wellington Avenue (marked in green).



(3) The Harbor Does Not Define the Coastal Classifications of Newport, Nor Should It:

It is true that the harbor waters in Newport, beyond the waters adjacent to the shore, are classified Type 3. But regardless of this fact, the outlying residential and scenic natural coasts have still been given a strip of appropriate water-type classification based on the characteristics of those coastlines, in keeping with CRMP policy (CRMP 1.2.1.A). These strips extend roughly 500 feet from the shore before the Type-3 harbor area is reached. The Type-3 harbor, with its mooring field devoted to recreational boating, does not exert an influence shoreward to determine what water-type classifications exist along the shore. Instead, it is the nature of the coastlines that control the water-type designations to approximately 500 feet beyond mean high water. If this same thinking is applied to Jamestown, in accordance with the CRMP (1.2.1.A), the existence of moorings for recreational boats should not be exerting an influence shoreward to determine how the coastal waters are classified. It should be the traits of the coastline that govern these classifications. So the presence of a seasonal mooring field cannot be the explanation as to why the waters abutting 1.35 miles of Jamestown's residential and highly scenic natural coast have been designated Type 3. The photo below shows how out of keeping with CRMP policy it would be to use the presence of the offshore mooring field as justification for a Type-3 classification along such a sparsely developed, natural shoreline as the one at issue in Jamestown. Just as in Newport, a seasonal mooring field should not control the water-type classification along this shore.



Photo by [Onne van der Wal](#)

The scenic Bull Point headland looking northwest.

(4) How the Western Side of Jamestown Is Classified:

Another example of how aberrant the Type-3 classification of this eastern Jamestown coastline is can be seen by comparing it with the water-type classification on a section of Conanicut Island's western side. Here, as the map on page 3 of this petition shows, the shoreline from Westwind Drive to Maple Avenue (about 0.78 of a mile directly opposite Dutch Island) is classified Type 2 (marked in green), which seems appropriate given that this area is primarily residential. However, this area is not entirely residential. In the middle of this shoreline are two high-intensity boating facilities: (1) Dutch Harbor Boat Yard, with its dock, marine railway, sizable boat-storage area, and large mooring field; and (2) a town-owned dock that offers both rental spaces for dinghies and tenders as well as a waste pump-out station. Together, these two commercial waterfront facilities represent roughly 18% of this total shoreline. Yet their presence is irrelevant to the water-type classification given. That classification is entirely Type 2, even for the waters within these two facilities' perimeters.

C. The existing Type-3 classification is incompatible with Jamestown's zoning ordinance.

(1) Clark Boat Yard and Jamestown Boat Yard Are Nonconforming Uses in an RR80 District:

Clark Boat Yard and Safe Harbor Jamestown Boat Yard are located in an area zoned Rural Residential 80, which has a minimum lot size of 80,000 square feet. Because both these facilities preexisted Jamestown's zoning ordinance, they are grandfathered as nonconforming uses even though they are incongruent with what is intended for RR80 districts. These districts are specifically "designed to allow land uses that will not substantially impact the rural character of the district, nor compromise its natural resources" (Jamestown Zoning Ordinance, Sec. 82-200). Safe Harbor Jamestown Boat Yard, in particular, the larger of the two, is viewed as doing both, being a commercial operation that employs heavy machinery and boat-related chemicals, as well as creating much road traffic, parking congestion, and undesirable levels of noise. Such nonconforming uses, and the activities attendant with them, are said to be "incompatible with and detrimental to permitted uses in the zoning districts in which they are located, cause disruption of the comprehensive land use pattern of the town, inhibit present and future development of nearby properties, and confer upon their owners and uses a position of unfair advantage" (Jamestown Zoning Ordinance, Sec. 82-700).

(2) A Type-3 Classification Undermines the Town's Zoning Intentions:

By classifying the entire 1.35 miles of coastline at issue Type 3, the CRMC is undermining what the town of Jamestown and its residents envision for this part of Conanicut Island, as specified in the town's zoning ordinance and its comprehensive plan for the community. This Type-3 classification also increases many fold the "unfair advantage" of a nonconforming boatyard. To the boatyard's great benefit but to the detriment of affected residents, a Type-3 classification along this entire stretch of shore allows many commercial, high-intensity boating uses and

activities in these waters that the CRMP deems unsuitable for Type-1 and Type-2 shorelines. These forms of development are antithetical to the vast majority of this coast. This shoreline outside the two boatyard perimeters is unquestionably rural residential and/or scenic, undisturbed natural habitat. It is also intended to remain such according to the Town's zoning ordinance.

(3) Developments in the Water Can Have a Great Impact on the Shore:

It is artificial to argue that Jamestown's zoning ordinance and comprehensive plan apply only to the land-based parts of the town. As an island community, the rural residential and natural esthetic areas of this island cannot be adequately preserved and protected, as the Town and its residents are committed to doing, without also addressing what occurs in the waters abutting the island's shorelines. From this perspective, the CRMP's classifications of these waters should be congruent with the true nature of the coasts adjacent to them, which is also reflected in how these coastlines are zoned. The principle underlying the CRMP's classification system is for the nature of the shoreline to define what is allowed in the abutting water. This principle is inappropriately turned upside down when activities allowed in the water adversely affect the nature of the shore, being totally inconsistent with the shoreline's character.

D. The existing Type-3 classification is incompatible with the CRMP's intent to protect coastlines of this nature from detrimental commercial development.

(1) The CRMP Intentions for Type-1 and Type-2 Waters Are Very Protective:

Shorelines that meet the CRMP definitions of Type 1 and Type 2 are ones that the CRMC is committed to preserving and protecting from more intense forms of development, the stated aim being to prevent such development from changing the character of these areas (CRMP 1.2.1.A). Yet in classifying this entire 1.35 miles of coast Type 3, far beyond the two boatyard perimeters, priority is in fact being given to more intense forms of development in waters adjacent to the very types of shorelines that the CRMC wishes to safeguard from such activities (CRMP 1.2.1.B.2.a & C.2.a). This inconsistency can only be remedied by reclassifying the majority of this coast Type 1 and Type 2, as described in this petition, while leaving the Type-3 designation only within the existing perimeters of the two grandfathered, nonconforming boatyards.

Summary and Conclusions

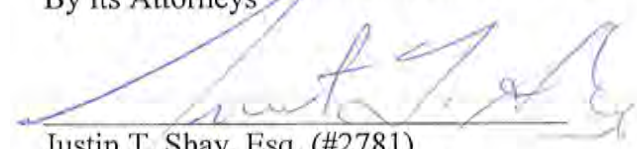
Petitioner, The Dumplings Association, Incorporated, respectfully petitions the CRMC for a Declaratory Ruling on this Type-3 water-type designation in Jamestown and whether there are justifiable reasons why this lengthy stretch of coast, outside the two boatyard perimeters, has

been classified in this way. Petitioner strongly maintains that an inappropriate classification exists along the majority of this shoreline because this classification: (1) does not conform to CRMP's water-type definitions; (2) is out of keeping with how similar coastlines in Rhode Island are classified; (3) is incompatible with Jamestown's zoning ordinance and comprehensive plan for the community; and (4) is also incompatible with the CRMP's protective intentions for coastlines of this nature. Continued misclassification of this rural residential and uniquely scenic coastline creates potential threats of expanded commercial development that are detrimental to the goals of the Town, its residents, and the Coastal Resources Management Program itself.

Request for Relief

Wherefore, Petitioner, The Dumplings Association, Incorporated, respectfully prays this Honorable Council grant its Petition for Declaratory Relief.

Respectfully submitted,
The Dumplings Association, Incorporated
By its Attorneys




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Dated: July 21, 2020

VERIFICATION

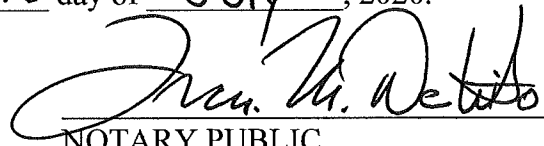
I, Mary Marshall, on behalf of The Dumplings Association, Incorporated, as its current President, attest that the content set forth in this Petition for a Declaratory Ruling is true and accurate to the best of my knowledge, beliefs, and available information.



Mary Marshall

STATE OF RHODE ISLAND
COUNTY OF NEWPORT

Subscribed and sworn to before me this 16 day of July, 2020.



NOTARY PUBLIC

PRINTED NAME: FRANCIS M. DeVITO
My Commission Expires NOTARY PUBLIC - ID #19257
STATE OF RHODE ISLAND
COMMISSION EXPIRES
7/15/2021