

STATE OF RHODE ISLAND  
COASTAL RESOURCES MANAGEMENT COUNCIL  
INTER-OFFICE MEMORANDUM

DATE: September 4, 2020

TO: Jeffrey M. Willis, CRMC Acting Executive Director  
Jennifer Cervenka, CRMC Chair and Council members

FROM: James Boyd, Coastal Policy Analyst

SUBJECT: Staff Report CRMC File 2020-07-083 – Petition for Declaratory Ruling filed by The Dumplings Association, Inc. by their Attorneys Cameron & Mittleman, LLP

**Issue**

A Petition for Declaratory Ruling was filed via email with the CRMC on July 21, 2020 (hard copy was received on July 24) pursuant to R.I. Gen. Laws § 42-35-8 and the CRMC Management Procedures at 650-RICR-10-00-1.12. **The Petition requests a Declaratory Ruling from the Council as to whether the CRMC’s designation as Type 3 for tidal waters that abut a specific shoreline segment in Jamestown is applicable and correct.**

The Petitioners contend in their filing that a 1.35 mile<sup>1</sup> segment of tidal waters abutting the eastern shoreline of Jamestown beginning at the Town’s commercial waterfront district at the terminus of Narragansett Avenue and extending southward to Bull Point should **not** be classified by the CRMC as Type 3 waters. The Petitioner claims that based on the nature of the existing shoreline and local zoning requirements, this particular shoreline segment is more representative of CRMC Type 1 or 2 waters as defined at §§ 1.2.1(B) and (C), respectively, in the CRMC Red Book codified at 650-RICR-20-00-1. The Petitioner, however, has not specifically requested the Council to reclassify this particular shoreline segment as a proposed CRMC rule change; rather, based on the merits of the Petition they have requested the Council’s determination as to whether this shoreline segment is appropriately classified pursuant to the CRMC’s water type designations as specified in 650-RICR-20-00-1.2.1.

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<sup>1</sup> The shoreline segment length at issue is approximately **1.15 miles** as measured by CRMC staff using Google Earth.

## **Background**

### A. CRMC water type designation of the shoreline at issue

The CRMC has designated the waters along the eastern shoreline of Jamestown from the Newport Bridge southward to Bull Point as Type 3 since 1983 when the Council initially adopted water types for the entire state coastal zone. The Type 3 water designation for this shoreline segment is based on the CRMC's determination of the prevailing water sheet use, which is high intensity boating activity. To our knowledge, this is the first time that the appropriateness of the CRMC water type designation along this particular shoreline or a segment thereof has been questioned either informally or through a petition filing with the CRMC.

The entire shoreline segment between the Newport Bridge to Bull Point is known as the East Harbor and contains four (4) CRMC authorized marina facilities identified as the Town of Jamestown Marina, Conanicut Marina, Clark Boat Yard and Jamestown Boat Yard, and includes the Conanicut Yacht Club located north of the town business district. In addition, the East Harbor contains an extensive mooring field that encompasses the entire shoreline from the Newport Bridge to Bull Point. All of these features are shown below in Figure 1. The East Harbor mooring field spans almost two miles along the Jamestown shoreline out to approximately 1000 feet offshore, and it is one of only two mooring fields, the other being Dutch Harbor on the west side of the island, approved by the CRMC as part of the Town of Jamestown's Harbor Management Plan (HMP)<sup>2</sup>. As detailed in the Jamestown HMP there were a combined 304 commercial moorings permits issued for East Harbor by Clark Boat Yard, Conanicut Marina and Jamestown Boat Yard in 2015. In addition, the Town separately issued 237 private mooring permits for East Harbor during the same period. In total there are 541 authorized vessel moorings along this stretch of shoreline, and these moorings within East Harbor comprise one of the largest mooring fields in the state surpassed only by the larger 707 moorings within Newport Harbor. A low altitude oblique aerial image in Figure 2 below provides a perspective showing the typical vessel density of the East Harbor mooring field in seasonal use as viewed from Bull Point looking north towards the Jamestown business district and the Newport Bridge.

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<sup>2</sup> The CRMC approved Town of Jamestown Harbor Management Plan (2015) is available at: [http://www.crmc.ri.gov/harbormanagement/HMP\\_Jamestown.pdf](http://www.crmc.ri.gov/harbormanagement/HMP_Jamestown.pdf)



Figure 1. Shoreline segment along the east shoreline of Jamestown from the Newport Bridge to Bull Point.



Figure 2. Looking north from Bull Point to the Newport Bridge. The Jamestown Boat Yard pier (upper) and the Dumplings Association pier (lower) are shown in the center left foreground in this image.

## B. CRMC water types at issue

The CRMC Red Book defines Type 3 waters as “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.” See § 1.2.1(D)(1) of the Red Book. In addition, the Council’s highest priorities for Type 3 waters and adjacent shorelines are “marinas, mooring areas, public launching ramps, and other facilities that support recreational boating and enhance public access to tidal waters.” (Emphasis added.) *Id.* at § 1.2.1(D)(4)(b)(1).

CRMC Type 2 waters are defined as low intensity use 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.” (Emphasis added.) *Id.* at § 1.2.1(C)(1). The Council’s policies support preexisting marina facilities within Type 2 waters, but limits such facilities to a 25% expansion of existing vessel capacity within a CRMC authorized marina perimeter limit. The policies also provide for maintenance dredging only, as opposed to new basins or fairway areas. *Id.* at §§ 1.2.1(C)(2)(b) and (c).

CRMC Type 1 waters are defined as conservation areas that include “water areas that are within or adjacent to the boundaries of designated wildlife refuges and conservation areas; water areas that have retained natural habitat or maintain scenic values of unique or unusual significance; and water areas that are particularly unsuitable for structures due to their exposure to severe wave action, flooding, and erosion.” *Id.* at § 1.2.1(B)(1). In addition, the Council prohibits dredging activity in Type 1 waters unless associated with the preservation or enhancement of an area as a natural habitat for native plants and wildlife or a beach renourishment/ replenishment project. *Id.* at § 1.2.1(B)(2)(c).

### C. Pending CRMC application of the Jamestown Boat Yard

The Jamestown Boat Yard (JBY) filed an application (2019-06-014) with the CRMC in June 2019 for a proposed marina dock expansion and dredging project<sup>3</sup>. The JBY is located adjacent to and within close proximity (between 100 to 200 feet) of the Dumplings Association's stone and timber pile shown in Figures 1 and 2. As originally proposed in June 2019, JBY sought a marina perimeter limit expansion to accommodate new proposed main docks of 10' x 146' and 8' x 105' including two 6' x 50' finger docks. In addition, JBY proposed dredging of approximately a 30,000 square foot area to provide for a deepened approach into and around the docks to accommodate the draft of larger vessels. The Petitioner through its attorneys filed an objection and request for a hearing dated July 23, 2019 to the original JBY application and noted that the proposed dock expansion and dredging would expose swimmers and waders to potential harmful heavy metals at the Petitioner's adjacent pier, result in potential contamination of nearby freshwater wetlands, and the destruction of eelgrass beds. The Petitioner also indicated that the proposed project did not meet local requirements, including a fire protection plan and parking availability, among other issues. Attorneys for the Petitioner filed a supplemental notice of protest and request for hearing with the CRMC on September 17, 2019 indicating that the JBY application contained numerous deficiencies and that the potential impacts from the proposed marina expansion have not been adequately assessed in accordance with the CRMC's requirements and standards, and accordingly the application should be rejected.

The CRMC was subsequently notified by the JBY's engineer in a letter dated February 26, 2020 that a change in ownership of the facility was completed, and Safe Harbor Marinas is now the property owner. As part of the new ownership notification the engineer's letter indicated that the project was being reduced in scope, apparently to address objections to the application. The proposed docks were reduced in size to two 8' x 18' and one 8' x 20' dock extensions and unlike the earlier proposal would be located entirely within the existing CRMC-approved marina perimeter limit. In addition, the proposed dredge footprint was reduced from approximately 30,000 to 19,710 square feet.

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<sup>3</sup> The JBY application 2019-06-014 is scheduled to be considered by the Council at the September 22, 2020 meeting and public hearing.

## Discussion

The Petitioner argues that the Jamestown shoreline segment at issue is inappropriately classified by the CRMC as Type 3 waters and that this classification is inconsistent with the CRMC's classification of other similar shorelines within the state. The petition notes that the shoreline segment at issue is predominantly residential in nature, is not zoned by the town for commercial use, and that the two existing marinas (i.e., Clark Boat Yard and JBY) within the segment at issue are non-conforming grandfathered marina facilities embedded within a residential zoned area. In addition, the petition contends that the southern portion of the segment including the Old Salt Works Beach and Bull Point are highly scenic. Based on these facts, the Petitioner suggests that the northern portion of the shoreline segment would be more appropriately classified as Type 2 waters, while the southern portion including Bull Point should be classified as Type 1 waters. As an example the Petitioner notes that the Newport shoreline directly across the East Passage from Fort Adams to Castle Hill is classified by the CRMC as Type 1 waters. Petitioner argues that this Newport shoreline segment 'is no more scenic, undisturbed and undeveloped natural habitat than the nearby Jamestown coast,' and that much of this Newport shoreline consists of widely-spaced residences similar to the northern portion of the Jamestown shoreline segment at issue. See Petition at 7.

In contrast to the Petitioner's characterization of this Newport shoreline segment, the waters abutting the shoreline from Fort Adams to Castle Hill do not contain an extensive mooring field or any moorings at all that CRMC staff are aware of, as compared to the East Harbor of Jamestown which contains an extensive mooring field. In addition, there is only a single residential dock along the entirety of this 1.7 mile Newport shoreline excluding the U.S. Coast Guard dock within the protected Castle Hill Cove, which is obscured from the Jamestown shoreline segment at issue. This Newport shoreline is exemplary scenic and relatively undisturbed and it is particularly unsuitable for structures due to its exposure to severe wave action. Accordingly, this Newport shoreline segment is appropriately classified by the CRMC as Type 1 waters since it meets the definition at § 1.2.1(B)(1) of the Red Book. The Petitioner has argued that the area consisting of Bull Point headland and the Old Salt Works Beach are relatively undeveloped and should meet the definition of CRMC Type 1 waters. However, Bull Point not only has the JBY facility to its north, but the RIDEM marina facility at Fort Getty is

located on its south flank, and Bull Point and the Dumplings are located within the midst of the southern end of the East Harbor mooring field. The Newport shoreline segment that the Petitioner makes a comparison with has none of the same elements as the Jamestown shoreline along East Harbor.

The Petitioner also argues that the CRMC Type 3 water classification within Newport Harbor is more limited to the existing marina facility boundaries as compared to the Jamestown shoreline segment at issue, and suggests that the Type 3 water classification should only be applied in the immediate vicinity of the marina facilities (e.g., Clark Boat Yard and JBY), while the remainder of the shoreline should be classified as Type 1 or 2. The vast majority of Newport Harbor waters are designated by the CRMC as Type 3 or Type 5 (commercial and recreational harbors) and they encompass almost the entirety of the mooring field within Newport Harbor. The East Harbor mooring field in Jamestown, the second largest mooring field in the state, is also designated as Type 3 waters as is most of Newport Harbor. And while there are Type 1 and 2 waters designated within Newport Harbor as the Petitioner points out, The Type 2 waters abut a City Park and a residential area along Goat Island, while Type 1 waters abut a designated historic district with large lot (R-120) zoning versus R-80 zoning for the shoreline segment at issue in Jamestown.

CRMC staff maintain that both Newport Harbor and the entirety of the East Harbor in Jamestown support high intensity boating and these two harbors are intensely utilized water areas where recreational boating activities dominate. Accordingly, each of these harbors are appropriately designated by the CRMC as Type 3 waters. In the case of Newport Harbor, the difference being that the waters abutting the historic wharfs and commercial docks are designated Type 5 waters as noted above. We note that other harbors such as Bristol Harbor and Wickford Harbor are predominately CRMC Type 3 waters supporting large mooring fields because of the intense recreational boating activities within those harbors, similar to East Harbor in Jamestown.

## **Conclusion**

Based upon CRMC staff review and analysis of the petition and the evidence and facts presented herein, we conclude that the CRMC designation of Type 3 waters for East Harbor along the eastern shoreline of Jamestown from the Newport Bridge to Bull Point is justifiable and accurate given the high intensity boating activity of this large mooring field and supporting shoreside infrastructure, including the Town's commercial district, and is in accordance with the CRMC's regulations at 650-RICR-20-00-1.2.1(D). CRMC staff also conclude that the Type 3 designation for the Jamestown shoreline segment at issue is not inconsistent with how similar shorelines in Rhode Island are classified by the CRMC.

The Petitioner suggests that CRMC Type 3 waters should only be designated adjacent to the limited shoreline area of the two grandfathered marina facilities and nowhere else along the petition shoreline segment. The petition, however, acknowledges that local zoning is restrictive in that new commercial uses are not permissible. Accordingly, even if the two boat yards acquired additional property adjacent to their existing facilities, local zoning would not permit an expanded landside marina expansion (i.e., new buildings, new parking areas, etc.) despite the CRMC Type 3 water designation. Nevertheless, despite the success or failure of the instant petition, the Petitioner or any other party may file an objection and request for hearing with respect to any CRMC applications for these two marina facilities. Accordingly, the Petitioner has other means (e.g., the filing of request for hearing or the filing of a substantive objection on a CRMC application) besides the present Request for Declaratory Ruling to address any marina facility expansion of concern.

In accordance with R.I. Gen. Laws § 42-35-8 and the CRMC Management Procedures at 650-RICR-10-00-1.12 the CRMC must schedule the matter for further consideration, decline to issue an order, or issue a declaratory order in response to the petition not later than sixty (60) days after receipt. As indicated above the petition was received by the CRMC on July 21, 2020 and was reviewed and considered by the CRMC Planning & Procedures Subcommittee for procedural matters at its meeting of July 28, 2020. The Subcommittee voted to send the petition to the full Council for review and consideration at a public hearing to be scheduled at a later date



in August or September. Accordingly, it is CRMC staff opinion that the CRMC has met the 60-day timeline for action as specified in R.I. Gen. Laws § 42-35-8(c).

**Staff Recommendation**

Based on the evidence and facts presented herein, it is CRMC staff opinion that the designation of the tidal waters of East Harbor abutting the eastern shoreline of Jamestown from the Newport Bridge southward to Bull Point, which includes the Petitioner's identified shoreline segment, as CRMC Type 3 is correct and supported by the intensely utilized water sheet where recreational boating activities dominate and are supported by existing shoreside infrastructure. Accordingly, CRMC staff recommends that the Council find the CRMC's classification along the shoreline segment at issue as Type 3 waters is indeed applicable and correct pursuant to 650-RICR-20-00-1.2.1(D).

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CRMC Staff *James Boyd* Date *9/4/2020*