

**Solicitation Information
October 3, 2012**

Addendum #3

RFP # 7457985

TITLE: LEASE OF STATE PROPERTY – 25 India Street, Providence, RI (property formerly known as “Shooters”)

SUBMISSION DEADLINE: October 30, 2012 @ 11:00 AM (ET)

The Rhode Island Division of Purchases has received notice from a former owner of its intent to exercise its statutory right of first refusal regarding the property at 25 India Street after proposals are received but before any lease is entered. DEM is aware of these rights and will ensure that the statutory process will be followed as part of any future lease of the property.

Attached are vendor questions with State responses. No further questions will be answered.

**Daniel W. Majcher, Esq.
Assistant Director, Special Projects**

RFP # 7457985 – 25 India Street

Addendum # 3

- The Rhode Island Division of Purchases has received notice from a former owner of its intent to exercise its statutory right of first refusal regarding the property at 25 India Street after proposals are received but before any lease is entered. DEM is aware of these rights and will ensure that the statutory process will be followed as part of any future lease of the property.
- Below are responses to vendor questions. There are two additional attachments related to these responses available on the website.
- Please continue to monitor the website regularly for any additional information.

25 India Street Questions and Answers

1. Why 20 year lease instead of the 40 year lease as approved by the General Assembly?
The Lease can extend for up to 40 years; it will be a 20 year lease with two additional terms of 10 years each.
2. If more time needed is will you extend to January? *We do not intend to extend at this point in time; we can extend if we believe that it is necessary.*
3. Is there a Guaranteed Winner? *No. The State reserves the right to reject any and all bids if they do not meet the criteria and threshold points.*
4. a. Is there an effective Marina Permit Line (MPL) currently in place? *The MPL is yet to be defined. The CRMC Permit is already in place but may require modification to MPL.*
b. What type of application would be necessary? *A new proposal will require a modification of the CRMC Assent currently in place.*
c. Is it a full category B application? *It may be an administrative process or a full Category B depending on the proposal.*
5. What is environmental situation of site? *There are no known existing DEM environmental violations on site.*
6. What is Providence approval process? *That will depend on the extent of development. The city zoning ordinance requires that projects that propose buildings of more than*

10,000 sq. ft. of floor area be reviewed by the City Plan Commission as Major Land Development Projects. Projects are expected to conform to the use, dimensional, landscaping, and parking requirements of the ordinance. The Providence Department of Planning and Development would consider on a case-by-case basis if it would support zoning variances. The Zoning Board of Review has final authority over variance requests. The State expects to have a representative from the City on the Review Team.

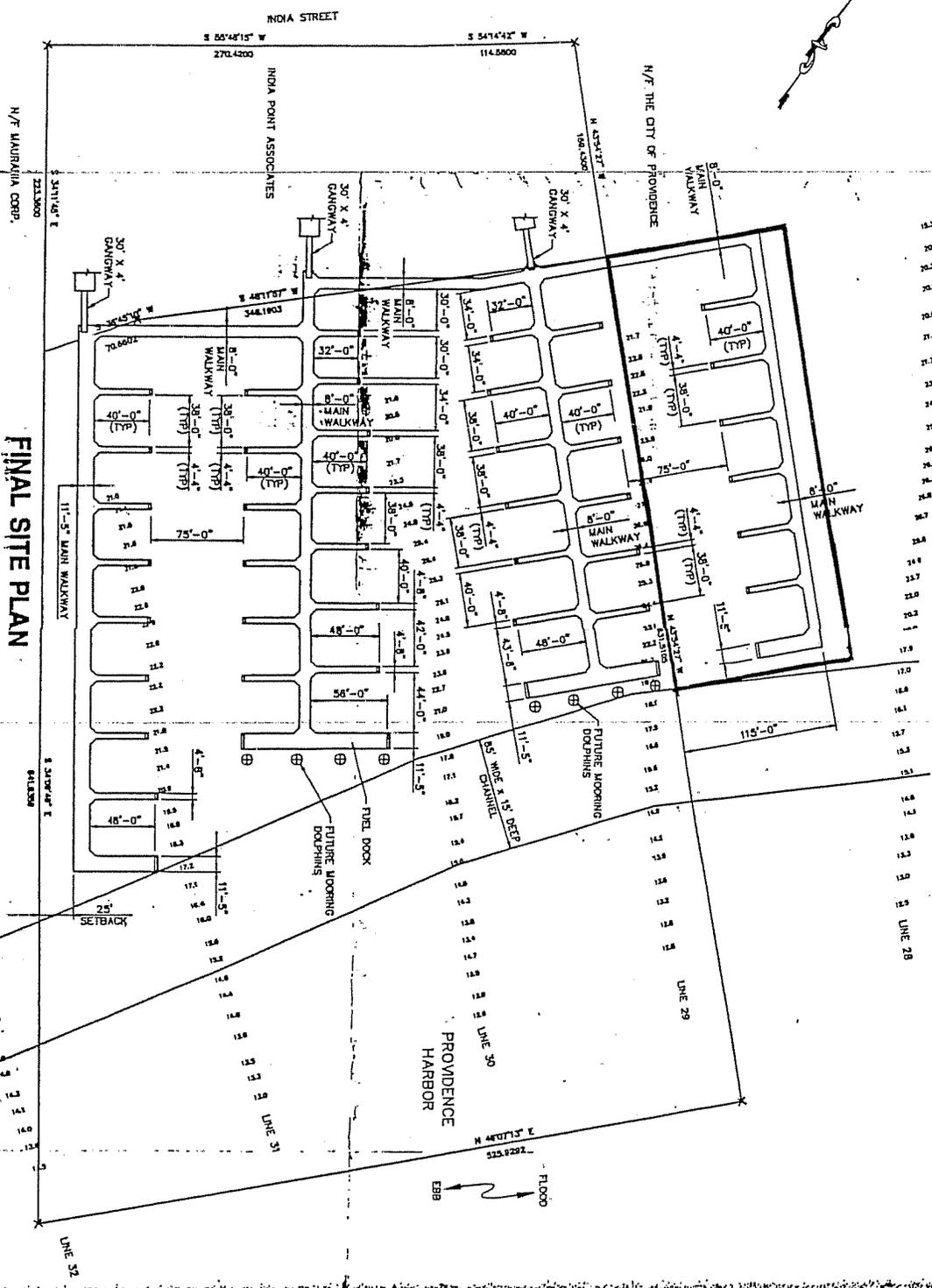
7. *Is there a lot of judgment in the approval of a proposal or is it just based on the criteria? The Review Team will score all proposals based upon the criteria in the RFP and make a recommendation based upon that review. There is a 60 point threshold that all proposals must meet in order to be considered.*
8. *What do you know about the adjoining property to west? That property is owned and operated primarily as a tugboat operation. The owner has stated his intent to keep the property as a “working waterfront”. b. Is it a rental? Our understanding is that part of the property (eastern most portion of the building) is rented to a marine repair shop. c. Is there availability of that rental site? At the time the property manger was contacted approximately six months ago, he did not have any intention of leasing any portion of this land for any other uses, including parking.*
9. *There is a PCB site around that area? Are there plans by DEM or the Feds to ameliorate? The State has no plans to resolve any contamination issues on the adjoining site; that is the responsibility of the landowner.*
10. *How many parking spaces available and are they guaranteed for this site? It is estimated that there are 150 public parking spaces within ¼ mile of the property. These parking spaces are not guaranteed for use by this site. What about onsite parking? It is estimated that the current configuration of the property allows for approximately 75 parking spaces on site.*
11.
 - a. *What are CRMC’s requirements as far as parking for a marina development? CRMC requires one parking space for every 1.5 slips.*
 - b. *Will CRMC consider this a destination facility? It may be possible for this to be considered a destination facility.*

12. What would be the status of improvements made at the end of the lease period? *At the end of the lease, permanent improvements typically would belong to the State. We may consider a buy-out provision for developer investment based upon the value of the improvements at the termination of the lease.*
13. Would the lease provide for a pre-negotiated price to purchase said improvements at the term's end. *We may agree to a formula and/or process to calculate the value of the improvements but unlikely we would agree to a a specific dollar amount at the onset of the lease of the value of improvements after a 40 year lease term.*
14. How is it handled at Galilee? *At Galilee, the improvements that cannot be removed at the termination of the lease become the property of the State. However, there is often a transfer of the lease and associated improvements during the term of the lease; the tenants can then 'sell" their investment to the new tenant. Any lease transfer requires DEM and State Properties Committee approval.*
15. Can you provide a sample contract/lease for the properties at Galilee? *A sample lease at Galilee is attached as Appendix "A" to the RFP.*
16. Please provide as an addendum a sample lease of the establishments on state land at Galilee, indicating DEM's handling of the issue of how prospective developers can recoup their investment in improvements on the site at the end of a lease term. *See answer to Questions 14 and 15 above.*
17. It would also be helpful, as discussed at the pre-bid conference, to know how the City Assessor will handle assessments on real and improved property. *As stated at the pre-bid conference, we expect that the City Assessor will tax the land and improvements as per R.I.G.L. 44-4-6.*
18. Did the US Army Corps of Engineers issue a permit for the project (Addendum #1 mentions one was needed)? Please provide a copy of the permit if it is available. *See addenda post "Department of the Navy Permit."*
19. As discussed during the pre-bid meeting, will CRMC be able to provide a copy of a more recent hydrographic survey of the waterway near the site? I believe circa ~2007 was mentioned. *See link to ACOE site for bathymetric survey information. The following link is for the USACE New England District Rhode Island navigation projects page. Interested parties can select the desired data set (ASCII XYZ data,*

PDF bathymetry maps or hydrographic survey in DGN file format) for the Seekonk River. The hydrographic data is directly adjacent to the Shooter's project site and the publication date is 10/12/2007.

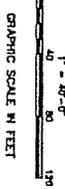
See: <http://www.nae.usace.army.mil/navigation/navigation2.asp?mystate=RI>

20. Can the State provide a copy of the 'approved site plan' referenced in the CRMC permit (Addendum #1)? Plan is referenced as: "*Luxury Dock Inc., India Point Marina, Providence, RI.. Final Site Plan*", dated 2/20/90, by Moffat & Nichol Engineers, in one sheet, stamped by S. M. Brockwell, PE.
See attached.



FINAL SITE PLAN

SLIP COUNT	
BOAT LENGTH	NO. OF SLIPS
37	8
43	7
50	10
	1
TOTAL	26



NOTE: SOUNDINGS TAKEN FROM SURVEY FOR U.S. ARMY CORPS OF ENGINEERS BY OCEAN SURVEYS, INC., AUGUST 1984.

FILE NAME 2677HN	MOFFATT & NICHOL ENGINEERS RALEIGH, NORTH CAROLINA	LUXURY DOCK INC. INDIA POINT MARINA PROVIDENCE, RHODE ISLAND	
DATE: 3-20-1980 SHEET: 1 OF 1	DRAWN: JCS CHECKED: DLK DATE: 2/7/80 2677	DESIGNED BY: D.S.D. DATE: 1/27/80	REVISION DESCRIPTION BY DATE

DEPARTMENT OF THE ARMY PERMIT

Permittee State of Rhode Island Department of Transportation

Permit No. 1989-00233

Issuing Office New England District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

To retain and maintain existing structures up to the limits of the navigable fairway as shown on the attached plan entitled "EXISTING CONDITIONS AND DOCK DETAILS" and dated August 16, 2001.

Project Location:

Off Fox Point at the confluence of the Providence and Seekonk Rivers,
Providence, RI

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on DECEMBER 31, 2006. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee shall ensure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for work.

(Special Conditions continued on Page 4)

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

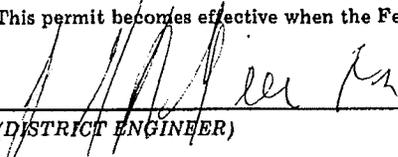
6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

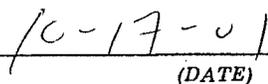
(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



(DISTRICT ENGINEER)



(DATE)

John L. Rovero
Lieutenant Colonel, Corps of Engineers

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

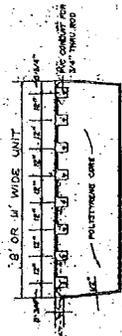
(Special Conditions continued from Page 2)

2. If the permit is issued after the construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. If the permit is issued after receipt of bids or quotes, the entire permit shall be included in the contract or sub-contract as a change order. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Vicinity Plan





LONGITUDINAL SECTION THRU DOCK (A-A)



PLAN SCALE 1"=20'



PLAN

PROVIDENCE HARBOR

FLOOD EBB

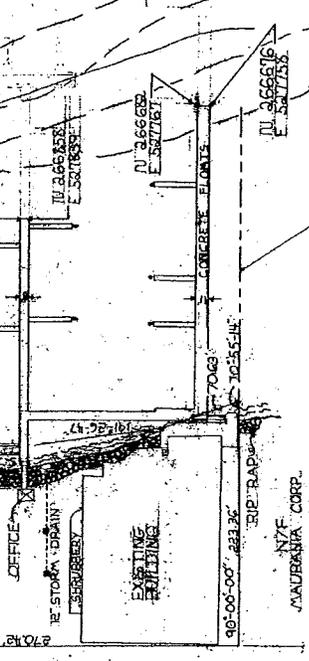
FEDERAL NAVIGATIONAL CHANNEL

16' RADIUS TURN (ON WATER)

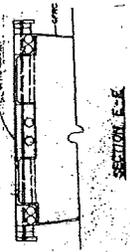
INDIA STREET

TRAVERSE STREET

BENEFIT STREET



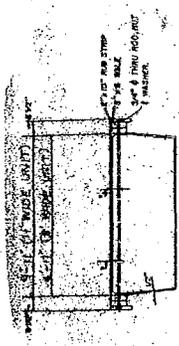
SECTION E-E



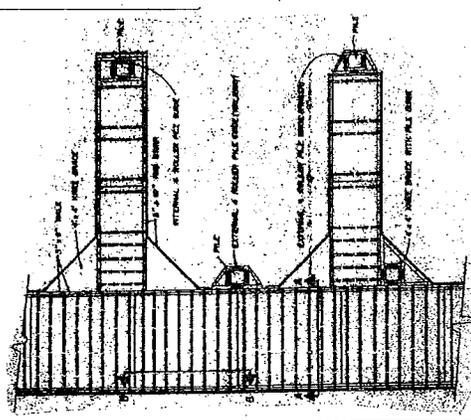
SECTION E-E

EXTENSION OF PROPERTY LINE (TYP)

PLAN SCALE 1"=20'



TRANSVERSE SECTION THRU DOCK (B-B)



The engineer and their institutions to which I belonged as depicted by the Seal above have furnished to the Board of Examiners for Professional Licensure the necessary facts and the necessary information for the Board to determine whether or not I am qualified to practice as a Professional Engineer in the State of Rhode Island.

Richard S. Latta
 Registered Professional Licensure # 5-8-019

EXISTING CONDITIONS, ROAD DOCK DETAILS	
SCALE: 1"=20'	DATE: 11-1-1999
LOT: 24	PROJECT: PROPOSED DOCK
ADDRESS: 1001 BROADWAY, PROVIDENCE, R.I.	CLIENT: ALLINSON-LAMA CORP.
SHEET 1 OF 1	

**ENVIRONMENTAL ASSESSMENT AND STATEMENT OF FINDINGS
INCORPORATING SEC 404 MITIGATION MOA**

1. Applicant: Rhode Island Department of Transportation
Application Number: 1989-00233
File Name: India Point Marina

2. This permit action is being taken under authority delegated to the District Engineer from the Secretary of the Army and the Chief of Engineers by Title 33, Code of Federal Regulations, Part 325.8, pursuant to:

Section 10 of the Rivers and Harbors Act of 1899

Section 404 of the Clean Water Act

Section 103 of the Marine Protection, Research,
and Sanctuaries Act

3. Description, location, and purpose of work: To retain and maintain two unauthorized piers and associated slips extending into the navigable fairway at Fox Point, at the confluence of the Seekonk and Providence Rivers in Providence, RI. The piers are part of a private marina.

4. Description of general environmental setting: The Fox Point area is primarily urban and the project lies within a mixed residential/commercial area. There are several recreational businesses in the immediate vicinity. Just east of the project is a community boating center and a Block Island Ferry service. To the north on the Providence River are other marinas and boating establishments.

5. Functions and values assessment of resources impacted: The area impacted by the docks consists of the navigable fairway at the confluence of the Seekonk and Providence Rivers. This area supports both recreational and commercial boating. The waterway, although heavily industrialized in the past, increasingly supports recreational uses. It also provides habitat and transport for several fish species. Our public notice noted essential fish habitat for several species where these piers lie.

6. Relationship to existing uses: Removal of the piers from the limits of the federal channel makes the piers compatible with the current uses of the site.

7. Impacts to public interest factors:

+ Beneficial - Adverse 0 Negligible Effect

- Water Quality	0 Benthic Flora & Fauna	
0 Land Use Classification	0 Water Supply and Conservation	
0 Wetlands	0 Historical	
0 Flooding	0 Drainage	0 Energy Needs
+ Economics	0 Circulation Patterns	0 Air Quality
0 Aesthetics	0 Erosion/Accretions	0 Noise
+/- Wildlife		0 Mineral Needs
0 Food and Fiber Production		+ Navigation
0 Floodplain Values		+ Recreation
0 General Environmental Concerns		0 Safety
0 Property Ownership		0 Finfish/plankton
0 Needs and Welfare of the People		0 Other

Description of impacts (including short term, long term and cumulative impacts):

Water Quality – There is a potential for adverse impacts if a gas pump is placed at the end of the piers. There was previously a gas pump located on the end of one of the existing piers. Any project increasing the use of the waterway by gasoline and oil dependant craft adds the possibility of having a negative impact on water quality.

Economics – Construction of the piers will increase property value. The piers will operate as a business by renting slips to boaters also having a positive impact on the local economy.

Wildlife – The structures act as an impediment to migrating fish and the additional traffic utilizing the docks destroys fish and fish habitat. Structures also serve as shade areas and cover for fish thus providing additional habitat to some species. Therefore, overall impact to wildlife is minimal.

Navigation – Construction of the piers will allow access of additional boats to the area.

Recreation - Construction of the piers will allow access of additional boats to the area.

8. Findings:

a. State water quality certification: N/A

b. State coastal zone management concurrence: Assent, #89-3-14 dated February 27, 1990, to India Point Associates, 97 Pine Street, Providence, RI.

c. A public notice based on the best available information which adequately described the proposed work was issued on October 12, 1999 and sent to all known interested parties. All comments received are noted below and have been evaluated and are included in our administrative record of this action.

On November 3, 1999, Captain Joseph Welch of the MV Nelseco commented that his ferry service to Block Island is put at a distinct disadvantage when trying to navigate around India Point Marina's docks. Captain Welch stated that Mr. Kent's docks take up most of the deep water formerly used for navigation. Additionally, Captain Welch states that the wind and current often pull his vessel toward the terminus of Mr. Kent's facility and the potential for a collision with Mr. Kent's gas dock.

The Captain of the Marine Pilots association also commented via telephone that the docks constitute a hazard to navigation and should be pulled back in order to leave sufficient area with deep water for marine navigation.

State of Rhode Island has purchased property and has since shortened dock so that it is located outside of the navigable channel, thus minimizing impacts on navigation.

i. The Corps coordinated the project with the federal agencies with resources of concern. None of the agencies involved objected to shortening of the piers. In fact, they believed that shorter piers would be an improvement over the current situation.

ii. Historic and Cultural Resources: The project will not affect any Historic or Cultural Resources.

d. General Evaluation: This case originated in January 1989, with an application submitted by the City of Providence and Joseph Cirelli, General Partner of India Point Associates, for a permit to construct a 172 slip marina, a pile and timber walkway and a shoreline support structure. In April of that year the Corps of Engineers issued a public notice and press release for the proposed project. Project impact review and coordination with the state Coastal Resource Management Council continued into August of 1990. During this time the City of Providence withdrew its name from the applications. India Point Associates conveyed interest to Mr. Carmine D'Ellena and Dr. Kenneth Sylvestri, investors in the restaurant aspect of the property. The Coastal Resource Management Council (CRMC) issued an assent to India Point Associates in April 1990 to construct the marina over the CRMC project manager's objections. The CRMC project manager cited the decrease in the depth of the natural navigation channel connecting the Seekonk and Providence Rivers as the reason for his recommendation for denial of the project. The Council did not follow this recommendation.

In August 1990, during the final evaluation of the project, the Corps

raised concerns regarding the project's limiting effect on navigation between two existing channels. Representatives from the Corps visited the site in October 1990 to review potential navigational impacts at the site. They discovered that substantial work had been completed and was continuing there. Specifically, they observed fill placed in the waterway and pilings and floats had already been placed. The fill was covered under a nationwide permit for maintenance of the bulkhead. However, no permit had yet been issued for the other work and the Corps issued a Cease and Desist letter to the applicant.

On November 14, 1990, Mr. Cirelli responded to the Cease and Desist, admitting that he began work without a permit on June 4, 1990. Later that year, Mr. Cirelli conveyed his interest in India Point Marina to Wickford Marina, Inc., 50% of which is owned by Mr. D'Ellena and Dr. Sylvestri.

In September 1991, Corps Office of Counsel prepared the Report of Legal Investigation and a Consent Decree on the case. The recommendation called for India Point Associates to pay \$40,000; to apply for a Corps of Engineers permit; and to abide by the permit decision. The recommendation was forwarded to the U.S. Attorney for action and, after myriad meetings and discussions, was signed by the U.S. Attorney and the defendant, Providence Harbour View, Inc., the owner at that time, on January 7, 1997. The judgment was entered on April 3, 1997 and signed by the United States District Judge on August 25, 1997.

Shortly thereafter, the owners' agent contacted the Corps to see what information we needed to complete a permit application and to ask if he could further negotiate the fine. Negotiations regarding the fine were referred to Office of Counsel and Regulatory Branch handled the after-the-fact application with the agent, Mr. Lama.

In October 1997, Mr. Anthony Izzo of Johnston RI. took over the property and Mr. Lama continued as the agent. From October 1997 until August 1998, the Corps worked with the applicant and his agent to develop appropriate plans for public notice. There were delays on the part of the applicant to provide current depth surveys and as built drawings for the application. However, Mr. Izzo was paying the \$10,000 per year fine ordered by the consent decree.

In August, 1998, the Corps contacted Mr. Izzo's attorney, Mr. Mittleman, regarding the permitting problems. Mr. Mittleman told us that Mr. Izzo had sold the property to Mr. Michael Kent and that we could contact him through his attorney, Douglas DeSimone. The Corps met with the new owner and his attorney on August 25, 1998 and reviewed the requirements of the consent decree including not only the fine payment but also the after-the-fact application. Mr. Kent told us he would move quickly on the project. The Corps worked with the applicant's agent until April 1999, at which time it became apparent that the agent was not capable of completing the tasks necessary for permit evaluation. Throughout these discussions, navigational impacts remained the issue between the Corps and the applicant. Several times, the applicant told the Corps that they had new survey data which would change

the position of the location of the navigable fairway. The authorized federal channel in the Seekonk River is 150 feet wide and 16 feet deep at mean low water. The area in the vicinity of the unauthorized piers is naturally deep and wide such that there has been no need to establish limits in this area of the river. Rather, the Corps position is to keep clear an area between the two rivers which is consistent with their authorized federal limits: an area 150 feet wide and at least 16 feet deep. The applicant did not contest the need to maintain the fairway. Rather, he contested the location of that fairway. Therefore, the Corps gave him additional time and guidance to accurately locate the fairway.

On April 12, 1999, we informed the owner that he needed to submit a complete package to us by April 30, 1999, or we would make a decision based on the information currently in the file. As stated herein and as mentioned to the applicant in meetings on the project, the Corps records showed that substantial portions of the structures extended into the navigable fairway, as defined by the Corps.

As a backup to the application and since it appeared that the applicant did not intend to submit a complete and technically acceptable application, the Corps performed a hydrographic survey on the area in July 1999 to confirm existing Corps data. The results of this survey determined the location of the 16' contour and the limits to which we would request removal of all structures.

The Corps wrote to the applicant on September 10, 1999, with a final request for the permit application. On September 28, 1999, the applicant paid his final payment and associated late charges due under the consent decree. However, he did not submit the required after-the-fact application. Therefore, the Corps issued a public notice for the project using the best available information. The notice closed on November 11, 1999, and all comments were forwarded to the applicant for review. He did not respond to the comments.

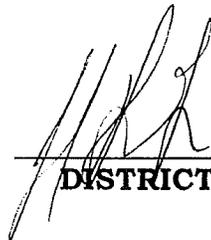
On August 31, 2001 the applicant submitted a complete application with "as built" drawings showing the limits of the piers. The remaining portion of the piers as shown on the August 16, 2001 plan "EXISTING CONDITIONS AND DOCK DETAILS" are consistent with State Plane Coordinates taken by the Corps, which show that the piers have been removed and are located outside of the Federal Navigational Channel.

e. The EPA regulations published as "General Conformity Rule" (58 FR 63214, November 30, 1993) to implement section 176(c) of the Clean Air Act for non-attainment areas and maintenance areas require that Federal actions, unless exempt, conform with the Federally approved state implementation plan. The impacts on air quality associated with the regulated activity described in this EA/SOF (discharge of dredged or fill material into waters of the U.S. (Section 404 of the Clean Water Act); and/or work in or affecting navigable waters of the U.S. (Section 10 of the Rivers and Harbors Act); and/or the transportation of dredged material for disposal in ocean waters (Section 103 of the Marine Protection, Research and Sanctuaries Act)) have been

considered and will not exceed de minimus levels of direct emissions of a criteria pollutant or its precursor, and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibilities, and generally cannot be practicably controlled by the Corps. Therefore, a conformity determination is not required.

f. I find that based on the evaluation of environmental effects discussed in this document, the decision on this application is not a major federal action significantly affecting the quality of the human environment. Hence, an environmental impact statement is not required.

g. I have considered all factors relevant to this proposal including cumulative effects. Potential factors included conservation, economics, esthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. After weighing favorable and unfavorable effects as discussed in this document, I find that this project is not contrary to the public interest and that a Department of the Army permit should be issued.

 per 10-17-01
DISTRICT ENGINEER DATE