Case Number: SU-2020-0168-MP
Filed in Supreme Court
Submitted: 2/8/2021 10:43 AM
Envelope: 2951064
Reviewer: Justin Coutu

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

CHAMPLIN'S REALTY ASSOCIATES	:	
v.	:	
PAUL E. LEMONT, et al.	:	
TOWN OF NEW SHOREHAM	:	SU-2020-168 MP
	:	SU-2020-169 MP
V.	:	
COASTAL RESOURCES MANAGEMENT COUNCIL OF THE STATE OF RHODE ISLAND	:	

THE ATTORNEY GENERAL FOR THE STATE OF RHODE ISLAND
MOTION TO INTERVENE

NOW HERE COMES the Attorney General for the State of Rhode Island, Peter F. Neronha, and, for the reasons set forth in the attached memorandum, hereby petitions this Court for intervention in the above-referenced proceedings for the sole and limited purpose of opposing the January 8, 2021, Joint Motion of the Respondent, Coastal Resources Management Council and the Petitioner, Champlin's Realty Associates for entry of and incorporation by reference of a Memorandum of Understanding between them into a Consent Order in this case.

Respectfully submitted,

THE STATE OF RHODE ISLAND

PETER F. NERONHA
ATTORNEY GENERAL

By:

/s/ Tricia K. Jedele
Tricia K. Jedele, Bar No. 5958
Special Assistant Attorney General
& Environmental Advocate
Office of the Attorney General
Environment and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400
tjedele@riag.ri.gov

/s/ Alison B. Hoffman
Alison B. Hoffman, Bar No. 9811
Special Assistant Attorney General
Office of the Attorney General
Environment and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400
ahoffman@riag.ri.gov

Case Number: SU-2020-0168-MP
Filed in Supreme Court
Submitted: 2/8/2021 10:43 AM
Envelope: 2951064
Reviewer: Justin Coutu

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2021, the within document was e-filed via the ECF filing system and that a copy is available for viewing and downloading. I have also caused a copy to be sent via regular mail to the following attorneys of record:

Anthony DeSisto, Esq.
Anthony DeSisto Law Associates LLC
450 Veterans Memorial Parkway, Suite 103
East Providence, RI 02914

Robert D. Goldberg, Esq.
Goldberg Law Offices
226 Cottage Street
Pawtucket, RI 02860

James Crowley, Esq.
Conservation Law Foundation
235 Promenade Street
Suite 560, Mailbox 28
Providence, RI 02908

Katherine Merolla, Esq.
Merolla & Accetturo
469 Centerville Road, Suite 206
Warwick, RI 02886

R. Daniel Prentiss, Esq.
R. Daniel Prentiss, P.C.
56 Pine Street, Suite 200
Providence, RI 02903

/s/ Ellen Ullucci

Case Number: SU-2020-0168-MP
Filed in Supreme Court
Submitted: 2/8/2021 10:46 AM
Envelope: 2951084
Reviewer: Justin Coutu

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
SUPREME COURT

CHAMPLIN'S REALTY ASSOCIATES	:	
v.	:	
PAUL E. LEMONT, et al.	:	
TOWN OF NEW SHOREHAM	:	SU-2020-168 MP
	:	SU-2020-169 MP
V.	:	
COASTAL RESOURCES MANAGEMENT COUNCIL OF THE STATE OF RHODE ISLAND	:	

MEMORANDUM IN SUPPORT OF ATTORNEY GENERAL'S MOTION TO INTERVENE

NOW HERE COMES the Attorney General for the State of Rhode Island, Peter F. Neronha (hereinafter "the Attorney General" or "the State") and submits this Memorandum of Law in Support of his Motion to Intervene. As grounds therefore, the Attorney General asserts the following:

I. INTRODUCTION

There are key aspects of this case's complex history that specifically demonstrate the Coastal Resources Management Council's (hereinafter "the CRMC" or "the full council") awareness of, familiarity with, and present deviation from the required agency process for the review of contested cases. Over the past

seventeen years, the CRMC has made great efforts to adhere to its own procedures, the Rhode Island Administrative Procedure Act ("APA"), and, after multiple remands, the clear directions from the courts regarding the process for modifying the agency's decisions. This Court's precedent is clear: council members should read the complete administrative record and certify that they have done so before casting votes on the application, consideration of alternatives to the application require supplementation of the administrative record and an opportunity for public comment and cross examination of evidence, and the full council's decisions must be supported by enumerated findings of fact and separate conclusions of law. These legal principles and requirements have served as the foundation for the factual findings that underpinned CRMC's decisions with respect to Champlin's Realty Associates ("Champlin's") application to expand its marina into Great Salt Pond by 240 feet and must be contrasted with the present Joint Motion of Champlin's Realty Associates and Coastal Resources Management Council (hereinafter "Joint Motion") requesting that this Court incorporate the Memorandum of Understanding attached thereto ("MOU") into a consent order of this Court. The CRMC now asks this Court to ignore the process requirements that have guided the review of the Champlin's application for nearly two decades and to instead bless a decision reached in a closed-door mediation that would allow an unexplained, unjustified marina expansion of a 156 feet into Great Salt Pond. The MOU, approved in a

CRMC executive session by an agency without jurisdiction over the application – because it is this Court which has jurisdiction – is divorced from the findings of fact contained in the administrative record lodged with this Court on November 30, 2020. The Attorney General is moving to intervene to address this recent agency action and the resulting agency decision with regard to Champlin's application, which are contrary to the public interest.

Arguments with respect to jurisdiction, agency procedure, and this Court's decisions concerning this application are discussed below in support of the Attorney General's assertion of interest in this case. Should this Court conclude that it may review the Joint Motion and the MOU, the Attorney General respectfully requests the opportunity to participate in this case as an Intervenor and to fully brief all relevant issues as directed by this Court.

II. BACKGROUND AND TRAVEL

In 2003, Petitioner, Champlin's applied to the CRMC for an assent to allow an expansion of its existing marina into Block Island's Great Salt Pond by 240 feet. On January 10, 2006, a subcommittee of the CRMC, tasked with reviewing the application in the first instance, issued a recommendation to the full council supporting a modified expansion of 170 feet. The subcommittee's recommendation to modify the requested expansion was supported by forty-seven findings of fact after twenty-three public hearings. Five members of the full council voted to accept

the recommendation of the subcommittee and to allow a modified expansion and five members voted not to accept the subcommittee's recommendation, instead denying the application. The tie vote resulted in a denial. The decision denying the application was issued on July 5, 2006.

Champlin's sought judicial review of the CRMC's July 5, 2006, decision in the superior court under the APA. Champlin's alleged that bias against the application by certain council members and other procedural irregularities required reversal of the full council's decision. After extensive evidentiary hearings in the superior court to determine whether and to what extent council members relied on *ex parte* information or communications as a basis for their respective votes and to what extent council members demonstrated bias toward Champlin's application, Champlin's moved to disqualify six council members from further participation in the application upon remand and further moved to disqualify four of the five council members who voted to deny Champlin's application. During the evidentiary hearings in the superior court, it came to light that one council member, Paul Lemont, who was also acting as the chair of the subcommittee, had advocated for a compromise plan, off the record, after the subcommittee hearings, but before the subcommittee issued its recommendation to the full council. This compromise became known as "the Goulet Plan" because it was prepared by the CRMC staff member Dan Goulet at the request of Paul Lemont and the CRMC's Executive

Director, Grover Fugate. The superior court found that Champlin's substantial rights had been prejudiced by the off the record consideration of the Goulet Plan and that council member Paul Lemont and the CRMC chair, Michael Tikoian, should not have voted on the application due to evidence of bias. For a number of reasons, rather than remanding the administrative record to the CRMC to correct the procedural irregularities, the superior court reversed the full council's decision and upheld the subcommittee's January 10, 2006, recommendation for a reduced expansion and elevated that recommendation to a final agency decision.

This Court eventually overruled the superior court's decision in part (upholding the findings of bias with respect to certain council members but overturning the superior court's decision to elevate the subcommittee recommendation to an agency decision). Instead, this Court remanded the case to the CRMC directing the agency to include the Goulet Plan in the administrative record, requiring all council members to certify that they have read the entire record before voting, and further disqualifying biased council members from participating in the review of the application on remand. See Champlin's Realty Associates v. Tikoian, 989 A 2.d 427, 462 (R.I. 2010) (hereinafter "Tikoian").

On January 11, 2011, the remaining council members, after certifying they had read the entire record, voted again to deny Champlin's 2003 application and issued a written decision on May 6, 2011, supported by ninety-one findings of fact

and ten separate conclusions of law. On June 1, 2011, Champlin's appealed that written decision, beginning the instant lawsuit. See Champlin's v. Lemont, Nos. WC 11-0615, WC 11-0616, 2020 R.I. Super. LEXIS 11, at *8 (Super. Ct. Feb. 11, 2020).

Not long after reaffirming its denial of the Champlin's application for expansion, the CRMC approved Payne's Dock, a neighboring marina's request for a smaller dock expansion. Viewing the subsequent approval of an application for a neighboring dock expansion as evidence of disparate treatment and arbitrary and capricious behavior on the part of the full council, Champlin's petitioned the superior court to expand the record or to take judicial notice of the CRMC assent granted to Payne's Dock (hereinafter the "Payne's Dock proceedings"). The superior court instead viewed Champlin's petition as a request for the presentation of additional evidence. On September 17, 2012, the superior court issued an order remanding the administrative record to the CRMC and requiring the parties to present, and the CRMC to accept, additional evidence into the record that related to the neighbor's expansion, including the bases for which both applications were either approved or denied. The order instructed the CRMC to consider any similarities or dissimilarities and, again, required each council member to certify that they had read the entire record prior to casting a vote. On September 27, 2013, after additional hearings, the CRMC issued a written decision stating that there was a

rational basis to approve the neighboring application for expansion and to deny the dissimilar Champlin's application.

On February 11, 2020, the superior court affirmed both the May 6, 2011, and the September 27, 2013, CRMC decisions. See February 11, 2020, Super. Ct. Decision at 1-2 (hereinafter "Decision"). Specifically, the lower court found that there was "legally sufficient evidence in the record" to support the CRMC's May 6, 2011, decision and that it was "rational, logical, and supported by substantial evidence." Decision at 55. Likewise, the superior court found that the September 27, 2013, decision treating the two marinas differently had a rational basis and was supported by legally sufficient evidence. Id.

On October 19, 2020, this Court granted Champlin's petition for writ of certiorari to review the Decision. On December 7, 2020, Champlin's and the CRMC filed the Joint Motion requesting this Court "incorporate and merge the [MOU] attached [thereto] into a consent order of this Court." Joint Motion at ¶ 2. The MOU attached to the Joint Motion, ratified by the CRMC in executive session, described an agreement reached during a closed-door mediation between Champlin's and the CRMC, which allows, most notably, a 156 foot seaward expansion of piers, an extension of the western portion of the existing fuel dock by sixty-five feet, and an extension of the eastern portion of the existing fuel dock by twenty feet. MOU at 3-4.

The Joint Motion asking this Court to incorporate and merge this mediated plan, divorced from agency procedure and the administrative record, into a consent order of this Court, is the reason for the Attorney General's interest in this case.

III. STANDARD OF REVIEW

The Attorney General is seeking to intervene in this proceeding at this stage of review in accordance with the common law powers of the Office of Attorney General in Rhode Island.[1] In State v. Lead Indus., Ass'n, Inc., this Court held that in the exercise of the Attorney General's common-law powers, "an attorney general may not only control and manage all litigation on behalf of the state, but ***may also intervene in all suits or proceedings which are of concern to the general public***." (***Emphasis added***). 951 A.2d A.2d 428, 474 n.45 (R.I. 2008); see also State of Florida ex rel. Shevin v. Exxon Corp., 526 F.2d 266, 268–69 (5th Cir.1976) ("[The duties and powers of attorneys general] are not exhaustively defined by either constitution or statute but include all those exercised at common law. * * * [Accordingly, the attorney general] typically may exercise all such authority as the public interest requires. And the attorney general has wide discretion in making the determination as to the public interest.").

[1] The Rhode Island Supreme Court previously has permitted the Attorney General to intervene during appellate proceedings. See generally, Jones v. Aciz, 275 A.2d 927 (R.I. 1971); Kirshenbaum v. Hamel, 291 A.2d 271 (R.I. 1972).

The Attorney General has determined that the public interest would be harmed by approval of the CRMC's unsupported decision to modify Champlin's application for expansion because to protect the State's public trust resources, agency decisions must be supported by adequate findings of fact and adhere to the processes prescribed by law for evaluating environmental impacts to these resources.

The Rhode Island Superior Court Rules of Civil Procedure, Rule 24, establishes the standard for intervention in a Superior Court action, but there is little precedent regarding the appropriate standard for intervention before this Court. While the public interest was not injured by the lower court decision nor by either the CRMC's 2011 or 2013 decisions, that interest is implicated and harmed by the January 8, 2021, Joint Motion asking this Court to approve the MOU, which purports to be a final agency decision. For this reason, the Attorney General asserts that in addition to Attorney General's common law obligation and authority to take all action necessary to protect the public interest, it also is appropriate for this Court to consider the elements for intervention set forth in Superior Court Rule 24 and the aggrieved party standard under the APA when considering the Attorney General's Motion to Intervene.

The Rhode Island Supreme Court has looked to federal precedent when interpreting the requirements in Rule 24, which sets forth in pertinent part:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:
>
> **(1)** When a statute of this state confers an unconditional right to intervene; or
>
> **(2)** When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24 - Intervention., R.I. Super. Ct. R. Civ. P. 24; see also, Tonetti Enterprises v. Mendon Road Leasing Corp., 943 A.2d 1063, 1072-73 (R.I. 2008) (citing Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 382 n.1, 107 S. Ct. 1177, 94 L. Ed. 2d 389 (1987). For example, federal law has guided this Court's interpretation of the "timeliness" requirement:

> Timeliness of intervention is to be judged by two criteria: (1) the length of time during which the proposed intervenor has known about his interest in the suit without acting and (2) the harm or prejudice that results to the rights of other parties by delay. Diaz v. Southern Drilling Corp., 427 F.2d 1118 (5th Cir. 1970); 7A Wright & Miller, Federal Practice and Procedure: Civil s 1916 at 574-76.

Marteg Corp. v. Zoning Bd. of Review of City of Warwick, 425 A.2d 1240, 1243 (R.I. 1981).

Under the APA, an aggrieved party to a contested case may seek review of the agency decision by going directly to the superior court and may seek review of

the superior court's decision through a writ of certiorari. See R.I.G.L. §§ 42-35-15 and 42-35-16. This Court has found that "government, although generally not 'aggrieved' in the conventional or personal sense, becomes 'aggrieved' in the broader or public sense whenever the public interest is affected by a[n] [administrative] action." City of East Providence v. Shell Oil Co., 110 R.I. 138, 142, 290 A.2d 915, 918 (1972).

While the APA standard of review for determining aggrieved party status is seemingly inapplicable here, because as stated previously, the Attorney General is neither seeking review of the 2011 or the 2013 CRMC decisions (nor the lower court's decision), the Attorney General is aggrieved by the Joint Motion and the MOU, which CRMC purports to be final, and which has been presented to this Court for approval. In other words, the present forum may be the only forum to obtain review and relief.

The existence of "available avenues for review" was a consideration discussed by this Court in Tikoian. In determining whether the Town of New Shoreham was a proper party before the Supreme Court on an appeal from the superior court decision in the APA appeal that had been initiated by Champlin's, this Court recognized that the superior court's substitution of the CRMC decision with the subcommittee recommendation left the intervenors with no avenue of review except through the discretionary writ of certiorari. Likewise, the substitution of the CRMC

decision with the recent MOU has left the Attorney General with no avenue to oppose the Joint Motion except through intervention. See generally, Tikoian, 89 A.2d 437-38.

As described in more detail below, the MOU implicates the public interest, which the Attorney General is charged with protecting. The Attorney General is therefore appropriately "aggrieved" under the APA.

IV. ARGUMENT

Until January 8, 2021, the Attorney General had no cause to intervene. The CRMC was adhering to the process requirements established in state law and in its own regulations and appropriately supplementing the administrative record with guidance from the courts. The MOU lodged with this Court on January 8, 2021, along with a Joint Motion, and was reached off the record between a single member of the full council, Champlin's, and the CRMC's Executive Director. The MOU itself, and the closed-door process utilized by the CRMC to arrive at it, violates the public trust and jeopardizes the natural resources of the State. There is no party to this action, absent the Attorney General, that can adequately represent those interests.

A. THE ATTORNEY GENERAL'S MOTION IS TIMELY

The Attorney General's application for intervention is timely because the CRMC's deviation from the laws and procedures designed to protect the coastal

environment and the State's public trust resources first and only became apparent with the filing of the Joint Motion on January 8, 2021, and the attached MOU.

The non-public mediation between the CRMC and the applicant, and the subsequent effort by the CRMC to have this appellate review body elevate that mediated settlement as a final agency decision in this case, is the transaction that gives rise to the Attorney General's interest in the case now. This issue did not arise until January 8, 2021. Given this recent development, the parties to this proceeding cannot claim to be prejudiced or unfairly burdened by the appearance of the Attorney General in this matter now and solely for the purpose of participating in the review of the lawfulness of the MOU.

As a practical matter, the Attorney General cannot intervene in every contested case at the state agency level, nor intervene in every action to review an agency decision in the superior court, only to preserve his status as a party in the event that the open judicial process turns into a closed-door mediation. In many circumstances, it is not until the public interest is threatened that the Attorney General's need to intervene becomes apparent. So, while the Attorney General recognizes that it is unusual to seek intervention at the appellate review stage, the circumstances here require it.

B. THE ATTORNEY GENERAL HAS THE STATUTORY RIGHT TO INTERVENE PURSUANT TO THE ENVIRONMENTAL RIGHTS ACT, R.I.G.L. § 10-20-1 *et seq*.

Here, the Attorney General, through his designated Environmental Advocate, and pursuant to the Environmental Rights Act, § 10-20-1, *et seq*., has a distinct and unconditional statutory right to "take all possible action" to protect the public's right to "the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state." See R.I.G.L. § 10-20-1 and § 10-20-3(d)(5). Agency decisions that do not adhere to prescribed process requirements or that contravene the published factual findings made by the agency, interfere with the State's ability to protect, preserve and enhance its natural resources.

C. THIS COURT'S DISPOSITION OF THE JOINT MOTION MAY IMPAIR OR IMPEDE THE PUBLIC'S INTEREST ABSENT THE ATTORNEY GENERAL'S PARTICIPATION

The Attorney General has the common law authority and obligation to protect the State's public trust resources from unreasonable interferences and other harms. As this Court recognized in Lead Indus., "unlike other attorneys who are engaged in the practice of law, the Attorney General "has a common law duty to represent the public interest." 951 A.2d at 471 (citing Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032 (R.I. 2005) (internal quotation marks omitted)). As a constitutional officer, the Attorney General has "specific and significant responsibilities to the people of Rhode Island." Id. (citing Mottola v. Cirello, 789 A.2d 421, 424 (R.I.

2002); see also State v. Briggs, 886 A.2d 735, 756 n.9 (R.I. 2005); State v. Peters, 107 A.2d 428, 431 (R.I. 1954) ("[The Attorney General] is in effect the representative of the people and not an advocate in the ordinary meaning of that term. * * * He represents all the people of the [state], including the defendant * * *.") (internal citations and quotation marks omitted).

The people of the State of Rhode Island have common law and constitutional public trust rights in the Great Salt Pond on Block Island, which is a natural pond and has been described by this Court as "a place of spectacular beauty." Tikoian, 989 A.2d at 431. The people's shared public trust rights in Great Salt Pond include fishing, access to the pond, water quality in the pond sufficient to support the pond's designated uses, and rights in the natural environment of the pond itself, which provides food, shelter, and habitat for birds and marine life. These common law public trust rights have been codified in our state constitution, Article I, Section 17 and are reinforced and further protected by the State's environmental regulatory frameworks for coastal and natural resources management. In other words, the State's environmental regulatory framework, in addition to agency enabling statutes and enforcement and procedural statutes are based on the public trust doctrine and the public's common law rights codified in the state constitution.

The fact that there are established, objective, and unbiased processes for managing the State's public trust resources provides the public with confidence that

their interests in the natural resources of the state and the health of their environment are being adequately safeguarded. It is adherence to these processes, however, and not their mere codification in our laws that guarantees the public an opportunity to review and engage in the agency decision-making processes, assure that aggrieved parties have the opportunity to present evidence and challenge agency decisions and ultimately protect the State's resources. When these mechanisms are side-stepped by the regulatory body charged with ensuring that very process in favor of compromised, non-public resolutions, then public confidence is undermined, and the health of our natural resources jeopardized.

Here, the CRMC proceeded with disregard for its own jurisdiction, the APA, the Coastal Management Plan, its own management procedures, and this Court's precedent regarding Champlin's application. Such disregard both undermines the public trust and threatens the State's public trust resources. It is these rights and interests – indeed the public trust – that are within the particular authority of the Attorney General to protect

V. OPPOSITION TO THE JANUARY 8, 2021 JOINT MOTION TO ENTER THE MOU BETWEEN THE CRMC AND CHAMPLIN'S

In support of his interest in this case, the Attorney General previews below why the Joint Motion and the MOU are inappropriate with respect to jurisdiction, process, and the legal precedent set by this Court with regard to this application.

Case Number: SU-2020-0168-MP
Filed in Supreme Court
Submitted: 2/8/2021 10:46 AM
Envelope: 2951084
Reviewer: Justin Coutu

Champlin's and the CRMC's Joint Motion requesting this Court to "incorporate and merge" the MOU into a consent order is improper for a myriad of reasons. In creating and approving the MOU while this action was pending, the CRMC exceeded its authority, violated numerous administrative and management procedures, and ignored the clear directives and intent of judicial decisions, including decisions in this case. For the reasons set forth below, the State requests that after granting its Motion to Intervene, this Court deny the Joint Motion.

A. THE CRMC DOES NOT HAVE JURISDICTION TO APPROVE THE MOU

When the CRMC went into executive session on December 8, 2020, and "voted unanimously to (1) approve the proposed mediated settlement, and (2) approve the MOU signed on December 7, 2020, thus granting a negotiated expansion permit to Champlin's," it did not have jurisdiction over the case. See Joint Motion at ¶ 7. The MOU reflects the CRMC's understanding of where jurisdiction lay at the time of the mediation: "[t]he Supreme Court ***shall maintain jurisdiction*** over this matter." MOU at ¶ 8 (***emphasis added***). The MOU was negotiated and approved by the CRMC ***after*** the administrative record was certified to the superior court in 2013 and after the superior court certified the administrative record with this Court on writ of certiorari.

The record was lodged with this Court on November 30, 2020, and this Court has had and will continue to have exclusive jurisdiction over this case unless and

until the record is remanded to the agency. See Barrington Sch. Comm. v. Rhode Island State Labor Relations Bd., 608 A.2d 1126, 1131–32 (R.I. 1992) ("It is evident that once a certification order has been entered, the party affected adversely can obtain no additional level of review within the ambit of the board. There is no further opportunity for the party to vindicate its rights in the administrative process itself."); see also Yellow Cab Co. of Providence v. Public Utility Hearing Bd., 101 R.I. 296, 222 A.2d 361 (1966) ("In short . . . when the decision of the agency has become final, ***judicial review*** by a justice of the Superior Court pursuant to the provisions of § 42-35-15 ***is the only remedy available*** if it constitutes a remedy adequate at law in all of the circumstances of the case.") (***emphasis added***).

The CRMC exceeded its authority and jurisdiction when it convened a meeting to authorize its approval of the MOU in a case or docket matter on which the Supreme Court has granted certiorari and that, at the time of the CRMC meeting, remained within this Court's exclusive jurisdiction.

B. THE MOU IS INVALID AS A MATTER OF LAW AND PROCEDURE

Even assuming *arguendo* that the CRMC had jurisdiction to modify its decision, the MOU itself is still invalid as a matter of law and should not be incorporated into the final order of this Court.

In Ratcliffe v. Coastal Res. Mgmt. Council, this Court adopted a three-part rule to evaluate the validity of an agency order:

Case Number: SU-2020-0168-MP
Filed in Supreme Court
Submitted: 2/8/2021 10:46 AM
Envelope: 2951084
Reviewer: Justin Coutu

> …[W]e find that there are three constraints upon any action taken by [the] CRMC. The CRMC must comply with the terms set forth in its enabling legislation. The CRMC is also bound by its own regulations. Finally, [the] CRMC is subject to the provisions of the Rhode Island Administrative Procedures Act (RIAPA), G.L.1956 (1988 Reenactment) chapter 35 of title 42.

584 A.2d 1107, 1110 (R.I. 1991). In this case, there is an additional limitation that should have acted to further constrain the CRMC – the direction and guidance provided by this Court and the superior court in previous decisions in this case. As discussed below, the MOU must fail because the actions undertaken by the CRMC to arrive at this MOU were not constrained by its enabling legislation, its own regulations, the APA, or this Court's precedent.

1. <u>The MOU is Inconsistent with the Legislature's Charge in CRMC's Enabling Statute</u>

The CRMC's enabling legislation charges the CMRC "to exercise effectively its responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone." The legislative findings section of the CRMC's enabling statute, R.I.G.L. § 46-23-1(b)(1), not only codifies the common law rights that the public have in their coastal resources but also describes how these important rights would best be guarded by the CRMC. The enabling statute makes it clear:

> That ***effective implementation of these policies is essential*** to the social and economic well-being of the people of Rhode Island because the sea and its adjacent

> lands are major sources of food and public recreation, because these resources are used by and for industry, transportation, waste disposal, and other purposes, and because the demands made on these resources are increasing in number, magnitude, and complexity; and that these policies are necessary to protect the public health, safety, and general welfare.

See R.I.G.L. § 46-23-1(b)(1) (***emphasis added***). Adhering to the procedures that provide for transparency, participation of aggrieved parties, and evidence-based decision-making is "how" effective implementation and preservation of resources is achieved. By failing to adhere to the APA and its own regulations and procedures, as discussed below, the CRMC is acting inconsistently with the objectives of its enabling legislation. Furthermore, the inconsistencies between the CRMC's May 6, 2011, agency decision, and the MOU now being advanced as a final agency order, elucidate the conflict between the CRMC's present action and its charge to protect and restore the coastal ecology of the State under its enabling legislation. R.I.G.L. § 46-23-1.

For example, the May 6, 2011, decision finds that "Champlin's evidence failed to sustain its burden of showing that the proposed project will not cause significant impacts on plant and animal life of the [Great Salt Pond]." Decision ¶ 52, May 6, 2011. However, the MOU inexplicably contains no information on wildlife impacts in the proposed plan. Did the full council's vote consider wildlife impacts? Were there updated studies performed for the new proposed layout? These procedural

failures deprive the public and the courts of any means to evaluate whether CRMC's decision protects the wildlife, navigation, competing uses, or any other resources that the CRMC is charged with managing and protecting.

2. The MOU is Inconsistent with the CRMC's Regulations and Procedures

In addition to the APA, the CRMP and the Coastal Resources Management Procedures ("CRMC Management Proc.") govern the CRMC's decision-making process in contested cases. See CRMP, 650-RICR-20-00-01 et seq., and the CRMC Management Proc., 650-RICR-10-00-1 et seq. As set forth below, the process by which the MOU was entered is in complete contradiction to the CRMP § 300.1 and ignores the requirements outlined in the CRMC Management Proc.[2]

a. The MOU Contradicts the Requirements of the CRMP

The CRMP was adopted pursuant to the federal Coastal Zone Management Act of 1972 and it authorizes the CRMC to "develop and adopt policies and regulations necessary to manage the coastal resources of the state and to provide for the integration and coordination of the protection of natural resources, the promotion of reasonable coastal dependent economic growth, and the improved protection of life and property from coastal hazards." See CRMP § 300.1.

[2] The CRMP's statutory numbering has been adjusted since the original application in 2003. Accordingly, the requirements listed here as CRMP § 300.1 refer to § 1.3.1(A) of the updated CRMP.

The CRMC's May 6, 2011, agency decision explained through findings of fact and conclusions of law why Champlin's application did not sufficiently demonstrate that its proposed expansion would comply with the requirements of CRMP § 300.1. Contrary to the CRMC's fact-based May 6, 2011, decision, the MOU fails to provide any reasoning to support its newly compromised position, which in many respects contradicts the CRMC's May 6, 2011, decision upheld by the lower court in June of 2020.

The tables below (emphasis added in bold) outline the unexplained contradictions between the May 6, 2011, decision and the December 7, 2020, MOU as related to a specific requirement in the CRMP. These unsubstantiated departures from the CRMC's 2011 findings of fact, arrived at by the full council after public hearings and receipt of record evidence, further demonstrate that many of the criteria required to be addressed by the applicant and the CRMC in accordance with CRMP § 300.1 in a final agency decision were simply ignored in the MOU.

Table 1. CRMP § 300.1(6): Public Access – The applicant must "[d]emonstrate that the alteration will not unreasonably interfere with, impair, or significantly impact existing public access to, or use of, tidal waters and/or the shore."

Joint Memorandum of Understanding	Decision, May 6, 2011.
6.a. That marinas are a principal means by which the boating public gains access to tidal waters, and thereby provide an important public service.	"81. The applicant has proposed by his public access plan to offer launch services, use of its beach by the public and use of its dinghy dock as measures for enhancing public access to the shore in exchange for its requested expansion of its use of public trust resources. **The proposed expansion will not maximize the public's use and enjoyment of the public trust, rather, it will only benefit a small segment of the public to the exclusion of a larger segment**." Decision ¶ 81, May 6, 2011 (***emphasis added***).
	"82. The applicant's proposed public access plan differs slightly, if at all, from the existing uses that are in place in the existing marina. Additionally, **the applicant's witness stated that currently during the summer the areas adjacent to the beach are not safe for swimming. Therefore, the plan does not constitute meaningful access**." Id. at ¶ 82 (***emphasis added***).
	"83. The **applicant's proposed public access plan is inadequate to compensate for the acquisition of public trust resources requested in its application**." Id. at ¶ 83 (***emphasis added***).

Table 2. CRMP § 300.1(10): Conflicts with Other Uses – The applicant must "[d]emonstrate that the alteration or activity will not result in significant conflicts with water-dependent uses and activities such as recreational boating, fishing, swimming, navigation, and commerce."

Joint Memorandum of Understanding	Decision, May 6, 2011.
6.b. There is sufficient room between Champlin's existing docks and the Town's Mooring Field to permit some expansion of Champlin's existing docks, accommodate the moorings historically located within the Town's Mooring Field, and maintain navigational safety.	"53. The evidence demonstrates that **Champlin's regularly attracts yachts in excess of 100-feet in length** that it has been used by vessels of at least 165-feet in length. Further, Champlin's application notes **it hopes to attract deep water draft ocean going yachts up to 300-feet**." Id. at ¶ 53 (***emphasis added***).
	"56. Consequently, **the appropriate distance to use in assessing navigational impacts is the**

	310-foot distance to the mooring field." Id. at ¶ 56 (***emphasis added***).
	"58. Therefore, applying appropriate and proper marine design criteria under the existing situation with a 165-foot vessel utilizing Champlin's facility **an appropriate channel would be as much as 330—feet, which is more than the 310-feet available under the current configuration**." Id. at ¶ 58 (***emphasis added***).
	"60. **The waters adjacent to the Existing Marina are heavily used** for a variety of recreational purposes, including kayaking, sailing, canoeing. fishing, and power boating. The waters are also used by vessels entering and leaving the Existing Marina, by vessels traveling to and from other marinas on the [Great Salt Pond], and vessels that utilize Mooring Field E." Id. at ¶ 60 (***emphasis added***).
	"61. The combination of recreational uses and the operation of the Existing Marina and Mooring Field E **result in the waters in the vicinity of the Existing Marina being extremely congested during the summer months**." Id. at ¶ 61 (***emphasis added***).
	"64. The evidence demonstrates that **even under existing conditions** when there are large vessels at the Champlin's facility **there is significant congestion resulting in navigation problems**." Id. at ¶ 64 (***emphasis added***).
	"**Harbormaster Land testified that the area in front of Champlin's Marina remains congested**, and that **on occasion boats waiting to dock at Champlin's** Marina have drifted into Mooring Field E and **have hit boats on moorings**." CRMC Tr. 347-48, 351-52, Nov. 16, 2012 ***(emphasis added***).
6.c. The Council's Subcommittee which conducted the 23 hearings on the Champlin's application recommended a 170-foot seaward expansion.	"71. The existing configuration of Champlin's marina is not the most efficient utilization of the area of the [Great Salt Pond] that it occupies or of the immediately adjacent areas. The irregular shape of the fixed docks results in fewer vessels being able to be docked within its marina than would be the case with a more carefully planned dock layout." Decision ¶ 71, May 6, 2011 (***emphasis added***).

6.d. Champlin's is permitted to extend its existing fuel dock up to sixty-five (65) feet on its western edge, and up to twenty (20) on its eastern edge so that both the western edge and the eastern edge approximate the east/west width of the dock immediately landward thereof. The revised fuel dock will be approximately 314 feet east — west.	"74. **By simply building on the Existing Marina, the proposed expansion would build on an already inefficient use of the [Great Salt Pond]** and impinge on competing existing uses if the area of the [Great Salt Pond] into which the expansion is proposed. The proposed expanded marina would not be an efficient use of the public trust waters." Id. at ¶ 74 (***emphasis added***).
	"76. Champlin's **failed to explore any reasonable alternatives** to its proposed expansion that would have less or no impact on competing uses of the [Great Salt Pond], and that would ensure that the public's interests in the public trust resources are protected." Id. at ¶ 76 (***emphasis added***).
6.e. Champlin's is permitted to extend piers, seaward up to one hundred and fifty six feet (156) seaward off of the revised fuel dock (herein," the Seaward Expansion"), and laterally (east-west) to the same extent as the revised fuel dock, i.e., 314 feet.	"74. By simply building on the Existing Marina, the proposed expansion would build on an already inefficient use of the [Great Salt Pond] and impinge on competing existing uses if the area of the [Great Salt Pond] into which the expansion is proposed. The proposed expanded marina would not be an efficient use of the public trust waters." Id. at ¶ 74.
	"76. Champlin's failed to explore any reasonable alternatives to its proposed expansion that would have less or no impact on competing uses of the [Great Salt Pond], and that would ensure that the public's interests in the public trust resources are protected." Id. at ¶ 76.
6.f. Champlin's Marina Perimeter Limit shall be extended 10 feet beyond the outer edge of all new docks, provided however that Champlin's is permitted without restriction to dock boats with a beam of up to 25 feet "side-to" along the seaward side of the new face dock at the seaward end of the 156-foot Seaward Expansion (herein, the "FaceDock"). There shall be no med-mooring off of the Face Dock. This approximates a 1.5-acre expansion to Champlin's Marina Perimeter Limit.	
6.g. Champlin's is granted a variance to CRMP Section 300.4.e.1(b) for vehicular parking.	Not addressed in the CRMC May 6, 2011 decision.
6.h. Notwithstanding the boat capacity increases set forth in the DEM issued Water Quality Certificate, Champlin's boat count shall be limited to its current 250 boat maximum.	"51. … therefore, **the evidence demonstrates that water quality issues have not been adequately addressed notwithstanding the**

	issuance of the WQC." Id. at ¶ 51 (***emphasis added***).
6.i. There will be no med — mooring seaward of the 156-foot dock extensions.	Not addressed in the CRMC May 6, 2011 decision.
6.j. In-slip pump — outs shall be provided on any new finger docks.	Not addressed in the CRMC May 6, 2011 decision.
6.k. Current standards of fire protection shall be incorporated into all additional dockage constructed pursuant to this Memorandum of Understanding.	Not addressed in the CRMC May 6, 2011 decision.
6.l. Pedestal lighting shall be installed on new finger docks. Overhead lighting is not permitted on new finger docks.	Not addressed in the CRMC May 6, 2011 decision.

Table 23 CRMP § 300.1(10): Impacts to Wildlife: The CRMC must "[d]emonstrate that the alteration or activity will not result in significant conflicts with water-dependent uses and activities such as recreational boating, fishing, swimming, navigation, and commerce."

Joint Memorandum of Understanding	Decision, May 6, 2011.
Discussion about wildlife impact is absent in the MOU.	"45. Mr. Rabideau's shellfish survey had no sampling points within the area of the proposed expansion. Further, his report acknowledged that his survey was concluded at a time of year when shellfish would not be expected to be found, and that **a follow-up survey should be conducted**. He never conducted such a follow-up survey." Id. at ¶ 45 (***emphasis added***).
	"46. **The evidence demonstrates that there are still unresolved issues impacts to water quality**." Id. at ¶ 46 (***emphasis added***).
	"47. [T]he study by the applicant was conducted in early spring which is at the end of the prime shell fishing season and **was conducted only in the vicinity of the existing docks, not in the area of the proposed expansion despite evidence that there were shellfish or finfish in that area**." Id. at ¶ 47 (***emphasis added***).

	"48. The Testimony presented by the **applicant acknowledged that the results of the study may have been 'skewed' because of the time of year** when it was conducted. They further acknowledged that the shell fishing resources within the Existing Marina might have been harvested prior to the survey. Further, due to the low water temperatures some shellfish species could have been deeper in the sediment than what was surveyed." Id. at ¶ 48 (***emphasis added***).
	"50. Arthur Ganz, **a biologist with [DEM] testified by deposition that his studies had shown that there are shellfish resources in the area of the proposed Champlin's marina expansion**, **and that the expansion would have a significant impact on those resources**." Id. at ¶ 50 (***emphasis added***).
	"51. therefore, **the evidence demonstrates that water quality issues have not been adequately addressed notwithstanding the issuance of the WQC**." Id. at ¶ 51 (***emphasis added***).
	"52. **Champlin's evidence failed to sustain its burden of showing that the proposed project will not cause significant impacts on plant and animal life** of the [Great Salt Pond.]" Id. at ¶ 52 (***emphasis added***).

b. The MOU Does Not Comport with The CRMC's Management Procedures

The CRMC Management Proc. § 1.5.13 requires that any modifications to the CRMC decisions be "for good cause" and that a majority of the council may "vote to modify any said action . . . ***provided reasons for such modifications are set forth on the record and in the minutes*** of the meetings" (***emphasis added***). First, the reference to "on the record" in the CRMC Management Proc. is to the administrative record, which was lodged with this Court on November 30, 2020. Therefore,

whatever evidence may be contained in the sealed minutes with regard to the CRMC's vote to approve the MOU is not the "record" referenced in the CRMC Management Proc. Second, there is no way to determine if the CRMC modified its decision for "good cause," because the meeting at which this decision was made was closed to the public and the meeting minutes sealed from public view. We might reasonably assume that the CRMC included all of its' rationale and "good cause" in the MOU. Presuming the CRMC met its obligation to set forth the bases for its decision, as outlined in the prior section, its stated justifications are woefully inadequate. The MOU is therefore in violation of § 1.5.13 and is not a proper modification under the CRMC Management Proc.

Additionally, § 1.8(c) provides a second option for modification of a CRMC decision whereby the Executive Director in his discretion can:

> [M]odify an assent or final decision of the Council ***when the requested modification is consistent with the prior approval*** of the Council ***and*** the applicant and staff review have ***clearly demonstrated*** to the Executive Director's satisfaction ***that the project's overall impact*** to the state's coastal resources ***will be less than or equal to the existing assent or decision***.

CRMC Management Proc. § 1.8(c)(2) (***emphasis added***). While the Executive Director of the CRMC participated in the mediation, which led to the MOU, and Champlin's conceivably requested this modification, the remaining conditions of the regulation are not met. The modification is not "consistent with the prior approval

of the Council." Indeed, the full council's prior decision denied the application. Furthermore, the modification cannot "clearly demonstrate" that the "project's overall impact to the state's costal resources ***will be less than or equal to the existing assent or decision***," because there is no existing assent and there is no possible scenario where a marina expansion of any size would impact the coastal resources less than no expansion at all. (***Emphasis added***). Accordingly, to find the MOU a proper modification of the May 9, 2011, decision would be contrary to the CRMC Management Proc.

3. The MOU Does Not Comply with the APA

This Court has consistently ruled that it will not review a decision of the CRMC when it substantively and procedurally violates the APA. See East Greenwich, 376 A.2d at 687 (holding that a petition for certiorari with no findings of fact, as required by R.I.G.L § 42-35-15, is not entitled to judicial review); Ratcliffe, 584 A.2d at 1110; Cullen v. Town Council of Town of Lincoln, 850 A.2d 900, 904 (R.I. 2004) ("if a tribunal fails to disclose the basic findings upon which its ultimate findings are premised, the Supreme Court will neither search the ***record*** for supporting evidence nor will it decide for itself what is proper in the circumstances") (***emphasis added***).

In Sakonnet Rogers, Inc. v. Coastal Resources Mgt. Council, the Court observed, "even if the evidence in the record, combined with the reviewing court's

understanding of the law, is enough to support the order, the court may not uphold the order unless it is sustainable on the agency's findings and for the reasons stated by the agency." 536 A.2d 893, 897 (R.I. 1988) (quoting 3 K. Davis, *Administrative Law Treatise*, § 14.29 at 128 (2d Ed. 1980)).

In East Greenwich, this Court evaluated an agency decision it determined it to be substantively deficient and conclusory. 376 A.2d at 687. There, this Court determined that the following reasoning failed to satisfy the statutory requirements of the APA: "the Council feels that there will be no substantial detriment to the ecological balance of the area. As the evidence shows the impact upon various ecological systems involved will be minimal, it is hereby the decision of this Council to grant the petition." Id. Specifically, this Court concluded that "absence of required findings makes judicial review impossible, clearly frustrating § 24-35-15." Id. The Supreme Court has also found that judicial appellate review "is circumscribed and limited to an examination of the ***certified record*** to determine if there is any legally competent evidence therein to support the agency's decision. Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) (***emphasis added***). In other words, where an agency action is taken upon an administrative record, in this case, the CRMC's decision to deny the Champlin's application, "it must be reviewed based only on that record, subject to limited exceptions." Ace Lobster Co., Inc. v. Evans, 165 F.Supp.2d 148, 165 (D.R.I. 2001).

The limited findings contained within the MOU fail to provide any substantive context as to how the full council reached its decision to approve this modification, why the concerns previously raised by the full council are no longer valid, or whether those concerns outlined in the May 6, 2011 decision have been somehow mitigated. Instead, the MOU is, without any explanation, completely divorced from the May 6, 2011, CRMC decision and outside of the administrative record certified to this Court. The MOU provides one single supportive fact that "marinas are a principal means by which the boating public gains access to tidal waters and thereby provide an important public service," followed by the conclusory finding that "there is sufficient room between Champlin's existing docks and the Town's Mooring to permit some expansion of Champlin's existing docks, accommodate the [town's] moorings, and maintain navigational safety." MOU at ¶ 6(a-b). These minimal findings do not shed light on the CRMC's analysis or its decision to modify its prior findings and therefore frustrate judicial review. Accordingly, the Joint Motion should be denied.

4. <u>This Court's Precedent Instructs the CRMC About How to Proceed with Compromise Plans for This Project</u>

The behind-the-scenes mediation process in which the CRMC participated blatantly ignored the directives provided by this Court in this case over the course of nearly two decades. This Court has been clear: council members who are also acting as hearing officers may not seek out or rely upon *ex parte* communications to

inform their votes, council members must certify that they have read the entire administrative record before voting to demonstrate a working knowledge of the matter they are adjudicating, and the administrative record must include any and all information that contributed to the full council's final vote so that parties to the contested case may have an opportunity to cross examine the evidence and to ensure that the administrative record certified on appeal is complete. See Tikoian, 989 A.2d at 427; 2020 R.I. Super. LEXIS 11, at *8 (Super. Ct. Feb. 11, 2020).

In the proceedings involving the Goulet Plan, this Court applied its analysis in Arnold v. Lebel and explained:

> Thus, under § 42–35–9(e) and § 42–35–10(4), if the decision maker "intends to consult any documentary source or person concerning facts or opinions about the merits of an appeal," he or she must notify the parties so that they may "contest any such evidence" and "cross-examine any people consulted." *Arnold*, 941 A.2d at 821. This prohibition extends to the decision maker's communications with agency staff members, although communication regarding general matters is permissible. *Id.*

Tikoian, 989 A.2d at 441 (quoting Arnold v. Lebel, 941 A.2d 813, 820 (R.I. 2007)).

As set forth in the Joint Motion, the CRMC voted unanimously to approve the MOU "thus . . . granting a negotiated expansion permit to Champlin's." Joint Motion at ¶ 7. However, one look at the public notice attached to the Joint Motion reveals that the "discussion and action" on this matter occurred in closed/executive session pursuant to R.I.G.L. § 42-46-5(a)(2). Joint Motion at ¶¶ 7-8. Removing this

contested case to a closed-door executive session where Champlin's sought approval of the MOU from the CRMC – after Champlins and representatives of the CRMC had just negotiated the MOU in closed-door mediation – flies in the face of this Court's previous rulings in Arnold and Tikoian. Any information or opinions provided to the full council in that executive session were off the record, not available for cross-examination or comment by the parties or the public and likely included information that would be considered *ex parte* under Arnold. Whether the discussion in executive session included any lobbying for one compromise approach versus another or contributed to any prejudgment with regard to the final vote on the MOU remains to be seen because the minutes have been sealed by the CRMC. It is this MOU that CRMC and Champlin's asks this Court to bless.

In Tikoian, this Court considered the communications that led to the creation of the Goulet Plan and warned:

> It is clear to us . . . that Lemont's and Tikoian's communications with the CRMC staff members about the Goulet plan and the plan itself represent *ex parte* contacts under our holding in *Arnold*. The Goulet plan is an *ex parte* contact under § 42–35–13 because Lemont, a decision maker, consulted the director of the CRMC, Fugate, about facts concerning the merits of an appeal, specifically, whether another feasible plan might be conceived. *See Arnold,* 941 A.2d at 821.

Id. The reasoning and instruction applied in this case eleven years ago also applies to this case today. The MOU that the CRMC and Champlin's now ask this Court to

adopt and enforce was created during a mediation between the Executive Director of the CRMC, counsel for the CRMC, and the CRMC's Vice Chair. See CRMC Meeting Notes from November 26, 2020 at ¶ 7-8 (stating that "Mr. Hudson motioned for the Council to direct CRMC Legal Counsel DeSisto, Mr. Coia, and Mr. Willis to follow the discussion contained in the executive session to authorize mediation with Champlin's Realty Associates and the CRMC."). On November 24, 2020, Vice Chair Coia, after having participated in the mediation, then also voted to seal the minutes of the executive session, to approve the MOU, and to instruct the Executive Director to sign the MOU on behalf of the CRMC. CRMC Meeting Notes from November 24, 2020, at ¶ 6. Without a view into the discussions at the mediation and the executive sessions we cannot know whether Vice Chair Coia, or other council members, like council member Lemont a decade ago, relied on *ex parte* communications or information for their decision-making contrary to the decisions in Arnold and Tikoian. If *ex parte* communications, or "secret evidence" as this Court called it in Tikoian, were presented to the full council, thus resulting in the unanimous decision to approve the MOU, it would add an additional layer of concern. See Tikoian, 989 A.2d at 442 (The compromise plan for expansion which was created at the *ex parte* request of Chairman of the CRMC and its subcommittee after all evidence had been submitted was "secret evidence" proscribed by Arnold.) The fact that the Vice Chair and the Executive Director sat at the same table trying

to mediate a resolution in this case is a violation of R.I.G.L. § 42–35–13 and this Court's previous ruling with respect to the Goulet Plan conversations. Id.

Additionally, in both the Goulet proceedings and the Payne's dock proceedings, this Court required that "[e]ach voting member must certify that he or she has read the entire record before the council, including the transcripts of the subcommittee hearings and workshop and any accompanying evidence, supporting data, and supplementary material." Id. at 449; see also 2020 R.I. Super. LEXIS 11, at *8 (Super. Ct. Feb. 11, 2020). Since this certification requirement for the adjudicators in this contested case was required by this Court twice with respect to this matter, it should apply to any subsequent votes by the full council. The certification requirement is especially important given the significant passage of time between the last full council vote on this matter and the vote to approve the MOU. The make-up of the full council has changed with the addition of many new council members. Without such a certification, the public has no assurance that voting council members, making decisions about this public trust resource are even familiar with the details of the matter upon which they are voting, let alone the extensive history in this case.

VI. CONCLUSION

Time and time again, this Court and the superior court have reinforced the legal standards and the procedural requirements that govern agency decision-making

through their respective remands. Both the 2011 and 2013 CRMC decisions were based on findings of fact and separate conclusions of law that were made part of the administrative record and subject to cross-examination and public scrutiny. Ultimately, the superior court found that the CRMC decisions were well-reasoned, and made by unbiased council members who, acting as hearing officers, certified familiarity with the complete administrative record before voting. At every phase over the past seventeen years, all of the parties with an interest in the Champlin's application have had opportunities to seek appellate review of the CRMC's decisions with respect to this application – until now. The State's coastal resources are among its greatest treasures, and as pedantic as it may seem, it is the adherence to regulatory process and rule of law that safeguards them for present and future generations. For these reasons, and the reasons set forth in this brief, the Attorney General prays that its Motion to Intervene be granted and that the Joint Motion for entry of the MOU be denied.

Respectfully submitted,

THE STATE OF RHODE ISLAND

PETER F. NERONHA
ATTORNEY GENERAL

By:

/s/ Tricia K. Jedele
Tricia K. Jedele, Bar No. 5958
Special Assistant Attorney General
& Environmental Advocate
Office of the Attorney General
Environment and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400
tjedele@riag.ri.gov

/s/ Alison B. Hoffman
Alison B. Hoffman, Bar No. 9811
Special Assistant Attorney General
Office of the Attorney General
Environment and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400
ahoffman@riag.ri.gov

Case Number: SU-2020-0168-MP
Filed in Supreme Court
Submitted: 2/8/2021 10:46 AM
Envelope: 2951084
Reviewer: Justin Coutu

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2021, the within document was e-filed via the ECF filing system and that a copy is available for viewing and downloading. I have also caused a copy to be sent via regular mail to the following attorneys of record:

Anthony DeSisto, Esq.
Anthony DeSisto Law Associates LLC
450 Veterans Memorial Parkway, Suite 103
East Providence, RI 02914

Robert D. Goldberg, Esq.
Goldberg Law Offices
226 Cottage Street
Pawtucket, RI 02860

James Crowley, Esq.
Conservation Law Foundation
235 Promenade Street
Suite 560, Mailbox 28
Providence, RI 02908

Katherine Merolla, Esq.
Merolla & Accetturo
469 Centerville Road, Suite 206
Warwick, RI 02886

R. Daniel Prentiss, Esq.
R. Daniel Prentiss, P.C.
56 Pine Street, Suite 200
Providence, RI 02903

/s/ Ellen Ullucci