

Coastal Features

INFORMATION
ABOUT THE
RHODE ISLAND
COASTAL
RESOURCES
MANAGEMENT
PROGRAM

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Recent Court Decisions

Two legal cases recently decided in Rhode Island are expected to affect coastal zone management in the State and, possibly have impacts nationally. The first of these cases, decided in the U.S. District Court, District of Rhode Island in February concerns the extent to which the activities of the Narragansett Indian Tribe are subject to state and local regulatory requirements, and highlights the CRMC's authority under the federal consistency provisions of the Coastal Zone Management Act (CZMA). The second case, decided by the Rhode Island Supreme Court in April, concerns an interpretation of the "Public Trust Doctrine" as it applies to historically filled lands. Both of these decisions are discussed below and

may change subject to further court proceedings.

Narragansett Indian Tribe of Rhode Island and Narragansett Indian Wetuomuck Housing Authority v. The Narragansett Electric Company

This case was brought before the Court through a request by the State of Rhode Island and the Town of Charlestown for a permanent injunction against the Narragansett Indian Tribe and Wetuomuck Housing Authority (hereafter referred to as the Tribe) prohibiting the Tribe from constructing a housing complex without first obtaining the various permits and approvals mandated by state law and local ordinances. In deciding the case, U.S. District Court Judge Ernest Torres was obliged to address the extent to which the State's civil regulatory jurisdiction extends to the development of land owned by an Indian tribe.

The parcel of land of which this case was the subject is a thirty-two acre housing site adjacent to, but not on, the Narragansett's settlement lands and in close proximity to Ninigret Pond in Charlestown. The parcel falls within Rhode Island's federally-approved coastal zone. (It should be noted that for the purposes of the federal consistency provisions of the CZMA and Rhode Island's federally-approved

Coastal Zone Management Program, the State's coastal zone extends inland to encompass the first coastal town.) The parcel also falls within one of Rhode Island's poorly-flushed estuaries for which the Council has adopted a Special Area Management Plan. The area is designated in the CRMC's *Salt Pond Region: A Special Area Management Plan* as "Lands of Critical Concern" and as such is subject to a development density of not more than one residential unit per two acres. This density standard is based in part on the potential impacts of nitrates from Individual Sewage Disposal Systems (ISDS) to impact the fragile Salt Ponds. The proposed project will contain 50 units and therefore exceeds the maximum density criterion.

Because the housing complex was to be located on tribal land, and based on the doctrine of Indian sovereignty, the Tribe argued that no state permits or approvals were needed for the project. In support of this contention, the Tribe argued that federal regulations, including the Department of Health and Human Service's Indian Health Service standards and Department of Housing and Urban Development (HUD) regulations, to which they were subject, were adequate to address safety concerns and to protect the pond and surrounding drinking water supplies.

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CRMC Prepares for 1995 Hurricane Season

Staff Attends Hazard Mitigation Planning Course

CRMC staff attended a two-day training course entitled, Hazard Mitigation Planning, held at the Holiday Inn in Providence on May 18th and 19th. The course was sponsored by the Rhode Island Emergency Management Agency, using a curriculum developed by the Emergency Management Institute's National Emergency Training Center. The purpose of the course was twofold. First, it provided an opportunity for participants to focus on hazards concepts, programs and regulations in order to reduce future vulnerability to natural hazards. Second, the course demonstrated the many levels of hazard mitigation planning and cooperation needed among federal, state and local agencies to effectively plan for and react to future disaster events, such as hurricanes.

Various presentations during the course included: identification of the State's vulnerability to natural hazards; potential strategies for reducing the vulnerabilities; and, post-disaster planning. Participants also learned how to use federal hazard mitigation programs to mitigate for future natural disasters, analyze a disaster scenario and, develop hazard mitigation goals, objectives and proposed strategies to reduce long-term vulnerability to the hazard.

Several ideas for avoiding and minimizing hazard vulnerability were presented. Suggestions included regular trimming of tree limbs near power lines, and for new development as well as existing development, relocating power lines underground. Local initiatives such as encouraging homeowners to remove potentially damaging tree limbs near or over their homes prior to hurricane season were also discussed. While these recommendations can and

should be implemented before any disaster occurs, federal assistance to implement them could be received following a disaster if these approaches were included in the state's hazard mitigation program. Partly for this reason, revisions to the CRMC's Special Area Management Plans (see related article on the opposite page) will include some of the applicable recommendations made during the course.

Most of the course was fashioned to have staff participate in hands-on exercises designed to simulate the workings of the State Hazard Mitigation Team (SHMT). The SHMT consists of various state agencies including the CRMC closely involved in hazard mitigation and/or planning, and is responsible for developing the State's Hazard Mitigation Plan as well as organizing each agency's role in pre-and post-disaster planning.



Coastal Features

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This issue of *Coastal Features* was edited by Laura Kelley Miguel. To comment on any article or to make address changes, please write to the CRMC at the Oliver Stedman Government Center, Tower Hill Road, Wakefield, Rhode Island, 02879.

Hurricane Conference Sponsored by Rhode Island Emergency Management Agency

On Monday, May 22nd, staff attended a day-long hurricane conference at the Quonset Officers' Club in Warwick. The agenda for the event targeted coordination between local emergency management directors, the Rhode Island Emergency Management Agency (RIEMA), and the Federal Emergency Management Agency (FEMA).

The CRMC is hoping to more clearly define its role in post-storm response with RIEMA. It is expected that better coordination between state and local disaster response and

damage assessment, and the CRMC's permitting/regulatory post-storm procedures will facilitate a smoother overall process. As a first step, the CRMC will enlist the help of RIEMA in the Salt Pond and Narrow River Special Area Management Plan revisions currently underway. Based on its availability and because both watersheds fall within Rhode Island's most frequently impacted areas, educational information pertaining to evacuation routes, shelters, and debris removal sites will be included in the revisions of both plans.

The Naming of Hurricanes

(The following information was provided by the National Weather Service)

The National Hurricane Center near Miami, Florida keeps a constant watch on oceanic storm-breeding areas for tropical disturbances which may herald the formation of a hurricane. If a disturbance intensifies into a tropical storm - with rotary circulation and wind speeds above 39 miles per hour - the Center will give the storm a name from the list below. A six-year list of storm names is developed and a separate list is used each year. After the sets have all been used, they will be used again. The 1995 set, for example, will be used again to name storms in the year 2001. The letters Q, U, X, Y, and Z are not included because of the scarcity of names beginning with those letters.

The list names have an international flavor because hurricanes affect other nations and are tracked by the public and weather services of countries other than the United States. Names for these lists are selected from library sources and agreed upon by nations involved during international meetings of the World Meteorological Organization.

1995 Hurricane Names

Allison	Luis
Barry	Marilyn
Chantal	Noel
Dean	Opal
Erin	Pablo
Felix	Roxanne
Gabrielle	Sebastien
Humberto	Tanya
Iris	Van
Jerry	Wendy
Karen	■

Update on the Revisions to the Salt Pond Region and Narrow River Special Area Management Plans

As discussed in past issues of Coastal Features, the CRMC has been working on revisions to the Salt Pond Region and the Narrow River Special Area Management Plans through funding provided by NOAA's Office of Oceanic and Coastal Resource Management under the Section 309, Projects of Special Merit Program. In an attempt to make these unique planning tools as useful and as current as possible, all aspects of the SAM Plans were reviewed, and revisions are currently underway. With the help of staff, local planners, nonprofit organizations, private citizens, and other state agencies, the effectiveness, strengths, and areas in need of improvement of the existing plans have been evaluated and necessary updates to technical information have been identified. In addition to the technical revisions necessary after years of implementation, the format of the existing plans is also being revised. This reformatting will make it easier for potential applicants to understand applicable rules and regulations as well as what can be expected as prerequisites to an application.

As part of the SAM Plan revisions, the University of Rhode Island has been conducting a nutrient loading analysis to help the CRMC better understand the status of the Salt Ponds and the Narrow River, and the effectiveness of the years of implementation of the SAM Plans' land use policies. The RIDEM Department of Fish and Wildlife has helped CRMC review the finfish and habitat information in the Plans, and the Rhode Island Historic Preservation and Heritage Commission has contributed new information on archeological/

historical sites and explained concerns over past implementation so that the CRMC's permit process vis-a-vis historic preservation can be improved. The University of Rhode Island is also providing geological processes information, and RIEMA and FEMA will be providing input for the hazard mitigation portion of the plans.

★ Most important to the successful revision of the plans is the CRMC's relationship with the involved coastal communities and their respective local planners who, along with the State, implement the plans. As draft suggestions and policies come together, CRMC will be working in close partnership with each of the effected municipalities to build a framework for the future protection of these crucial watersheds. We are hoping to sit down with local officials at the end of the summer, and bring both plans to the public for review in the Fall of 1995 - so look forward to some new, complete, and exciting information!

For more information on the CRMC's Special Area Management Plans, please contact Donna Doyle at 277-2476.



Recent Court Decisions

(continued from front page)

Narragansett Electric, joined in the case by the State of Rhode Island and the Town of Charlestown, (the defendants) argued that the development was subject to local and state regulation for two reasons: they argued that first, because the parcel was purchased privately, it did not enjoy the same immunity from state regulation traditionally accorded Indian lands; and second, even if the property were to be considered "Indian Country", the development was still subject to regulation due to jurisdiction conferred in applicable federal and state statutes and the potentially significant off-site impacts. Their argument specifically referenced, but was not limited to, the CZMA.

In order to fully understand the implications of the problem posed to the Court and its potential impact on coastal zone management nationally, a general understanding of the federal consistency provisions (Section 307) of the CZMA is necessary. Under section 307 of the CZMA, federal agencies conducting or supporting an activity, whether within or outside the coastal zone, which affects any land or water use or natural resource of the coastal zone, are required to do so in a manner consistent, to the maximum extent practicable, with the enforceable policies of the Rhode Island Coastal Resources Management Program (RICRMP), including the Special Area Management Plans. In addition, federal permits and licenses, and grant-in-aid programs to local or state governments, and related public entities, which may affect any land or water use or natural resource of the coastal zone must also be consistent with the enforceable

policies of the RICRMP. While once excluded from these provisions, 1990 amendments to the CZMA subjected federal activities on Indian lands to the federal consistency provisions of Section 307. Based on those provisions, the defendants argued that the housing project was subject to Council review and the policies and standards of the RICRMP.

Seeking to balance the interests of the Tribe and federal government with those of the state, Judge Torres acknowledged that, "tribal sovereignty does not necessarily preclude the exercise of state authority in Indian country". However, he wrote, "[s]ince, in this case, the State has failed to demonstrate an interest in applying its regulations that is sufficiently compelling to justify intruding on federal and tribal interests, the state's building and zoning regulations are pre-empted".

With regard to the applicability of the RICRMP, Judge Torres was of a different opinion. Recognizing the fragility of Rhode Island's unique Salt Ponds and the reasonable possibility of impacts to the land or water uses or natural resources of the coastal zone, the Judge affirmed the applicability of the Council's jurisdiction over the housing project. "[A]pplication of Rhode Island's CRMP regulations will promote not interfere with federal interests as reflected in the CZMA. Moreover, compliance with those regulations will not directly infringe on the Tribe's right to self-government in any meaningful way. Finally, the State has demonstrated a compelling interest justifying the assertion of State authority." In short, the judge determined that the CRMP was not pre-empted by federal law and was applicable to the housing site.

Since other portions of the case have not yet been decided, the long-term implications of this case both within Rhode Island and nationally remain to be seen. However, based on Judge Torres' decision, the applicability of federal consistency provisions to activities on Indian lands seems clear.

The Greater Providence Chamber of Commerce et al. v. State of Rhode Island

This case concerned a request for a declaratory judgement regarding the effect of the "Public Trust Doctrine" on previously filled tidal lands and involved a question of ownership rights to these lands. The request for a declaration of property rights was initiated by the Greater Providence Chamber of Commerce, Rhode Island School of Design, Narragansett Electric Company, and Providence Gas Company (the plaintiffs), each owners of filled land formerly part of Narragansett Bay, and was decided in Rhode Island Supreme Court this past Spring.

Basically, the plaintiffs were seeking a clarification of a 1991 Superior Court case, *Hall v. Nascimento*. In this specific case, the Court decided that an adjacent lot owner could not claim any private littoral rights on filled lands. The case was interpreted by some to imply that the State retained some residual rights over filled tidal lands under the public trust doctrine, although the extent of those rights was unclear. Naturally, this interpretation caused concern among property owners of previously filled lands. The question before the Court was of particular importance to the CRMC, as it has explicit management authority over public trust resources below mean high water (R.I.G.L. 46-23-6) and would pre-

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Around the State

RIDEM Opens Eco-Depot



The Department of Environmental Management recently opened the Household Hazardous Waste Collection Facility, Eco-Depot, located in the Fields Point area of Providence. The facility serves as a collection point for common household toxics that require special handling. These wastes include: pesticides; herbicides; gasoline; oil-based paints; household solvents; automotive fluids including antifreeze, dry gas, transmission fluid, etc.); pool chemicals; and, photographic chemicals. The facility will not accept commercial or school waste; out-of-state waste; explosives or ammunition; empty containers (even if they were used for hazardous materials); biological or radioactive materials; asbestos shingles or floor tiles; latex paints; and, tires or automotive batteries. In order to avoid delays, the Eco-Depot operates by appointment only. You must have an appointment to bring wastes to the facility. When calling to make an appointment, be prepared to describe the amount and type of each waste to be brought to the facility. Materials will only be accepted in quantities appropriate for a single household.

For more information, or to schedule an appointment, call RIDEM, Office of Environmental Coordination at 1-800-CLEAN-RI, ext. 4434, Monday - Friday, from 10:00 am - 3:00 pm.

Save The Bay's "Explore the Bay" Educational Cruises

Have a face-to-fin encounter this summer on a voyage of discovery aboard Save the Bay's shipboard education program, Explore the Bay. Combine fun and education while you get up close and personal with the creatures that live in Narragansett Bay. Learn about the Bay ecosystem and the role of people in this fascinating natural resource.

There are three trips daily aboard the 60' marine research vessel, *Lauri Lee*, which features a 15' long

touch tank. Daily cruises leave at 9 a.m., 11:30 a.m. and 2 p.m., Tuesdays through Fridays from July 5th through August 11th. Cost for Save the Bay members is \$15 for adults and \$10 for children; non-members cost is \$17 for adults and \$12 for children. Trips are by reservation only. For reservations call Save the Bay's Education Department at (401)272-3540.



*Save The Bay's Riley Young teaches students at the 15' touch tank.
Photo by Ed Barber.*

Rhode Island's Beaches Aren't Just for Tourists

Certainly Rhode Island's spectacular beaches are one of our State's most valuable coastal resources...just ask any of the thousands of tourists visiting our state this summer. The Council works year-round to ensure that

beaches are protected from uncontrolled development as well as pollution for the benefit of all Rhode Islanders. This summer, why not be a tourist in your own state? You'll save a lot of money on hotels and you can't beat the beaches!

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Rhode Island's Beaches

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State Beaches

Block Island Beach • Block Island
466-2611

Charlestown Beach • Charlestown
364-7000

East Beach • Charlestown
322-0405

East Matunuck Beach
Succotash Rd., So. Kingstown
789-8585

Misquamicut Beach
Atlantic Ave., Westerly
596-9097

Salty Brine Beach
Great Island, Narragansett
789-3563 or 789-8374

Scarborough/North & South Beach
Ocean Rd., Narragansett

Roger Wheeler Beach
Sand Hill Cove, Narragansett
789-3563 or 789-8374

Teddy's Beach
Park Ave., Portsmouth
253-7482

Beach Parking Rates

Daily Rates (per car)

Weekdays:

\$4.00/resident, \$8.00/nonresident

Weekends and Holidays:

\$5.00/resident, \$10.00 nonresident

Buses: \$40.00 anytime

Season Passes (per car)

\$25.00/ resident

\$50.00/ nonresident

\$40.00/ nonprofit organization

Senior Citizens and Disabled Visitors

Seniors/half off the established entrance fee with proof of age

Disabled Visitors/no fee with proper identification

Nonpoint Source Tips

Water conservation can help prevent pollution as well as protect and conserve our finite water resources. Whether water is for residential, industrial or agricultural use, using less reduces the amount of wastewater discharged into our lakes, streams, rivers and coastal waters. In addition, the amount of pollution contained in wastewater can be reduced. For example, recycled process water can reduce pollutants from industry; septic system performance can improve with less water use; and runoff of fertilizers and pesticides can be minimized with more efficient irrigation practices.

Water efficiency also has benefits other than pollution prevention. Perhaps most importantly to some of us, wise water use can result in money saved. Less water use results in lower pumping and treatment costs and reduces the amount of energy required for heating water. This, in turn, leads to lower utility, water and/or sewer bills.

Wise water use habits begin at home. The following are some simple steps we all can take to minimize water use in our daily household activities.

- Do not leave water running when washing, brushing teeth or shaving.
- Install low-volume plumbing fixtures in the shower and toilet.
- Do not use your toilet as a waste basket; this puts undue stress on your septic system and leads to unnecessary flushing.
- Run washing machines and dishwashers only when full. Water lawns in the morning or evening, and not to excess.
- Choose outdoor plants that are tolerant of dry weather.
- When washing your car, use a bucket of water rather than a running hose.

CRMC Staff Visit Hampton Meadows School

by Alison Suhecki and Megan Halacy,
Hampton Meadows School, Barrington



Friday, May 19th, Laura Miguel of the Coastal Resources Management Council came to our class and talked to us about saving the coastal waters from point pollution and non-point pollution.

Point pollution is pollution that you can see running into the water, like you can see sewer drainage after a good amount of rain. Another kind of pollution is non-point pollution. It is pollution that you cannot see, but you know is there. It's like one day you see oil and you come back another day and it's not there. That's because somebody didn't clean it up and it got washed

away into the water. Somethings that could also be in the non-point pollution category are gasoline, trash, dog poop, etc.

Another thing she talked about was ways people waste water. Here are some of the ways people waste water: keeping the water on in the bathroom or kitchen; keeping a sprinkler on when it's not needed; or playing games with a hose.

Then we watched a movie about how people waste water. When she left, Laura gave us a poster that had pictures of pollution.

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