

Coastal Features



INSIDE THIS ISSUE:

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Special Issue

Mitigating the Impact of Coastal Development on Public Access to the Shore in Rhode Island

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#### Part I

## *The Coastal Resources Management Council's Program to Enhance Public Access to the Shore in Rhode Island*

The Coastal Resources Management Council's enabling legislation includes a mandate which charges "*The council shall be responsible for the designation of all public rights-of-way to the tidal waters of the state, and shall carry on a continuing discovery of appropriate public rights-of-way to the tidal waters of the state*" [RIGL 46-23-6 (E) (1)]. Over 200 public rights-of-ways (ROWs), which are typically pathways to the shore, have been designated by the CRMC through this legislation. But at the same time that the CRMC is providing shoreline public access through the ROW designation process, other access opportunities are being threatened by the steady march of development along the Rhode Island coast. Section 335 of the Rhode Island Coastal Resources Management Program is the CRMC's programmatic response to this growing dilemma. The magnitude and relative permanence of some types of coastal development have been shown to potentially reduce or eliminate public access to the shore in Rhode Island. Section 335 lists industrial and commercial development, the filling of tidal waters, and marina construction projects as types of development with a likelihood of impacting public access to the shore. In order to mitigate the inevitable impacts on public access by such developments, the CRMC requires a public access plan as a condition of permitting them. This two-part Special Issue of *Coastal Features* describes public access plans that were stipulated by Section 335, and other examples of public access that were created through the CRMC permit process prior to the addition of Section 335 to the Rhode Island Coastal Resources Management Program.

### **CRMC Assented Project: POINT STREET LANDING**

**Location:** Providence River, City of Providence

**Public Access Provided:** The Point Street Landing public access project includes two nearly identical public transit facilities built on an existing seawall along the western bank of the Providence River. Each facility – one to the north of the Point Street Bridge, the other at its southern side – includes an 80' x 18' floating dock with gangway, a wooden boardwalk, and a landscaped pedestrian walkway. Both facilities are handicap accessible and open to the public year-round, 24 hours a day, free of charge.

When the Narragansett Electric Company and New England Power Company (The Companies) proposed the Manchester Street Station Repowering Project in 1991, the CRMC saw a unique opportunity to dramatically improve public access to the shore in the heart of Rhode Island's urban waterfront. The Point Street Landing project was negotiated as part of a CRMC Assent (CRMC file # 91-12-11) which defined how the re-powering project would proceed with respect

(continued on page 2)

When Section 335 amended the Rhode Island Coastal Resources Management Program in 1997, it streamlined and strengthened the CRMC's regulatory ability to require mitigation for the loss of public access to the shore by certain types of development. While the CRMC has always protected public access on a permit-by-permit basis whenever it has been threatened by development along the coast, Section 335 makes the inclusion of a public access plan standard operating procedure when certain industrial, commercial, or marina construction projects are permitted. Section 335 also applies to the filling of tidal waters, and publicly funded beach nourishment projects. This special two-part issue of *Coastal Features* illustrates the varied types of public access and ancillary benefits that have been achieved by the CRMC through Section 335 and other efforts to protect the public's constitutional privilege to enjoy Rhode Island's coastal resources.

(continued from page 1)



*A view of the public access facility located to the south of the point street bridge. The repowered Manchester Street Station is in the background. The RI Department of Transportation's Providenc-to-Newport ferry loads and unloads passengers at this location*

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to protecting the state's coastal resources. As part of these negotiations, The Companies made a commitment to the CRMC and the Energy Facility Siting Board to provide improvements and public access at the two locations adjacent to the Point Street Bridge as described above. While the public clearly realized a substantial benefit in terms of access to the coastal resources of the state, The Companies benefited by the quick handling of an application that could have taken months to permit. The Manchester Street Station Repowering Project was brought to its conclusion when the Point Street Landing public access facilities were completed in 1996.

Since that time, the Point Street Landing facilities have provided substantial public access benefits. The Rhode Island Department of Transportation's Providence-to-Newport ferry service uses the facility on the southern side of the Point Street Bridge to load and unload passengers. With ample free public parking available at an adjacent parking lot, city dwellers can readily leave the summer time heat of Providence behind. And after a leisurely one hour ferry ride on the open waters of Narragansett Bay, passengers will find themselves strolling in Newport, Rhode Island's world famous tourist destination-by-the-sea. And those adventurous travelers who use the reverse route, only enhance their enjoyment upon arriving in Provi-

(continued on page 3)

(continued from page 2)



dence, which, with its historical charm and world class dining, is rightfully called “The Renaissance City.” Regardless of how this gem of an addition to a formerly crumbling part of Providence’s Old Harbor District is used, it will remain dedicated to its current role of providing the maximum public benefit possible for the citizens of Rhode Island, and its always welcomed visitors.

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*A commuter ferry tied up dockside at the public access facility to the north of the Point Street Bridge. A decommissioned Narragansett Electric Company building is in the background*

### **CRMC Assented Project: APPONAUG COVE MARINA**

**Location:** Apponaug Cove, City of Warwick

**Public Access Provided:** A walking trail through a privately owned waterfront lot which leads to a traditional shoreline fishing spot at Long Point.

John Dickerson runs his business like a man who gets it. His livelihood is dependent upon the state’s cooperation, as it has granted him the privilege of using the publicly owned coastal waters and submerged lands that are currently occupied by his marina. Dickerson has a reputation for fairplay and cooperation. He has never gated his property, and he has always allowed people to sit in his parking lot to enjoy a waterfront lunch break, take a jog across his property, or simply walk across it to lands end where pleasant vistas of Apponaug Cove unfold. So when he applied to the CRMC for permission to expand his marina, he was quick to appreciate the intention of the Section 335 stipulation that required a public access plan as part of the assent which approved his proposed marina expansion. He was also quick to ensure that public access to the shore would continue there, by setting aside a walking path which leads to a favorite old fishing spot through a forested lot on his property. The CRMC is grateful for citizen’s like John, who understand that the public’s Constitutional right of access to the shore in Rhode Island need not be seen as a burden to private property owners whose livelihood’s are derived directly from their privilege to use the state’s public trust resources.



*Apponaug Harbor Marina has posted a sign at the head of a path on its property that leads to a secluded waterfront spot away from the bustle of the marina’s boating facilities. The public is welcome to use the shoreline access provided by this pathway free of charge. The pathway’s use is limited to pedestrian access only. The public is also urged to stay on the trail, and avoid trampling any vegetation.*



**CRMC Assented Project: THAMES STREET LANDING/STONE STREET CONDOMINIUMS****Location:** Bristol Harbor Waterfront (Off Thames Street), Town of Bristol

**Public Access Provided:** Between the Section 335 stipulations required for these two separate but adjacent projects, a brand new public boardwalk will be constructed that will become part of a continuous pedestrian walkway that connects the entire downtown Bristol waterfront, with no impediments to public access by any privately owned waterfront parcels. The 119 foot long section of the boardwalk stipulated under the Thames Street Landing assent has already been completed. The boardwalk will also be available to transient recreational boaters who tie up to the newly replaced adjacent fenders. When the under construction Stone Street Condominium project is completed, it will contribute the remaining portion of the boardwalk.

The Thames Street Landing project was the realization of a trend that for years had been gradually transforming parts of the old Bristol waterfront into a retail shopping and dining district. The project accelerated this piecemeal pace in one fell swoop to create a complex of high end specialty shops, taverns, restaurants, and other commercial ventures. But the waterfront's vigorous new countenance couldn't mask the realities of its tired old face. The seawall's dilapidated fender system, which linked the Thames Street Landing site to recreational boaters who desired increased access to the beauty and charm of Bristol's waterfront amenities, sorely needed a facelift. And when it got one, the CRMC made sure that it included the new public boardwalk. And the new fender system is also an integral part of public access at this location, as its purpose is to provide dockage for transient recreational boaters who wish to disembark and enjoy the amenities of Thames Street Landing and Bristol's historic downtown.

It is significant that these public access projects were found to be consistent with the historical character of the Bristol waterfront. The Town of Bristol dates back to the colonial period, and the town takes its historic roots seriously. The red, white, and blue traffic lines painted on downtown Bristol's main street, mark the town's Fourth of July parade route, which is the nation's first and longest continuously running Fourth of July parade.



*The Thames Street Landing boardwalk shown in this picture seems to abruptly end as it meets the barrier posed by a chain link fence. And for now, it does. But that will change when construction of the Stone Street Condominiums seen in the background is completed. The two separate but adjacent waterfront parcels that contain the Thames Street Landing development, and the Stone Street Condominiums, will be linked by the boardwalk. When completed, the combined boardwalks will be part of a pedestrian waterfront public access pathway that will stretch from Independence Park, continue through the two developed parcels, and include Rockwell Park.*

**CRMC Assented Project: WESTWIND MARINA****Location: Waite's Wharf (Off Thames Street), City of Newport****Public Access Provided:** 1) Public launch landing; 2) public dinghy dock; 3) 24-hour public access to a boardwalk and bulkhead; and, 4) variable 24-hour and seasonally restricted public access to two (2) piers.

The CRMC originally granted an assent in 1989 (CRMC Assent # B1987-11-039) to a Mr. Paul Sullivan to permit the construction of Westwind Marina (Westwind). The marina had been operating for several years when Harbor Realty, LLC submitted an "as-built" plan to the CRMC in 1997, in which it requested several modifications to the original assent. Among the modifications was a request for the "elimination of the requirement for an interior public dinghy dock within the corral area." Another proposed modification sought "to allow the marina docks to be closed to the public between the hours of 8:00 p.m. - 8:00 a.m. from June 1 through the end of September, or other such hours as the CRMC determines to be in the interests of public safety."

The public dinghy dock resulted from previous litigation between the applicant, the City of Newport, and numerous other parties regarding the location of "The Boat," a permanently docked vessel which had served as a restaurant before its removal. At a public hearing, the CRMC Full Council determined that this litigation had no relevance to the request to modify the original assent granted to Mr. Sullivan. However, it was judged relevant that out of this litigation the City of Newport had agreed to apply to the CRMC for 100 linear feet of dinghy docks within the West Extension Street Channel, an area subsequently occupied by Westwind. It was shown that the City had applied to the CRMC, and that the CRMC had granted an assent for the installation of the dinghy docks (CRMC File # 01-11-029). As such, the Council ordered the installation of the dinghy docks as a condition of granting Westwind the modified assent. The public launch landing represented mitigation for Westwind's unauthorized construction of a 12' x 20' pier. The Council stipulated that the northern face of the pier be dedicated to the sole purpose of serving as a public launch landing, and that "no boats or extensions of boats shall hinder the public launch landing."

In response to the request to seasonally restrict public access to the marina docks, the Council sought to balance public shoreline access rights with the reasonable needs of the marina and its boat owners' need for safety. Though the Council allowed unrestricted public access along "the bulkhead and boardwalk from the Coddington Wharf Condominiums to West Extension Street," it also restricted public access to a 30' x 110' pier and the "J" pier "from 11p.m. to 7:00 a.m. from May 1st up to and including September 15th."



*A view of the fixed pier at Waite's Wharf, with Newport Harbor in the background. A pump-out station is located at the end of the pier by the flagpoles.*



*The prominent sign on West Wind Marina's dockside facilities make it easily visible to boaters as they cruise the waters of Newport Harbor. This view shows the marina as seen from the fixed pier that provides public access for all boaters.*

**CRMC Assented Projects: WHITE CAP DRIVE SUBDIVISION / BLUE BEACH**

**Location:** Keifer Park (Quonset Point Davisville Port and Commerce Park), Town of North Kingstown

**Public Access Provided:** The Section 335 public access plan associated with the White Cap Drive Subdivision is contained in two separate CRMC assents. One assent authorizes the construction of the White Cap Subdivision itself (White Cap assent). The other assent (Blue Beach assent) authorizes the development of a public access pathway that leads to Blue Beach, a sandy beach on Narragansett Bay adjacent to the White Cap subdivision. The various public access stipulations contained in these two separate assents collectively satisfy the CRMC's Section 335 requirements for the White Cap Drive Subdivision.

The White Cap assent contains two such stipulations. The first stipulation requires the Rhode Island Economic Development Corporation (EDC), the Keifer Park property owner, to provide a public parking area capable of accommodating a minimum of six vehicles. The second stipulation links the parking area to a nearby pathway that provides public access to the shore. Under this stipulation, people that use the parking lot are also allowed to unload passengers and their gear at the entrance to the pathway. In addition, this stipulation requires that appropriate signage be installed at both the parking lot and the pathway to identify their intended purpose of providing public access to the shore.

The major public access stipulation contained in the Blue Beach assent addresses the development of the aforementioned public access pathway to the shore. The pathway is 1,400 feet long, six feet wide, and it leads from Circuit Drive to Blue Beach. The Blue Beach assent in fact focuses solely on the development of the pathway. The assent does not allow any earthwork as a part of the pathway's development or maintenance. A small footbridge is provided over an area subject to storm flow. From a public use perspective, the pathway represents the highest possible benefits: the Blue Beach assent stipulates that the pathway shall be open to the general public, and its users may not be limited to either the residents of the Town of North Kingstown or the tenants of Keifer Park.

In addition, Blue Beach itself represents a marvelous public benefit, especially with respect to its location in Narragansett Bay. While sandy beaches are common along Rhode Island's southern coast which faces the Atlantic Ocean, there are fewer such beaches further up the Bay. The public access provided by Section 335 under the White Cap Drive Subdivision and Blue Beach assents, provides a rare opportunity along this western shore of Narragansett Bay. Opportunities for saltwater fishing, strolling along a sandy beach, observing wildlife, or simply taking in the scenic vistas of Narragansett Bay are all readily available to all members of the public at Blue Beach.



*Looking in a southerly direction from the Quonset Davisville shoreline, Blue Beach is seen as a sweeping crescent curve where the water meets the land. Blue Beach itself commands panoramic views of Narragansett Bay that hint at the nearby open waters of the Atlantic Ocean.*



## **“Protection and Enhancement of Public Access to the Shore” Some Key Provisions of Section 335**

### **Findings**

- ❖ In accordance with Article 1, Section 17 of the Constitution of the State of Rhode Island, the public has the legal right to use and enjoy Rhode Island's coastal resources.
- ❖ As trustee of Rhode Island's coastal resources and in accordance with state and federal statutory mandates, the Council has a responsibility to ensure that public access to the shore is protected, maintained and, where possible, enhanced for the benefit of all.

### **Policies**

- ❖ It is the Council's policy to protect, maintain and, where possible, enhance public access to and along the shore for the benefit of all Rhode Islanders.
- ❖ Due to their likelihood of impacting public access and/or the public's use and enjoyment of Rhode Island's public trust resources, it is the Council's policy to require that applications for the following activities include a public access plan:
  - Commercial and industrial development and redevelopment projects, as defined in section 300.3.
  - New and significant expansions to marinas, as defined in section 300.4.
  - Activities which involve the filling of tidal waters, as defined in section 300.10, other than those considered as maintenance, as defined in section 300.7.
- ❖ Publicly funded beach nourishment projects shall contain a public access component.
- ❖ In accordance with R.I.G.L. 32-6-5(c), limited liability applies when the CRMC stipulates public access as a permit condition and when the Council designates a public right-of-way to the shore.

### **General Guidelines**

- ❖ Any public access created to compensate for proposed project impacts should be of a type and level similar to that which will be impacted.
- ❖ In cases where access cannot practically be provided onsite, due to safety, security, environmental or other considerations, the Council may permit access be provided offsite.

### **Guidelines for the Development of Public Access Plans**

- ❖ The Council recognizes that public access plans should be developed based on the uniqueness of each site and encourages applicants to consult with staff early in the planning process.
- ❖ All public access plans should be consistent with the Americans with Disabilities Act of 1990.
- ❖ All public access plans should provide for long-term maintenance.
- ❖ When developing public access plans, applicants may incorporate the following examples:
  - Physical access: the ability to reach the shoreline from upland areas via perpendicular access points such as rights-of-way, boat launch ramps, and fishing piers; and, the ability to pass and repass laterally along the shore.
  - Visual access: the ability to view the coast and shoreline areas without obstruction by structures. Visual access can be provided or enhanced through the provision of viewing platforms, observatories, scenic drives, and innovative architectural designs.
  - Interpretive access: the provision of signage, plaques, or other techniques to educate the public about the historical, ecological, economic, cultural or other significant aspects of a coastal site.

*NOTE: Go to the CRMC website [www.crmc.state.ri.us](http://www.crmc.state.ri.us) for the complete text of Section 335. Click on the “Publications/Regulations” button at the home page, next, click on the HTML hypertext for the first icon (The Redbook). Finally, navigate your way to Section 335. The HTML version of the Redbook opens faster than the PDF version.*



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*As seen from the island of Jamestown, the far western expanse of the old Jamestown Bridge appears to dive into the waters of Narragansett Bay. Since the Jamestown-Verazzano Bridge replaced the old bridge over ten years ago, numerous ideas have been floated regarding the old bridge's fate. The CRMC granted an assent several years ago to permit the development of a fishing pier from the western span of the old bridge. At the time of this writing, an engineering firm has been hired by the state to determine the feasibility of doing so.*

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