

COASTAL FEATURES

March - 1992

The Rhode Island Coastal Resources Management Council's Report on Current Events

George L. Sisson, Jr., Chairman
Grover J. Fugate, CRMC Executive Director

CRMC RESPONDS TO RECENT EDITORIAL

A recent editorial in a local newspaper questioned the need for the Rhode Island Coastal Resources Management Council (CRMC). The editorial suggested the Coastal Council's duties should be absorbed by the Department of Environmental Management. All decisions regarding the coast, now decided by a 16-member council, would then be decided by one person, appointed by, and reporting to the governor. The editorial's proposed reorganization would also mean less local representation. Right now, each town has local representation in any contested case.

Besides accountability, the reorganization would also cost the state substantial sums it can ill afford. Keep in mind that the General Assembly recently passed a bill to create the Department of the Environment (DOE). This would, in effect, integrate the Coastal Council with the Department of Environmental Management (DEM). But the measure has not been implemented because of the projected high cost.

The expense of this implementation for the CRMC has been estimated to be from \$300,000 to \$500,000. No efficiency will be gained. Current regulatory functions would still have to be performed. Since we are a small organization with a focused purpose we can operate with fewer staffers and more flexibility. To gain the efficiencies suggested in the editorial we would have to eliminate environmental regulations; that would force the state backwards.

The editorial suggests that the DEM could administer the CRMC's responsibilities - possibly by adding a few technical staffers - thus allowing a net reduction of total employees at a savings to the state. This is a fallacy. First, DEM currently is not, nor has been, in a position to administer CRMC's broad responsibilities, including federal mandates under the Coastal Zone Management Act.

In addition, the editorial's criticism about the level of efficiency at the CRMC can be countered by the most recent federal review of our Coastal Resources Management Plan (CRMP). Under Section 312 of the Coastal Zone Management Act (CZMA), all approved coastal zone management programs must undergo a review of performance by the Federal government. The most recent review, published in 1989 by the National Oceanic and Atmospheric Administration, stated that the Rhode Island CRMP successfully resolved permit delays despite an over 30 percent increase in category "A" applications. The CRMC had reduced processing time for category "A" assents to four to six weeks from six months, with no significant increase in the number of staffers.

The rest are category "B" assents for more complicated projects, which require at least one public hearing and take longer to process because of our stringent guidelines.

This is the case with the purportedly long delayed plans to boost electrical service to Quonset Point Industrial Park. The CRMC did not hold up the application because one truck had to service the substation; it did so because a special exception was required to alter a wetland in order to put up a power line. Such a wetlands alteration is prohibited activity under the Coastal Resources Management Plan (CRMP). According to the CRMP Section 130, special exceptions may be granted only under the following conditions: the proposed activity serves a compelling public purpose; all reasonable steps should be taken to minimize environmental impacts; and, there is no reasonable alternative means of, or location for, serving the compelling public purpose cited.

The CRMC delayed the application because members felt that the applicant had not proven that there was not a reasonable alternative to altering the wetland. The CRMC requested additional evidence.

The editorial also questions the CRMC's handling of Narragansett Electric's Manchester Street station in Providence. The editorial states that the project will "actually improve the local environment", but is being held up by the CRMC.

While we agree that natural gas is generally a cleaner fuel than oil, and, that substantial waterfront improvements are planned for the project, there are other considerations which require evaluation by the CRMC and other regulatory agencies.

The utility proposes to triple the plants output, and in doing so emit higher levels of certain pollutants into the atmosphere. At the same time, the plant will increase its discharge of hot water into the Providence River.

One of the pollutants that will be emitted to the atmosphere in greater quantities is carbon monoxide. This pollutant has been the center of concern in the evaluation of current standards for meeting the goals of the Federal Clean Air Act. We must also evaluate the increased temperature of the upper Providence River as to whether it will have an effect on some of the aquatic life forms. We feel that these considerations require careful evaluation.

It should be noted that the \$600,000 application fee that was questioned in the editorial is a fraction of a percentage of the entire cost of the project. It is also a reduction of the original one million dollar fee. The original fee was reduced because the project will improve the waterfront. These shoreline improvements are proposed as a form of compensation to the citizens of Rhode Island through the CRMC regulatory process. This fee will be used to process the application; it will also be used to expand the CRMC staff for a limited period of time.

This additional staff will help to reduce the backlog of current applications, allowing more to begin. It will also allow the CRMC to upgrade the technical capability of its planning and enforcement unit.

The recent editorial was grossly unjust. It is astounding that the CRMC could be so assaulted given our recent efforts to bring quick and effective recovery to a shoreline recently devastated by a major hurricane. No mention has been given CRMC for spending several months going door to door issuing "on the spot" permits for redevelopment of our coastline while assuring that this redevelopment be done in the most environmentally sound manner possible.

The coastal resources of Rhode Island, a rich variety of natural, commercial, industrial, recreational, and aesthetic assets, are of immediate and potential value to the present and future development of this state. Unplanned or poorly planned development of this basic natural environment can restrict the most beneficial and

efficient utilization of these resources. The policy of the CRMC is to preserve, protect, develop, and where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordinated long range planning and management designed to produce the maximum benefit for Rhode Islanders.

We at CRMC feel our agency, staffed with professional civil engineers, environmental scientists, wildlife biologists and marine resource specialists, fulfill this need.

THE PUBLIC TRUST DOCTRINE: WHAT IT MEANS TO RHODE ISLANDERS

Over twenty years have passed since the creation of the Rhode Island Coastal Resources Management Council (CRMC), and although many gains and achievements have been made through our Coastal Resources Management Plan (CRMP), pressures continue to build on coastal lands, waters, and resources. Recently, however, a Rhode Island Supreme Court decision, *Hall V. Nascimento*, significantly expanded the role of the CRMC by clearly reasserting the Public Trust Doctrine. This landmark decision declares that the state owns filled land in tidal waters. It also means that the General Assembly must devise some legislation to govern the use of historically filled lands. What does this mean to Rhode Islanders? This decision has the potential to improve public access to the shoreline; yet, it also has the potential to dramatically affect the titles to all filled lands unless the state conveyed the land to a private owner through a legislative grant.

In order to understand the implications of such legislation one has to know the parameters of the Public Trust Doctrine. The doctrine is a body of law pertaining to shorelands, bottomlands, tidelands, and navigable freshwaters. These lands are owned by the public, but held in trust by the state for the benefit of the public. In addition, the doctrine states that a title to these lands within a state is a special title. It is a title held by the state in trust for the benefit of the public, and establishes the right of the public to use and enjoy these trust lands and waters for a wide variety of public utility. It is important to note that the title has two components; the public trust title and the private proprietary title. The public trust title is the collective rights of the public to fully utilize and enjoy trust lands for commerce, navigation, and other related purposes. The public trust title cannot be conveyed or alienated to private ownership. The private proprietary

title is the right to use and possess trust lands. This private proprietary title may be, and sometimes is conveyed into private ownership.

There are strict limitations upon the state when the private proprietary right is conveyed into private ownership. The legislature must act through legislation to authorize the conveyance. In addition, the conveyance must be described in clear and definite language, with all ambiguities construed in favor of the state and against the grantee. The primary purpose of the conveyance is to further the public interest, with benefits to private parties being secondary and corollary. There must be no substantial impairment of the public interest in the remaining lands and waters. Failure to comply with all of these requirements could violate the Public Trust Doctrine and can render the conveyance void. The courts will strictly scrutinize a conveyance of public trust lands for compliance with all of the aforementioned requirements.

Since any legislation governing historically filled tidal lands will be subject to such scrutiny, a legislatively appointed task force has begun to study many of the issues that will provide a basis for the continued management of these submerged lands. At their first meeting, held on January 9, the task force members agreed to hire David Slade, of the Coastal States Organization, as a consultant in the process. Mr. Slade, who wrote, Putting The Public Trust Doctrine To Work: The Application of the Public Trust Doctrine to the Management of Lands, Waters, and Living Resources of the Coastal States, addressed members of the task force, as well as the general public, at a February 12 meeting at the Rhode Island State House. The commission is chaired by Representative Christopher Boyle of Newport. Also on the commission are Representative David Dumas of East Greenwich; Rep. Robert A. Weygand of East Providence; Rep. Edward J. Smith of Tiverton; Sen. John Orabona of Providence; Sen. Albert J. Russo of Charlestown; and Sen. David Kerins of Newport.

A recent decision by the Town Council of Little Compton to determine what the impact of the Hall V. Nascimento decision will have on the purchase of the controversial Lot 433 at Sakonnet Point demonstrates the powerful effects of the Supreme Court's action. In June of 1991 the Town Council of Little Compton agreed to buy the lot for \$435,000 from HCM Properties; however a large amount of Lot 433 is filled land. A condition for purchasing the property is that the town must demonstrate it can obtain financing from the state and federal government; yet, the Hall V. Nascimento decision declares that the state already owns filled land. In order to temporarily resolve the conflict the town council agreed to ask for a one year extension on the purchase.

Another case which demonstrates the powerful effect of the Hall vs. Nascimento decision involves the Capital Center in downtown Providence. Capital Properties tried to get the state to pay an additional \$6.1 million for land taken for a downtown river relocation project. In turn, the state argued a defense based on the Public Trust Doctrine. The defense argued that since the area used to be Great Salt Cove, until it was filled in by railroads during the 19th century, Capital Properties did not have clear title to the land. Superior Court Justice John P. Bourcier only awarded the owners of Capital Properties Inc. \$400,950 and attached a 60 day stay to the order so that lawyers for the Department of Transportation could pursue their claim that the land taken from the Capital Properties actually belongs to the state. In the decision, Bourcier said the Rhode Island Constitution and the Hall decision appear to require more than a mere resolution of the General Assembly to convey tidal land.

In a continued effort to inform Rhode Islanders about the implications of the Hall v. Nascimento decision the CRMC has held a series of public workshops throughout the state. The workshops feature a videotape of the CRMC's October 9th conference, "Who Owns The Waterfront?". Featuring speakers at the conference including Governor Bruce Sundlun, Attorney General James O'Neil, and Secretary of State Kathleen Connell. Participants in the panel discussion were Dennis Nixon, from the University of Rhode Island; Michael Rubin from the Rhode Island Attorney General's Office; Robert Goldman, a private attorney; and Carl Dierker and Dennis Duscik, officials from the Massachusetts Coastal Zone Management Office and the Massachusetts Department of Environmental Protection. After the video presentation, CRMC staff members answered questions asked by workshop participants. In addition, the same video was aired on the cable television channel A interconnect on December 12th, 17th, 24th, and 31st.

Those wishing to comment on articles in *Coastal Features* are invited to do so. Please send to:

Eva M. Badway
Coastal Features
 Coastal Resources Management Council
 Oliver H. Stedman Government Center
 Tower Hill Road
 Wakefield, RI 02879

Coastal Features is a publication of the
 Rhode Island Coastal Resources Management Council.
 Telephone: (401) 277-2476

RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL

MEMBERS

George L. Sisson, Jr., Chairman
John L. Lyons
James Beattie, DEM
Samuel Snow
Charles "Ted" Wright
Representative Paul E. Moura
Roger D. Medbury
Senator Domenic A. DiSandro, III

Paul T. Hicks
Sandra Thornton-Whitehouse
Representative Edward J. Smith
Kathryn G. Owen
Michael Bernstein
Patrick G. Kirby, II
Senator Paul P. Pederzani, III
Richard H. James

Alan J. Goldman, Esq.-Legal Counsel

Grover J. Fugate - Executive Director

If you would like to be placed on our mailing list contact the CRMC office at 401-277-2477

The preparation of this newsletter is financed in part by a grant from the National Oceanic and Atmospheric Administration, under the provisions of the Coastal Zone Management Act of 1972 (Public Law 92-583), through the Integrated Grant Administration Program administered as part of Federal Regional Council Grant FRC-IGA-01-07.

COASTAL FEATURES

MARCH 1992

The Coastal Resources Management Council's Report on Current Events

George L. Sisson, Jr., Chairman
Grover J. Fugate, Executive Director

COASTAL RESOURCES MANAGEMENT COUNCIL
Oliver H. Stedman Government Center
Tower Hill Road
Wakefield, RI 02879

BULK RATE
U.S. Postage
PAID
Providence, RI 02904
Permit No. 1286