

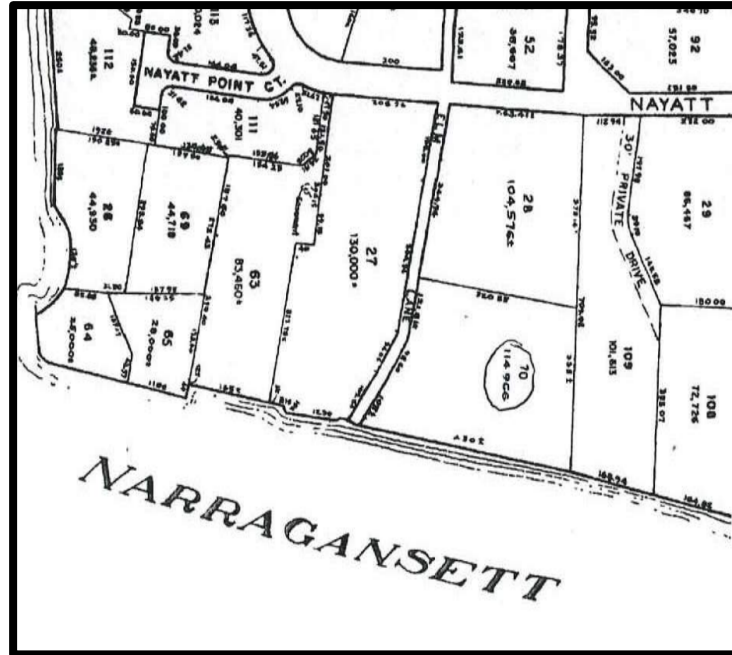


at its very core, revolves around whether an unrecorded assent is valid and binding on subsequent bona fide purchasers.

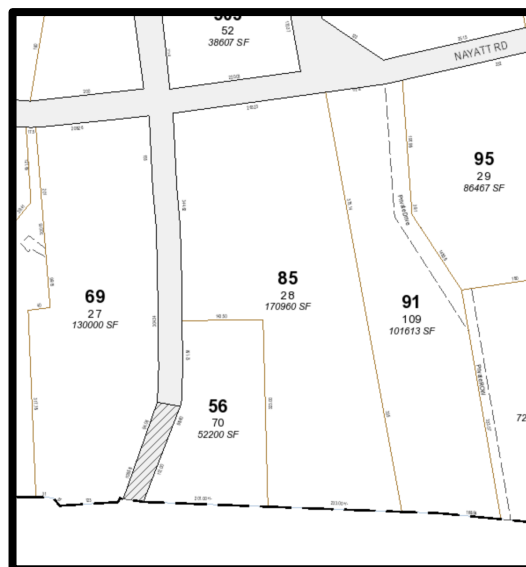
## **II. STATEMENT OF FACTS**

The Plaintiffs' property at 85 Nayatt Road carries a relatively complex history as the size and shape of the property has changed over the last two hundred years. Notably, when the Property expanded or contracted, it has done so in concert with a separate property that has frontage along Elm Lane. For context, Nayatt Road runs from east to west, as does the shoreline relevant to this case. Elm Lane runs from north to south, crossing over Nayatt Road to eventually reach Narragansett Bay. The Plaintiffs' property lies at the southeast corner of the intersection of Nayatt Road and Elm Lane. Since 1883, the Property has had a northern boundary along Nayatt Road that stretches approximately 263' from Elm Lane to the neighboring property to the east. The southern boundary, however, has varied over the years. At times, the southern boundary, or at least a portion of it, bounded the Narragansett Bay. At other times, the Property did not abut the Bay. The property that stood between 85 Nayatt Road and the Bay was property fronting Elm Lane.

The property fronting Elm Lane, specifically 56 Elm Lane, has also had its property lines expand and contract over time. When Robert Kilmarx purchased 56 Elm Lane in 1965, the property had a southern property line bounding the Bay for over 434'. Plaintiffs' Ex. E. At that time 56 Elm Lane was completely between 85 Nayatt Road and the Bay, so that 85 Nayatt Road had no shoreline frontage. In the image below from Plaintiffs' Exhibit E, 85 Nayatt Road is depicted as Lot 28, and 56 Elm Lane is depicted as Lot 70. This map was attached to the Kilmarx 2011 maintenance request to CRMC for the seawall repairs.



In 2014, 85 Nayatt Road was purchased by the David Goulden Trust. In 2017, 56 Elm Lane was also purchased by the David Goulden Trust. The David Goulden Trust, having common ownership of both 56 Elm Lane and 85 Nayatt Road, applied to subdivide the property. The subdivision was approved by the Barrington Planning Board on September 29, 2017 (“2017 Subdivision”). The image below from the current Town of Barrington Tax Assessor’s Plat Map depicts 56 Elm Land and 85 Nayatt Road after the 2017 Subdivision.



The 2017 Subdivision turned 85 Nayatt Road into waterfront property. The subdivision created a new north-south lot line that divided 56 Elm Lane in half. The newly created eastern half of 56 Elm was then made part of 85 Nayatt by the removal of the eastern portion of 56 Elm Lane's northern property line. As a result, 85 Nayatt Road now abuts the Narragansett Bay.

The 2017 Subdivision divided ownership of the 434' of a seawall, with 201' of the seawall controlled by 56 Elm Lane and 233' controlled by 85 Nayatt Road. It should be noted that the property east of 85 Nayatt (91 Nayatt Road) also includes a seawall. Furthermore, Elm Lane itself, as well as the property west of Elm Lane (69 Nayatt Road), also have seawalls. Plaintiffs' Ex. H. The seawalls on these properties are connected. Plaintiffs' Ex. H. The seawalls on these properties are constructed of similar vertical concrete walls. Plaintiffs' Ex. B.

The record does not reveal when the seawall spanning these properties was created.<sup>1</sup> However, the record does reflect that maintenance had been performed on the wall. On December 3, 1981, Robert Kilmarx requested permission from CRMC to perform maintenance work on approximately 285' of the seawall (although, at that time, he had ownership of over 400' of the seawall). Plaintiffs' Ex. A. Within that application, Mr. Kilmarx provided a description of the seawall, and explained that "repair and protection is essential to prevent the imminent collapse of the whole wall and resulting damage and erosion of our and adjacent residential and public land, as well as the connecting seawalls protecting the property on either side of ours." Plaintiffs' Ex. A.

Mr. Kilmarx's application also describes how the seawall provides public access:

This long standing seawall is footed below Mean High Water level, and public access to seaward of it is only possible at low water, and then only with great difficulty due to a rocky, boulder strewn beach condition and a concrete ramp extending to low water, perpendicular to the seawall. As a result, such limited public traffic as exists does not

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<sup>1</sup> A Maintenance Certificate from 2011 indicates that the seawall's date of construction was not known and that it existed when the Mr. and Mrs. Kilmarx purchased the property in November of 1965. Plaintiffs' Ex. E.

traverse the beach area but travels along the 2' wide top of the seawall itself. This proposed project will create an additional 2' wide flat, lateral access walkway for the public along the top of the rip rap which will improve, rather than limit, the public's access to the seaward of the wall.

Plaintiffs' Ex. A.

In response to Mr. Kilmarx's application, CRMC produced a CRMC Engineer's Field Report on January 5, 1982. The Engineer's Field Report notes the following:

The applicant has addressed the question of passage above MHW to some degree. The applicant has proposed to create a 2' wide level area atop the proposed riprap for pedestrian access. The CRMC should stipulate some form of small sign or permanent plaque on the wall to identify that the entire riprap wall is under the public domain for lateral access (or some similar language). The CRMC may wish to address other aspects of further infringement upon tidal waters.

Plaintiffs' Ex. B.

The Engineer's Field Report repeats its concern for public access by recommending that a stipulation related to public access be incorporated into a potential assent. Specifically, the Engineer's Field Report recommended the following stipulation:

H. A sign or plaque shall be placed at each end of the proposed riprap, to be clearly visible to the public, indicating that passage atop the riprap shall not be denied the public, per order of CRMC. Suitable language may be decided upon by the CRMC. I. The riprap shall be constructed so that it will be readily passable by pedestrian traffic along the shore. Stone at ends of the wall may have to be arranged in a step fashion to accomplish this.

Plaintiffs' Ex. B.

In the Staff Summary Report, dated January 6, 1982, the Staff Planner's Report notes that "[i]f an Assent is granted, the Council should consider some form of recompensating the public for bottom lands taken to protect the applicant's property." Plaintiffs' Ex. B.

On January 15, 1982, CRMC approved Mr. Kilmarx's request to repair and protect the seawall. Plaintiffs' Ex. B. The 1982 Assent has additional stipulations of approval. Plaintiffs' Ex. B. Additional Stipulation H states "[a] sign or plaque shall be placed at each end of the proposed

riprap, to be clearly visible to the public, indicating that passage atop the riprap shall not be denied the public, per order of CRMC. Suitable language may be decided upon by the CRMC.” Plaintiffs’ Ex. B. Additional Stipulation I states that “[t]he riprap shall be constructed so that it will be readily passable by pedestrian traffic along the shore. Stone at ends of the wall may have to be arranged in a set fashion to accomplish this.” Plaintiffs’ Ex. B.

On December 26, 1995, Kilmarx’s eastern abutter (91 Nayatt Road) received a CRMC assent to perform maintenance work to the seawall on the southern portion of that property. Stipulation K of that assent specifically states that “the public shall have the right to pass and re-pass laterally upon the riprap revetment.” This Assent is recorded in the Barrington Land Evidence Records. Defendant’s Ex. A.

In 2011, Kilmarx returned to CRMC with another CRMC Maintenance Certification Request. In that request Kilmarx described the relevant structure as follows:

430’ concrete sea wall along southern shore of my lot, abutting south end of Elm Lane public right of way to the bay. Flat level top surface of *wall much used safely throughout the year by public [sic] for Bay viewing, fishing, clamming, access to water, exercise, jogging and dog walking* (Att. Evidence). Storm waters have dislodged and damaged sections of the wall causing uneven surfaces and creating hazardous public use conditions.

Plaintiffs’ Ex. E. (emphasis added).

As part of that maintenance request, photos were submitted to CRMC depicting pedestrians walking on the seawall. Plaintiffs’ Ex. E. Additionally, Kilmarx, in his request for a Maintenance Certificate, wrote “repair damaged sections to the previous condition of safe public access.” Plaintiffs’ Ex. E. Included within CRMC’s records related to Mr. Kilmarx’s 2011 Maintenance Certificate is a letter received by CRMC on February 28, 2011, from a user of Elm Lane. That letter recounts that “[l]ike most streets in Barrington there is no parking, so to get public access (by car to park) they park at Elm Lane to walk the seawall.” Plaintiffs’ Ex. E.

In 2017, the old Kilmarx property was divided in half, with the eastern portion granted to 85 Nayatt Road, so that that property now abuts the Narragansett Bay. On May 5, 2021, the Plaintiffs purchased 85 Nayatt Road. Later that year, it came to the attention of CRMC that the Plaintiffs had constructed two fences and erected signs within 200 feet of the coastal feature (the seawall). On September 23, 2021 CRMC issued a cease and desist order indicating that the fences and signs had been erected without CRMC's permission. Plaintiffs' Ex. I. Furthermore, the Cease and Desist Order indicated that the fences and signs had been erected in nonconformance with a CRMC Assent. Plaintiffs' Ex. I.

On May 2, 2022 CRMC received an email from a former user of the seawall. It stated the following:

Our understanding is that the sea wall was deeded for shoreline access by the former owners. The Sheffields have been very aggressive about prohibiting people from walking on the sea wall, which many in the neighborhood use to get to the beach, and we have done so for 30 years. They initially blocked the wall with a fence and posted no trespassing signs, which they were made to take down, (not sure by whom) and now have a siren which goes off when you walk by a security guard posted on the wall. He stopped us yesterday from walking on the wall.

Plaintiffs' Ex. C.

On May 27, 2022 a second Cease and Desist Order was issued to the Plaintiffs for preventing lateral public access along the top of the riprap in nonconformance with a CRMC Assent. Plaintiffs' Ex. J. Based on these cease and desist orders, the Plaintiffs petitioned CRMC for a Declaratory Ruling on December 12, 2022. CRMC was unable to hear the petition within 60 days.

### III. ARGUMENT

#### Standard of Review

The Superior Court's scope of review in an administrative appeal is an extension of the administrative process. *Environmental Scientific Corp. v. Durfee*, 620 A.2d 200, 208 (R.I. 1993). The Plaintiffs petitioned CRMC under R.I.G.L. 42-35-8, which permits a person to petition an agency for a declaratory order that states whether an agency order applies to the petitioner. Due to scheduling conflicts, CRMC legal counsel suggested to Plaintiffs' legal counsel a Superior Court action on the matter, and the instant action was filed. Thus, as an extension of the administrative process, the Court may decide whether CRMC's orders apply to the Plaintiffs. The Supreme Court has held that "[a] Superior Court decision granting or denying declaratory relief is reviewed with great deference." *Caluori v. Dexter Credit Union*, 79 A.3d 823, 826 (R.I. 2013) (quoting *Town Houses at Bonnet Shores Condominium Association v. Langlois*, 45 A.3d 577, 581 (R.I. 2012)). The Court further stated that Superior Court findings are given great weight, however, findings on questions of law are reviewed de novo. *Id.* (quoting *Town Houses at Bonnet Shores Condominium Association v. Langlois*, 45 A.3d 577, 581 (R.I. 2012)).

A. This Court Should Deny the Plaintiffs' Request for a Declaratory Ruling With Regard to the Enforceability of the 1982 Assent Because a Government Permit Does Not Need to Be Recorded to be Valid, the Plaintiffs Did Not Conduct Adequate Due Diligence, and the Plaintiffs' Had Adequate Constructive Notice of the Permit.

i. *The Plaintiffs' Claim that an Assent Must Be Recorded to Be Valid is Not Supported by Rhode Island Law.*

The Superior Court has held that a subsequent purchaser is not relieved of responsibility for defects or conditions on a commercial property by the mere fact that a government document was not recorded. *CFD Realty, LLC v. State*, 2017 R.I. Super. LEXIS 43, \*24-25. Specifically,



the Superior Court held that a subsequent purchaser of commercial property is not relieved of liability for wetlands violations on their property by virtue of the fact that a DEM notice of violation had not been recorded in the land evidence records. *Id.* Here, the fact that the 1982 Assent went unrecorded should not relieve the Plaintiffs of the conditions that were placed on that government permit. If the parties *CFD Realty* were not relieved of their responsibility for the prior owner's DEM violations, then the Plaintiffs should not be relieved of the 1982 Assent.

The Plaintiffs do not point to any case law which indicates that government permits must be recorded in order to be binding. Instead, the Plaintiffs argue that *Bazarsky v. City of Newport* provides such a holding. 1985 R.I. Super. LEXIS 14, 16 (R.I. Super 1985). It does not. The *Bazarsky* case involved documents that purportedly created a covenant requiring a property owner to maintain a portion of his property as a park and provide an easement to the City allowing the City to maintain the park. *Id.* at 4. The owner had submitted such documents to the City in the hope that it would encourage the City Council to rezone his property. *Id.* The City Council never accepted these documents. Instead, the city solicitor drew an X across the documents, indicating that they were rejected. *Id.* at 9-10. However, the City Council did allow the owner to rezone his property. *Id.* at 4. When the subsequent property owner, Bazarsky, tried to change the use of the park, the City objected by relying on the unrecorded and unaccepted covenant and easement. *Id.* at 16. The case was brought before the Superior Court, and the Court held that the unaccepted and unrecorded documents could not bind Bazarsky. *Id.* While it is true that these promises were never recorded, they were also never incorporated into the government permit that allowed the promisor to rezone his property. *Id.* 4-5. Here, the 1982 Assent that allowed Kilmarx to reconstruct the seawall had clear stipulations as to public access. Therefore,

the *Bazarsky* case is not analogous, and fails to demonstrate that a government permit must be recorded to be binding on a subsequent purchaser.

Given that the Plaintiffs cannot demonstrate that a government order must be recorded to be enforceable against a subsequent purchaser, the Plaintiffs must resort to relying on cases regarding the effect of recording on private conditions on land. The Plaintiffs cite to *Shappy v. Downcity Capital Partners, Ltd*, for the proposition that a bona fide purchaser is entitled to protections under Rhode Island Law. *Brief of Plaintiffs Lance Sheffield and Holly Slater Sheffield In Support of Their Administrative Appeal*, 13 (citing *Shappy v. Downcity Capital Partners*, 973 A.2d 40, 44 (R.I. 2009)). The Plaintiffs stretch *Shappy* to claim that a “‘bona fide purchaser’ is a person who purchases property ‘for value, in good faith, and without knowledge of any adverse claims,’ such as a restrictive covenant or public easement.” *Id.* However, *Shappy* does not deal with restrictive covenants or public easements. *See generally Shappy*, 973 A.2d at 44. Rather, *Shappy* is centered around the conveyance of a quit claim deed. *Id.* at 41. Regardless of whether the *Shappy* case is about quit claim deeds, restrictive covenants, or public easements, the Plaintiffs have not demonstrated how these conveyances are analogous to a government permit. The reason deeds, covenants, and easements must be recorded is to have a public record of these instruments that are between private parties. Government permits, especially CRMC permits, however, are very different. They involve public interest and rights. They are also public documents that, in Rhode Island, must be made available to the public under R.I.G.L. 38-2-3. Therefore, the Plaintiffs’ implication that *Shappy* protects the Plaintiffs from an unrecorded CRMC Assent is off-point and unpersuasive.

It should be noted that a CRMC Assent should not be compared to an easement or restrictive covenant because the CRMC Assent provides a benefit to the Plaintiffs. *Shappy*

specifically states that “the theory behind the [bona fide purchasers] rule is to protect innocent purchasers and allow them to obtain and convey *unsullied* interests.” *Shappy v. Downcity Capital Partners*, 973 A.2d 40, 44 (R.I. 2009) (quoting *Sun Valley Land and Minerals, Inc. v. Burt*, 123 Idaho 862, 853 P.2d 607, 611 (Idaho Ct. App. 1993)). (emphasis added). The Court in *Shappy* indicates that bona fide purchasers are protected from *adverse* claims. *Id.* (citing *Fleckhamer v. Fleckhamer*, 50 R.I 363, 366-67 (1929)) (emphasis added). The CRMC Assent is not a cloud on the Plaintiffs’ title, rather it is evidence that improvements on the shoreline were properly obtained and permitted.

CRMC’s Assent permitting the seawall and rip rap is a great benefit to the Plaintiffs because it protects their land from coastal erosion. Without this manmade coastal feature, it is possible that the Plaintiffs would be losing their land to the Bay. Given that the CRMC Assent is a benefit to the Plaintiff, the case law that requires the recording of adverse interests is inapplicable.

- ii. *The 1982 Assent is Enforceable Against the Plaintiffs because the Assent would have been discovered if the Plaintiffs had performed adequate due diligence.*

Rhode Island Courts have recognized that a purchaser's due diligence can extend beyond a review of the land evidence records. *See Lizotte v. Mitchell*, 771 A.2d 884, 888 (R.I. 2001) (“As real estate agents, plaintiffs knew or should have known that absent a survey of the lot, they were charged with the duty to ascertain that the lot they were purchasing was buildable. The plaintiffs cannot later complain about consequences they could have avoided.”) *See Hotel Assocs., LLC v. HMS Assocs. Ltd. P’ship*, 2004 R.I. Super. LEXIS 44,\*70 (R.I. Super 2004) ((citation omitted) “Environmental due diligence is a vital step for a prudent real estate purchaser. It is necessary to ‘assess environmental risks in some fashion or else risk being blind-

sided by catastrophic losses.”). When Mr. Kilmarx was permitted to repair his seawall, and then armor it with rip rap, CRMC placed the specific and unambiguous condition—in the 1982 Assent—that public access be allowed atop the rip rap. Moreover, the record is replete with examples of how this property has been used for public access and Mr. Kilmarx’s intent to protect public access. He of course returned to CRMC in 2011 for additional maintenance work on the wall. Furthermore, the neighboring property has a recorded Assent stating that the seawall on that property, which is connected and similar to the seawall on the Property, has a condition related to public access. In acquiring valuable waterfront real estate in Barrington – in the Nayatt Point area – Plaintiffs certainly retained title attorneys to report on all aspects of the Property, including but not limited to title issues, zoning and other local regulatory matters, as well as the status of any CRMC action given its shoreline frontage. It is baffling that the CRMC database, searchable on the CRMC website, was not reviewed prior to purchase. The public’s long standing passage along the shore should not be terminated because the Plaintiffs and their title attorneys failed to perform proper due diligence in acquiring the property.

*iii. The 1982 Assent is Enforceable Against the Plaintiffs because the Plaintiffs Had Constructive Notice of the Assent.*

Rhode Island Courts have recognized the doctrine of constructive notice. Under that doctrine, Rhode Island Courts have stated the following:

[W]here one acquires knowledge of facts that are reasonably informative of the existence of an ultimate fact, a reasonably cautious person would thereby be led to the ultimate fact, and the courts will imply that such person had actual notice and, therefore, is chargeable with notice of the ultimate fact. However, the doctrine should be applied cautiously and only where one has acquired knowledge of facts that are so suggestive of the existence of an ultimate fact that a reasonably prudent person would be moved to investigate and ascertain the ultimate fact.

*Souza v. Town of Coventry*, 774 A.2d 812, 815 (R.I. 2001); *see In Re Barnacle*, 623 A.2d 445, 449 (R.I. 1993).

The Plaintiffs had constructive knowledge of the existence of the CRMC Assent. The mere existence of a seawall and riprap revetment is indicative of a government permit. Any attorney, particularly a title attorney, understands that the State, through CRMC, is protective of its coastline. Furthermore, that attorney, reasonably familiar with coastal real estate would know that coastal development requires permission from the CRMC. Thus, the mere presence of the seawall at the shoreline should have led the Plaintiffs and their lawyers to the CRMC database.

**B. This Court Should Deny the Plaintiffs' Request for a Declaratory Ruling With Regard to the September 23, 2021 Cease and Desist Order.**

The CRMC's September 21, 2023 Cease and Desist Order should be upheld because—irrespective of the status of the seawall and riprap—the Plaintiff violated CRMC regulations. 600-RICR-20-00-1.1.4(A) requires a council assent for any alteration or activity that is proposed for areas contiguous to shoreline features. Such activities include construction of fencing and signs. Furthermore, 600-RICR-20-00-1.1.6(H) allows fencing along property bounds located landward of the coastal feature to receive a lower level of review than a more extensive construction project. Nonetheless, a coastal property owner must still apply to the Council for permission to undertake that activity. The Plaintiffs failed to do so, thus, the Cease and Desist Order should remain in effect.

**IV. CONCLUSION**

The 1982 CRMC Assent that requires the Plaintiffs to permit public access atop the riprap revetment protecting their seawall should be enforced. The Superior Court has recognized that an unrecorded government order does not relieve a property owner of the burdens of their lands, therefore, the Plaintiffs should not be relieved of their obligations under the 1982 Assent. Furthermore, the 1982 Assent is not a burden on the land as it provides a significant benefit to

the Plaintiffs. To the extent that the 1982 Assent could be considered a burden on the Plaintiffs' land, that burden would have been uncovered if the Plaintiffs had performed adequate due diligence. Moreover, regardless of the sufficiency of due diligence, the Plaintiffs had constructive notice of the Assent because the Assent should have been discovered during the due diligence phase of acquiring the Property. Based on the foregoing, the CRMC respectfully requests that this Honorable Court deny the Plaintiffs the relief that they have requested.

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Coastal Resources Management Council  
By Its Attorneys,

/s/ Anthony DeSisto

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**CERTIFICATION**

I hereby certify that on the 28th day of August, 2023, I filed this document through the court's electronic filing system. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's electronic filing system.

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# EXHIBIT A



00070

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL  
Oliver H. Stedman Government Center  
4808 Tower Hill Road  
Wakefield, R.I. 02870-1000  
(401) 277-2470

ASSENT

File Number: 95-9-49 Assent Number: B95-9-49

Meeting Date: December 12, 1995

Whereas, **LOUIS SUGARMAN**  
**91 NAYATT ROAD**  
of **BARRINGTON, RI 02806**

has applied to the Coastal Resources Management Council for assent to: repair an existing seawall by the placement of riprap seaward of the wall as shown on the approved plans, and hereby represents that HE is the owner of the riparian rights attached to the property involved and submitted plans of the work to be done.

Now, said Council, having fully considered said application in accordance with all the regulations as set forth in the Administrative Procedures Act does hereby authorize said applicant, subject to the provisions of Title 46, Chapter 23 of the General Laws of Rhode Island, 1956, as amended, and all laws which are or may be in force applicable thereto: repair an existing seawall by the placement of riprap seaward of the wall as shown on the approved plans, located at 91 Nayatt Road, Barrington, RI, Plat 5, Lot 109, in accordance with said plans submitted to this Council and approved by this Council. All work being permitted must be completed on or before December 26, 1998, after which date this assent is null and void, (unless written application requesting an extension is received by CRMC sixty (60) days prior to expiration date).

Applicant agrees that as a condition to the granting of this assent, members of the Coastal Resources Management Council or its staff shall have access to applicant's property to make on-site inspections to insure compliance with the assent.

Licensee shall be fully and completely liable to State, and shall waive any claims against State for contribution or otherwise, and shall indemnify, defend, and save harmless State and its agencies, employees, officers, directors, and agents with respect to any and all liability, damages (including damages to land, aquatic life, and other natural resources), expenses, causes of action, suits, claims, costs (including testing, auditing, surveying, and investigating costs), fees (including attorneys' fees and costs), penalties (civil and criminal), and response, cleanup, or remediation costs assessed against or imposed upon Licensee, State, or the Property, as a

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result of Licensee's control of the Property, or Licensee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Licensee's employees, agents, assigns, sublicensees, contractors, subcontractors, permittees, or invitees.

Nothing in this assent shall be construed to impair the legal rights of this granting authority or of any person. By this assent the granting authority by no manner, shape, or form assumes any liability or responsibility implied, or in fact, for the stability or permanence of said project; nor by this assent is there any liability implied or in fact assumed or imposed on the granting authority. Further, the granting authority by its representatives or duly authorized agents shall have the right to inspect said project at all times including, but not limited to, the construction, completion, and all times thereafter.

This Assent is granted with the specific proviso that the construction authorized therein will be maintained in good condition by the owner thereof, his heirs, successors, or assigns for a period of fifty (50) years from the date thereof, after which time this permission shall terminate necessitating either complete removal or a new application.

Permits issued by the CRMC are issued for a finite period of time, confer no property rights, and are valid only with the conditions and stipulations under which they are granted. Permits imply no guarantee of renewal, and may be subject to denial, revocation, or modification.

A copy of the legal decision may be acquired by contacting the CRMC office in writing.

A copy of this Assent shall be kept on site during construction.

Application for future alteration of the shoreline or other construction or alteration within the CRMC jurisdiction shall be submitted to the CRMC for review prior to commencing such activity.

All applicable policies, prohibitions, and standards of the RICRMP shall be upheld.

All local, state or federal ordinances and regulations must be complied with.

Please be advised that as a further conditions of this Assent, it is hereby stipulated that you and/or your agents shall comply at all times with Federal and State Water Quality Standards and other State standards and regulations regarding water quality, and shall exercise such supervision over and control of these facilities to prevent the dumping or discarding or refuse, sanitary wastes and other pollutants in the tidal waters, either from vessels docked at said facilities or from land adjacent thereto.

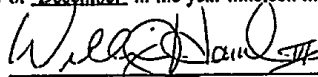
No work that involves alteration to wetlands or waters of the United States, shall be done under this Assent until the required Federal Permit has been obtained.

Non-compliance with this assent shall result in legal action and/or revocation of this permit.

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In Witness Whereof, said Coastal Resources Management Council have hereto set their hands and seal this twenty-sixth day of December in the year nineteen hundred ninety-five.



William J. Hawkins, III  
Acting Executive Director  
Coastal Resources Management Council

**CAUTION:**

The limits of authorized work shall be only for that which was approved by the CRMC. Any activities or alterations in which deviate from the approved plans will require a separate application and review. If the information provided to the CRMC for this review is inaccurate or did not reveal all necessary information or data, then this permit may be found to be null and void. Plans for any future alteration of the shoreline or construction or alteration within the 200' zone of CRMC jurisdiction or in coastal waters must be submitted for review to the CRMC prior to commencing such activity.

**ATTENTION: ALL STRUCTURES AND FILLED AREAS IN THE TIDAL, COASTAL, OR NAVIGABLE WATERS OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS ARE SUBJECT TO:**

1. The Superior Property Rights of the State of Rhode Island and Providence Plantations in the Submerged and Submersible Lands of the Coastal, Tidal, and Navigable Waters;
2. The Superior Navigation Servitude of the United States;
3. The Police Powers of the State of Rhode Island and the United States to regulate Structures in the Tidal, Coastal, or Navigable Waters.

**THE SUBMERGED AND SUBMERSIBLE LANDS OF THE TIDAL, COASTAL, AND NAVIGABLE WATERS OF THE STATE ARE OWNED BY THE STATE AND HELD IN TRUST FOR THE PUBLIC. CONVEYANCE OF THESE LANDS IS ILLEGAL; TITLES PURPORTING TO TRANSFER SUCH LANDS ARE VOID. ASSENTS THAT INVOLVE THE FILLING OR USE OF THE STATES SUBMERGED LANDS ARE GRANTED WITH THE PROVISIO THAT IT IS SUBJECT TO THE IMPOSITION OF A USAGE FEE TO BE ESTABLISHED BY THE COASTAL RESOURCES MANAGEMENT COUNCIL.**

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**SPECIFIC STIPULATIONS OF APPROVAL:**

A. The applicant shall record this assent in its entirety in the land evidence records of the Town of BARRINGTON within thirty (30) days of the date of assent issuance. Certification by the Town Clerk's office that this stipulation has been complied with shall be furnished to Coastal Resources Management Council by the applicant within fifteen (15) days thereafter. Failure to comply with provision will render this assent null and void.

B. For the purpose of this permit, the coastal feature shall be the man-made shoreline; and the inland edge of the coastal feature shall be the top of the man-made shoreline.

C. The approved seawall repair plans shall be those entitled "Louis Sugarman, 91 Nayatt Road, Barrington, RI, 02806", 2 sheets dated September 1995, and bearing CRMC approval stamp dated 12/21/95. Except as stipulated or modified herein, all details and specifications thereon shall be strictly adhered to. Any and all changes require written approval from this office.

**Earthwork Stipulations:**

D. There shall be no stockpiling or disposal of soils, construction materials, debris, etc., on the coastal feature or in coastal waters.

E. All excess excavated materials, excess soils, excess construction materials, and debris shall be removed from the site and disposed of at an inland landfill or a suitable and legal upland location outside of CRMC jurisdiction. No materials shall be deposited on the coastal feature, within 200 feet of the inland edge of the coastal feature or in coastal waters.

F. All materials shall be clean, free of debris and rubble, and free of materials which may cause pollution of surface waters or groundwater.

G. All areas of exposed soil which are disturbed by construction and related activities shall be revegetated as immediately as is physically possible so as to minimize erosion and sedimentation. If the season is not conducive to immediate revegetation, all exposed soils shall be temporarily stabilized with hay mulch, jute mat netting or similar erosion control materials. Soil stabilization methods shall be employed during, as well as after, the construction phase to the maximum extent possible.

H. The work shall be limited to the area approved. Work conducted seaward beyond that authorized by this assent is not permitted.

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I. There shall be no discharge or disposal of hazardous wastes or hazardous materials which may be associated with construction machinery, etc. on the site or in the waterway. All used oil, lubricants, construction chemicals, etc. shall be disposed of in full compliance with applicable State and Federal regulations.

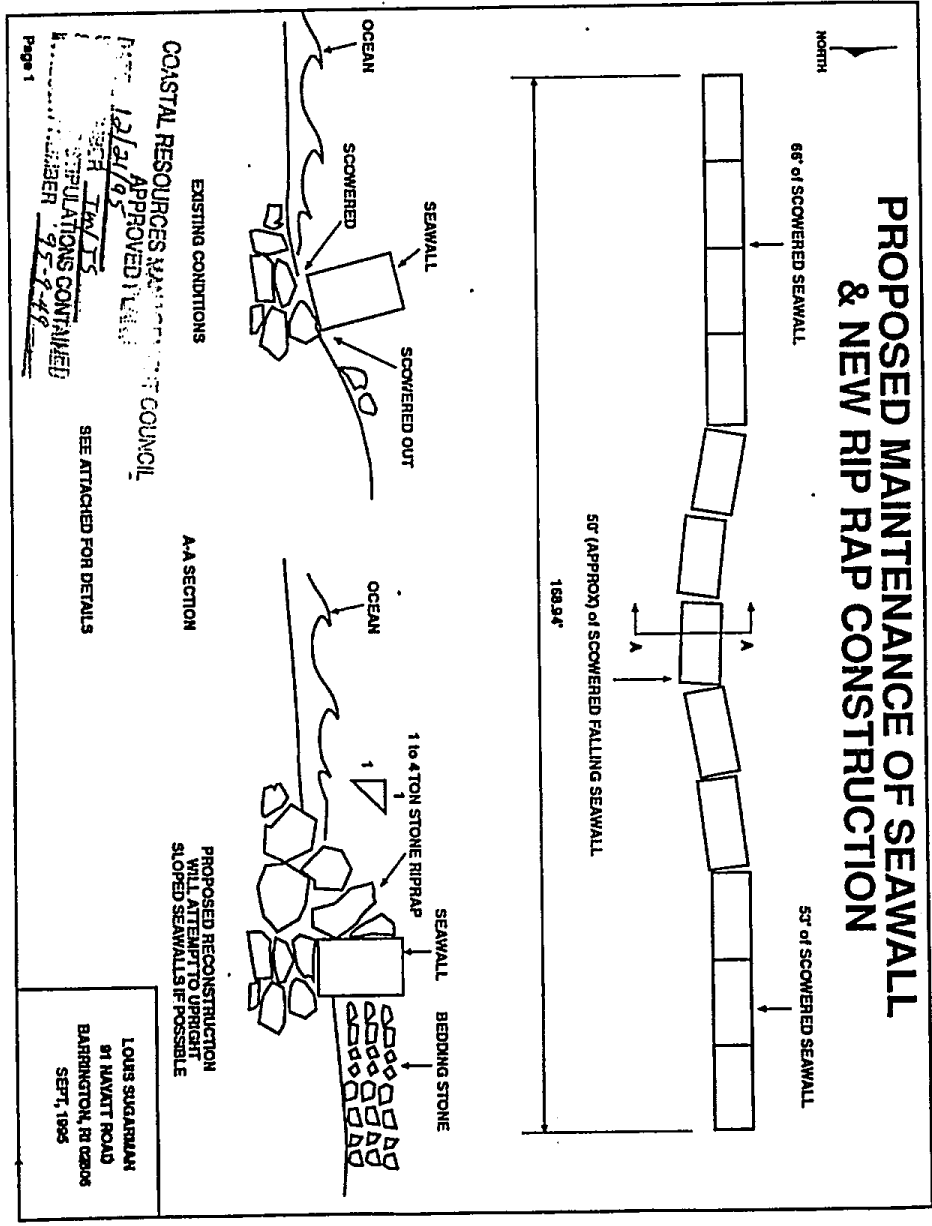
**Pier/Float Stipulations:**

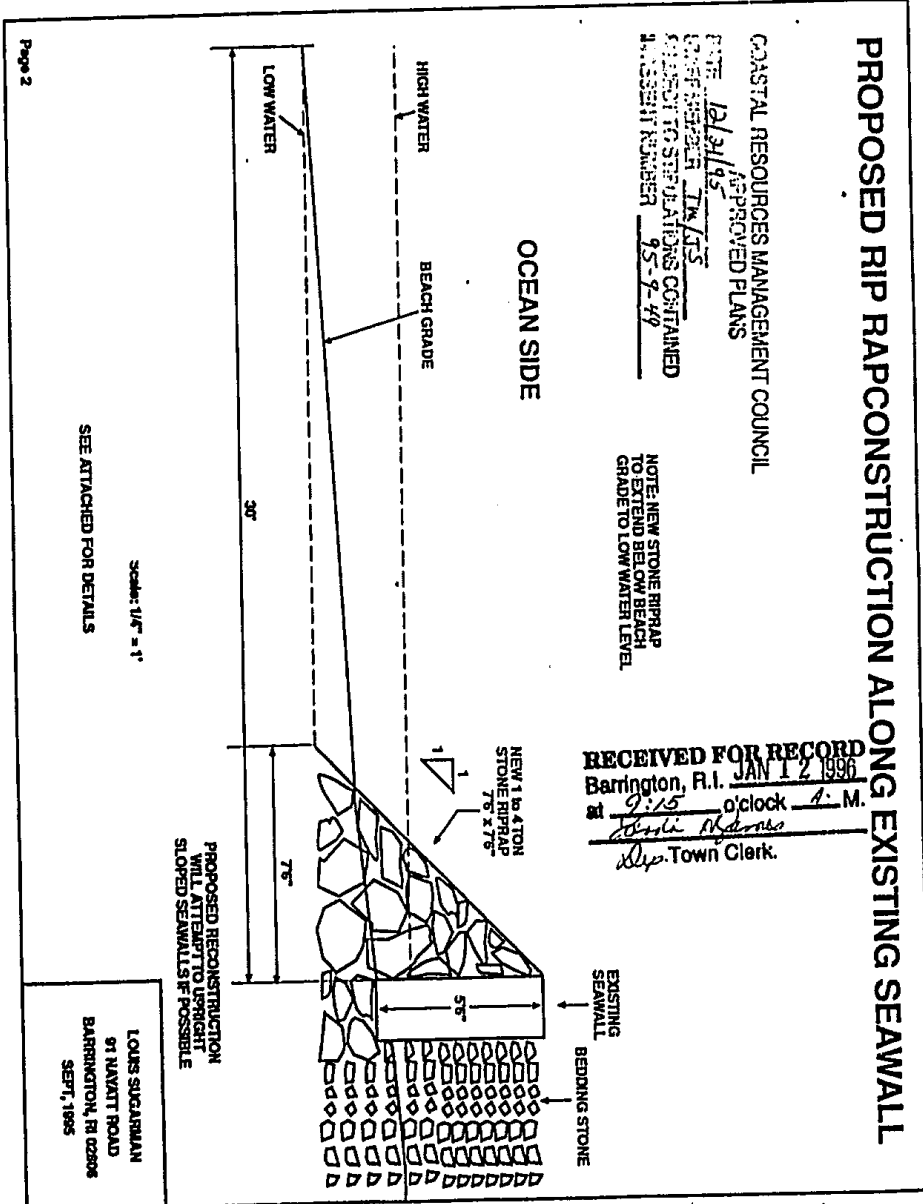
J. U. S. Army Corps of Engineers permit may be required.

K. The public shall have the right to pass and re-pass laterally upon the riprap revetment.

/jmm

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