

# Coastal Resources Management Council

# Coastal Briefings



## Public Right of Ways: CRMC's Designation Process

### Public Access in Rhode Island

Rhode Island has one of the most densely populated coastal zones in the country. In fact 90 percent of the state's residents live within a 20 minute drive of the shore. This makes public access an important coastal resource.

Rhode Island offers a wide variety of coastal access sites available for year round public use. Examples of the wide diversity of public access sites that are available include: bike paths; mooring areas; state and local beaches and parks; municipal waterfront areas; state designated fishing areas; boat launching ramps; marinas; and state fishing ports. In addition, citizens can also access the shore using public right-of-ways (ROWs) or pathways to the shore.

### What is a Public Right-of-Way to the Shore?

A public ROW to the shore is a piece of land over which the public has right to pass on foot, or if appropriate by vehicle, in order to access the tidal waters of Rhode Island. This right of passage is consistent with the use and condition of each particular site. Accordingly, public ROW's can be used for a variety of activities. In some cases, public ROWs provide access for fishing and scenic overlooks while in other cases, public ROWs can be used to launch a boat.

### How is the Public ROW Established in Rhode Island

Generally, there are six legal methods of establishing a public ROW in Rhode Island.

1) *Roadways which have been laid out, recorded, opened and main-tained by a city or town council.*

These are commonly known as city or town-accepted streets. To become a public ROW, the city or town must follow the statutory method for laying out public highways. Many of the public ROWs in Rhode Island's coastal communities fall into this category.

2) *Highways by grant or use (R.I.G.L. Chapter 24-2).* This statute provides that all lands that have been quietly, peaceably, and actually used, improved, and considered as public highways for 20 years by a city or town council shall be taken and considered to be public highways as if the lands had been regularly laid out, recorded, and opened by the city or town council. In order for this statute to apply, a city or town must give notice of its intentions to declare the land as a public highway and must prepare and record a plat of the highway in the land evidence records of the city or town where the land lies.

3) *Ways that have been approved by recordation of a subdivision plat.* Rhode Island's subdivision statute authorizes cities and towns to control the subdivision of land within their borders (R.I.G.L. Chapter 45-23). A subdivision, of necessity, requires roads and ways. Sometimes, a subdivision contains roads or ways that lead to the state's tidal waters. After a city or town planning commission has given notice of the proposed subdivision plat, held public hearing(s), and approved the subdivision plat and that plat has been recorded in the city or town's land evidence records, the roads or ways are available for public use.

4) *Ways that have been offered to the public by dedication and accepted by public use or by official city or town action (implied dedication).* This is a common law method of establishing public ROWs. In order for there to be a common law dedication, there must be a clear intent by the owner to donate the land and a clear acceptance of that land by the public. Once a parcel of land has been dedicated, the transfer is irrevocable. The landowner's intent to dedicate the land can be evidenced by the recordation of a plat map showing the ROW as public or by language contained in a deed(s). Many public ROWs to Rhode Island's shoreline have been established by dedication.

5) *Highways that have been used by the public since time immemorial.* This is an old common law concept. The law provides that to create a public ROW by use, the evidence must show that the use has been general, uninterrupted, continuous, and adverse so as to warrant the inference that the land had been laid out, appropriated, or dedicated by the landowner to the public. An occasional use of land by a few persons living in the area or by abutters to the property without any claim of right is insufficient to establish a public ROW.

6) *Ways that have been obtained by the public's adverse use.* Privately owned paths to the shore, that have been used for a period of 10 consecutive years by the public may become ROWs, but only if the requirements of the R.I. General Laws are met (R.I.G.L. Chapter 34-7). This method is commonly known as an easement by prescription. An easement is a right to use the land of another in a specified manner. In order to create a public ROW by this method,

the public has the burden of establishing actual, open, notorious, hostile, and continuous use of a way under a claim of right for 10 years. In addition, the law specifically does not allow a public ROW to be established by footpaths; the pathway has to have been used by carriages or vehicles.

### **The CRMC's Public ROW Designation Process**

The Rhode Island Coastal Resources Management Council (CRMC) has the authority to designate public ROWs to the tidal waters of the state (R.I.G.L. 46-23.6). A CRMC public ROW designation clarifies the status of a public ROW and provides shoregoers with clear and legally defined pathways to the shore. The designation of public ROWs also ensures the preservation and protection of these access sites for subsequent generations of Rhode Islanders.

The CRMC carries on a continuous process of discovery and designation of ROWs using a standing ROW subcommittee. Because of administrative and legal requirements, the ROW designation process is complex and requires a substantial investment of time and resources. Therefore, the CRMC typically takes a town-by-town approach to identify and investigate potential public ROWs.

The CRMC designation process begins with a fact finding investigation and a title search conducted by the CRMC's legal counsel, usually at the request of a coastal city or town. In many cases, the CRMC's efforts are supplemented with research by the municipality.

During the fact finding process, evidence pertaining to the existence of a ROW is gathered from land evidence records, deeds, tax assessor records, public works records, town documents, and court records. A visual inspection of potential sites is also made to gather evidence pertaining to the exercise of dominion over a potential ROW including maintenance, repair and upkeep.

All evidence is reviewed for accuracy and relevance by the CRMC ROW subcommittee and presented at a public hearing in the town or city involved. If, based on the evidence gathered and public testimony received, the subcommittee determines with reasonable probability that a public ROW exists, a recommendation is made to the full Council to designate the site.

If the full Council approves the ROW subcommittee's recommendation, then a final written decision is rendered containing factual findings and conclusions of law. If there is not appeal or after an appeal has been resolved in favor of the CRMC, then the decision is recorded in the land evidence records, and filed with the Secretary of State's Office.

Since 1978, the cumulative efforts of the CRMC have resulted in the review of over 337 potential ROWs and the designation of over 216 sites.

### **What a CRMC Designated ROW Means**

Once a public ROW has been designated, the public possesses a passage way to gain access to the tidal waters of the state. Like an easement, a public ROW relates to the public's use, not the public's ownership. In other words, the public has the right to pass over and use the land in a manner consistent with the condition of the site no matter who owns it.

When the CRMC designates a public ROW, it does *not* determine the ownership of the site. The CRMC is prohibited from addressing questions of ownership. Determining the ownership of a public ROW can be complicated and often requires court action. Frequently, if a site has been actively used by the public, the public may in fact own the site.

The CRMC does not create "new" public ROWs, they must already exist. The CRMC merely recognizes and places an official designation on previously existing conditions. It is the landowner and/or a city or town which *creates* a public ROW; the CRMC merely *identifies* these sites.

If the CRMC has not designated a site, it does not mean that a public ROW does not exist. In fact, a public ROW may exist, but the CRMC may not have enough information to legally designate it or the CRMC may not have investigated the site.

### **Can a Public ROW be Blocked or Abandoned?**

Once a site has been designated as a public ROW the CRMC prohibits any activities that would obstruct the public's use of these sites. The CRMC also pursues legal actions against individuals that block or impede the public's access at designated ROWs. In this manner, the CRMC protects and preserves these sites for the public's use.

Once a public ROW has been designated by the CRMC, it cannot be abandoned by a city or town without prior approval of the CRMC (R.I.G.L. 46-23-6.2). In addition, a public right-of-way that has not been designated by the CRMC, but is never-the-less a public way, cannot be abandoned without formal abandonment proceedings. Moreover, highways which have been designated to the public by the actions of a landowner or acquired by prescription, cannot be lost due to non-use and the public cannot lose its rights due to adverse possession.

### **How You Can Help Improve Public Access**

There are many ways that you can help to safeguard public access to Rhode Island's tidal waters. These include:

- Cleaning up public access sites
- Participating in your town's harbor management process
- Gathering information necessary to designate public ROWs
- Reporting the unlawful blocking of public ROWs

**For further information call the CRMC at (401) 783-3370**

