



Aug. 31, 2020, 10:30 AM

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RE: Public Access comments for the CRMC 309 Assessment & Strategy for 2021-2025

Dear CRMC:

The Coastal Resource Management Council (CRMC) is currently seeking public comment on its Assessment & Strategy for Enhancement for 2021-2025* which is being prepared in consultation with NOAA's Office for Coastal Management (Every five years, state coastal management programs -- such as CRMC --conduct self-assessments.)

As requested, Friends of the Waterfront (FOW), a 36-year-old local non-profit organization with a mission to preserve Newport's historic waterfront, hereby comments on the 309 Assessment & Strategy for Enhancement. **This comment letter is written in support and gratitude for all the fine work that the Council and the staff do to protect the Rhode Island coastline.** Please accept this comment letter in that spirit.

FOW believes that, in such a small state, particular spots (access locations) and specific actions deserve attention in the final CRMC plan. FOW asks that generalities not be substituted for specific concrete identified action items to be undertaken by the CRMC.

FOW very respectfully recommends as follows:

• ***Direct actions: Public Access actions directly within the CRMC's power and control:***

1. CRMC will host a conference in the post-pandemic period (hopefully in the spring, summer or fall of 2021), or a webinar, on RI public access. Open to all, especially realtors and those related

interests as well as access advocates, the conference could be something along these lines: “The Ibbison case 40 years later: public shore access in RI”. Speakers could include representatives of government, community groups, academia, and business/property interests. CRMC could even find some of the participants from the original Ibbison case to appear.**

2. CRMC will clarify the following: Marine Avenue in Newport has, according to late second-hand reports, already been formally designated to be a public right-of-way. The status of Marine Avenue (leading to a neighborhood beach in use since the turn of the 20th century) should be made clear to the general public in that it should officially appear on the CRMC web-site map of coastal access ways. Updating of the web-site is in order. ***

3. CRMC will investigate and take action on the following: the Newport Scott’s Wharf/North-Commercial Wharf right-of-way (or set of rights-of-way) -- along Newport’s historic waterfront - has been litigated successfully, at length, in Newport Realty v. Lynch (RI Supreme Court 2005). Nonetheless it has never been designated. CRMC will undertake to do so.

4. CRMC will hold appropriate hearings to consider the following regulatory change: CRMC will seek modification of its permitting regulations to specify that no work will be allowed or assented-to in any CRMC-designated public right-of-way. The only exceptions would be:

- a) for work to positively enhance and protect public shore access,
- b) for wholly subterranean utilities not visible at all from the surface,
- c) for temporary construction equipment staging needed to preform work on an abutting parcel where the activity is of extremely limited defined duration with complete restoration to promptly follow.

Moreover, procedurally, any such work could be approved (assented-to) only by, and under, a separate application, separately indexed with respect to the affected right-of-way, and never simply as part of an application for work on an adjacent parcel. Any action by the Council would be archived in the file pertinent to such right-of-way. All such approvals would ultimately be by the full Council and never, ultimately, by staff.

It is recognized that there may be rare cases where work in a right-of-way could be needed outside of the exceptions listed. Nonetheless, CRMC intends to move forward with the proposed regulation with the idea that, if such exceptional circumstances were to arise, the regulation could then be amended at such future time.

5. CRMC, through appropriate processes, will amend The Redbook (the CRMC substantive regulations on permitting) with respect to “Section 1.3.6 Protection and Enhancement of Public Access to the Shore” as follows:

- a) The editing error in subsection B.4 of the above section shall be corrected so that it mandates construction “in a manner which does not unreasonably interfere with the public's right” Note the addition of the negative prefix “un.”
- b) The requirements for public access in the above section will be increased in specificity so as to require that, where applicants are to provide on-site access, such on-site access should be configured so as to connect with any CRMC-designated public right-of-way through or adjacent to the proposed project.
- c) The requirements for public access in the above section will be further increased in specificity so to require that any significant project provide enhancement to any CRMC-designated right-of-way through or adjacent to the project. It is unimaginable that a major project can surround or abut a designated right-of-way without significant negative impacts. Therefore, compensatory enhancement must be required.

• ***Indirect actions. Actions that are NOT within the CRMC's power and control; but ARE subject to CRMC influence:***

1. CRMC will issue guidance to coastal municipalities to encourage that all zoning, planning, and subdivision ordinances be amended as follows. All applications for work or subdivision in a zone bordering on the coast must meet the following requirement. An attorney, surveyor or engineer, as appropriate, must formally certify that:

- a) CRMC records (archives) on CRMC-designated rights-of-way in the vicinity have been searched thoroughly.
- b) All CRMC-designated rights-of-way adjacent to, or through, the project are accurately shown in the submitted plans.
- c) No encroachment will result from the planned work or subdivision sought.

2. CRMC will pro-actively seek repeal of the anti-footway statute. The details follow:

- a) The CRMC is concerned about future encroachments on public rights-of-way to the shore.
- b) The CRMC staff will take the time and effort to inform the legislature so as to allow that body to correct any weaknesses in the public's legal posture.
- c) The CRMC is particularly concerned about the presence, on the books, of the following archaic law (it dates at least from the 1890s). That statute follows: **§ 34-7-4 Right of footway denied. No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time.** The RI statute web link follows: <http://webserver.rilin.state.ri.us/Statutes/TITLE34/34-7/34-7-4.HTM>.

This antiquated statute could be harmful to the National Historic registered Newport Cliff Walk and other RI historic trails. But, it would be rendered harmless by repeal (or by suitable modification). CRMC will provide the needed leadership and advocacy for this important legislative change.

FOW makes the above comments in an overall context that is concerning. Current development is happening in flood zones. All of the construction that is taking place in areas that have flooded in the past few years -- and, moreover, that is taking place amidst projections that are worsening -- is problematic. While these problems have been addressed by disallowing ground-floor level living and business quarters, the result is that Rhode Island ends up with taller buildings and less visual access. Therefore, enhanced public coastal access actions and regulations have a direct relation to such construction. Public access is now more important than ever.

Thus, Friends of the Waterfront very respectfully submits the seven action items listed above to be considered for the ***CRMC 309 Assessment and Strategy for 2021-2025.***

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**note the mislabeled dates on CRMC's website: "2016-2020"*

***FOW mentions -- for the benefit of readers other than the CRMC-- that there is a collateral benefit to the conference/webinar mentioned above (item 1 in direct actions). Hopefully, all pro-access advocates Save-the-Bay, RIMS, Surf-riders, Clean Ocean Access, Saltwater Anglers, Friends of the Waterfront, CLF would take advantage of the event as an opportunity to, immediately thereafter, separately meet in order to coordinate and reach a joint agenda.*

****The general public remains uncertain if Newport's Marine Avenue is undesignated or if the map is simply not updated; but, in any case, it does not appear on the CRMC web-linked page that reflects GIS mapping of public rights-of-way.*