



January 14, 2022

Re: Friends of the Waterfront Recommendations for Special House Legislative Commission on CRMC Reorganization

The Honorable Deborah L. Ruggiero
Chair, Special House Legislative Commission on CRMC
Rhode Island House of Representatives
82 Smith Street
Providence, RI 02903

Dear Representative Ruggiero and Members of the Special Commission,

On behalf of the Friends of the Waterfront, I am pleased to submit these comments to the Special House Legislative Commission on the topic of the reorganization of the operations and management of the Rhode Island Coastal Resources Management Council. Friends of the Waterfront (FOW) is a grass roots 501(c) (3) non-profit organization founded in 1983 by concerned Newport, Rhode Island, citizens to ensure continued public access to the Newport harbor front at a time when developers threatened to turn public access to private and to block nearly all access to the waterfront. These enduring public access pathways can be traced back to the colonial era.

The Friends of the Waterfront values the work of the CRMC and its skilled professional staff. In its March 2020 evaluation of Rhode Island's Coastal Management Program,¹ NOAA's Office of Coastal Management stated that the CRMC staff was praised "for their high quality work and level of service," and that stakeholders described the staff as "well respected,' 'talented,' 'accessible,' 'trusted,' 'responsive,' 'fair,' 'transparent,' 'great public servants,' 'eye to the public good,' and the 'the best in the state.'"² FOW has enjoyed a strong working relationship with CRMC staff, and wholeheartedly agrees with this description. We submit these comments for the purpose that any reforms or reorganization of CRMC build upon these organizational strengths.

A particular strength of the CRMC is its independence. Unlike our neighbors in New England or in most other states with a coastal program, the Rhode Island Legislature decided that the functions performed by CRMC should stand outside of any cabinet-level department that has other functions or duties. In most states, the powers and functions that the Rhode Island Legislature has delegated to CRMC are housed in an office that reports to that state's environment or natural resources department. The decision not to follow this model was a wise decision for the Ocean State, given our intimate relationship to the sea and Narragansett Bay, and the fact the rights of Rhode Islanders that are now enforced by CRMC date to the founding of Rhode Island in the colonial era.

The maintenance of an independent CRMC is a bedrock principle for the Friends of the Waterfront. Under no circumstance should CRMC be placed under the jurisdiction of another cabinet-level

¹ *Final Evaluation Findings, Rhode Island Coastal Management Program, March 2010 to June 2019*, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, United States Department of Commerce, Published March 2020 ("2020 NOAA Report")

² 2020 NOAA Report at p. 6

department that has other functions such as the Department of Environmental Management. While we understand that the absorption of CRMC responsibilities under DEM is not currently under consideration, we are concerned that an unintended consequence of reform efforts might lead to consolidation of CRMC responsibilities under DEM in the future, perhaps in the name of efficiency or better coordination on policy. While no current Legislature can tie the hands of a future Legislature on the organization of agencies and delegation of powers, any fundamental change in CRMC structure must be accompanied by an unambiguous endorsement of the intent of this Legislature to maintain the independence of CRMC or a successor entity.

One reform option that has been long discussed is to replace CRMC with a cabinet-level executive department often described as a “Department of Coastal Resources,” which would report to the Governor as a separate and distinct department from the Department of Environmental Management, and co-equal to it. Our colleagues and collaborators at Save the Bay recently made this recommendation during the 2019 NOAA review.³ In this proposal, the current Coastal Resources Management Council would be retained but would serve in the role of policy advisor. FOW takes no position on this option at this time. While we acknowledge that the Legislature could create a sufficiently independent Department of Coastal Resources, and that a cabinet department reporting to the governor with an administrative hearing process similar to that of DEM has certain advantages, we have chosen to focus our comments on reform within the current CRMC structure.

If the politically-appointed Council is to be retained, FOW recommends that the criteria for appointment to the Council be further strengthened. (As we all know, the membership of the Council consists of ten members, nine of whom who are appointed by the governor with the advice and consent of the Senate, with the head of DEM serving as an ex officio tenth member.⁴ In 2018, the Legislature amended the statute to clarify membership on the Council. There are criteria that appointees to the Council must meet. Current criteria include the appointee’s status as a serving elected or appointed official of local governments (six members), the size of community represented, and coastal adjacency.⁵ Three members are appointed from the public, one of which must be from a coastal municipality.⁶) Making decisions in the coastal zone is a highly technical undertaking from a policy, legal and scientific perspective. The Council needs to include persons with the professional qualifications and experience to make such decisions. FOW acknowledges that there is an important role and perspective for non-expert citizen membership on the Council, but a supermajority of the Council should meet significant educational and/or experience criteria for appointment. Quorum standards should also be amended as well to reflect the new qualification requirements. All Council decisions should be made by a quorum with a supermajority of persons who meet the new criteria.

Moreover, importantly, FOW urges that CRMC staff be provided support from dedicated and independent in-house staff attorneys for legal advice and counsel on all matters including contested cases.

The core mission of FOW is to preserve and expand public access to and along the shore in accordance with the Rhode Island Constitution. The identification, dedication, protection, and maintenance of public rights-of-way are ongoing efforts, and we rely upon CRMC to protect these public rights. In the past year, FOW has been part of two notable successes in Newport regarding public access, and the outcomes in these cases would not have been possible without the support of CRMC staff. In any reform of CRMC, FOW strongly recommends that the resources allocated to dedicating and protecting ROWs be increased

⁴ RIGL § 46-23-2(a)

⁵ RIGL § 46-23-2(a)(1)

⁶ RIGL § 46-23-2(a)(2)

from current levels. Our understanding is that there was once a dedicated fund for researching rights-of-way. This must be restored and even enhanced.

In its otherwise glowing evaluation of the Rhode Island Coastal Management Program, NOAA did raise concerns regarding public access and designation of new ROWs. NOAA noted in its report that CRMC's metric for the evaluation period (2012-17) was dedication of 15 new ROWs, and only one was achieved.⁷ NOAA acknowledged an additional four ROW designations in 2018, which was beyond the evaluation period.⁸ NOAA noted going forward that "staffing remains a concern as new emerging issues such as wind energy are taking up significant staff time."⁹ Through June 2020, the last year for which CRMC published data, no additional ROWs were designated, though the reports for both years noted progress towards designation.¹⁰ Since the last published report in 2020, three additional ROWs were designated in North Kingstown and one in Providence.¹¹ FOW could not have achieved its recent successes on public access without the help and support of CRMC staff. We remain concerned that the designation of new ROWs remains an issue due to lack of staff capacity and urge that reform efforts includes strengthening this vital function.

In closing, the CRMC plays an indispensable role in protecting rights that have been guaranteed to all Rhode Islanders since the founding of the Colony. Friends of the Waterfront believes in a strong and independent CRMC, and that CRMC or any successor agency must remain independent and not placed under the jurisdiction of any other cabinet department which has other functions. We do believe that decision-making can be improved by strengthening the criteria for appointment to the Council and by appointing an in-house attorney to represent staff in contested cases. Finally, we strongly urge that additional resources and priority be accorded to designation of rights of way.

Sincerely,



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Cc: Member of the Special House Legislative Commission on CRMC Reorganization

⁷ 2020 NOAA Report at 25.

⁸ Id.

⁹ Id.

¹⁰ *Designation of Public Rights-of-Way to the Tidal Areas of The State, Progress Report for July 2018 through June 2019*, Coastal Resources Management Council Subcommittee on Rights-of-Way, June 2019, at pp.2-4, and *Designation of Public Rights-of-Way to the Tidal Areas of The State, Progress Report for July 2010 through June 2020*, Coastal Resources Management Council Subcommittee on Rights-of-Way, June 2020, at pp.2-4.

¹¹ Email exchange between author and CRMC, January 13, 2022.