UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

Rhode Island Association of Coastal Taxpayers, Plaintiff, v. Peter Neronha, et al., Defendants.	Case No. 1:23-cv-00278-WES-LDA

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT

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> "[G]overnment-authorized invasions of property—whether by plane, boat, cable, or beachcomber—are physical takings[.]"

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INTRODUCTION

Pursuant to Federal Rule of Civil Procedure Rule 65, Plaintiff Rhode Island Association of Coastal Taxpayers (RIACT) hereby moves the Court to issue a preliminary injunction halting the enforcement of a state law that converts private beachfront land into a public beach area, without just compensation.

Members of RIACT own residentially developed beachfront properties along Rhode Island's coastline. *See* Ex. 1 (Declaration of David Welch (Welch Dec.)) at 1, ¶ 4. Their properties extend to (1) the mean high water (MHW) line, the traditional state law boundary separating public and private beaches, or to (2) the "high water" line, which is more landward than the MHW line, but still seaward of the area converted into a public beach by the challenged state law. *Id.* In short, the private titles of RIACT members include generally dry beach lands located inland of tidal waters. *See Northeastern Corp. v. Zoning Bd. of Review*, 534 A.2d 603, 606 (R.I. 1987) (noting the "well-established principle that in this jurisdiction the line of demarcation that separates the property interests of the waterfront owners from the remaining populace of this state is the mean high-tide line").

The private status of their properties changed drastically, however, on June 26, 2023, when a new state law ("the Act") expanded the public's beach area from the MHW line to *ten feet landward of the high water line*, thereby granting the public access to all private parcels above the MHW line. *See* Ex. 2 (Act). The Act

specifically declares that the public's "shore" "rights"—defined by Article I, Section 17, of the state constitution to include a "right of passage"—extend to coastal lands lying ten feet landward of the "recognizable high tide line." The Act locates this line at the line of "seaweed, oil, scum," or "fine shell or debris" found on the shore each day. The Act therefore extends the publicly accessible shore area inland from its historic terminus at the MHW line to the more landward private parcels located ten feet inland of the migratory high tide/seaweed line. The law grants the public a right to invade this private property for beach access purposes, with immediate, unsettling, and unconstitutional effects on RIACT members and all who own beachfront property in Rhode Island. *See* Ex. 1 at 6 (Welch Dec.).

By converting all private land lying between the MHW line and ten feet inland of the high water/seaweed line into a publicly accessible beach area, the Act effectively takes an easement from RIACT members (and all other citizens owning land between the MHW and ten feet inland of the seaweed line) and strips the owners of their right to lawfully exclude strangers from their property. This is a per se taking of property that violates the Fifth Amendment to the United States Constitution. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 832 (1987) (an unconstitutional taking results from authorization of "a permanent and continuous right [in the public] to pass to and fro, so that the real property may continuously be traversed"). Further, RIACT has no adequate remedy at law because sovereign immunity and valuation difficulties preclude an award of damages for the migrating public easement taken by the Act. It is therefore proper to enjoin state officials from enforcing the Act, and

the Court has power to do so. *Ex parte Young*, 209 U.S. 123 (1908); *Asociación De Subscripción Conjunta Del Seguro De Responsabilidad Obligatorio v. Flores Galarza*, 484 F.3d 1, 24 (1st Cir. 2007).

LEGAL BACKGROUND AND FACTS

A. Rhode Island Coastal Property Law

1. Shoreline features and terminology

The Rhode Island coastline is generally defined by the following features: (1) the mean low tide (MLT) line, also called the mean low water mark. The MLT line is calculated as the average of low tides over an approximately 19-year period, and is located near open waters; (2) the MHW line (also called the "mean high tide" line),[1] calculated as an average of daily high tides over an approximately 19-year period; (3) the actual or "recognizable" high water line, which is often marked by a seaweed, debris, shell, oil, or wrack line; and (4) the first line of vegetation that spreads continuously inland. *See generally* Ex. 3 at 7 (Final Report of the Special Legislative Commission To Study And Provide Recommendations On The Issues Relating To Lateral Access Along The Rhode Island Shoreline ("Shoreline Commission Report")).

The Act declares that "the actual water line is significantly landward of the MHW line." Ex. 2 at 3:28–29. Indeed, according to Rhode Island Coastal Management Council (CRMC) data and analysis, the high water line/seaweed line is "*never* seaward of the MHW line." *See* Ex. 4 at 3 (Janet Freedman & Megan Higgins, *What*

[1] The terms "mean high water line" and "mean high tide line" refer to the same line calculated as an average of daily high tides on the shore over an 18.6 year period. These terms are used interchangeably in this memorandum, though RIACT may use the phrase "mean high water" line more frequently than "mean high tide line" because the Act itself uses that phrase.

Do You Mean by Mean High Tide? The Public Trust Doctrine in Rhode Island); *see also*, Ex. 5 (CRMC coastal rights brochure stating that the "mean high tide is seaward of the seaweed line"). Further, the legislative commission that studied and recommended passage of the Act found that the "MHW line is usually *40–60 feet seaward*" of the "seaweed line." Ex. 3 at 6 (Shoreline Commission Report) (emphasis added); *see also*, Sean Lyness, *A Doctrine Untethered: "Passage Along the Shore" Under the Rhode Island Public Trust Doctrine*, 26 Roger Williams U. L. Rev. 671, 679–80 (2021) ("As an average, the mean high water line is further into the water" than the high water line.).

2. Relevant legal background

Article I, Section 17, of the Rhode Island Constitution recognizes the existence of public rights in the "shore," stating:

> The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values[.]

Article I, Section 16, further states:

> The powers of the state and of its municipalities to regulate and control the use of land and waters in the furtherance of the preservation, regeneration, and restoration of the natural environment, and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in section 17, shall be an exercise

> of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property.

The state constitution does not define the location or extent of the "shore" area to which the public has the right of access and use declared in Article I, Section 17. However, for more than a century, Rhode Island courts have identified *the MHW line* (not the high water/seaweed line) as the landward extent of the public's "shore" area. *Jackvony v. Powel*, 21 A.2d 554, 557 (R.I. 1941) (holding that the state-controlled shore is "between the lines of mean high tide and mean low tide"); *Narragansett Real Estate Co. v. Mackenzie*, 82 A. 804, 806–07 (R.I. 1912) (a private landowner "has title in fee only to ordinary high-water mark, and that the fee of the land below ordinary high-water mark is in the state").

In *State v. Ibbison*, 448 A.2d 728 (R.I. 1982), the Rhode Island Supreme Court emphatically confirmed that the MHW line has always demarcated the extreme landward boundary of the pubic beach under state common law. *Ibbison* considered the issue of at "what point does the shore extend on its landward boundary?" *id.* at 729, and noted that "[t]he setting of this boundary will fix the point at which the land held in trust by the state for the enjoyment of all its people ends and private property belonging to littoral owners begins." *Id.* In *Ibbison*, the state argued that the "mean high tide line" is the public/private beach boundary. *Id.* at 730. The defendants, a group of beachgoers charged with trespassing, argued that the public beach extended inland to the high water line, a point marked by the seaweed line. *Id.* The *Ibbison* court held that, under the common law in Rhode Island, "*the mean-high-tide line [is]*

the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution." *Id.* at 732 (emphasis added).

The *Ibbison* court understood that the MHW line is "not readily identifiable by the casual observer," but must be ascertained by scientific methods. *Id.* at 732–33. The court found, however, that the MHW line boundary provides greater certainty than one set at the visible highest tide, and that the latter approach "would unfairly take from littoral owners land that is dry for most of the month." *Id.* at 732. The *Ibbison* court further noted that other coastal states had adopted the MHW line as the private/public beach boundary. *Id.* at 733.

In sum, *Ibbison* (1) recognized that the high water/seaweed line was located landward of the MHW line, and the public would have more beach area if the high water/seaweed line was the boundary, but it (2) rejected the high water line as the landward public beach boundary, and held instead that the boundary existing since the inception of the state under common law lies at the MHW line. *Ibbison* has never been overruled.

B. The Act and Its Effect on Private Property

1. RIACT members' property

Given Rhode Island's background law, it is not surprising that coastal land deeds in Rhode Island state that private titles to beachfront property extend to the MHW line/"mean high tide" line or to the "high water line." *See, e.g.*, *Newport Hospital v. Ritchie*, 161 A. 371, 371 (R.I. 1932) (discussing a private title to land adjacent to Sachuest Beach bounded "by the line of mean high tide"); *Taber v. Hall*, 51 A. 432,

434 (R.I. 1902) (discussing a private title that extended to the "high-water mark"). Both types of boundaries (the mean high tide and high water mark) extend private ownership farther toward the sea than a line set at 10 feet inland of the high tide line/seaweed line.

The property owned by RIACT President David Welch provides an illustration. Welch owns a small home on beachfront property in the Charlestown area. Ex. 1 at 2, ¶¶ 5–7 (Welch Dec.). The deed to Welch's property states that portions of his land extend to the "mean high tide line." *Id.* at 2, ¶ 10. There is no recorded or adjudicated public easement on Welch's title. *Id.* at 3, ¶ 17. Welch acquired his property with the expectation that he could exclusively possess and enjoy all of the land within his title, including the dry sandy portion of his property that extends seaward to the "mean high tide" line. *Id.* at 2, ¶¶ 11, 13; *id.* at 3, ¶ 16. The location of the mean high tide or MHW line is regularly surveyed on the beach near Welch's property by his neighbors. *Id.* at 4, ¶ 21. Based on these surveys, Welch estimates that the high water line/seaweed line is usually 20–50 feet landward of the MHW line that demarcates the seaward edge of his ownership. *Id.* at 4, ¶ 22. Welch has guarded the exclusivity of his property lying landward of the MHW line by regularly informing beachgoers that the area above the water line is private property and not open for public use. *Id.* at 3, ¶ 14.

As President of RIACT, Welch has reviewed deeds held by other RIACT members that similarly extend the members' private lot lines to the "mean high tide" line. *Id.* at 1, ¶ 4.

2. The Act

In 2021, a special legislative commission, the Shoreline Commission, was created to study "lateral" shoreline access in the state and make recommendations on the issue to the Rhode Island House of Representatives. Ex. 3 at 4. In 2022, two members of the Shoreline Commission introduced legislation to expand the location of the publicly accessible shore area. *Id.*

On June 26, 2023, the Governor of Rhode Island signed a law passed in the 2023 legislative session entitled, "An Act Relating to Waters and Navigation—Coastal Resources Management Council." The Act's preamble declares, that "[t]he general assembly finds that the lack of a workable, readily identifiable right of access to the shore by the public has led to confusion, conflict and disputes between those attempting to exercise their rights and privileges to the shoreline and the rights of landowners whose property abuts the shore." Ex. 2 at 1:2–5.

The Act recognizes that *Ibbison* set the public beach boundary at the MHW line but declares that

> use of the MHW for determining shoreline access has restricted the public's rights. Retaining the MHW line rule employed by the court in 1982 results in the public only having meaningful shoreline access at or near the time of low tide, if at all, at some locations. Thus, the constitutional right and privileges of the shore delineated in the 1986 Constitutional Convention amendments have become illusory under such a rule.
>
> . . . Insofar as the existing standard for determining the extent of the public's access to the shore is unclear and not easily discernable, due to the lack of a boundary that can be readily seen by the casual observer on the beach, resulting in confusion, uncertainty and even confrontation, the General Assembly is obligated to provide clarity. This enactment

> constitutes the necessary clarification in accordance with Article I Section 17 of the R.I. Constitution.

Ex. 2 at 3:34–4:9.

The Act ultimately declares that "notwithstanding any provision of the general laws to the contrary, *the public's rights and privileges of the shore may be exercised*, where shore exists, on wet sand or dry sand or rocky beach, *up to ten feet (10') landward of the recognizable high tide line*." *Id.* at 4:29–31.

The Act does not limit public access in the area between the MHW line and ten feet inland except to this extent:

> the public's rights and privileges of the shore shall not be afforded where no passable shore exists, nor on land above the vegetation line, or on lawns, rocky cliffs, sea walls, or other legally constructed shoreline infrastructure. Further, no entitlement is hereby created for the public to use amenities privately owned by other persons or entities, including, but not limited to: cabanas, decks, and beach chairs.

Ex. 2 at 4:31–5:2.

The Act defines "recognizable high tide line" (which functions as the baseline marker for locating the publicly accessible beach area created by the Act) as:

> a line or mark left upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface level at the maximum height reached by a rising tide. The recognizable high tide line may be determined by a line of seaweed, oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, or other suitable means that delineate the general height reached by the water's surface level at a rising tide. If there is more than one line of seaweed, oil, scum, fine shell, or debris, then the recognizable high tide line means the most seaward line.

Id. at 4:15–22.

The Act notes that if there is no physical beach residue available to identify the "recognizable high tide line," that line can be identified by the

> wet line on a sandy or rocky beach. The line encompasses the water's surface level at spring high tides and other high tides that occur with periodic frequency, but does not include the water's surface level at storm surges in which there is a departure from the normal or predicted reach of the water's surface level due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storms.

Id. at 4:23–28.

During their deliberations, members of the Shoreline Commission stated that "[T]he difference between the actual location of the water" and the MHW line "[i]s . . . 60 feet . . . . *We are actually gaining 60 feet* just by making it the wrack line." Lateral Access Along the RI Shoreline, Hearing of Special Legislative Commission (Mar. 3, 2022) (statement of Michael Rubin at 00:25:50), *available at* http://ritv.devosvideo.com/show?apg=80e0c946&video=7ff103c4e379 (last viewed July 24, 2023) (emphasis added). With respect to granting the public access to an additional ten feet of property beyond (inland of) the high water/seaweed line, another Commission member stated: "My girlfriend and I, we held hands this weekend and we measured how much space we took up when we were walking and it was over four and a half feet, just the width of her and I walking side by side. . . . My perspective is we should provide enough room for two couples walking hand in hand to pass each other on the beach and I'm pretty sure that's 9 to 10 feet." *Id.* at 00:30:22 (statement of Representative Blake Anthony Filippi); *see also*, Ex. 7 at 3.

The Act recognizes that several state agencies will participate in its enforcement, declaring: "The coastal resources management council (CRMC) in

collaboration with the department of environmental management (DEM), shall develop and disseminate information to educate the public and property owners about the rights set out in this section," and that "[t]he CRMC in collaboration with the DEM, and the attorney general, shall determine appropriate language and signage details for use at shoreline locations." Ex. 2 at 5:6–10.

The Act does not include any provision or means to compensate owners of private beachfront lands that are regulated, declared, or treated as a public area under color of the Act.

3. The effect of the Act and RIACT's complaint

Following passage of the Act, members of the public intentionally entered onto RIACT members' beachfront properties located near South Kingstown and Charlestown, under color of the Act. Ex. 1 at 4, ¶ 25 (Welch Dec.). Members of the public entered and occupied RIACT President Welch's property and other RIACT members' property in the Charlestown and the South Kingstown beach area between June 30–July 4, 2023. *Id.* at 4, ¶¶ 24–25.

On or about July 3, 2023, a local coastal activist entered Welch's neighbors' beachfront property and orally urged other members of the public present on the beach to enter private property located landward of the seaweed line, under authority of the Act. When the activist approached a private security guard hired by Welch's neighbors, the guard told the activist he could not set up beach equipment on property inland of the water line. Ex. 1 at 4–5, ¶ 26 (Welch Dec.). The activist objected based on the Act and then called the police. *Id.* The activist later apparently asked the

Charlestown police to press charges under Rhode Island General Laws § 11-44-24 against the guard for trying to exclude him from privately owned property lying between the MHW and ten feet inland of the seaweed line. *See* Ex. 6 (news stories about post-Act beach confrontations).

Rhode Island General Laws § 11-44-24 states: "Every person who shall obstruct or block or cause any obstruction of any public rights-of-way to water areas of the state shall be imprisoned not exceeding one year or be fined not exceeding five hundred dollars ($500)." Welch and other members of RIACT fear that they can and will be criminally or civilly penalized under Rhode Island General Laws § 11-44-24 if they attempt to stop people from occupying private beach property under color of the Act, and will therefore refrain from excluding members of the public from their property in some instances. Ex. 1 at 5, ¶ 33 (Welch Dec.).

On July 7, 2023, RIACT filed a complaint seeking redress for a violation of their federal constitutional right to be free from an uncompensated taking of private property. ECF No. 1. Their amended complaint (which is the operative complaint) names three state officials as defendants in their official capacities, including the Rhode Island Attorney General. ECF No. 11. The complaint does not seek damages, but asks for prospective equitable relief from the enforcement of the Act, including, but not limited to, a preliminary injunction.

STANDARD OF REVIEW

A district court may grant a preliminary injunction if the moving party shows: (1) a substantial likelihood of success on the merits; (2) a likelihood of suffering

irreparable harm in the absence of relief; (3) the balance of equities favors the movant; and (4) the injunction is in the public interest. *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008). To demonstrate likelihood of success on the merits, plaintiffs must show a "reasonable likelihood" that they will prevail. *Jean v. Mass. State Police*, 492 F.3d 24, 26–27 (1st Cir. 2007). A movant can establish the existence of "irreparable harm" by demonstrating that it likely has "no adequate remedy at law." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004). The balance of the equities and the public interest factors "merge when the Government is the opposing party" to the preliminary injunction. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

SUMMARY OF ARGUMENT

Under the *Ex parte Young* doctrine, plaintiffs may "seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law" without violating a state's sovereign immunity. *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 532 (2021). The *Ex parte Young* exception to sovereign immunity applies whenever a "complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective," *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002), including to complaints raising federal takings claims. *See Asociación De Subscripción*, 484 F.3d at 24; *Ortiz De Arroyo v. Barcelo*, 765 F.2d 275, 280 (1st Cir. 1985) (stating, in an *Ex parte Young* takings case against state officials, "[t]he court may not award the value of the diminished property right; it may issue only declaratory or injunctive relief").

RIACT's complaint seeks an injunction to stop the Act from effecting an ongoing violation of their constitutional right to be free from an uncompensated taking of property, and is thus proper under *Ex parte Young*. *Soscia Holdings, LLC v. Rhode Island*, No. 22-cv-266, 2023 WL 4230720, at *8 (D.R.I. June 15, 2023) (holding that takings claims "fall within the *Ex parte Young* exception" and survive sovereign immunity to the extent they "seek[] prospective injunctive relief against [state officials]").

Issuance of a preliminary injunction to halt the enforcement of the Act is warranted because RIACT is likely to prevail on the merits of its takings claim and its members will suffer irreparable harm without an injunction due to lack of an adequate monetary remedy. As to the merits, under state common law in force for over a century, the public has rights in the shore only to the MHW line, not to the more inland "high tide"/seaweed line. *Ibbison*, 448 A.2d at 732. Conversely, many private titles to beachfront land, including those held by RIACT members, extend to the MHW line and include property lying between the MHW line and ten feet inland of the seaweed line. Ex. 1 at 1, ¶ 4 (Welch Dec.). In authorizing public use of all shorelands up to ten feet inland of the high tide/seaweed line, the Act grants the public a right to invade all private land, including that of RIACT members, lying between the MHW line and ten feet inland of the high tide line/seaweed line. The Act takes an access easement on this area of private land, which strips the fee owners of their fundamental and constitutionally protected right to exclude non-owners from private property. *Nollan*, 483 U.S. at 834 ("requiring uncompensated conveyance of

the [access] easement outright would violate the Fourteenth Amendment"). The Act accordingly causes a per se, physical taking of property, and since it provides no mechanism for compensation, it is unconstitutional. *Cedar Point*, 141 S. Ct. at 2074 ("[G]overnment-authorized invasions of property—whether by plane, boat, cable, or beachcomber—are physical takings[.]").

RIACT members are likely to suffer irreparable harm without issuance of an injunction halting the unconstitutional enforcement of the Act. Irreparable harm exists when an injured plaintiff has no adequate monetary remedy. When state sovereign immunity bars a plaintiff from securing a damages remedy in federal court, as it does in this case, no adequate monetary remedy exists, and irreparable harm is present. *Odebrecht Constr., Inc. v. Sec'y, Florida Dep't of Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013) ("[N]umerous courts have held that the inability to recover monetary damages because of sovereign immunity renders the harm suffered irreparable.").

Furthermore, when damages cannot be accurately measured, alleged monetary remedies are inadequate. *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 18–19 (1st Cir. 1996). Here, the public easement which the Act imposes on beachfront property, like that held by RIACT's members, is uncertain in its physical size (width) because it is defined by a migratory boundary marker (i.e., the high tide/seaweed line). It is also uncertain as to the scope of the "rights" and "privileges" in private land that it grants to the public. Thus, it is not possible to accurately ascertain the amount of "just compensation" for a taking of property

effected by the Act. This renders monetary remedies inadequate and injunctive relief warranted. *Ross-Simons of Warwick*, 102 F.3d at 18–19.

Indeed, because the boundaries of the easement created by the Act (like the seaweed line) shift based on natural forces, property owners subject to the Act will have to file new takings claims when erosion inevitably moves the seaweed line boundary (and the easement) farther into private property. The likelihood that multiple suits will be needed to secure full compensation confirms that monetary remedies are inadequate. *Terrace v. Thompson*, 263 U.S. 197, 214 (1923) (to qualify as "adequate," a "legal remedy must be as complete, practical and efficient as that which equity could afford"); 11A Charles Alan Wright et al., Federal Practice and Procedure § 2944 (3d ed. 2013) (stating a legal remedy may be deemed inadequate and equitable relief is proper "if plaintiff demonstrates that effective legal relief can be secured only by a multiplicity of actions, as, for example, when the injury is of a continuing nature, so that plaintiff would be required to pursue damages each time plaintiff was injured") (footnotes omitted).

Finally, a preliminary injunction will not harm the public. Since the public did not have a beach easement on RIACT members' private land prior to the recent enactment of the Act, an injunction will take nothing from the public. It will simply return beaches to the status quo ante. Requiring the officials to abide by the Constitution before taking private land for public beach access purposes is in the public interest. *See Condon v. Andino, Inc.*, 961 F. Supp. 323, 331 (D. Me. 1997) ("It

is hard to conceive of a situation where the public interest would be served by enforcement of an unconstitutional law[.]").

ARGUMENT

I. RIACT IS LIKELY TO SUCCEED ON ITS TAKINGS CLAIM

A. RIACT Will Show That the Act Unconstitutionally Takes Private Property

RIACT is likely to prevail on its claim that the Act effects an unconstitutional taking of private property by extending public beach access inland onto private property located between the MHW line and ten feet inland of the seaweed or high water line. *See Cedar Point*, 141 S. Ct. at 2072 (a law granting union organizers "a right to physically enter and occupy" private property was "a *per se* physical taking" because it "appropriates for the enjoyment of third parties the owners' right to exclude").

1. Takings standards

The Takings Clause of the Fifth Amendment prohibits uncompensated takings of private property. U.S. Const. amend. V. A "taking" occurs when government action results in a physical invasion of property. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005). Indeed, a physical invasion or occupation of property constitutes a taking without regard for the public purpose for the invasion, its size, or its duration. *Cedar Point*, 141 S. Ct. at 2074.

The most obvious example of a taking arising from a physical invasion is when the government invades property for its own use. But it also occurs when it authorizes third parties, such as members of the public, to invade private land. *Cedar Point*, 141

S. Ct. at 2072; *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); *Nollan*, 483 U.S. at 833. The authorization of public access into private land is sometimes described as a taking of an "easement," *Cedar Point*, 141 S. Ct. at 2073. The Supreme Court has made clear that whether called an "easement" or not, governmental authorization of a public right to invade land violates the Takings Clause. *Id.*; *Nollan*, 483 U.S. at 834 ("requiring uncompensated conveyance of the [access] easement outright would violate the Fourteenth Amendment"); *Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979). Indeed, it is not necessary for actual public trespassing to be complete for authorization of an easement to qualify as a per se taking. *Cedar Point*, 141 S. Ct. at 2073. The grant of a *public right to access private land* is sufficient to trigger takings liability. *Kaiser Aetna*, 444 U.S. at 180 (A taking occurs "even if the Government physically invades only an easement in property."); *Cedar Point*, 141 S. Ct. at 2072.

Appropriation of a public access easement over private land so readily qualifies as a taking because it deprives the underlying property owner of the "right to exclude others" from their property. *Nollan*, 483 U.S. at 831–32. This right, which includes the subsidiary right to control entry onto one's land, is one of "the most essential sticks" in the bundle of property rights. *Kaiser Aetna*, 444 U.S. at 176; *id.* at 179–80 ("[T]he 'right to exclude,' so universally held to be a fundamental element of the property right . . . cannot [be] take[n] without compensation.") (footnote omitted); *Nollan*, 483 U.S. at 831–32; *Hendler v. United States*, 952 F.2d 1364, 1378 (Fed. Cir. 1991). When government authorizes a public invasion of private land, it takes away

an important property right—the right to exclude—from the owner and a per se taking arises. *Cedar Point*, 141 S. Ct. at 2073.

2. The Act takes property by imposing a public beach easement on all private beach land located inland of the MHW line

As previously noted, it is the settled common law rule in Rhode Island that public beaches extend no further inland than the MHW line, and private property begins at that point. The Act therefore takes private property by imposing a public beach easement on all private land lying inland of the MHW line, between the MHW line and ten feet inland of the high water/seaweed line. In granting the public an access easement on private land, "a permanent and continuous right to pass to and fro," *Nollan*, 483 U.S. at 832, between the MHW line and ten feet inland of the seaweed line, the Act deprives the owners of their property interests, including their right to lawfully exclude strangers. *See* R.I. Gen. Laws § 11-44-24. Members of the public have already entered RIACT members' private land under authority of the Act. Ex. 1 at 4–5 (Welch Dec.). The result is a classic per se, physical taking of property. *Nollan*, 483 U.S. at 832 (a physical taking occurs "where individuals are given a permanent and continuous right to pass to and fro" on private beach land); *Cedar Point*, 141 S. Ct at 2072–73; *Chmielewski v. City of St. Pete Beach*, 890 F.3d 942, 950–51 (11th Cir. 2018) (government authorization and encouragement of public use of private coastal land caused a taking).

Application of the Act to the property of RIACT President David Welch illustrates its confiscatory effect. Welch's beachfront property extends down to the MHW line, and the seaweed/high water line is always landward of the MHW line and

currently sits about thirty feet inland of the MHW line. Ex. 1 at 2, ¶ 10 (Welch Dec.); *id.* at 4, ¶ 23. By granting the public a right to invade Welch's land lying between the MHW line and ten feet inland of the seaweed line, the Act has given the public access to (1) thirty feet of Welch's land lying landward of the MHW, plus (2) the ten-foot strip lying landward of the seaweed line, a taking of approximately forty feet (in width) of Welch's land. *See Nollan*, 483 U.S. at 832–33. It is true that this amount may expand or contract as wave action moves the seaweed line back and forth on Welch's property. But because the seaweed/recognizable high water line (and the additional ten-foot strip) is *always* more landward than the MHW line boundary of Welch's title, Ex. 2 (Act) at 3:28–29; Ex. 3 at 6 (Shoreline Commission Report), there is no circumstance in which the Act will not take some property from owners like Welch. Finally, since the Act creates a public right-of-way on his land, Welch is now at risk of civil and criminal penalties if he attempts to exclude the public from his beachfront property. *See* R.I. Gen. Laws § 11-44-24.

The Act has the same appropriative effect along the state's entire coastline. Again, the Act authorizes public access up to the high water line, plus an extra ten feet inland, dramatically expanding the public beach area from its pre-Act common law boundary at the MHW line. *Ibbison*, 448 A.2d at 732. In thus extending public access to the ten feet inland of the high water line/seaweed line, the Act has encumbered every private parcel lying above the MHW line with a public easement, subjecting those areas to public invasion and stripping the owners of their right to exclude. *Cedar Point Nursery*, 141 S. Ct. at 2074 ("government-authorized invasions

of property—whether by plane, boat, cable, or *beachcomber*—are physical takings") (emphasis added); *id.* at 2073 ("appropriation of an easement constitutes a physical taking"). It does not matter that, for some coastal owners, the pubic access rights granted by the Act may be limited to the ten-foot strip above the high water/seaweed line. A taking arises from authorization of a public invasion of property without regard for "the size of the area" subject to occupation. *Loretto*, 458 U.S. at 436–37; *Lingle*, 544 U.S. at 538 (a compensable taking arises when "government requires an owner to suffer a permanent physical invasion of her property—however minor").

Many other states have concluded that statutes like the Act are unconstitutional as an uncompensated taking. For instance, in *Purdie v. Attorney General*, 732 A.2d 442 (N.H. 1999), the New Hampshire Supreme Court struck down a statute, like the one here, that extended the public beach to the "high water mark." Finding that New Hampshire common law "limits public ownership of the shorelands to the mean high water mark," and that "the legislature went beyond these common law limits by extending public trust rights to the highest high water mark," *id.* at 447, the court held that the statute "authorizes the taking of private shoreland for public use and provides no compensation for landowners whose property has been appropriated" and, as a result, "it violates . . . the Fifth Amendment of the Federal Constitution." *Id.*

Similarly, in *Opinion of the Justices*, 313 N.E.2d 561 (Mass. 1974), the Massachusetts Supreme Court considered whether a law that granted the public a "right-of-passage" on private land lying between the mean low tide line and MHW

line caused a taking. Under state common law, the property was subject to only a few public rights, like fishing. *Id.* at 565. The Massachusetts court held that the law's attempt to introduce pedestrian use on the private land was a taking. The court stated that the law "proposes to take easements for the benefit of the public," which "involves a wholesale denial of an owner's right to exclude," and thus "[t]he permanent physical intrusion into the property of private persons, which the bill would establish, is a taking of property within even the most narrow construction of that phrase." *Id.* at 568.

Finally, in *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989), the Supreme Judicial Court of Maine considered the constitutionality of a law which granted the public a broad recreational easement over private intertidal property. The court concluded: "the common law has reserved to the public only a limited easement; the [] Act takes a comprehensive easement for 'recreation' without limitation. The absence of any compensation to the fee owners renders the Act unconstitutional." *Id.* at 179. The court thus held that the law was unconstitutional on its face. *Id.* at 177.

There is nothing special about the Rhode Island Act that would justify any different treatment than that afforded to similar beach access legislation found to be a taking. The Act is clear in its purpose to extend public beach access onto coastal parcels that are landward of the MHW line, which were previously private under state common law. *Ibbison*, 448 A.2d at 732. While the goal may be laudable, the means are unconstitutional. The legislature cannot simply declare that the public has access and use rights in previously private land without providing a

contemporaneous, certain, and prompt mechanism for compensating all affected property owners. Because the Act does not do that, it violates the Takings Clause of the Fifth Amendment.

3. The legislature cannot disavow common law property rights without causing a taking

The officials will likely argue that the Act is permissible legislation because the state legislature has authority to abrogate common law property rules, such as the MHW beach boundary line, and to adopt a different rule. But this argument fails. While state legislatures generally have authority to alter common law property rules, that power is constrained by the United States Constitution, including the Takings Clause. *Phillips v. Washington Legal Found.*, 524 U.S. 156, 167 (1998) (The state may not "sidestep the Takings Clause by disavowing traditional property interests long recognized under state law."); *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 164 (1980) (the state "may not transform private property into public property"); *Hall v. Meisner*, 51 F.4th 185, 190 (6th Cir. 2022) ("[T]he Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take.").

The Rhode Island General Assembly does not have power to define away pre-existing property boundaries in a manner that takes private property interests in violation of the Takings Clause. *Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 713 (2010) ("States effect a taking if they recharacterize as public property what was previously private property.") (citing *Webb's Fabulous Pharmacies*, 449 U.S. at 163–65); *Purdie*, 732 A.2d at 447 ("Although the legislature

has the power to change or redefine the common law . . . property rights created by the common law may not be taken away legislatively without due process of law.") (citations omitted). But that is exactly what the Act has done. By moving the public beach inland from its traditional terminus at the MHW line to ten feet landward of the high water line/seaweed line, the Act burdens and takes upland areas of property that were previously private under state law. Without a mechanism for just compensation, which the Act fails to provide, the Act's reclassification of private beachfront property into a public area is an unconstitutional taking.

It makes no difference that state officials apparently believe the Act simply "clarifies" pre-existing property rights. It is the impact of government action on property rights that matters for Takings Clause purposes, not its characterization. *Lingle*, 544 U.S. at 539. The Act overturns the MHW-based property boundary regime that limited public beach rights to the MHW line (and seaward) for the last century, in favor of a "high water line plus ten feet" regime that gives the public a wider beach at the expense of private owners. The officials cannot evade the invasive and confiscatory effect of this action by calling it a mere "clarification" of state law. *Cedar Point*, 141 S. Ct. at 2076 ("property rights 'cannot be so easily manipulated'") (citation omitted).

II. RIACT HAS NO ADEQUATE COMPENSATORY REMEDY DUE TO THE UNCERTAIN SIZE AND SCOPE OF THE EASEMENT, AND WILL SUFFER IRREPARABLE HARM WITHOUT AN INJUNCTION

RIACT is not only likely to prevail on the merits, but its members face irreparable harm if the court does not enjoin enforcement of the Act. Irreparable harm exists when there is no adequate monetary remedy. *Ross-Simons of Warwick*,

102 F.3d at 18–19. To be adequate, a legal remedy "must be as complete, practical and efficient as that which equity could afford." *Terrace*, 263 U.S. at 214. When a movant will suffer an injury that is "not accurately measurable," alleged damages remedies are inadequate and "irreparable harm" exists. *Ross-Simons of Warwick*, 102 F.3d at 19.

RIACT members have no adequate remedy at law for the ongoing, unconstitutional imposition of a public easement on their lots because sovereign immunity bars monetary damages against state officials. *Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Due to sovereign immunity, RIACT can obtain only prospective, equitable relief against the officials, and this damages barrier justifies a finding of irreparable harm. *See also Chamber of Commerce v. Edmondson*, 594 F.3d 742, 770–71 (10th Cir. 2010) ("Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury."); *United States v. New York*, 708 F.2d 92, 93 (2d Cir. 1983).

Moreover, even if a procedure for obtaining damages were generally available, it would be inadequate in this particular case because damages cannot be accurately calculated for the taking of property occurring under the Act. The easement granted to the public by the Act reaches into private land, up to ten feet from the "recognizable high tide line"/seaweed line. The high water/seaweed line that locates this easement is not a static boundary marker, but is instead a migratory one that will shift farther inland onto private property with stronger wave action and tides, or retreat seaward with calmer seas. The public easement imposed by the Act is therefore indefinite in

size and constantly changing in location. It is impossible to gauge the burden on private property that such an encumbrance will impose over time, and thus, impossible to gauge the damages to the owners at one point in time. *See generally*, *Hickey v. Town of Burrillville*, 713 A.2d 781, 785 (R.I. 1998) (stating, in a case of an easement taking, "to determine the value of damages to which the Hickeys are entitled, we must first endeavor to discern the exact property interest the town claimed by condemnation"). To obtain full compensation for an easement that migrates inland with natural forces, swallowing more property over time, affected fee owners will almost surely have to file multiple lawsuits. This confirms the lack of an adequate compensatory remedy and presence of irreparable harm. *Ross-Simons of Warwick*, 102 F.3d at 19 (when damages are "not accurately measurable . . . irreparable harm is a natural sequel"); *Pharmaceutical Research & Mfrs. of Am. v. Williams*, 64 F.4th 932, 945 (8th Cir. 2023) (holding that a facial takings plaintiff did not have an adequate legal remedy because it would have to "litigate a multiplicity of suits" to secure full compensation); *see also Di Giovanni v. Camden Fire Ins. Ass'n*, 296 U.S. 64, 70 (1935) ("Avoidance of the burden of numerous suits at law between the same or different parties, where the issues are substantially the same, is a recognized ground for equitable relief in the federal courts.").

The difficulty in reaching a just and certain damages calculation for the easement taken here is compounded by the fact that the Act does not state what "rights" and "privileges" the public has in the easement. Easements are valued (and compensation for their taking, calculated) based on the monetary loss they impose on

the fee estate, which in turns depends on the nature of the easement burden. *Hickey*, 713 A.2d at 785–86 (damages for a permanent easement are calculated "in light of the most injurious use that the town might make of its easement rights"); *Burke-Tarr Co. v. Ferland Corp.*, 724 A.2d 1014, 1021 (R.I. 1999) ("We conclude that this measure of liability [for an easement] . . . [is] the value of the servient estate, as diminished, if at all, by the additional burden" of the easement's use.). Here, the Act does not articulate the scope of the permissible public uses of private land between the MHW line and ten feet inland of the seaweed line. In short, since the scope of the public easement imposed on RIACT members is uncertain, its effect on private property values cannot be reasonably calculated, and any purported compensatory remedy is therefore not "complete, practical," or adequate. *Terrace*, 263 U.S. at 214.

Courts are prone to find that "irreparable harm" exists when dealing with injuries to real property, *Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 6 (1st Cir. 1991) ("In cases involving real property, we have often found the irreparability of the injury to be of paramount concern."), and a preliminary injunction is warranted in this property rights case for the foregoing reasons. *Id.*; *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003) ("An 'irreparable harm requirement is met if a plaintiff demonstrates a *significant risk* that he or she will experience harm that cannot be compensated after the fact by monetary damages.'") (citation omitted); *see also Vaqueria Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 479–80 (1st Cir. 2009) (affirming issuance of preliminary injunction against state officials in a takings case arising under *Ex parte Young*).

Issuing such an injunction will not harm the public interest. Since the public never had a beach easement on private property located landward the MHW line prior to the Act, an injunction will take nothing from the public. It will simply return property interests along the coast to the pre-Act status quo and ensure that countless coastal owners do not have their property rights and investments suddenly and unconstitutionally injured. It is always in the public interest to ensure that state laws are enforced constitutionally. *Maine Forest Products Council v. Cormier*, 586 F. Supp. 3d 22, 64 (D. Me. 2022) ("The public has a stronger interest in ensuring the constitutionality of state laws, and protecting constitutional rights[.]").

STATEMENT REQUESTING ORAL ARGUMENT

Plaintiff RIACT requests oral argument on this motion and anticipates that it will require approximately one-half hour of argument time.

DATED: July 25, 2023.

Respectfully submitted,

/s/ J. David Breemer
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2023, the foregoing motion and exhibits were delivered by personal service on the following:

Sarah W. Rice
Jeff Kid
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903

/s/ J. David Breemer
J. DAVID BREEMER, *Pro Hac Vice*

Exhibit 1

Declaration of David Welch

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

Rhode Island Association of Coastal Taxpayers, Plaintiff, v. Peter Neronha, et al., Defendants.	Case No. 1:23-cv-00278-WES-LDA

DECLARATION OF DAVID WELCH

I, David Welch, do hereby declare and testify:

1. I have personal knowledge of the following facts and, if called upon to do so, could competently testify to these facts.

2. I am a United States citizen, and owner of beachfront property located at 865 Charlestown Beach Road, South Kingstown, Rhode Island.

3. I am the President of Rhode Island Association of Coastal Taxpayers (RIACT), an association formed to advocate for the protection of coastal property rights and reasonable public beach access that respects coastal property owners.

4. RIACT has about 50 members. Approximately, half of the members own beach front property. I understand that the deeds of RIACT who own beach front property extend to the "mean high tide line" or "mean high water line" or to the "high water" line. I have viewed deeds of RIACT members other than myself that state that their property lines extend to the "mean high tide line."

5. In 2016, I purchased a plot of residentially developed beachfront property at Charlestown Beach Road, South Kingstown, Rhode Island, for $628,000.

6. There is a three-bedroom, one-bathroom, 798-square-foot beach house on the property, adjacent to the shore. Exhibit A.

7. The house was lawfully built in approximately 1965, and has existed at its current location since that time.

8. The house is my part-time personal residence, and I often use it for weekend visits with my children.

9. Dry sandy land lies directly next to my beach house on the seaward side, and sandy land exists under an upper-story deck attached to the seaward side of the home.

10. The deed to the property states that portions of my property extend to the "mean high tide line." Exhibit B.

11. When I purchased the property, I understood that my property included the area of dry sandy land that extends seaward from the beach house to the mean high tide line.

12. I further understood that the public had the right to access and use the beach land located *seaward* of the mean high tide line, which I do not own.

13. I have controlled and used the dry sand area that lies within my lot lies, and between the mean high tide line and my home, as my "backyard" since I acquired my beach house.

14. I have regularly asked members of the public not to use or occupy my sandy property that lies landward of the mean high water mark.

15. The deed to my property is not encumbered by a public beach access easement or any reserved public access rights.

16. When I purchased the property, there was no legal impediment to my private use of the dry sandy land lying landward of the mean high tide line. The title did not include any "disclosure" that my land is subject to public use.

17. No one has ever sued me or my predecessors to establish the existence of a public easement on the property, and no court has ever issued a judgment establishing such an easement on the property.

18. The land within my lot lines that lies ten feet inland of the seaweed line is part of my title and includes the "backyard" area of my home that I have always used as my exclusive property.

19. On June 26, 2023, a new law changing the public beach boundary went into effect in the state of Rhode Island. As I understand it, the Act declares that the public beach now extends to ten feet inland of the seaweed line.

20. As I understand it, the Act does not limit the time, duration, or nature of activities that the public can engage in on private land that is now considered as part of the "public beach" because it lies between the MHW and ten feet inland of the seaweed line.

21. My immediate next-door neighbors regularly survey the location of the mean high tide line on the beach near my house. I am aware of the location of that line.

22. On my property, and the adjacent beach area, it is my observation that the seaweed line/high water line moves back and forth in location, but is always landward of the surveyed MHW line.

23. Based on my observations, on and around my property, the seaweed line is currently located approximately thirty feet inland of the surveyed mean high tide line.

24. On or about July 1, 2023, after enactment of the Act, a group of people entered my property, without permission.

25. On or about July 3, 2023, a local coastal activist entered my neighbors' property located landward of the water line and seaweed line. The activist urged other people to enter the privately owned beach area that lies landward of the seaweed line (which is marked by a "Private Property" sign) under authority of the new beach law.

26. When the activist approached a private security guard hired by my neighbors, the guard told him he could not set up beach equipment on the privately owned dry sandy area that lies landward of the water line. Standing on private land lying above the seaweed line, the activist objected to the guard's instructions based on the Act and called the police. The police apparently responded and told the security

guard that, due to passage of the Act, the activist could not be stopped from using private land lying inland of the seaweed line.

27. During the June 30–July 4, 2023, period, other beachgoers and members of the public entered and occupied private land that I and my neighbors own above the seaweed line.

28. I am concerned that members of the public can and will continue to enter and occupy my property and station themselves immediately around my home, at any time of day or night. This harms the privacy of my beach home and raises safety concerns.

29. Rhode Island General Laws § 11-44-24 makes it a criminal offence to obstruct a public right of way to the water, stating: "Every person who shall obstruct or block or cause any obstruction of any public rights-of-way to water areas of the state shall be imprisoned not exceeding one year or be fined not exceeding five hundred dollars ($500)."

30. It is my understanding that, on at least one occasion after enactment of the Act, coastal activists asked the Charlestown police to press charges under Rhode Island General Laws § 11-44-24 against a security guard who tried to exclude a member of the public from private beach property lying between the MHW and ten feet inland of the seaweed line.

31. In creating a public right-of-way over the area of my dry sand property lying landward of the MHW line, the Act strips me of my right to lawfully exclude strangers from my property.

32. I am aware that beachfront property owning members of RIACT, including myself, who seek to fence off or otherwise defend the private status of their property lying inland of the MHW line have been verbally harassed, either online or in person, after enactment of the Act.

33. RIACT members, including myself, are concerned that they may be prosecuted if they attempt to exclude members of the public from stationing themselves on private property lying inland of the MHW line after passage of the Act and, as a result, will refrain from enforcing the exclusivity of their property in some instances.

34. If I desire or need to sell my property, I believe I would have to disclose that it is now partly a public beach due to the Act. The Act damages the value and marketability of the property.

35. The Act does not offer or guarantee just compensation to me for converting the seaward portion of my property into public beach area available for public use and access.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. Attested and executed this 18th day of July, 2023, at South Kingstown, Rhode Island.

DAVID WELCH

Exhibit A
To Declaration of David Welch

Exhibit B
To Declaration of David Welch

Bk L1641 Pg334 #38

PARCEL FOUR:

Beginning at a point marking the intersection of the Northwesterly Corner of land conveyed by the Town of South Kingstown to Robert M. Mill, Jr. et al recorded in the land evidence records of the Town of South Kingstown, Rhode Island, in book no. 107, page 376 and the Northeasterly corner of the within conveyed premises with the Southerly line of said Green Hill Beach Road; thence from said point the line runs in a general southerly direction to the mean high water mark of the Atlantic Ocean; thence the line turns and runs in a Westerly direction; following the mean high water line of the Atlantic Ocean, a distance of Fifty Feet (50), more or less to land now or formerly of George F. Sherwood et al; thence the line turns and runs in a generally northerly direction to a point in the Southerly line of Green Hill Beach Road Fifty (50) feet Westerly of the Point of beginning; said last mentioned course being parallel with the first described course; thence the line turns and runs in a general easterly direction, following the road, said Green Hill Beach Road, to its point or place of beginning. Said premises are bounded easterly by land now or formerly of Robert M. Mills, Jr. et al, southerly by the Atlantic Ocean; westerly by land now or formerly of Robert M. Mills Jr., et al, and northerly by the Green Hill Beach Road, or however otherwise said premises may be bounded and described.

Parcels I and II are the same premises as were conveyed to Joyce E. Greene by deed of Larry N. Greene recorded on May 17, 1999 in Book 768, at Page 164 of the South Kingstown, Rhode Island Land Evidence Records.

Parcels III and IV are the same premises as were conveyed to Joyce E. Greene by deed of The Connecticut Institute for the Blind recorded on September 16, 2004 in Book 1154, at Page 38 of the South Kingstown, Rhode Island Land Evidence Records.

Being the same premises conveyed to this grantor by deeds recorded in Book 1634, Page 314, and in Book 1639, Page 292 of the South Kingstown Land Evidence Records.

The grantor hereby acknowledges that it is not a resident of the State of Rhode Island, and that a R.I. 71.3 Remittance Form will be submitted to the Rhode Island Division of Taxation in order to obtain and record an Acknowledgement of Discharge of the withholding lien arising under R.I.G.L. § 44-30-71.3.

This conveyance is in the ordinary course of grantor's business and does not constitute the sale or transfer of the major part in value of the Rhode Island assets of the grantor.

See Power of Attorney recorded herewith.

PROPERTY ADDRESS
865 CHARLESTOWN BEACH ROAD
SOUTH KINGSTOWN, RI

GRANTEE'S MAILING ADDRESS
40 WESTFIELD DRIVE,
PLANTSVILLE, CT 06479

(SIGNATURE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2007-22, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-22 has caused these presents to be executed by its duly authorized attorney in fact this 3 day of May, 2017.

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2007-22, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-22,
By its attorney in fact,
Bayview Loan Servicing, LLC

Julieth Salvatierra
Witness

By: _____

Sonia Asencio
Assistant Vice President

State of Florida
County of MIAMI DADE

On the 3 day of May, 2017, before me, personally appeared the above-signed Sonia Asencio as AVP of BAYVIEW LOAN SERVICING, LLC, a limited liability company, to me known and known by me to be the party executing the foregoing instrument, and he/she acknowledged said instrument by him/her executed to be his/her free act and deed in said capacity and the free act and deed of THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWALT, INC., ALTERNATIVE LOAN TRUST 2007-22, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-22.

MILAGROS P. GARCIA
MY COMMISSION # GG 053959
EXPIRES: January 9, 2021
Bonded Thru Notary Public Underwriters

Milagros Garcia
NOTARY PUBLIC:
Commission Expires:

Exhibit 2

An Act
Relating To Waters And Navigation – Coastal Resources Management Council

2023 -- S 0417 SUBSTITUTE A

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LC001241/SUB A/2
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

_____

A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT COUNCIL

Introduced By: Senators McKenney, Sosnowski, Euer, Pearson, Miller, DiMario, Gallo, DiPalma, Gu, and Kallman
Date Introduced: February 16, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Legislative findings.

(1) The general assembly finds that the lack of a workable, readily identifiable right of access to the shore by the public has led to confusion, conflict and disputes between those attempting to exercise their rights and privileges to the shoreline and the rights of landowners whose property abuts the shore.

(2) The general assembly recognizes and declares the public's rights and privileges of the shore of this, the ocean state, are not only guaranteed in the State Constitution but have enjoyed a long use throughout history to our founding documents, including the 1663 Rhode Island Charter from King Charles II. The general assembly further acknowledges the use and enjoyment of the shore by Native Americans for thousands of years prior to that.

From the Rhode Island Charter (1663-1843)

"Our express will and pleasure is, and we do, by these presents, for us, our heirs and successors, ordain and appoint that these presents, shall not in any manner, hinder any of our loving subjects, whatsoever, from using and exercising the trade of fishing upon the coast of New England, in America, but that they, and every or any of them, shall have full and free power and liberty to continue and use the trade of fishing upon the said coast, in any of the seas thereunto adjoining, or any arms of the seas, or salt water, rivers and creeks, where they have been accustomed to fish, and to build and set upon the waste land belonging to the said Colony and Plantations, such wharves,

stages and workhouses as shall be necessary for the salting, drying and keeping of their fish, to be taken or gotten upon that coast."

(3) Rhode Island's historical commitment to the public rights and privileges of the shore is so strong that is was written into our Constitution in 1843 making us unique to other states:

From the Rhode Island Constitution (1843)

"The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state. But no new right is intended to be granted, nor any existing right impaired, by this declaration".

(4) The general assembly also recognizes that its public trust duty to preserve the public's rights and privileges of the shore is a progressive and evolving doctrine that is expected to adjust to changing circumstances. In this spirit, voters of Rhode Island overwhelmingly supported the reinforcement of these rights and privileges in 1986 following the constitutional convention of that same year.

Added to the constitution in 1986

"Section 16. Compensation for taking of private property for public use -- Regulation of fishery rights and shore privileges not public taking.

Private property shall not be taken for public uses, without just compensation. The powers of the state and of its municipalities to regulate and control the use of land and waters in the furtherance of the preservation, regeneration, and restoration of the natural environment, and in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore, as those rights and duties are set forth in Article I, Section 17, shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property.

"Section 17. The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it is the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration, and restoration of the natural

environment of the state."

(5) In 1982, our state supreme court, acknowledging that it was acting in the absence of guidance from the general assembly, defined the public's rights to the shore by the mean high water (MHW) line, derived from an arithmetic average of high-water heights measured over an 18.6-year metonic cycle. The 1986 Constitutional Convention considered and rejected defining the mean high tide line for purposes of public access by this means and, accordingly, amended the constitution. Moreover, since 1982, there has also been a greater awareness by the public, judiciary and lawmakers of the scientific findings that establish the difficulties in using the MHW line as the indicator of public rights to the shore.

The general assembly accepts the conclusions of the coastal scientists from the University of Rhode Island who have documented that:

(i) The MHW line is not a visible feature that can be seen on the beach like a watermark or debris line. MHW is an elevation, calculated from the average of all the high tides, two (2) per day in Rhode Island, over a nineteen (19) year period and the MHW line is where this elevation intersects the beach profile. It cannot be determined by the naked eye and requires special surveying expertise and equipment, thereby making it impossible for the general public to know where the line is.

(ii) The MHW line may change on a daily basis. Because the profile or shape of the beach changes constantly, as waves move sand onshore, offshore and alongshore, the location where MHW intersects the beach likewise changes. Even when the MHW line is found through precise surveying, it does not remain in the same location for very long on a wave-dominated shoreline. For instance, two (2) years of near weekly surveyed beach transects in the town of Charlestown revealed that the position of the MHW line migrated back and forth across a one hundred twenty-five foot (125') swath of the beach profile.

(iii) The MHW line is based on measurements collected inside a tide gauge, an instrument that filters out dynamic factors like breaking waves, which causes water to run up the beach. In other words, the measure of MHW is insulated from the dynamic action of the surf, which projects the water to a higher elevation. This results in a pervasive and predominant situation in which the actual water line is significantly landward of the MHW line. Data has shown that, on most days, due to the dynamic action of the surf and other factors, dry sand is exposed below the MHW line for, at most, only a few hours over a tidal cycle. This exposure occurs only at or near the time of low tide.

In sum, while the MHW may be helpful for other purposes, such as findings or definitions pertaining to waters and navigation, use of the MHW for determining shoreline access has restricted

the public's rights. Retaining the MHW line rule employed by the court in 1982 results in the public only having meaningful shoreline access at or near the time of low tide, if at all, at some locations. Thus, the constitutional right and privileges of the shore delineated in the 1986 Constitutional Convention amendments have become illusory under such a rule.

(6) Insofar as the existing standard for determining the extent of the public's access to the shore is unclear and not easily discernable, due to the lack of a boundary that can be readily seen by the casual observer on the beach, resulting in confusion, uncertainty and even confrontation, the General Assembly is obligated to provide clarity. This enactment constitutes the necessary clarification in accordance with Article I Section 17 of the R.I. Constitution.

SECTION 2. Chapter 46-23 of the General Laws entitled "Coastal Resources Management Council" is hereby amended by adding thereto the following section:

46-23-26. The public's rights and privileges of the shore.

(a) The public's rights and privileges of the shore are established by Article I, Sections 16 and 17 of the Rhode Island Constitution.

(b) For purposes of this chapter, the "recognizable high tide line" means a line or mark left upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface level at the maximum height reached by a rising tide. The recognizable high tide line may be determined by a line of seaweed, oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, or other suitable means that delineate the general height reached by the water's surface level at a rising tide. If there is more than one line of seaweed, oil, scum, fine shell, or debris, then the recognizable high tide line means the most seaward line. In the absence of residue seaweed or other evidence, the recognizable high tide line means the wet line on a sandy or rocky beach. The line encompasses the water's surface level at spring high tides and other high tides that occur with periodic frequency, but does not include the water's surface level at storm surges in which there is a departure from the normal or predicted reach of the water's surface level due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storms.

(c) Notwithstanding any provision of the general laws to the contrary, the public's rights and privileges of the shore may be exercised, where shore exists, on wet sand or dry sand or rocky beach, up to ten feet (10') landward of the recognizable high tide line; provided, however, that the public's rights and privileges of the shore shall not be afforded where no passable shore exists, nor on land above the vegetation line, or on lawns, rocky cliffs, sea walls, or other legally constructed shoreline infrastructure. Further, no entitlement is hereby created for the public to use amenities

privately owned by other persons or entities, including, but not limited to: cabanas, decks, and beach chairs.

(d) Any landowner whose property abuts the shore shall, with respect to the public's exercise of rights and privileges of the shore as defined in this chapter, be afforded the liability limitations pursuant to chapter 6 of title 32.

(e) The coastal resources management council (CRMC) in collaboration with the department of environmental management (DEM), shall develop and disseminate information to educate the public and property owners about the rights set out in this section.

(f) The CRMC in collaboration with the DEM, and the attorney general, shall determine appropriate language and signage details for use at shoreline locations.

SECTION 3. This act shall take effect upon passage.

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LC001241/SUB A/2
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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO WATERS AND NAVIGATION -- COASTAL RESOURCES MANAGEMENT COUNCIL

***

This act would provide that the public's rights and privileges of the shore established by Article I, Sections 16 and 17 of the State Constitution may be exercised where shore exists, on wet or dry sand or rocky beach up to ten feet (10') landward of the high tide line but not where no passable shore exists with abutting landowners afforded limited liability.

This act would take effect upon passage.

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LC001241/SUB A/2
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Exhibit 3

Final Report
Rhode Island House of Representatives
Special Legislative Commission To Study And Provide Recommendations On The Issues Relating To Lateral Access Along The Rhode Island Shoreline

Rhode Island House of Representatives

Special Legislative Commission To Study And Provide Recommendations On The Issues Relating To Lateral Access Along The Rhode Island Shoreline

Final Report

March 31, 2022

Report Submitted to the
Rhode Island House of Representatives

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Commission Members

- Representative Terri Cortvriend, Chairwoman
- Representative Blake A. Filippi, Vice-Chairman
- Michael Rubin, resident of a coastal community
- Jeffrey Willis, Executive Director, CRMC
- David Splaine, representative of the Rhode Island Realtors Association
- Dennis Nixon, Professor Emeritus of Marine Affairs, URI
- Jonathan Stone, Executive Director, Save the Bay
- Mark P. McKenney, Land Use Attorney
- Mark Boyer, Professional Land Surveyor
- Judge Francis X. Flaherty, retired Rhode Island Supreme Court Justice
- Alison Hoffman, Special Assistant Attorney General, Environmental Unit
- Julia Wyman, Director, Marine Affairs Institute, RWU Law/ Director, Rhode Island Sea Grant Legal Program

Executive Summary from Chairwoman Terri Cortvriend

Dear Speaker Shekarchi,

I am pleased to provide you with this report by the Special Legislative Commission to Study and Provide Recommendations on the Issues Relating to Lateral Access along the Rhode Island Shoreline.

Pursuant to its enabling legislation, the purpose of the Commission is to make a comprehensive study and provide recommendations on the issues relating to lateral access along the Rhode Island shoreline.

Twelve (12) individuals representing various backgrounds and professional affiliations were appointed to the Commission. These professionals included a retired Rhode Island Supreme Court Justice, the Executive Director of the Coastal Resources Management Council, the Executive Director of Save the Bay, a Professor Emeritus of Marine Affairs from the University of Rhode Island, an Adjunct Professor of Law and the Director of the Marine Affairs Institute from Roger Williams University, a representative of the Rhode Island Realtors Association, a resident of a coastal community, a Land Use Attorney, a Professional Land Surveyor, and a representative from the Rhode Island Attorney General's Office with experience in shoreline access issues.

The Commission first met on August 26, 2021 and elected Representative Terri Cortvriend as its Chairwoman and Representative Blake A. Filippi Vice as its Vice-Chairman. Over the course of eight (8) months, the Commission met a total of ten (10) times and heard testimony from thirty-nine (39) witnesses, including twenty-nine (29) members of the general public.

This report contains the Commission’s findings and recommendations to the House of Representatives based on information presented by the above referenced witnesses who testified before the Commission, voluminous written testimony, and presentations made to the Commission. All written testimony and Capitol TV videos of each hearing have been posted on the General Assembly website in the House Commissions section.

On March 25, 2022, House Bill 8055 was introduced by Chairwoman Cortvriend and Vice-Chairman Filippi and was referred to the House Judiciary Committee, but no hearing has been scheduled as of the date of this report. The bill provides a definition of the recognizable high tide line for the public’s rights and privileges of the shore.

I would like to express my gratitude to all members of the Commission for their willingness to take part in this worthy initiative, and we appreciate the investment of the time and talent that they graciously provided.

Sincerely,

Representative Terri Cortvriend
Chairwoman

Background Information and Commentary

In Rhode Island, one of the most important and historic responsibilities of the General Assembly is to protect the rights of the public "to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore" (Constitution of the State of Rhode Island, Article 1, Section 17).

Article 1, Section 16 entitled in part "Regulation of fishery rights and shore privileges not public taking" of the Constitution of the State of Rhode Island provides that "private property shall not be taken for public uses, without just compensation." But, this section also provides that "the powers of the state and of its municipalities to regulate and control the use of land and waters…in furtherance of the protection of the rights of the people to enjoy and freely exercise the rights of fishery and the privileges of the shore… shall be an exercise of the police powers of the state, shall be liberally construed, and shall not be deemed to be a public use of private property."

The Rhode Island Supreme Court in 1982 based its *State v. Ibbison* decision on common law principles in the absence of a statutory definition of "shore". In *Ibbison*, the court held that "the common law governs the rights and obligations of the people of the state unless that law has been modified by our General Assembly."

The Legislature, by clarifying and defining the shore as an area that includes a ten foot area landward of the "Recognizable High Tide Line" (seaweed line), would presumably preempt the court's definition. The public trust doctrine is widely recognized as a baseline of state property law that insulates its exercise from takings liability. In other words, the public's rights and privileges of the shore are already established by Article 1, Sections 16 and 17 of the Rhode Island Constitution.

Despite a long history of public use of an area above the high-water mark, a recognizable feature along the coast today commonly known as the "Seaweed Line", "Swash Line", "Wrack Line", Last Throw of the Seaweed", "High Water Line", or "High Tide Mark", the Rhode Island Supreme Court settled on using the Mean High Water (MHW) boundary in *Ibbison*. That test involved an analysis of lunar cycles and tidal datum that does not relate to any recognizable feature along the shore and is impossible to determine by an ordinary person trying to exercise their constitutional right to the privileges of the shore guaranteed in Article 1, Section 17 of the Rhode Island Constitution. Although it could be determined by scientists and surveyors at some degree of difficulty and expense, MHW clearly has not worked in Rhode Island as a practical boundary between public and private rights.

In fact, the *Ibbison* court was very mindful of going too far in either direction, and held that "we feel that our decision best balances the interests between littoral owners and all the people of the state. Setting the boundary at the point where the spring tides reach would unfairly take from littoral owners land that is dry for most of the month. Similarly, setting the boundary below the mean-high-tide line at the line of the mean low tide would so restrict the size of the shore as to render it practically nonexistent."

However, an unintended consequence of using the MHW as the boundary has been a *de facto* taking from the public. As the expert testimony has shown, the public can't safely and legally use the shore under the *Ibbison* decision for most of the day without being subject to the wetness and push of the surf. Members of the public are forced to choose between a soaking, on one hand, and harassment and arrest, on the other. Balance has been skewed to the property owners, and the shore has often become nearly nonexistent for the public.

The Commission has heard from private property owners who have threatened to sue, contending that any change would be a taking and subject to compensation. What the *Ibbison* court couldn't have known at the time, and what the URI Coastal Institute scientists have shown, is that Mean High Water is underwater for most of the day on Rhode Island's south-facing shores. This results in the inability of the public to exercise its right to pass and repass on the shoreline.

Annual beach confrontations, with beachgoers arrested after heated disputes with shorefront property owners, have become all too frequent.

Research by scientists at the Coastal Institute of URI's Graduate School of Oceanography demonstrated that the MHW mark is a completely inappropriate measure for the migrating, high-energy beaches found on our south, ocean-facing coast. The scientific data shows the public can access the dry shore below MHW, at most, for a few hours around the time of low tide each day. The data also reveals that, more often than not, if one is accessing the shore on dry sand, he or she is likely above the *Ibbison* line (MHW) and possibly subject to arrest for trespassing. The scientists' analysis has revealed that the continued use of the MHW standard, particularly in light of rapidly increasing sea level rise, amounts to a denial of the public's constitutional rights to use the shore. It simply renders Rhode Islander's rights and privileges of the shore illusory.

In addition, the same scientists have documented that the shore profile changes daily, compounding the problems alluded to above (the problem that the MHW test does not relate to any recognizable feature along the shore) in determining the location of the boundary. Testimony has shown that law enforcement is currently hampered because it cannot be known where the boundary is located on any given day. Law enforcement would welcome a visual shore boundary so that alleged trespass situations can be fairly resolved.

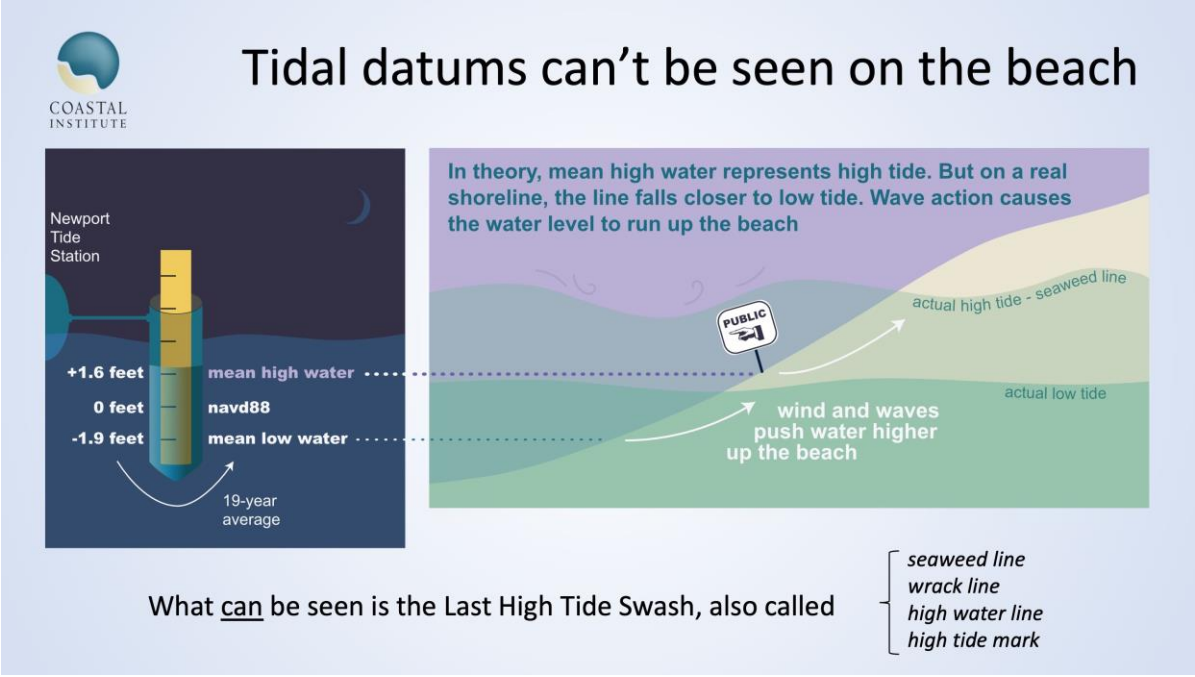
Excerpted from the March 1, 2022 written testimony of Nathan Vinhateiro, PhD. and Janet Freedman, MS of the URI Coastal Institute:

> 1. The mean high water (MHW) line cannot be seen on the beach. It is an elevation, like a contour line. In order to find the MHW line, you must use surveying tools.
>
> 2. The MHW line is not where most people think it is. In fact, the MHW line is routinely confused with the seaweed line on the beach, but our data coupled with long-term beach profiles collected by other URI scientists show that the MHW line is usually 40-60 feet seaward of this feature.
>
> 3. Even when the MHW line can be found through precise surveying, as we have done, its position changes constantly as wind and waves rearrange

sand on the beach. The same URI data show that the location of the MHW line on the beach can change by more than 100 feet from normal cycles of erosion and accretion.

4. While it's true that mean high water can be calculated with great precision, the calculations are backward looking. Today's MHW datum is calculated from historical measurements between 1983-2001. Local sea level has risen approximately 5 inches since that time resulting in a present-day decision being made on an outdated dataset.

5. The MHW line is based on measurements collected inside a tide gauge, an instrument that filters out factors like wind and waves – natural features that push water up the beach. For this reason, the MHW line is underwater on the Rhode Island shoreline most of the day, meaning the public must wade into the ocean to legally walk along the shore at a depth that could range from inches to feet of water.



*Graphic courtesy of Nathan Vinhateiro, PhD. and Janet Freedman, MS of the URI Coastal Institute 03-01-2022

During Colonial days, those rights to the shore extended at least approximately 10 feet landward of the high-water mark, a width based upon the size of the historic ox carts Rhode Island farmers used to gather seaweed which they used for fertilizer. The Commission has also received a photo, courtesy of the Little Compton Historical Society, of a farmer with an ox cart on the beach gathering seaweed in the 1905-1915 year range.

In 1982, our state Supreme Court, acknowledging that it was acting in the absence of guidance from the General Assembly, defined the public's rights to the shore by the Mean High Water (MHW) line, derived from an arithmetic average of high-water heights measured over an 18.6-year metonic cycle. The 1986 Rhode Island Constitutional Convention considered and rejected defining the mean high tide line for purposes of public access by this means and, accordingly, proposed an amendment to the constitution which was overwhelmingly approved by the electorate. This amendment further clarified and guaranteed the public's rights included but were not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore.

Moreover, since 1982, there has also been a greater awareness by the public, judges and lawmakers of the difficulties in using the MHW line as the indicator of public rights to the shore.

The MHW mark the Rhode Island Supreme Court chose in 1982 has led to confusion on both sides because no one can identify a visual boundary. The public doesn't know where they can safely legally walk, and private property owners don't know where they can legally exclude trespassers. This Commission has tried to find a balance, using current scientific data and testimony, which preserves the rights of both the public and private property owners, just as the Rhode Island Supreme Court attempted in 1982.

There was agreement from the Commission members that the current MHW boundary is not working and Rhode Island should recognize the seaweed mark as the basis of its shore boundary. Some members even acknowledged they changed their opinion of this boundary during the course of the hearings after listening to the expert testimony. However, there were differing points of view on the width, if any, of a buffer zone landward of the seaweed line. The following options were thus considered by Commission members at its hearing on March 3, 2022:

1. Seaweed line
2. Seaweed line plus area reasonably adjacent and landward to that line
3. Seaweed line plus 4 feet (width of a typical sidewalk)
4. Seaweed line plus 6 feet
5. Seaweed line plus 10 feet

A consensus from Commission members was reached (with the Rhode Island Attorney General's Office abstaining), on restoring and using the historical seaweed line with a reasonable buffer zone landward of 10 feet. A buffer zone of 10 feet landward uses the historical ox cart width example and also accommodates testimony received of two people walking safely, above the seaweed line, along the shore side by side approaching another two people walking towards them. Passage goes both ways.

This historical seaweed boundary is visible, is easily determined by the public, private property owners, and law enforcement, and it ensures the public can safely exercise their rights and privileges of the shore.

Commission Findings

Based on its study of historical shoreline issues, expert testimony and material presented to it, and discussions by and amongst its members, the Commission has reached the following findings:

1. The public's rights to and privileges related to the shore are set forth in Article 1, Sections 16 and 17 of the Rhode Island Constitution.

2. The Mean High Water (MHW) line:

    - Is not a visible feature that can be seen on the beach like a tide line, seaweed line, or a debris line.
    - Cannot be determined by the naked eye and can only be determined by using special surveying expertise and equipment, thereby making it impossible for the general public to know where the line is.
    - Changes on a daily basis due to the constantly changing profile or shape of the beach caused by waves moving sand onshore, offshore and alongshore.
    - Is based on measurements collected by a tide gauge, which is an instrument that filters out dynamic factors such as wind and waves.
    - Is underwater on the Rhode Island south-facing shoreline most of the day, meaning the public must wade into the ocean to legally walk along the shore as defined by the *Ibbison* decision.

3. The MHW boundary employed by the Rhode Island Supreme Court in the 1982 *Ibbison* case has been rendered obsolete by the 1986 Rhode Island Constitutional Amendments, and results in the public only having meaningful shoreline access at or near the time of low tide, if at all, at some locations.

4. Law Enforcement is currently hampered to resolve alleged trespass situations due to the lack of a visual shore boundary.

Commission Recommendations

Based on its study of historical shoreline issues, expert testimony and material presented to it, and discussions by and amongst its members, the Commission suggests the following recommendations:

1. The General Assembly, by statutory enactment, should:

   - Secure the public's rights and privileges related to the shore that are set forth in Article 1, Sections 16 and 17 of the Rhode Island Constitution.

   - Restore its historical seaweed line shore boundary, and this boundary should be designated as the "Recognizable High Tide Line."

2. The public's rights and privileges related to the shore may be exercised, where shore exists, on wet sand or dry sand or rocky beach, 10 feet landward of the Recognizable High Tide Line; provided, however, that the public's rights and privileges related to the shore should not be afforded where no passable shore exists, nor on land above the vegetation line, sea walls, or other legally constructed shoreline infrastructure.

3. Any landowner whose property is subject to the exercise of the public's rights and privileges of the shore should be afforded the liability limitations pursuant to § 32-6-5.

4. After the successful implementation of this redefinition of the Rhode Island shore to its historic limits, the Commission recommends that the RI Coastal Resources Management Council (CRMC), the Department of Environmental Management (RIDEM), and the Legislature examine and improve shoreline access with particular regard to the following issues that were brought to our attention during the hearing process:

   - Potential funding to allow CRMC and DEM to support shoreline access, law enforcement, and shoreline education programs for both the public and shoreline property owners.
   - Working with the Rhode Island Attorney General, determining appropriate signage terminology and enforcement of illegal shore signage and barriers.

   - Increasing CRMC's capacity to designate perpendicular access to the shore in accordance with its enabling statute at RIGL 46-23-6.

   - Identifying State and Municipally-owned parcels that could be used for parking at or near designated Rights-of-Way (ROW), including possibly issuing ROW fishing/parking stickers.
   - Evaluating Rhode Island State Beach parking lot closures at night that limit shoreline access.

Ox Carts

Ox Cart photo on shore gathering seaweed year 1905-1915 range

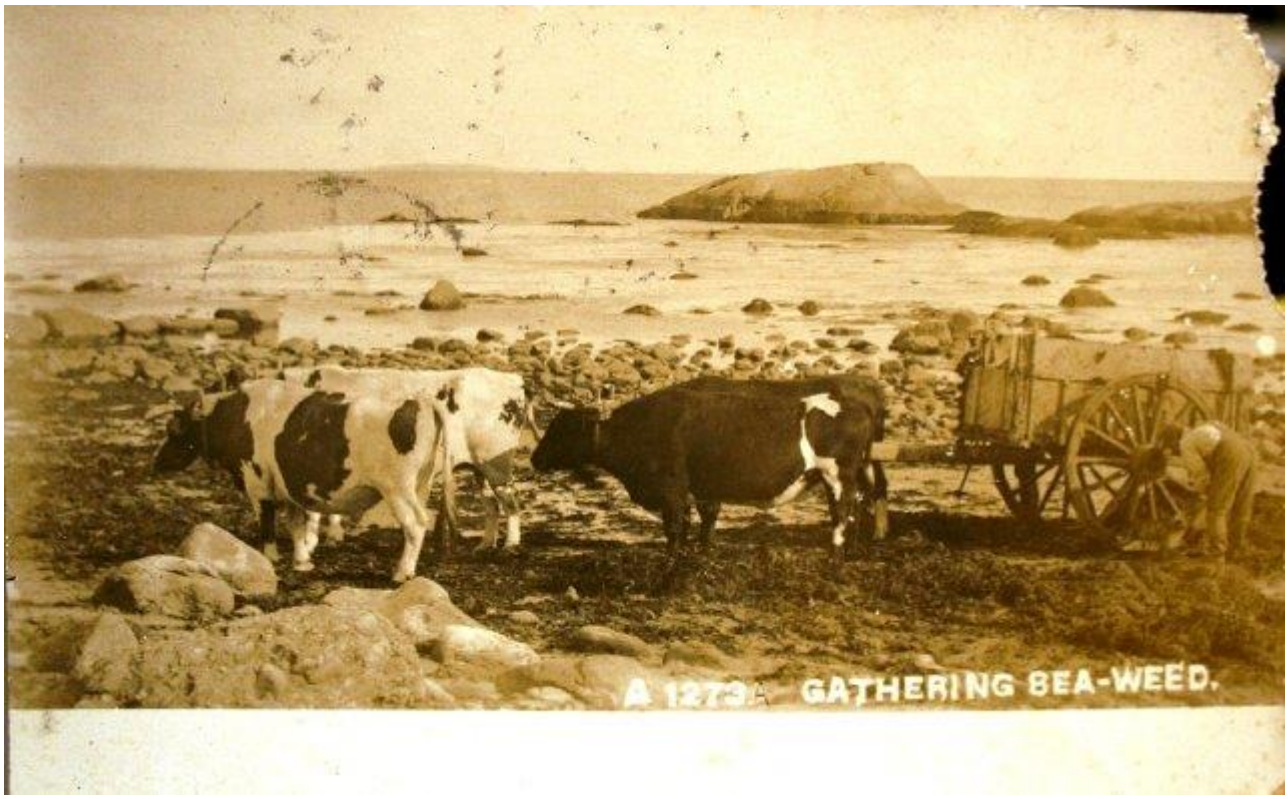


*Photo courtesy of Little Compton Historical Society

Ox Cart photo on shore Little Compton RI year 1905-1915 range

*Photo courtesy of Little Compton Historical Society

Appendix A-Enabling Legislation 2021 H 5469 Sub A

2021 -- H 5469 SUBSTITUTE A
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LC000676/SUB A/5
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STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2021

H O U S E R E S O L U T I O N

CREATING A SPECIAL LEGISLATIVE COMMISSION TO STUDY AND PROVIDE RECOMMENDATIONS ON THE ISSUES RELATING TO LATERAL ACCESS ALONG THE RHODE ISLAND SHORELINE

Introduced By: Representatives Cortvriend, Handy, Tanzi, Fogarty, McGaw, McEntee, Carson, and Craven
Date Introduced: February 10, 2021
Referred To: House Judiciary

RESOLVED, That a special legislative commission be and the same is hereby created consisting of twelve (12) members: two (2) of whom shall be members of the House who represent a coastal community, not more than one from the same political party, to be appointed by the Speaker of the House; one of whom shall be a resident of a coastal community, to be appointed by the Speaker of the House; one of whom shall be the Executive Director of the Coastal Resources Management Council, or designee; one of whom shall be a representative from the Rhode Island Realtors Association or a home owner's association, to be appointed by the Speaker of the House; one of whom shall be a representative from the Marine Affairs Institute & R.I. Sea Grant Legal program at Roger Williams University, to be appointed by the Speaker of the House; one of whom shall be from the Department of Marine Affairs at the University of Rhode Island, to be appointed by the Speaker of the House; one of whom shall be the Executive Director of either Clean Ocean Access or Save the Bay, or designee, to be appointed by the Speaker of the House; one of whom shall be a land use attorney, to be appointed by the Speaker of the House; one of whom shall be the President of the Rhode Island Society of Professional Land Surveyors, or designee; one of whom shall be a retired Rhode Island Judge, to be appointed by the Speaker of the House; and one of whom shall be a representative of the Rhode Island Attorney General's Office with experience in shoreline access issues, to be appointed by the Attorney General.

In lieu of any appointment of a member of the legislature to a permanent advisory commission, a legislative study commission, or any commission created by a General Assembly resolution, the appointing authority may appoint a member of the general public to serve in lieu of a legislator, provided that the majority leader or the minority leader of the political party which is entitled to the appointment consents to the appointment of the member of the general public.

The purpose of said commission shall be to make a comprehensive study and provide recommendations on the issues relating to lateral access along the Rhode Island shoreline.

Forthwith upon passage of this resolution, the members of the commission shall meet at the call of the Speaker of the House and shall organize and select a chairperson from among the legislators.

Vacancies in said commission shall be filled in like manner as the original appointment.

The membership of said commission shall receive no compensation for their services.

All departments and agencies of the state shall furnish such advice and information, documentary and otherwise, to said commission and its agents as is deemed necessary or desirable by the commission to facilitate the purposes of this resolution.

The Speaker of the House is hereby authorized and directed to provide suitable quarters for said commission; and be it further

RESOLVED, That the commission shall report its findings and recommendations to the House of Representatives no later than March 30, 2022, and said commission shall expire on June 30, 2022.

Appendix B-Commission Agendas, Presentations, and Meeting Videos

Shoreline Commission Website with Documents and Commission Videos

August 26, 2021

Agenda 08262021

- Election of Chair and Vice Chair
- Review of House Resolution H5469 Sub A

The members elected Representative Terri Cortvriend as Chairwoman and Representative Blake Filippi as Vice Chairman.

September 23, 2021

Agenda 09232021

Sean Lyness, Faculty Fellow, New England Law
Presentation: The History of Shoreline Access in RI

The Rhode Island Public Trust Doctrine 1663-1982

Jeff Willis, Executive Director, CRMC
Discussion regarding Rights-of-Way

Sean Lyness, Faculty Fellow, New England Law provided testimony and written testimony on the history of shoreline access in RI.

Jeff Willis from CRMC provided testimony and written testimony on rights-of-way (ROW).

PowerPoints on the above presentations are located on the Shoreline Commission website.

October 14, 2021

Agenda 10142021

Nathan Vinhateiro, Assistant Director, URI Coastal Institute
Janet Freedman, Senior Fellow, URI Coastal Institute

- Coastal Dynamics and Implications for Alongshore Access

Nathan Vinhateiro and Janet Freedman, URI Coastal Institute

Nathan Vinhateiro and Janet Freedman update March 1 2022

Dennis Nixon, Professor Emeritus of Marine Affairs, URI
- 1986 RI Constitutional Convention discussion

Dennis Nixon H 5469 Balances Public and Private Rights along RI Shore

State vs Ibbison (1982)

Nathan Vinhateiro and Janet Freedman from URI Coastal Institute provided testimony and written testimony on coastal dynamics affecting the RI shoreline.

Dennis Nixon, Professor Emeritus of Marine Affairs URI, provided testimony and written testimony on the history of the 1986 RI Constitutional Convention in regards to shoreline access.

October 28, 2021

Agenda 10282021

Jason McNamee, Deputy Director for Natural Resources, RIDEM
- State Beaches, fishing locations, and parking
- Public Testimony

Jason McNamee DEM 10282021

Jason McNamee of DEM provided testimony and written testimony on RI State Beaches, fishing locations, and parking.

Public testimony was received in person from:

Scott Keeley, Charlestown RI
Regina DeAngelo, Charlestown RI
Tom Grieb, Portsmouth RI
Scott Duncan, East Greenwich RI.
Conrad Ferla, South Kingstown RI
Michael Woods, North Kingstown RI
Nate Merrill, South Kingstown RI
Ken Block, Barrington RI
Shawn Ganglani, Barrington RI

November 4, 2021

Agenda 11042021

John Boehnert, Esq.-JMB Law Offices
- Property Rights/Coastal Property Ownership

John Boehnert, Esq. JMB Law 11042021

Richard Hittinger and Peter Jenkins-RI Saltwater Anglers

- Shoreline Access for fishing

PowerPoints on the above presentations are located on the Shoreline Commission website.

John Boehnert, Esq. of JMB Law Offices provided testimony and written testimony on coastal property owner rights.

Richard Hittinger and Peter Jenkins of the RI Saltwater Anglers provided testimony and written testimony on shoreline access for fishing and the economic benefits to the RI economy on recreational saltwater fishing.

November 18, 2021

Agenda 11182021

Public Testimony at Chariho Middle School-Auditorium
Wood River Junction, RI

The following people presented verbal testimony at Chariho Middle School:

Cynthia Zerquera-Martin, Narragansett RI
Scott Keeley, Charlestown RI
Jen Krekorian, Wakefield RI
Dennis Zambrotta, Newport RI
Jed Thorp, Providence RI
Michael Woods, Saunderstown RI
Richard Langseth, Warwick RI
Caroline Contrata, Westerly RI
Thomas Micele, Westerly RI
Christina Holden-Shea, Charlestown
Ben Weber, Westerly RI
Brian Wagner, Narragansett RI
Stephen Stokes, Charlestown RI
Cliff Vanover, Charlestown RI
Stephen Stokes, Charlestown *(not present but supportive of shoreline rights)*
Jann Campbell, N. Smithfield
Stefan DiPippo, Providence
Alexander Lehmann, Charlestown
Gary Dorfman, Narragansett *(was present but had to leave and submitted written testimony)*
Patricia Curry Almeida, Charlestown
Bella Noka, Narragansett Tribal Nation Elder
Susan Cornacchia, Westerly RI

January 27, 2022

Agenda 01272022

Professor Michael C. Blumm Esq., Jeffrey Bain Faculty Scholar & Professor of Law, Lewis and Clark Law School-written testimony only to be read

Professor Michael C. Blumm Northwestern School of Law

Roundtable discussion of previous Commission testimony and documents

Professor Michael C. Blumm Esq., Jeffrey Bain Faculty Scholar & Professor of Law written testimony was read into the record on shoreline access in other states.

February 10, 2022

- Roundtable discussion of previous Commission testimony and documents.

March 3, 2022

Agenda 03032022

Roundtable discussion of previous Commission testimony and documents

Nathan Vinhateiro and Janet Freedman 03012022 update

- Consensus reached on Seaweed Line plus 10 feet Buffer Zone

March 31, 2022

- Draft Final Report discussion with findings and recommendations
- Discussion of 2022 H 8055 by Chairwoman Cortvriend and Vice Chair Blake Filippi

Appendix C- Written Testimony, Presentations, and Articles

The following information will provide direction to the corresponding links that may be found on the General Assembly Shoreline Access Commission website under "Commission Documents"

1. Agenda RI Shoreline Access Commission 03-31-2022
2. Lawmakers Introduce long awaited bill ProJo March 28 2022
3. Nathan Vinhateiro Janet Freedman URI Coastal Institute Letter to Shoreline Commission 03012022
4. Property owners won't take changes to R.I. shore The Boston Globe March 9 2022
5. Craig Marr, Charlestown RI, Economic Improvement Commission 02032022
6. RI General Assembly House approves bill to study shoreline access 06232021
7. Advocates 'geared up,' anticipating legislation on shoreline The Public's Radio 03042022
8. Shoreline Access Panel Settles on 10 ft Buffer Zone Prov. Journal 03042022
9. Inching closer to shoreline rights bill, R.I. experts settle on 10 ft Boston Globe 03032022
10. Old Sturbridge Village Ox Cart picture late 18th early 19th c. width 95 inches 03032022
11. Warwick City Park Beach 3.3.22 at 8.22am
12. Susan Jones 03032022
13. Phil Moreschi Charlestown RI 03022022
14. Ellen Kane Westerly RI 03022022
15. Jeffrey Devine 03022022
16. Gayle L. Gifford Providence RI 03022022
17. Bob Goulet Lincoln RI 03022022
18. Sebastian Wagner Berlin 03022022
19. Rick Chace Bristol RI 03012022
20. Tiffany Doran South Kingstown RI 03012022
21. Agenda RI Shoreline Access Commission March 3 2022
22. Nathan Vinhateiro Janet Freedman URI Coastal Institute Letter to Commission 03012022
23. Nicole Cambio RI 02232022
24. Theresa Lynch-Benoit Wakefield RI 02232022
25. Meridith Ashworth Narragansett RI 02232022
26. Ann Rossman Newport RI 02242022
27. Jake Kahn Wakefield RI 02232022
28. Mary Kahn Wakefield RI 02232022
29. Richard Soderberg Wakefield RI 0223022
30. Linda Soderberg Wakefield RI 02232022
31. James McMonigle Narragansett RI 02232022
32. John Turcotte Saunderstown RI 02232022
33. Diane Grinnell Hewitt Narragansett RI 02882
34. Cynthia Zerquera-Martin Saunderstown RI 02232022
35. Mathew Glander Charlestown RI 02232022
36. Jane Glander Charlestown RI 02232022
37. M. Sullivan Charlestown RI 02232022
38. Patricia Cawley Saunderstown RI 02232022
39. James Roehm 4 North Kingstown RI 02232022
40. James Roehm 3 North Kingstown RI 02232022
41. James Roehm 2 North Kingstown RI 02232022

42. James Roehm North Kingstown RI 02232022
43. Janne Roehm North Kingstown RI 02232022
44. Kimberly Rose Cranston RI 02232022
45. Susan Carter Morgan 03012022
46. Erin McGinn Warwick RI 02282022
47. Francesca Bedell 02252022
48. Phyllis Donnelly RI 02262022
49. Stacey and Mike Lecours Charlestown RI 02262022
50. Susan McVicar North Kingstown RI Concerns and Remedies 02262022
51. Nancy Maree Charlestown RI 02272022
52. Julius Dover Providence RI 02282022
53. B. Plante 02252022
54. Richard Langseth Warwick RI 02252022
55. Dana Holmgren Cranston RI 02252022
56. Narragansett Times Surfers Article Ox Cart on beach May 26, 1966
57. Thomas Micele Westerly RI 02252022
58. Tim Peterson Charlestown RI 02252022
59. Nancy St. Jean RI 02252022
60. Brian Clark RI 02252022
61. Rochette Family Wakefield RI 02242022
62. Laura Edmonds, MD Saunderstown, RI 02242022
63. Richard Blaine South Kingstown RI 02242022
64. Charlene Ingham Charlestown RI 02192022
65. Benjamin J. Vadnais, Jr. and Sandra E. Vadnais Charlestown RI 02242022
66. Jim Bedell RISAC 02212022
67. Jane Donnelly Charlestown RI 02202022
68. Charlene Ingham Charlestown RI 02202022
69. Joe Geary Charlestown RI 02202022
70. Jim Roehm N. Kingstown RI 02202022
71. Laureen Gozaydin Hope Valley RI 02202022
72. Mike and Lauren Classey Charlestown RI 02192022
73. Monica Keeley 02182022
74. Caroline Contrata pic children stopped on shore 02202022
75. Laura Kelly South Kingstown RI 02182022
76. Laura Carpenter Providence RI 02162022
77. Griffith H. Trow February 18 2022
78. Mark Keeley February 18 2022
79. Matthew Page February 17 2022
80. Regina DeAngelo Charlestown RI 02162022
81. Melissa Barrett 02172022
82. R.I. shore access commission has some ideas. Boston Globe 02172022
83. Ox Cart Old Harbor Block Island 1905
84. Ox Cart Postcard Block Island 1915
85. RI shoreline access commission gets closer to consensus Projo 02112022
86. Nathan Vinhateiro Info Rack card 01272022
87. Nathan Vinhateiro Update on MHW monitoring 01262022
88. Conrad Ferla Vegetation Line email 02012022

89. RI shoreline commission plans new beach access legislation ProJo 01282022
90. Would R.I. lose lawsuits if it expanded shore access Boston Globe 01272022
91. Nathan Vinhateiro Janet Freedman SK Town Beach Coastal Survey update 01262022
92. URI Coastal Institute Shoreline Access Factsheet 01262022
93. US Supreme Court Cedar Point v Hassid June 232021
94. Daniel Procaccini Lines in the Sand January 102022
95. Chris Boyle Cedar Point Memo January 102022
96. Professor Michael C. Blumm written testimony January 272022
97. RI beach access CRMC discusses Portsmouth, Narragansett, Weekapaug ProJo 01252022
98. Mark Dingley Warwick RI Rip Rap Sea Wall 01262022
99. Agenda Shoreline Access Commission January 27 2022
100. Susan McVicar North Kingstown RI 01252022
101. Public Trust Document in 45 States March 2014 Michael C Blumm
102. January 13th meeting canceled and rescheduled to January 27th 2PM
103. Nick Del Greco Portsmouth RI 010622022
104. Caroline Contrata Westerly Sun Letter 12052021
105. 1986 Constitutional Convention Plenary Session Question 9 video links
106. Charlestown Town Council Resolution supporting 2021 H 5469 01032022
107. Ashley Pincins Warwick RI 12102021
108. Lucia Pesce Charlestown RI 12102021
109. Political Scene Shoreline Access candidates weigh in ProJo 12272021
110. Regina DeAngelo Charlestown RI 12022021
111. How much of RI Shoreline public entitled to ProJo 12092021
112. December meeting cxld, next meeting Jan 13 2022 2PM RI State House
113. John Hacunda Charlestown RI 12062021
114. Barrington Shoreline Access Parking ProJo 12022021
115. Alan Keeley Charlestown RI 11252021
116. Scott Keeley Charlestown RI 11252021
117. Gary S. Dorfman Narragansett RI 11222021
118. Study commission hears from R.I.'ers shoreline rights Boston Globe 11182021
119. RI has a ways to go on shoreline access The Public's Radio 11182021
120. Public Testimony Witness Sheets 11182021
121. Cynthia Zerquere-Martin Narragansett RI 11182021
122. Dennis Zambrotta Newport RI 11182021
123. Richard Langseth Warwick RI 11182021
124. Michael Woods NE Backcountry Hunters and Anglers 11182021
125. Scott Keeley Charlestown RI 11182021
126. Joe Loberti Saunderstown RI 11192021
127. Steven Frazier Wakefield RI 11182021
128. Joan Morin RI 11172021
129. Susan McVicar North Kingstown RI 11172021
130. Kenneth Wollenberg Hopkinton RI 11172021
131. Kathleen Squillante Saunderstown RI 11172021
132. Haley Benoit South Kingstown RI 11172021
133. Teo Wickland Providence RI 11172021
134. Sarah Schwartz Providence RI 17172021
135. Rosemary Finnegan Wakefield 1172021

136. Rochelle Lee Providence RI 11172021
137. Amanda Lee Shannock RI 11172021
138. Scott Blakney Coventry RI 11172021
139. Yvette Wollenberg Hopkinton RI 11172021
140. Janet Antonelli Wakefield RI 11172021
141. David Antonelli Wakefield RI 11172021
142. Jean Roland Charlestown RI 11172021
143. Chris Dumas Charlestown RI 11172021
144. Tim Connelly Charlestown RI 11172021
145. Deborah Lantz Wakefield RI 11172021
146. Chastity Machado Wakefield RI 11172021
147. Kathleen Hunt Wakefield RI 11172021
148. Mark London North Smithfield RI 11172021
149. James Quirk Charlestown RI 11172021
150. Susan McVicar North Kingstown 11172021
151. Thomas Micele Westerly RI 11172021
152. Sara Michaud Charlestown RI 11172021
153. Theresa Benoit Wakefield RI 11172021
154. Gretchen Duggan Wakefield RI 11172021
155. Lynn O'Malley Cranston RI 11172021
156. Barbara Reynolds Charlestown RI 11172021
157. Dorothy Lebeau West Greenwich RI 11172021
158. Patricia Sullivan North Kingstown RI 11172021
159. Colleen Molt Charlestown RI 11172021
160. Jason McNamee DEM Ltr to Shoreline Access Commission 11122021
161. Agenda Shoreline Access Commission 11182021
162. The right to exclude property owners' side BostonGlobe11042021
163. In RI, some fire districts are under fire over beach accessBostonGlobe08262021
164. Peter Jenkins Saltwater Edge 11042021
165. Testimony of John M. Boehnert with Exhibits 11042021
166. Rich Hittinger RISAA Public Access 11-4-2021
167. Agenda RI Shoreline Access Commission 11-4-2021
168. ACLU represent Pawtucket woman BostonGlobe11022021
169. Catalina Martinez Saunderstown RI 10282021
170. Ronald DuVall Newport, RI 11022021
171. Sarah Atchley Portsmouth RI 10312021
172. Beth Levow Providence RI 10312021
173. Jill Kotch South Kingstown RI 10282021
174. Cate Brown North Kingstown RI 10282021
175. Ronald Archambault West Greenwich RI 10282021
176. Stefan DiPippo Providence RI 10282021
177. Chris Lewis Richmond RI 10282021
178. Eleftherios Pavlides Providence RI 10282021
179. Bhavik Patel Chepachet RI 10282021
180. John Greichen Newport RI 10282021
181. Peter Gummo Saunderstown RI 10282021
182. Chris Mello Bristol RI 10282021

183. Kris Waxman Greene RI 10282021
184. Ken Block 10282021
185. Linda Perri Providence RI 10282021
186. Kevin Regan Warwick RI 10282021
187. Amy Herlihy Barrington RI 10282021
188. Jeremy Marcantonio Wakefield RI 10282021
189. Timo DiPilato Providence RI 10282021
190. Rita Lavoie Cranston RI 10282021
191. Janice Fifer Wood River Junction RI 10282021
192. Patricia Cook Jamestown RI 10282021
193. Elizabeth Gordon Narragansett RI 10282021
194. Nathaniel Merrill Wakefield RI 10282021
195. Marc Cohen East Providence RI 10272021
196. Everett Aubin Cranston RI 10272021
197. Kelby Maher Providence RI 10272021
198. Jean Williams Kingston RI 10272021
199. Andrew Lohmeier Cranston RI 10272021
200. Paul Knowles Warwick RI 10272021
201. Angela Muhuri Cranston RI 10272021
202. Lynn O'Malley Cranston RI 10272021
203. Judy Knowles Middletown RI 10272021
204. Steve Clemens Barrington RI 10272021
205. Michael Mello Portsmouth RI 10272021
206. Cheri Metallo Agawam MA 10272021
207. Sarah Anderson Providence RI 10272021
208. Joel Gates North Scituate RI 10272021
209. Regina Noponen North Kingstown RI 10272021
210. Cynthia Clark Warren RI 10272021
211. Robert Hart Barrington RI 10272021
212. Laurel Murphy Wakefield RI 10272021
213. Karin Lucier Warwick RI 10272021
214. Michael Staebler Wakefield RI 10272021
215. Deborah Linnell North Kingstown RI 10272021
216. Nick DelGreco Portsmouth RI 10272021
217. Jeanne Pascone East Providence RI 10272021
218. Tom Martino Jamestown RI 10272021
219. Michelle Vitale Cranston RI 10272021
220. Daniel Force Newport RI 10272021
221. Patrick Druken Newport RI 10272021
222. Piper LaBarre Harrisville RI 10272021
223. Jillian O'Connor Hopkinton RI 10272021
224. Paul Marshall Newport RI 10272021
225. Jane Robbins North Kingstown RI 10272021
226. Julie Tilley Coventry RI 10272021
227. Susan McVicar North Kingstown 10272021
228. Caroline Contrata Westerly RI 10262021
229. Tom Grieb Portsmouth RI 10282021

230. Scott Duncan East Greenwich RI 10282021
231. Colin T Hynes Narragansett RI Coastal Shoreline Use
232. Cynthia Zerquera-Martin Saunderstown RI 10282021
233. Benjamin Weber Westerly RI 10282021
234. 2021 H5469A Sub A Shoreline Access Commission
235. 2021-H5469 Trespass Bill
236. Jason McNamee PPT RIDEM Shoreline Access 10282021
237. Jason McNamee RIDEM PDF Shoreline Access10282021
238. Designing Public Coastal Access RI Division of Planning February 1988
239. Agenda RI Shoreline Access Commission 10-28-21
240. Who has access to Lloyd's Beach in Little Compton, RI_ ProJo 10212021
241. Are Beach Boundaries Enforceable Washington Law Review 10-1-2018
242. Public Being Shortchanged by R.I. Supreme Court ecoRI News 10152021
243. H 5469 Balances Public and Private Rights Along RI Shore Dennis Nixon 2021
244. RI Bar Journal 1984 Harborlines Lots and Coastal Development Dennis Nixon
245. Shoreline Access RI Case Study of Black Point Michael Rubin Dennis Nixon 1990
246. CI_Coastal-Dynamics_14Oct2021_handout
247. Emerging Issue Coastal and Marine Planning Beach 2012 Robert Thompson URI
248. Evolution of Public Private Rights Shore Dennis Nixon 1990 Suffolk Univ Law
249. CI_Coastal-Dynamics_14Oct2021 PowerPoint
250. Public Access to the Shoreline The RI Example-Dennis Nixon 1978
251. Boston Globe 10142021 Drawing a line
252. Boston Globe 9232021 Expert suggests Rhode Islanders might need to rethink
253. Agenda 10142021 Shoreline Access Commission
254. ProJo Oct 5 2021 Barrington beach access_ Council resists adding public parking
255. ProJo Oct 3 2021 Westerly beach access fight
256. Lateral Shoreline Access in RI House Final Report March 1980
257. Jeff Willis-House Lateral Access Commission 92321 - CRMC presentation FINAL
258. Lyness-The Rhode Island Public Trust Doctrine 1663 - 1982 PDF
259. Lyness Presentation 9 23 2
260. RI Shoreline Access Commission Agenda 9-23-21
261. Warwick to remove unenforceable 'no parking' signs near beach access
262. SCAN Restrictive Beach Laws
263. Shoreline Fire Districts
264. Why Narragansett Town Beach can charge a $12 entry fee just to walk on
265. Cavanaugh v. Town of Narragansett, 91-0496 (1997)
266. State v. Ibbison RI Supreme Court
267. Boston Globe Article 08252021 Beach Access Lawsuit
268. RI Shoreline August-26-2021 Meeting Agenda

Exhibit 4

Janet Freedman and Megan Higgins, *What Do You Mean by Mean High Tide? The Public Trust Doctrine in Rhode Island*

WHAT DO YOU MEAN BY MEAN HIGH TIDE? THE PUBLIC TRUST DOCTRINE IN RHODE ISLAND

Janet Freedman, RI Coastal Resources Management Council
Megan Higgins, RI Coastal Resources Management Council

Keywords: mean high water line, last high tide swash line, public trust lands, beach, beach profiles, Tidal Epoch

INTRODUCTION

The Rhode Island State Constitution guarantees shoreline privileges that include but are not limited to fishing from the shore, collecting seaweed, leaving the shore to swim in the ocean and passing along the shore (Article I, Section 17). Traditionally the "seaweed line" has been interpreted as the boundary between private property and public trust lands. This boundary has been one that is clearly visible on the beach and, except at high tide, affords the people the shoreline privileges that are specified in the Constitution. On wave dominated shorelines, the position of the "seaweed line", or the last high tide swash line (LHTS), is dependent on the wave climate as much or more than tidal phase. Tide coordinated aerial surveys and in-field delineation of the water line in shoreline mapping surveys reinforced the concept of including wave dynamics in demarcating an interpreted MHW line.

BACKGROUND

In 1979, a group of people were arrested in Westerly, RI during a beach clean up. The individuals were clearly seaward of the LHTS line but were landward of a staked line that the littoral property owner claimed marked mean high water. The staked line was under water at the time of the arrest. In the ensuing case, *State v. Ibbison,* 448 A.2d 728 (1982), the Rhode Island Supreme Court ruled that the boundary between private property and public trust lands was the mean high tide line (MHW) defined as the intersection of the plane of mean high water with the shore. The plane of mean high tide was defined as the average of all high water elevations observed over an 18.6 year period or Tidal Epoch. Although the court correctly defined MHW and the methods used to determine the MHW line, the court attributed the discrepancy between the LHTS line on the beach and the staked MHW line to the tidal phase, implying that the LHTS line would be landward of the MHW line half the time and seaward half the time. The decision was based on the ruling in *Borax Consolidated Ltd. v. City of Los Angeles* 296 U.S. 10, 22-23, 56 S. Ct. 23, 29 (citing *Attorney General v. Chambers,* citations omitted). In *Borax,* the mean high water line was used to define the ownership of tidelands on Morman Island in the inner Los Angeles Harbor. The island was in a protected area, where wave energy was reduced. The wave dominated Westerly beach in Ibbison, was a very different coastal environment. The *Ibbison* ruling failed to consider all factors that influence the movement of water onto the shore.

METHODS

In order to determine the relationship between the mean high water line and the last high tide swash line a long term record was needed. The University of Rhode Island Department of Geosciences, under the direction of Dr. Jon Boothroyd, has been measuring the beach profile at Cha-EZ in Charlestown, RI since 1977. Profilers use a modified version of the Emory

Method (Rosenberg, 1985; Boothroyd, 1986) which allows rapid data collection, with little in the way of high tech equipment. The profiles are measured weekly and data is used to examine shoreline dynamics, to quantify beach volume changes and to study long term trends (Blais, 1986; Graves, 1990; Harwood, 1993). Data records include time the profile was taken, wave height, wind speed and direction, and, sometimes but not always, details such as the location of the last high tide swash line and the current swash line where the profilers hit the water.

The distance of the LHTS and MHW line from the profile datum was calculated for the 19 year Tidal Epoch between 1983 and 2001. A total of 716 profiles recorded both the LHTS and the MHW. The number of profiles per year ranged from 16 to 59, averaging 38 profiles per year. Tide elevations from the Newport, RI tide station were downloaded from the NOAA CO-OPS website (www.co-ops.nos.noaa.gov). The annual mean high water elevations were compared with the average tide heights of the high tide immediately preceding each beach profile. This was done to determine if the data set was selecting for stormy days or if it represented average conditions. A subset of profiles (569) taken during years where the average annual high tide level was less than 0.03 m (0.10 ft) difference in elevation from the average tide heights occurring prior to the profile reading was also analyzed.

RESULTS

There was considerable variability in the distance from datum (0 meters) and the MHW line in the different profiles. This distance was dependent on the amount of erosion or accretion along the shoreline (Figure 1). Average annual distances from datum to the MHW line ranged from a low of 62.35 meters in 1991, the year when the RI coast was hit by Hurricane Bob and the Perfect Storm, to a high of 84.02 meters in a relatively calm year. Figures 2 and 3 illustrate the variability for both the MHW and LHTS lines over the course of a year. In 1983 (Figure 2), the annual MHW level at Newport was approximately equal to the average elevations of the tides occurring prior to profile recording (1.190 m MLLW and 1.193 m MLLW). Two erosion events were documented in the profiles (41 and 46). The year 2000 (Figure 3) was a non-stormy year, as noted by the stable shoreline. The inter-annual migration of the MHW line was less than ten meters. There was more variability in the location of the LHTS than the MHW line in 2000, but it was considerably less than in 1983. For much of the year the distance between the MWH and LHTS lines was consistently 19-20 meters. Tide levels at the Newport Tide Gage were 0.027 m higher than the average of tides occurring before profiling.

The same uniformity is seen when comparing the average annual distance between the MHW and LHTS lines over the 1983-2001 Tidal Epoch. The distance averages 19.91 meters for all profiles and 19.23 meters when selecting for years when the difference between the average annual MHW and the mean of tides prior to profile recording is less than 0.03 m (0.10 ft). The distance between the two measures was lowest in the three years within the Tidal Epoch when the annual MHW was lowest, suggesting some tidal influence. However, wave dynamics are more significant than tides for delineating lands under the daily ebb and flow of the sea on ocean fronting shorelines.

MANAGEMENT IMPLICATIONS

Tensions between the private property owners and the public beach users seem to escalate with the rise in coastal property values. In an attempt to balance the needs of the private property owners with the public, the Rhode Island Supreme Court applied scientific principles to define public trust land boundaries without fully understanding coastal dynamics. Long term beach profile data demonstrates that the MHW line is not the appropriate measure for determining the boundary between public trust lands and private property on the wave dominated shorelines of Rhode Island. The LHTS line is never seaward of the MHW line. At the Cha-EZ profile, the MHW line averaged 19-20 meters seaward of the LHTS lines. This measure is probably typical for the RI south shore. Using this measure the shoreline privileges that are guaranteed in the RI State Constitution would be limited to only a few hours a day.

REFERENCES CITED

Article I, Section 17, Constitution of the State of Rhode Island and Providence Plantations. www.rilin.state.ri.us/gen_assembly/RiConstitution/riconst.html

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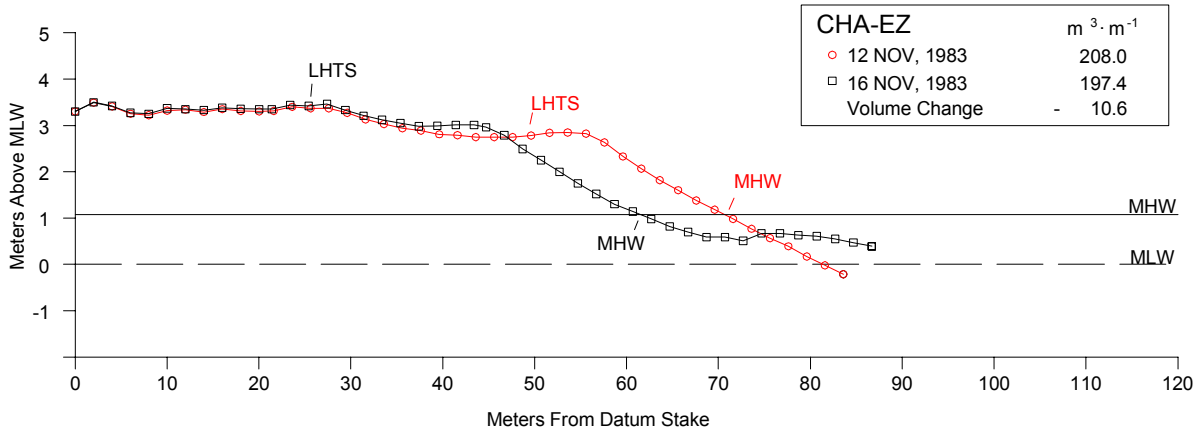
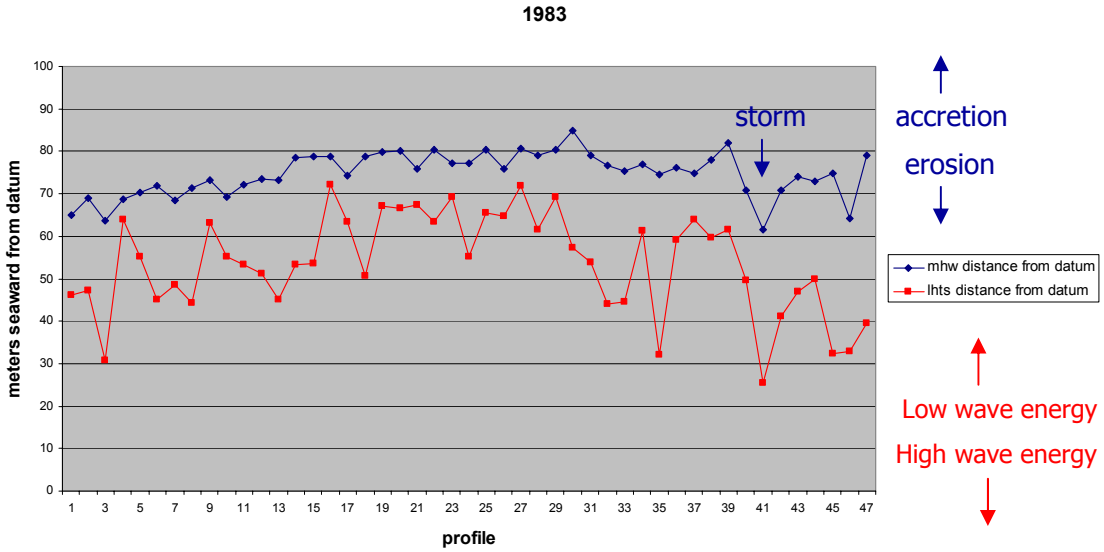
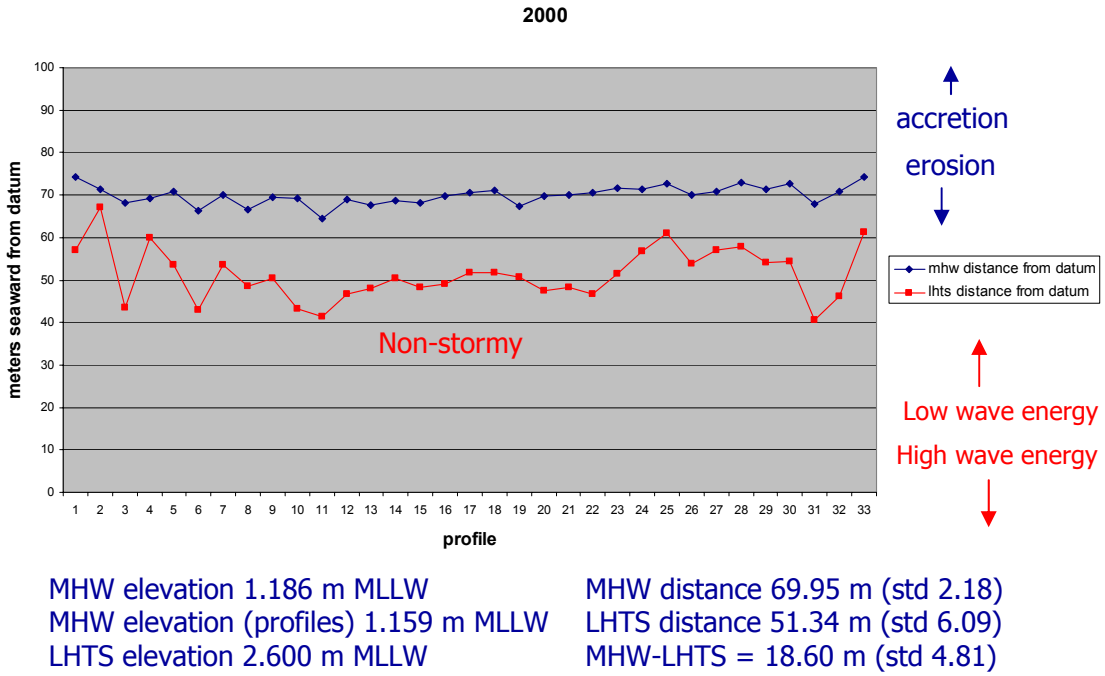


Figure 1. Cha-EZ pre- and post-storm beach profiles show the landward migration of the mean high water line (MHW) after the storm. The position of the last high tide swash line (LHTS) is dependant on wave height and the beach profile.



MHW elevation 1.190 m MLLW
MHW elevation (profiles) 1.193 m MLLW
LHTS elevation 2.583 m MLLW
MHW distance 74.74 m (std 5.11)
LHTS distance 53.61 m (std 11.63)
MHW-LHTS = 21.13 m (std 9.40)

Figure 2. The distance of the LHTS and MHW lines seaward from the profile datum is influenced by the shape of the shoreline and the amount of wave energy. Variability in the position of the MHW line and the LHTS line is due to erosion and accretion. Variability in the position of the LHTS line is also dependent on wave energy.



MHW elevation 1.186 m MLLW
MHW elevation (profiles) 1.159 m MLLW
LHTS elevation 2.600 m MLLW

MHW distance 69.95 m (std 2.18)
LHTS distance 51.34 m (std 6.09)
MHW-LHTS = 18.60 m (std 4.81)

Figure 3. In non-stormy years there is less variability in the position of the MHW line and the LHTS line. The LHTS line is still meters landward of the MHW line.

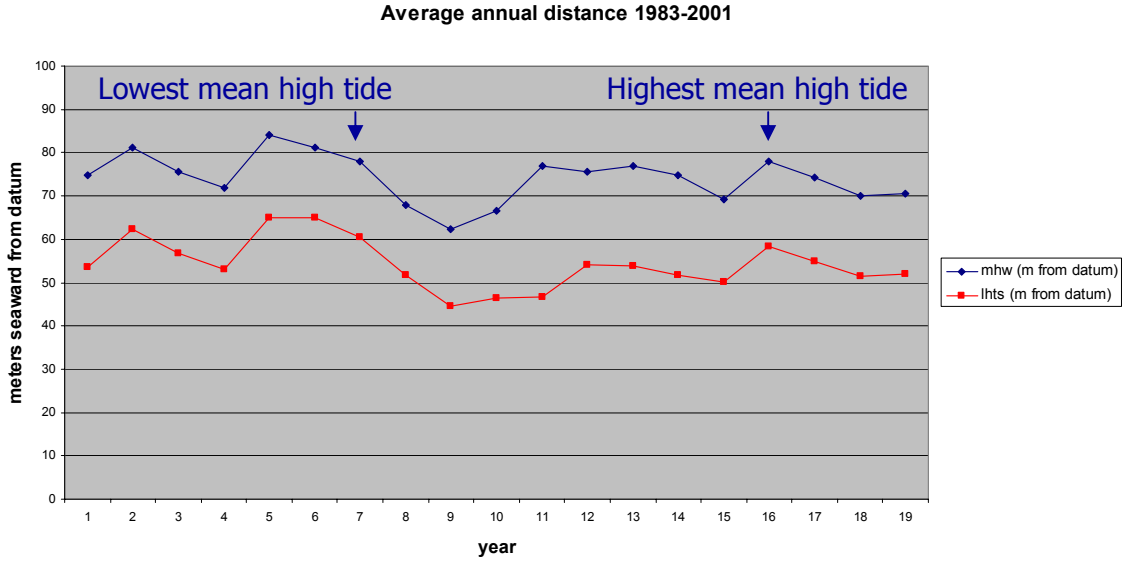


Figure 4. The average annual distance between the MHW line and the LHTS line is consistent over time. The MHW line intersected the shoreline at approximately the same location for the years with the lowest annual mean high tide level and the highest mean high tide level within the Tidal Epoch.

Exhibit 5

CRMC Brochure

Things to Remember...

When using Public Trust Resources in Rhode Island:

- Use Public Rights-of-Way to gain access to and from the shore;
- Respect private shorefront property;
- Keep the shore clean of all debris, trash and plastics. Bring a bag to carry your trash and litter and then dispose of it properly;
- Be aware of conservation areas along the shore. These are home to species of plants and animals that depend upon the shore and its environment to survive;
- Leave the shore in the condition in which you would want to find it.

This brochure is intended to be distributed to the general public.

CRMC
COASTAL RESOURCES MANAGEMENT COUNCIL

"...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 society from such coastal resources; and that the preservation and restoration of ecological systems shall be the primary guiding principal upon which environmental alteration of coastal resources shall be measured, judged and regulated."

For additional copies of this brochure, contact the CRMC at (401) 783-3370 or visit us at the Stedman Government Center.

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State of Rhode Island

Coastal Resources Management Council

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More about Public Access in Rhode Island

Rhode Island Colony Charter

"Every one of them shall have liberty to use the trade of fishing upon the coast and to set upon the 'waste land' belonging to the Colony and Plantations"

- Charles II

Rhode Island Constitution

"The people shall continue to enjoy and freely exercise all rights of fishery, and privileges of the shore"

- Article I, Section 17

FAQs

Q: What are my rights to the shore as a citizen of Rhode Island?

A: Rhode Island law recognizes the individual's rights to fish from the shore; leave the shore to swim in the sea; gather seaweed; and pass along the shore. Trespassing across private property to access the shore, however, is illegal.

Q: How do I know what part of the shore is public and what part is private?

A: Every state has its own laws on this issue, but by law in Rhode Island, the public has the right to access the beach seaward of the mean high water mark (mean high tide is seaward of the seaweed line and where the beach gets wet on any given day). Confusion exists because the mean high water is not the same as the high tide mark. In actuality, MHW, as determined by the Ibbison case, is much further seaward than most think. This is confusing because under the State Constitution, Article 1, Sect. 17, the public has the right to lateral access without mention of this difference. The activities that are allowed under this law (printed at left) are, by implication, activities that take place above the mean high tide line.

Q: Does any legislation exist that might clarify this situation?

A: The most recent bill was introduced in the House in February 2006 that would provide the public with the right to walk along a 10-foot wide strip of dry-sand beach. The bill was passed by the House, but did not reach the senate in the 2006 session.

Q: Are there any other issues associated with beach access?

A: Erosion is another problem that complicates the public/private access debate. The beach is dynamic. Property owners who apply for fencing for erosion control or dune restoration, when it is installed, must have the fencing 15 feet from the dune crest. After two or three good storms, however, 10 feet of that distance might now be in the ocean. Because of the natural fluctuations in erosion and accretion (when sand is deposited on a beach), property lines fluctuate also.

CRMC permits do, however, stipulate that fencing cannot block lateral access.

Q: Is putting up fencing and Private Property signs legal on the beach?

A: These are activities that require permits from the CRMC. Preventing lateral access is prohibited.

Have other questions? **Contact us at cstaff1@crmc.ri.gov or (401)783-3370**

Exhibit 6

Newspaper Articles

The Providence Journal

POLITICS

RI's new beach access law creates controversy, confusion and lawsuits as line is drawn in sand

Antonia Noori Farzan
The Providence Journal

Published 5:05 a.m. ET July 12, 2023

One week after Rhode Island's new shoreline access law went into effect, Scott Keeley decided to put it to the test.

The Charlestown-based activist was arrested while gathering seaweed in 2019, in an incident that spurred public outcry and ultimately inspired the new legislation. So on July 3, with his striped beach chair in tow, he returned to the same spot where he'd been accused of trespassing.

He weaved through the crowds at Charlestown Town Beach and kept walking east, past a large sign stating, "Town Beach Property Ends Here — Private Property Beyond This Point." Then, he was stopped by a polo shirt-clad security guard.

"If you're planning on setting up, you can't set up past the private property sign," the guard told him.

Keeley, who captured the exchange on video, set his beach chair near the seaweed line and called the police. An officer from Charlestown arrived, and, citing the new law, told the security guard that Keeley had the right to be there. Gradually, other beachgoers took note and began walking past the fence to set up chairs and towels of their own.

His quest? Walk RI's entire coast: But private property and blocked access are a challenge

"I guess the security guard didn't know what to do," Keeley told The Providence Journal. "She stopped telling people that they couldn't be there."

After a multiyear fight to make shoreline access law, the last few weeks have given Rhode Islanders a taste of what it actually looks like in practice.

For beach-access advocates — as well as police departments that had struggled to adjudicate disputes — the law offers some much-needed clarity around what is and isn't considered public. But according to the waterfront property owners who are suing to overturn it, it's effectively turned private backyards into public beaches, lowering their home values.

Meanwhile, plenty of people don't realize that the law has changed at all. And Keeley is now focused on ensuring that there are penalties for those who seek to block the public from exercising their rights.

"People should know what the law is, and that it’s there for their enjoyment, finally," he said.

Shifting sands: Who has access to Lloyd's Beach in Little Compton?

New law leads to immediate action in Westerly

The new shoreline-access law states that the public can exercise the "rights and privileges of the shore" on any beach as long as they're no more than 10 feet above — aka inland — of the recognizable high tide line, also commonly recognized as the seaweed line.

After passing the General Assembly in the final days of the legislative session, it was signed by Gov. Dan McKee on June 26 and went into effect immediately.

Within about a week, police in some coastal communities began getting calls.

'It's crazy': CRMC faces scrutiny over handling of Matunuck Oyster Bar shellfish farm

On July 4, for instance, Westerly police received a complaint about ropes set up in front of the Atlantic Beach Casino Resort in Misquamicut that were blocking the 10-foot zone.

The property manager at the timeshare "gave us the runaround for about two hours," so officers finally took the ropes down themselves, Westerly police chief Paul Gingerella said. He added that he eventually was able to speak with the property's owner, who indicated a willingness to comply with the law. (The Journal's attempts to reach the resort for comment were unsuccessful.)

In some other parts of the state, though, things have been fairly quiet.

"We haven't had any calls for it yet," said Narragansett Police Chief Sean Corrigan. He said that the department was aware of the new law and prepared to enforce it, but "historically speaking, we don't get a lot of these complaints."

Political Scene: How did a Warwick councilwoman acquire land next to her house? The neighbors have questions

In years past, the mean high water mark — which is based on scientific calculations and is not visible to the eye — was typically considered the boundary between public and private beach.

Without a clear line to point to, police had a tough time determining if someone was trespassing on private property or if public access was being obstructed, Gingerella said. Now, with the new law in effect, responding to complaints has become more straightforward.

"We just didn't have a clear-cut line," he said. "This makes it easier for us."

Can you set up a beach chair? Police in Charlestown say yes

One thing that the law doesn't address is what you can do when you get to the 10-foot buffer zone. Fishing, gathering seaweed and passage along the shore are explicitly protected in Rhode Island's Constitution. But can you plop down a towel or a beach umbrella and stay for a while?

Keeley argues that you can, in fact, do anything that isn't already considered illegal. (In other words, no public nudity or drunkenness.) And when he put that to the test on July 3, Charlestown police officers backed him up.

In one video that Keeley captured, the security guard can be heard **t**elling police officers that she didn't stop anyone from walking along the beach. "I just said that they couldn't set up," she says.

"He can set up, too," one of the officers tells the guard, gesturing to the beach chair that Keeley placed directly above the seaweed line. "He's fine right where he's at right now. ... Have you guys checked on the law that just passed?"

More: One RI man's quest to find old-growth forests and his mission to protect century-old trees

The guard passes over her phone so that the officer can speak with the man who hired the security company. "I think you're mistaken in your interpretation," the man, identified only as Michael, tells the police. He argues that the law allows people to walk, swim or gather seaweed, but "it does not say that they have the right to use the property or occupy the property."

"They can't stop them from passing through, or even setting up," the police officer counters. Later, he adds that guards "have to be careful with their language, because if their language is not on point, they're going to be held responsible."

It's unclear whether the security guard was hired by one specific homeowner or by a neighborhood association. Keeley said he wasn't sure. The security company, N.E.S. Solutions, did not return a call seeking comment.

Property owners' lawsuit seeks to overturn new law

For years, Keeley has been asserting his constitutional right to use the shoreline directly east of Charlestown Town Beach, where he encountered the security guard. (Though it's accessed from Charlestown, that portion of the barrier beach is technically in South Kingstown.)

So it's perhaps unsurprising that two out of the three officers of a new group called the Rhode Island Association of Coastal Taxpayers — which is attempting to overturn the shoreline-access law — own property along that same stretch of beach.

More on the lawsuit: 'Get off my sand?': Coastal homeowners sue over shoreline law, but state is prepared to fight

Just a few days after Keeley's run-in with the security guard, RIACT filed suit in federal court. Over the long July Fourth holiday weekend, the lawsuit alleges, members of the public "trespassed" on private properties in Charlestown and South Kingstown that belong to the group's president, David Welch, and other RIACT members — and did so under the color of law.

"RIACT beachfront property owners purchased their residentially developed coastal property with the understanding, right, and expectation of using their property for private, exclusive use, including for private family beach gatherings," the complaint states.

The lawsuit contends that the new law amounts to an unconstitutional "taking" under the Fifth Amendment. It makes the case that some waterfront properties have deeds that use the

mean high water mark as a boundary, but the state has now established a new boundary that's higher up on the beach — without compensating homeowners.

In other words, land that was once considered private property "is now subject to public beach use," argues RIACT, which is being represented pro-bono by the libertarian Pacific Legal Foundation.

And when naturally occurring forces move the seaweed line further inland, "the public beach area created by the Act will also move farther inland onto previously unburdened parcels of private, coastal property," the suit says, alleging that the new law "operates as a mechanism for a perpetual, unpredictable conversion of private coastal land into public beach areas."

Attorney General Peter Neronha has indicated that he is ready to defend the law, which remained in effect as of press time. However, RIACT is seeking an injunction that would prevent it from being enforced while the lawsuit is pending.

Can people who block public access be penalized?

While some property owners have been attempting to reverse the law, activists like Keeley have been trying to ensure that the beachgoing public actually gets to use it.

That means pushing officials to crack down on misleading signs, unauthorized barriers and anything else that might act as a deterrent. After his run-in with the security guard, Keeley filed a complaint with the South Kingstown police — he was just over the town line when the confrontation happened — and is hoping they will press charges.

South Kingstown police chief Matthew C. Moynihan said in an email that the incident was "under investigation," and that police had "no details to share at this time." He said that the police report would not be released while the incident was still being investigated.

"I think we need to make it clear that blocking people from their constitutional right to the shore is not right," Keeley said. "And it’s against the law."

Who rules RI's forgotten old roads? Advocates push to preserve public access

The new law doesn't impose any penalties for preventing the public from using the shoreline, but Keeley believes that another state statute — 11-44-24 of the Rhode Island General Laws — serves that purpose.

Under that law, anyone who obstructs or blocks "any public rights-of-way to water areas of the state" can be fined up to $500 or jailed for up to one year. The implication, Keeley says, is that "no one is allowed to block people from accessing the shore."

Until he challenged the security guard, Keeley noted, no one had questioned the idea that they weren't allowed to sit down on the opposite side of the fence.

"I think that one of the saddest things was that not one person had said, 'Hold on, we have a new law,'" he said. "One hundred percent of the population obeyed that security guard."

POLITICS

Security guard tries to keep man behind RI shoreline access bill off Charlestown beach

by: Sarah Doiron, Anita Baffoni
Posted: Jul 12, 2023 / 06:42 PM EDT
Updated: Jul 12, 2023 / 07:38 PM EDT

CHARLESTOWN, R.I. (WPRI) — Scott Keeley was walking along Charlestown Town Beach last week when he was stopped by a security guard.

Keeley had walked past a sign reading "private property," and the guard told him he couldn't be there.

"You can't set up past the 'private property' sign," the guard told him in a video of the interaction obtained by 12 News.

"I can't set up past the private property sign?" Keeley responded. "Really?"

The security guard replied: "No."

Keeley had wanted to set up his beach chair along the "high tide line," which would be in compliance with a new state law signed by Gov. Dan McKee earlier this summer.

Ocean, Bay & Beach // A look at the conditions by the coast »

And after being told by the security guard he couldn't, Keeley decided to contact the authorities.

Two officers arrived at the beach and informed the guard that Keeley had the right to be there.

"[Property owners] can't stop [beachgoers] from passing through or even setting up," the officer said. "He is 10 feet [from the high tide line], he is not over that 10 feet."

Keeley, who was arrested nearly four years ago for trespassing on the same beach, fought hard for the passage of the new shoreline access law. He told 12 News he feels "vindicated," even though the interaction was initially frustrating.

“To go down to the beach closest to my home and be told the exact same thing I was told in 2019, ‘You can’t sit here.’ I was a little shocked by that,” he said.

5 chances to get free skin cancer screenings this summer ›

McKee signed the shoreline access legislation into law late last month, and at the time, the bill’s sponsor Sen. Mark Kenney described it as “…a practicable solution to the question of access and preserve one of the most important rights enjoyed by Rhode Islanders.”

In response, the Rhode Island Association of Coastal Taxpayers (RIACT) filed a lawsuit last week in an attempt to reverse it.

RIACT, which is made up of multiple anonymous beachfront property owners, argues that the new law “…denies them of their right to exclude non-owners from private beachfront property without just compensation.”

“The legislature has taken a pen and has simply redrawn their property line so they have less than what they paid for and no one has been compensated,” said Attorney David Breemer, who’s representing RIACT in the lawsuit.

Keeley said he set his chair up and enjoyed his time at the beach after the officers told the security guard he could stay. He hopes other Rhode Islanders will follow suit.

“It’s time for all of Rhode Island to stand up for their rights,” he said.

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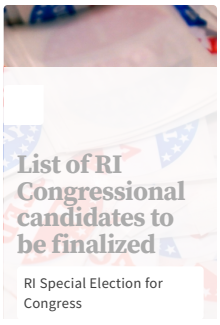


Exhibit 7

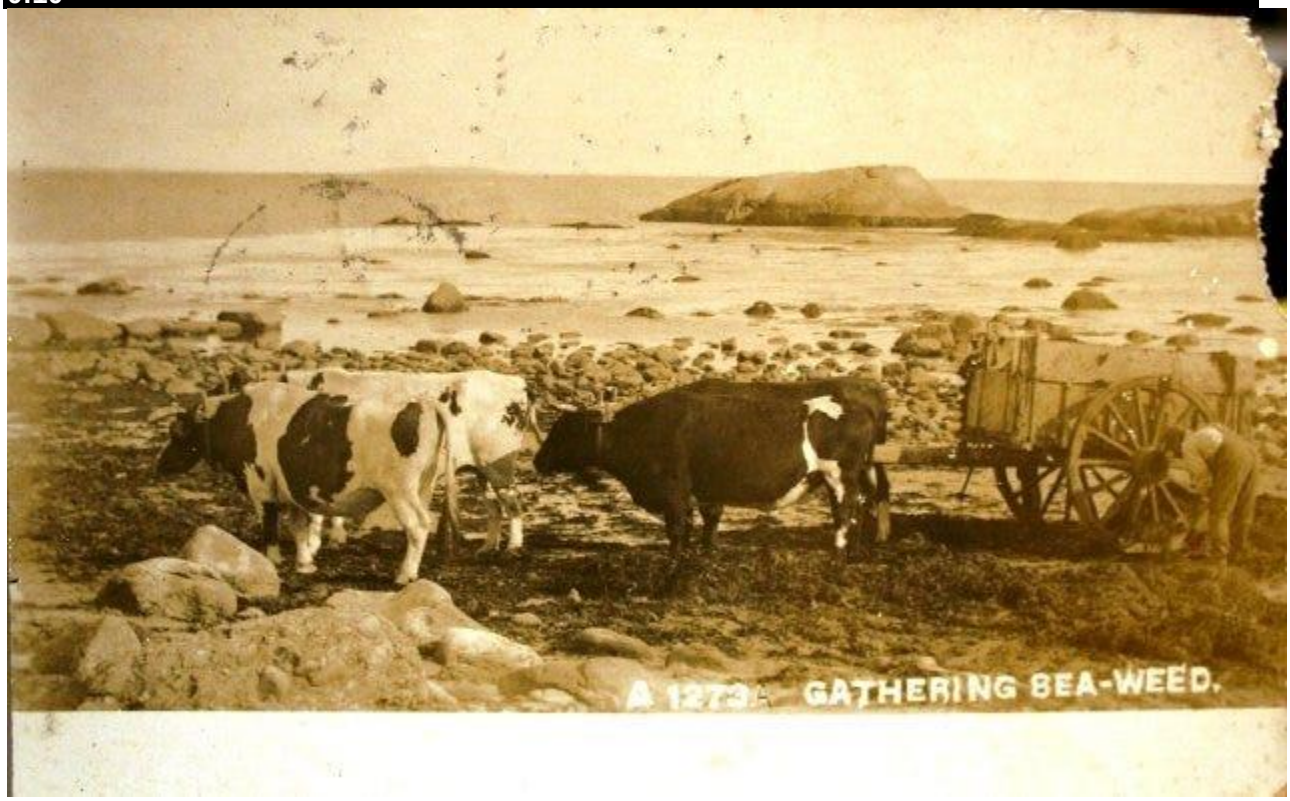
Antonia Noori Farzan, *Shoreline-access panel settles on 10-foot buffer zone; won't address question of beach chairs*, The Providence Journal, March 4, 2022

Shoreline-access panel settles on 10-foot buffer zone; won't address question of beach chairs

Antonia Noori Farzan

The Providence Journal 03-04-2022

View Comments



They didn't manage to find an oxcart, but the special House commission on shoreline access did reach a consensus on Thursday: There should be a 10-foot buffer zone above the high-tide line where the public can exercise their constitutional rights.

And the commission signaled that it doesn't intend to take up the question of what those rights entail —such as whether they include laying down a towel or setting up a beach chair.

"I think our charge is limited to the area in which the substantive rights are exercised, rather than what those rights are," said the commission's vice chair, House Minority Leader Blake A. Filippi, R-Block Island.

That amounts to a victory for shoreline access advocates who had worried that the commission was on track to propose legislation that would reclaim a portion of the beach for public use, but with the caveat that beachgoers had to keep moving.

Instead, the bill that will soon be finalized and sent to the General Assembly for consideration will be intended to resolve just one key issue: What portion of the shoreline is open to everybody, and what portion is private property?

Dennis Nixon, professor emeritus of marine affairs at the University of Rhode Island, characterized the goal as "restoring what was taken from the public" in 1982, when the Rhode Island Supreme Court sided with a homeowner who claimed that his property extended to the mean high tide line.

That case, State v. Ibbison, set a precedent that's proven to be problematic: Finding the mean high tide line requires specialized surveying equipment and knowledge of tidal datums, so the average beachgoer has no way of identifying where it is.

Plus, as scientists from the University of Rhode Island's Coastal Institute discovered when they surveyed South Kingstown Town Beach, the line is underwater for most of the day.

In their previous meetings, commission members agreed that the "recognizable high tide line" — commonly known as the wrack line, seaweed line, or swash line — would be a more logical boundary. But that

prompted another question: Since people typically avoid walking through piles of washed-up seaweed, how far above the swash line they can go?

On Thursday, most commission members agreed that 10 feet made sense. Nixon said that there was a "strong precedent": Ox carts that would have been about eight to 10 feet wide traditionally travelled above the wrack line to gather seaweed.

While no one actually managed to track down an ox cart before the meeting, commission chair Rep. Terri Cortvriend, D-Middletown, and clerk Michael Hogan did manage to locate some historic photographs with help from the State Archives.

Filippi offered a more modern — and romantic — formula. The buffer "should allow enough room for two couples walking hand in hand to pass each other on the beach," he said. By his calculations, that meant roughly nine to 10 feet.

"My girlfriend and I, we held hands this weekend, and we measured how much space that we took up while we were walking, and it was just over four and a half feet," Filippi said.

Cortvriend, Coastal Resources Management Council executive director Jeff Willis, Save the Bay attorney Kendra Beaver, Julia Wyman of the Roger Williams University's Marine Affairs Institute and Rhode Island Sea Grant, and former Rhode Island assistant attorney general Michael Rubin were also among the members of the commission who expressed support for a 10-foot buffer.

Land surveyor Mark Boyer and former Rhode Island Supreme Court Judge Francis X. Flaherty were initially skeptical. "I don't think people have the right to spread out," Flaherty said, arguing that four to six feet would be better.

After it became clear that 10 feet was the consensus, both Boyer and Flaherty said that they would go along with it.

The lone dissenter was David Splaine of the Rhode Island Association of Realtors, who had taken a walk down to Warwick City Park Beach that morning with a tape measure. At the 8:22 a.m. high tide, the wrack line was about nine feet above the water's edge, he told the committee.

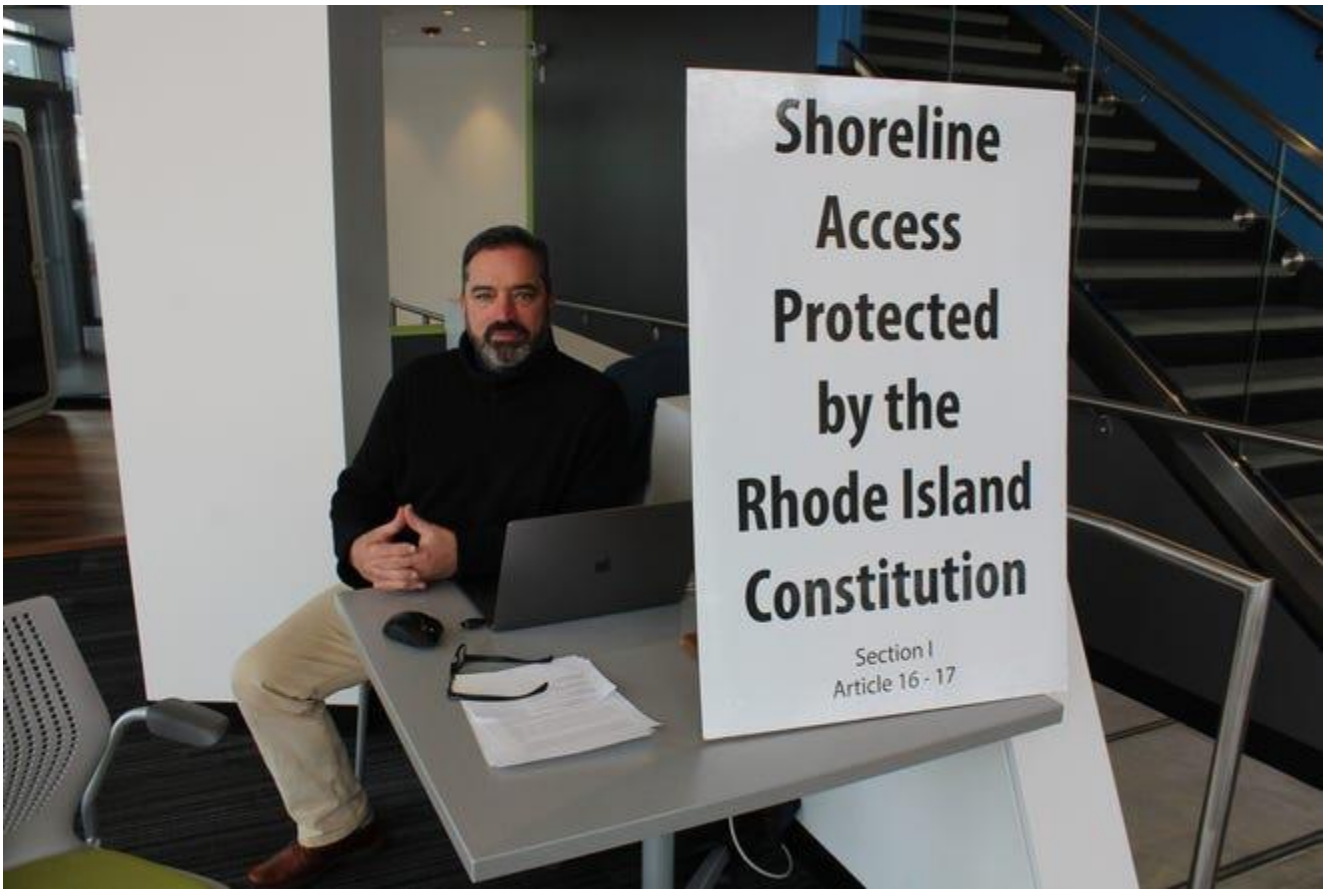
That would suggest that people could walk below the wrack line without getting their feet wet "a large percentage of the time," Splaine said.

Nixon pushed back, arguing that conditions are very different on oceanfront beaches that get more wind and wave action than upper Narragansett Bay. And the ocean beaches tend to be where most disputes over property boundaries have occurred, he said.

"We've been fighting over these same beaches for 50 years," he said. "We need to get this straightened out."

The next step will be for Cortvriend and Filippi to finalize the wording of a bill that reflects the commission's consensus, and introduce it in the General Assembly.

"This isn't the beginning of the end, but the end of the beginning," Filippi said, urging members of the public to remain involved in the process. "There's a lot of hard work over the next four or five months to get this thing across the finish line."



In the last few minutes of Thursday's meeting, Flaherty raised the question that had been on activists' minds: Would the bill say anything about whether people are required to keep moving while they're on the 10 feet of dry sand above the swash line?

The answer was no. But it's a potentially thorny legal question that could reemerge in the future.

The Rhode Island constitution states that the public "shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore."

To advocates, the key words are "including but not limited to" — which would appear to indicate that the public's right to use the shoreline isn't exclusively restricted to fishing, gathering seaweed, swimming or passing along the shore.

But Nixon, who helped draft the amendment that codified those four rights at the 1986 constitutional convention, told the commission last fall that the idea that you have a right to throw down a beach blanket and spend the afternoon is a widespread misconception.

Broadly speaking, only activities that were taking place along the shoreline in Colonial times — like fishing and gathering seaweed — are protected "privileges of the shore." Besides the four specific examples that already are codified in the constitution, it's hard to think of many others that "have strong historical support," Nixon said.

Launching a boat would likely qualify, he added, and you could potentially make the case that someone who is swimming would need to take breaks to sit on the shoreline and rest.

"But we can't just throw something into the constitution right now without another convention," he warned.

Activists remain skeptical. And concerns boiled over after the commission's last meeting, when former Warwick state Sen. Mark P. McKenney proposed legislation stating that "no rights to the shore are conferred for setting up tents, chairs, umbrellas, grills, nor implements for loud music or noise." (McKenney did not attend Thursday's meeting.)

Scott Keeley, the Charlestown resident who was arrested while sitting on the beach and collecting seaweed in 2019, warned that any law that's designed to ensure that people keep moving would just lead to more security guards along the coast.

"Certainly, we shouldn't be letting the perfect get in the way of the good," he told The Providence Journal in late February. "But this is far worse than that. This is losing your head to save your heart."

Keeley's arrest, which sparked an uproar, is largely the reason that the House commission on shoreline access exists. But if scrapping the mean high tide line as a boundary comes with the trade-off that you're not allowed to bring a beach chair and sit down, "then we're better off with nothing," he said.

In the weeks leading up to Thursday's meeting, Keeley held a series of letter-writing parties in Providence and South County and urged people to make their views known to commission members.

"I don't think I'm the only person that wants to sit along the beach," he said. "If that's the case, I'll shut up."

He wasn't: Dozens of letters flowed in.

"We have a once in a lifetime opportunity to get this right, for our residents now and for generations to come," added Cynthia Zerquera-Martin, who serves as chairman of the Town of Narragansett's Coastal Access Improvement Committee.

"I can't always just walk along the water's edge," added Thomas Micele of Westerly. "I'm old; sometimes I just want to bring my chair and just watch the waves. This is therapy."