Technical Paper Number 132

DESIGNING A PUBLIC COASTAL ACCESS PROGRAM FOR THE OCEAN STATE: A POST-NOLLAN ASSESSMENT

February, 1988

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Division of Planning
Rhode Island Department of Administration
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KFR459 .J64 1988

ABSTRACT

Title: Designing a Coastal Public Access Program for the Ocean State: A Post -Nollan Assessment

Subject: Resource Planning/Management

Date: February, 1988

Agency: Division of Planning, Rhode Island Department of Administration

Source of Copies: Rhode Island Division of Planning
265 Melrose Street
Providence, Rhode Island 02907

Series No: Technical Paper Number 132

Abstract: This document assesses programatic needs and legal considerations relevant to the development of a comprehensive approach to protecting and expanding public access to the shoreline of Rhode Island.

Aspects of the legal environment of coastal access, including pertinent decisions of Rhode Island courts, and the probable implications of the the U.S. Supreme Court's 1987 decision in Nollan v. California Coastal Commission are discussed. Recommendations for an expanded program coastal access effort are made in the areas of coastal access planning, access expansion, development, maintenance and enforcement, promotion and public information, and landowner protection.

Preface

This technical paper was prepared by George W. Johnson, Principal Planner, with supervision and assistance provided by Daniel W. Varin, Associate Director. Ms. Kim A. Gelfuso, Word Processing Typist, typed and corrected the paper. The project evolved as a multiple-purpose endeavor. While primarily developed for presentation at a "Coastal Access Roundtable Discussion" sponsored by Rhode Island Shoreline Access Concern (RISAC) on January 30, 1988, Parts I and II of the paper also served to partially fulfil the requirements of the course "Planning Law" offered by the Graduate Curriculm in Community Planning at the University of Rhode Island, in which the principal author participated during the fall of 1987.

The preparation of this paper, and the participation of the Division of Planning in the Coastal Access Roundtable Program support the implementation of Ocean State Outdoors, the Recreation Element of the State Guide Plan, which recommends development of a comprehensive coastal public access program for Rhode Island.

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I. INTRODUCTION

A. The Dilemma of Shrinking Coastal Access in "The Ocean State."

The sea and its shores have nurtured Rhode Island and its inhabitants since pre-colonial times, providing food, avenues of commerce and trade, and increasingly, a recreational outlet. Public access to the salt water shoreline is a long and proud Rhode Island tradition taken as a right by its citizens, and indeed guaranteed by the state's Constitution. As recently as the mid 1950's a majority of Rhode Island's shoreline was undeveloped, open land and coastal communities typically consisted of farms and fields, small villages and fishing ports, and scattered summer colonies. Development conditions and small town folkways were such that reaching and utilizing the coastline presented relatively few conflicts for citizens of most areas. Beginning in the late 1970's, however, and accelerating in recent years, a surge of growth and expansion has swept like a wave over the state's coastal areas bringing new residents, swarms of seasonal visitors and burgeoning residential and commercial development to accommodate them. During the 1970's when the state as a whole remained stable in population growth, many coastal communities witnessed population expansion of 50-70%.[1] Figure 1 illustrates the dramatic growth of Rhode Island's rural coastal communities relative to other areas of the state during the 1980's. While recent land use data are unavailable, clearly a significant portion of this development has occurred proximate to the shoreline, where the amenities of a coastal lifestyle are most immediately enjoyed. Today, in the late 1980's, as desirable coastal parcels have declined in number, the state has witnessed an escalation of coastal real estate values to unprecedented levels and a consequent increase in the exclusivity and privatization of the shoreline.

Coinciding with this period of expansion of development in the coastal region, have been societal trends of increasing average income and lesiure time which have stimulated greater public demands for outdoor recreation, particularly water-based recreation. The 1986 State Comprehensive Outdoor Recreation Plan found that 65% of Rhode Island residents regularly enjoy saltwater swimming, nearly 50% participate in boating, and a quarter of the state's residents engage in saltwater fishing at least once per year.[2]

These intersecting trends of shoreline development and growing public demands for coastal access and water-based recreation challange Rhode Island to develop a more aggressive, pro-active program for insuring that the present and future generations of Rhode Islanders may continue to exercise their guaranteed rights to access and utilize the shore.

B. The Physical Context

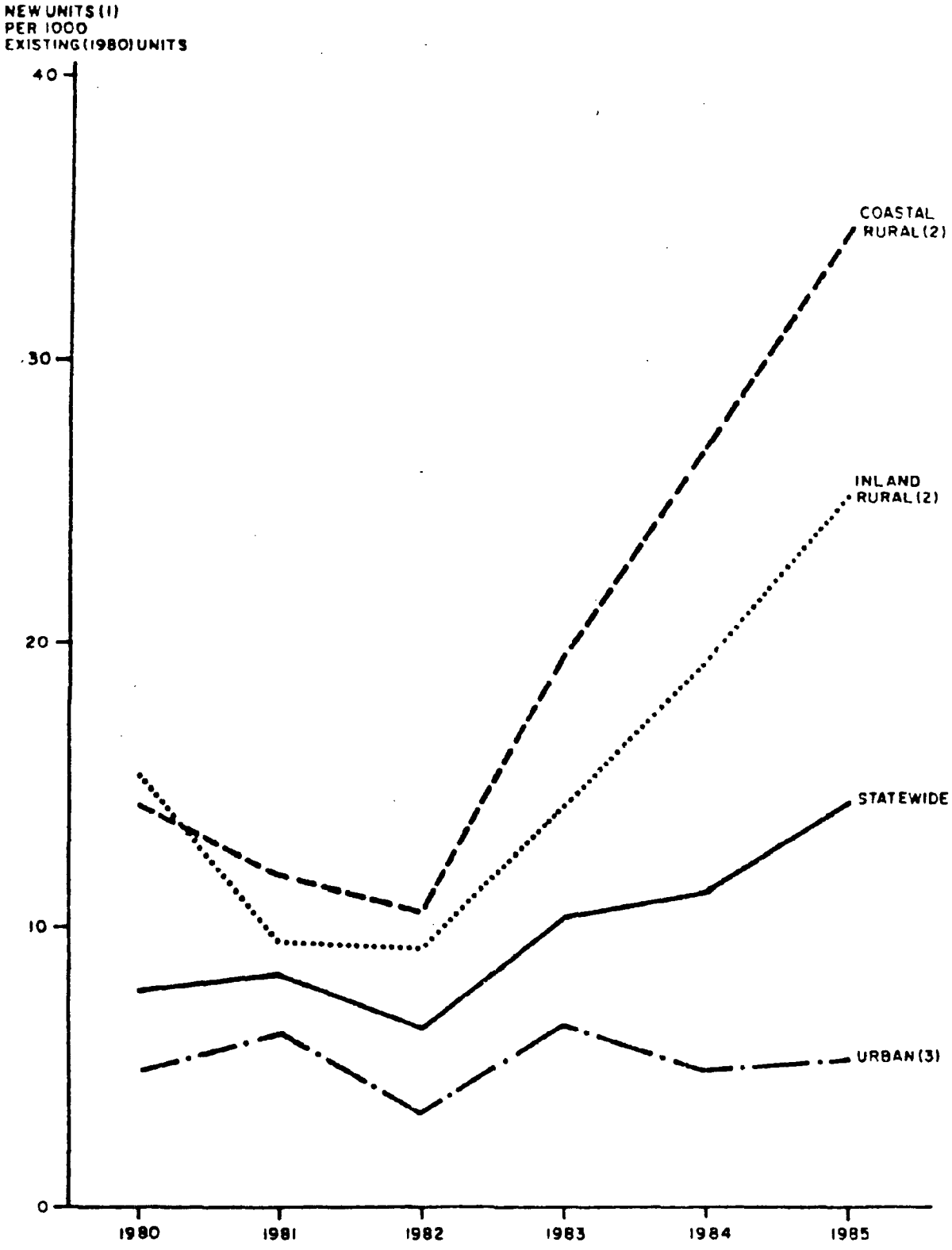
1. Pertinent Geography of the Shoreline

A brief orientation to the physical context in which access issues arise is necessary in order that the legal climate in which coastal access issues reside be fully understood. The coastal zone is generally described as being comprised of three distinct areas or categories of land, each of which has distinct legal status in regard to public and private property rights (including access). These areas are:

Figure 1

RELATIVE GROWTH IN HOUSING UNITS BY COMMUNITY TYPE AND LOCATION

1980–1985



(1) Housing Units Authorized by Residential Building Permits

(2) "Rural" Defined as Community Population Less Than 15,000 in 1980

(3) "Urban" Defined as Community Population Greater Than 50,000 in 1980

a) uplands - are lands which lie landward of the reach of mean high tide, including the so-called "dry" portion of the beach face which lies between the vegetation line and the mean high tide line. The dry sand area above the mean high tide line is washed by waves during extreme tidal events such as the spring tide and during storms.

b. tidelands - lands situated between the lines of mean high tide and mean low tide, also known as the intertidal zone or the foreshore. These areas are regularly washed by the tides.

c. submerged lands - or the portion of the beach lying seaward of the mean low water line.[3]

Ownership status, or title in coastal lands generally adheres to principles derived from English common law, as modified by subsequent developments including the American Constitution. Uplands adjoining most of the U.S. coastline are privately-owned and are subject to use, occupancy and conveyance by their owners in accordance with the full panoply of rights which adhere to inland (non-coastal) lands. Title in submerged lands (extending seaward for three miles) is held by the states.

The state's rights in tidelands are subject to the what is known as the public trust doctrine. This doctrine, described more fully in Part II.A. 1., essentially constitutes a trusteeship relationship between the state and its citizens covering the resources involved. The state's ownership and stewardship of tidal and submerged lands must benefit the general public, and may not be abborgated.

2. Types of Coastal Access

Just as the shoreline region may be categorized, "access" itself is a muli-faceted concept. Coastal public access can be defined simply as the public's right to get to and use the public resources of the salt water shoreline (e.g. the tidelands and submerged lands). Applying this definition of access to the physical geography of the coast involves the concept of lateral access, involving movement along the shore, and perpendicular access, or getting to the shore. Broader definitions of "access" include the concept of visual access or an ability to view the coastline and water from various vantage points, some of which may be physically remote from the shoreline itself.[4]

Both forms of physical access present potential conflicts between public and private rights in coastal properties. While the public may be given the right to use the resources of the shore and sea (as they are under Rhode Island's Constitution), getting to the shore at various locations necessitates physically traversing privately-owned uplands. Assuming this problem is surmounted, and the shoreline is reached, use of the public trust tidelands for lateral access is feasible only part of the time unless our intrepid shore seeker doesn't mind getting his feet wet during periods of higher tides.

Thus, the application of private and public property rights, as they have evolved with regard to the peculiar geography of the land-sea interface, has resulted in the creation of a curious situation. Public rights to the shore proper (e.g. the wet-sand) are established in principle under laws; but enjoyment and exercise of these rights encounter practical difficulties due to the interposition of the countervailing rights of shorefront landowners. This perplexing situation is the impetus for the public's demand for practical means in which to exercise their coastal privileges, and in turn, is the stimulus for the creative attempts of government to expand access opportunities up to the limits allowed by law.

C. Coastal Access Initiatives of State Government in Rhode Island

While the recent coastal development boom has stimulated demands for more aggressive government action to protect and expand the rights of the public to the shore, state involvement in the access question dates (at least) to the mid-1950's. In 1956, the Rhode Island General Assembly created a "Special Commission to Discover Public Rights-of-Way to Water Areas of the State", and, in 1958 (following the Commission's submission of a report outlining the complexity of such a task) established a permanent "Rhode Island Commission on the Discovery and Utilization of Public Rights of Way". The Commission was charged with carrying on "continuing discovery of the public rights of way to the water areas of the state" in order to "define and mark and cause to be opened for public use all discovered rights-of-way". The major contribution of the Commission was publication, in 1970, of a voluminous report listing, mapping, and analyzing some 148 rights-of-way to tidal waters.[5] This was followed in 1974 by publication and wide distribution of a map showing the general location of the rights-of-way documented in the Commission's lenghty report.

While both the map and the report upon which it was based, were criticized as being inaccurate and/or misleading in some respects, they represented the first systematic attempts to document and expand public coastal access in Rhode Island. The Commission also encountered difficulties in its attempts to mark the rights-of-way it discovered. Signs it posted were quickly removed or vandalized, and more permanent bronze markers set in concrete bases were also stolen or removed.

Faced with growing criticism of the effectiveness of the Commission, the General Assembly, in 1977, abolished the body and assigned responsibility for tidal rights-of-way to the Coastal Resources Management Council (CRMC) (See section II.B.3). The CRMC responded by establishing its own Rights-of-Way Subcommittee. Perhaps intimidated by the attacks upon and discrediting of the previous legislative commission's research and mapping, the CRMC's Subcommittee elected to address the coastal access question through an exhaustive, expensive and time-consuming program of legal research and documentation of all presumed rights-of-way to tidal waters. This process, begun in 1978 and continuing to the present, essentially re-covered-obstensibly with greater precision and certainty-the ground covered by the legislative Commission from 1958 to 1970. By 1986, some ten years and $500,000+ worth of legal research into the CRMC's Subcommittee's work, a total of 159 rights-of-way to the coastline had been found to have sufficient legal standing to be formally designated by the CRMC.[6] A number of the sites designated, were however, challenged in the courts and their status remains unresolved. The Subcommittee has also indicated that, based upon information and evidence brought forward during its research process, some 150-300 additional rights-of-way may exist which would require legal research to verify.

The CRMC, like its predecessor Commission, has been relatively unsuccessful in promoting the marking and public awarenes of designated rights-of-way. Although the Subcommittee commissioned the design and casting of some 200 bronze medallions, only 13 rights-of-way have been marked by the state. Despite the urging of the State Planning Council[7] that the Subcommittee provide public information on the location and usage characteristics of designated rights-of-way, (except for producing engineering drawings of the rights-of-way designated in one community) the CRMC has been unable to extensively promote or publicize the products of its coastal access research.

One realm in which Rhode Island has moved very aggressively to expand coastal access is direct acquisition of coastal land for public recreation. Over the past decade the acquisition of coastal open space and recreation land has been a priority of the

Department of Environmental Management and, as a result has contributed substantially to the expansion of coastal access. Through various means, the Department of Environmental management has provided a dramatic 85% increase in the quantity of public land on the shoreline. In 1975, the state owned some 2,600+ acres fronting on the coast. By 1986, through fortuitous acquistion of surplus federal lands to create the Bay Islands Park System and efforts by the Department of Environmental Management to protect important coastal sites on Block Island and the south shoreline, Rhode Island's coastal recreation system totalled over 4,900 acres. While the isolation and fragility of some of this land limits its ability to provide public access, clearly the addition of some 2,300 acres fronting on the coastline affords a multitude of new and diverse opportunties for Rhode Islanders to reach and enjoy their shoreline.

In addition to state land acquisition, communities maintain local park and recreation systems. While a number of coastal communities have important shoreline recreation sites, local land acquistion for park system expansion has not, in general, been a priority of Rhode Island's local governments during the late 1970's and early 1980's. The major reason for this has been a drastic decline in the funding available for land acquistion. A major source, the federal Land and Water Conservation Fund, has been drastically curtailed under the Carter and Reagan years. Funding available to Rhode Island under this program has fallen from $3.7 million in fiscal year 1976 to $0.3 million in fiscal 1987.

No direct state funding was available for park land acquisition from the mid-1970's (when the remenants of the 1965 Green Acres Bond Fund were exhausted) until the 1986 Open Space Bond Issue was distributed last year.

While the CRMC's Subcommittee has been engaged in painstaking legal research, the access situation along portions of Rhode Island's coast has grown acute. A crisis point appears to have been reached in places such as the Newport waterfront, where a working harbor of docks and fishing piers has undergone a near complete transformation into a "gold coast" of exclusive condominiums, up-scale commerical developments and time-share resort accommodations. In the process, access advocates have charged, the public's historically-respected rights to utilize wharfs and piers, which comprise waterfront street-ends, have been extinguished with the acquiecsence of the CRMC (through its issuance of the requisite development permits without stipulations of continued public access rights). Not until 1985, with most of the waterfront developed and faced with growing criticism, did the CRMC commission a special study of the public's rights to Newport's waterfront.

While Newport continues to represent the extreme in the erosion of historic coastal access rights by the onslaught of shoreline development, the experience there points to the difficulties of the fragmented appraoch to state's coastal access program. Limited as it is to ponderously researching presummed rights-of-way based upon information presented to it, the rights-of-way program is ill-equipped to respond effectively to the challenge of protecting access along a rapidly-developing shoreline, and even less able to produce the planning and vision needed to craft the comprehensive coastal access initiatives necessary to meet the shoreline usage needs of present and future Rhode Island citizens. As expensive land and exclusive waterfront developments have become the norm along the entire coastline, the economic stakes in excluding the general public have risen accordingly. If Rhode Island is to truly guarantee the rights of its citizens to enjoy the privileges of the shore in a meaningful fashion, the time has come for a more aggressive, pro-active and encompassing coastal access effort.

II. THE LEGAL FRAMEWORK IN WHICH PUBLIC RIGHTS TO THE SHORELINE RESIDE

Since all public undertakings aimed at protecting and expanding coastal access in Rhode Island must be executed within the legal framework which defines public and private rights in coastal lands and resources, an understanding of the salient aspects of this area of law is a necessary prerequisite to the development of new program initiatives. Accordingly, this section of the paper is devoted to a concise review of the most prominent common law theories and provisions of codified law affecting coastal access. This review, which focuses upon Rhode Island cases and statutes, draws heavily from previously-published analyses.

The rights of the public to get to and utilize (e.g. access) the resources of the coastline obtain from a combination of common law, constitutional entitlements and statutory enactments. While shoreline access rights accorded under the common law differ from jurisdiction to jurisdiction, certain legal traditions and doctrines have developed as accepted vehicles for establishing and expanding public rights in the shore. Supplementing these common law provisions, are aspects of codified law which affirmatively proclaim the public's interest in and rights to the resources of the coastal zone. Included under codified law are provisions affirming the public's rights derived from common law, exposition of legislative policy encouraging public access, and authorization of regulatory programs and other devices for insuring that development of private coastal lands is compatible with the protection of abutting public resources of the coastline.

A. Common Law Doctrines

1. The Public Trust Doctrine

The concept that the public has certain inalienable rights to use navigable waters regardless of the ownership of lands underlying them has antecedents in the English common law, and indeed may even be traceable to precepts of Roman Law. One translation of a portion of Justinian's Institutes states that...

> "No one is forbidden access to the seashore. The public use of the seashore, as of the sea itself, is part of the law of nations, consequently everyone is free... to dry his nets and haul them up from the sea..."[8].

Subsequently refined and interpreted over time, this concept came to be embodied in the common law of England, a sea-faring nation having signficant stakes in unfettered access to the oceans. English statutes and court rulings increasingly broadened and defined the concept that the public had rights to navigate on and fish in tidal waters, evolving eventually into what is today known as the public trust doctrine. The doctrine expresses the notion of public rights to tidal areas as a public easement or servitude imposed upon private lands.[9] Essentially, the doctrine requires a stewardship responsibility on the part of the sovereign (now the state) for the control and management of tidal and submerged lands for the benefit of all citizens.

Transferred to the American colonies, and later the states, the public trust doctrine has endured and grown through the decisions of American courts. The landmark case articulating the doctrine as an inalienable responsibility of state government is Illinois Central Railroad v. Illinois[10] decided by the U.S. Supreme Court in 1892. This case stemmed from a legislative grant to the railroad of title to the submerged land along the entire waterfront of Chicago. The court held the grant to be invalid on the basis of the

public trust doctrine stating... "Such abdication is not consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public."[11] The court did, however, recognize the legitimacy of grants by a state of rights to wharf out, or construct piers over submerged lands, if such grants were intended to better serve the interests of the public in navigation and commerce. With the Illinois Central decision, the Court affirmed the public trust doctrine and imposed a mandate upon the states to act as proper stewards for the public's interests in tidelands and submerged lands.

In Rhode Island, the State Constitution gives formal recognition to the public's rights in tidal and submerged lands (see section II B.1). In addition, several cases have addressed the question of the public trust in tidal areas. In Providence Steam Engine Company v. Providence and Stonington Steamboat Company[12], a decision predating Illinois Central, the Rhode Island Supreme Court stated, "the State has governmental control of the shores and tidewaters for the benefit of the people in order to protect the public rights of passage or other rights on the shore"[13]. In an 1895 case, Allen v. Allen, the court said, "The State holds the legal fee of all lands below high-water mark... in trust for all inhabitents."[14] Both of these pronouncements, however, were dicta in decisions which upheld the rights of shorefront landowners to wharf out over tidal waters.

The 1941 case, Jackvony v. Powell[15] is regarded as a pivotal decision relating to shoreline rights protected under the public trust concept in Rhode Island. The case involved a challenge by the state Attorney General (Jackvony) of an ordinance adopted by the City Council of Newport which allowed the Newport Beach Commission to erect a fence on Easton's Beach interrupting lateral passage along the shore between the mean-high and mean-low tide lines. In deciding the case, the Supreme Court held that passage along the shore in the intertidal zone was one of the "privileges of the shore" embodied in the State Constitution, and continued in its decision to differentiate between the term "shore", which it found applied to the area of land between the mean high and mean low water marks, and the term "beach", which the court applied to the area between the high water mark and the beginning of the upland.[16] Most significantly, the Jackvony court went on to decide which common law shore privileges generally assumed to exist under the public trust doctrine had matured into rights under the Rhode Island Constitution. Based upon the case law of other states, particularly New England states, as well as generalized ideas of custom and usage, the court concluded that the public's rights in the shore included fishing from the shore, taking seaweed form the shore, leaving the shore to bathe in the sea, and passage along the shore.[17] In, 1986, some 45 years subsequent to the Jackvony decision, these four activities were codified as "privileges of the shore" via amendment of the Rhode Island Constitution (see section II. B. 1).

In summary, the public trust doctrine stands as an important protector of the public's interest in and rights to the shore. Cases such as Jackvony v. Powell[11], which define and apply the doctrine in a modern context, maintain its vitality as an instrument of coastal access preservation, particularly with regard to lateral access. It is important to realize, however, that the doctrine has limits, the most significant of which stem from the difficulty presented to courts in weighing the public's rights in tidelands against the rights of riparian landowners to wharf out to navigable waters. In addition, the public trust doctrine, limited in its direct effect to tidal and submerged lands, is not a powerful tool for expanding perpendicular access (across uplands) to the shoreline.

2. Implied Dedication

The essential elements of the doctrine of dedication include an offer by the landowner, either express (orally or in an deed) or implied, to donate a permanent interest

in land for the public's use, as well as an acceptance of the offer, express or implied, by the public.[18] In the context of coastal access, implied dedication of an accessway across private property to the shoreline can result from the acquiescence of the landowner in the public's continuous usage of the land to reach the shore. The intent of a landowner to dedicate an access route across his land to the shore can be inferred from the silence of the owner in the face of adverse public use, or through some act or conduct of the owner which manifests an intention to donate the property to public use".[19] Implied dedication was successfully employed in the Rhode Island case Talbot v. Town of Little Compton[20] in which the state Supreme Court held that title to a 1,000 foot beach had become vested in the Town in trust of the public, based upon the landowner's tolerance of widespread and continuous public usage of the property. Despite the occasional posting of the property, the court found that factors such as the long-standing practice of Town to haul gravel from the beach, clear debris, and maintain a road across the property, and clear evidence of long and continuous usage of the site by the public for fishing, hunting and swimming created a compelling presumption of dedication of the property.[21]

Implied dedication of coastal access, thus, does have precedent in Rhode Island case law, and, indeed, has recently seen life in the modern day access controversey at Black Point in Narragansett, aspects of which are currently before the courts and regulatory bodies. The utility of the implied dedication tool, however, is limited by the necessity of demonstrating the heavy factual burden it requires on a case-by-case basis.

3. Prescriptive Easement

An easement is a property right, less than full ownership, which permits the use of the land of another in some fashion. A right-of-way easement across property (whether shorefront or not) can be established by prescription under Rhode Island law through a showing that usage of the right-of-way for passage has been general, continuous, uninterrupted and adverse for at least ten years.[22] While distinct from the doctrine of implied dedication, successful use of the prescriptive easement theory can obtain a similar practical result: a right to traverse privately-held land in order to reach public trust lands along the shore.

While theoretically straightforward enough, establishment of prescriptive easements faces difficult evidentiary standards imposed by courts in order to protect landowners from spurious claims. For example, courts have generally held it unreasonable to expect landowners to fence in their land to prevent trespassing that could result in eventual easement claims. Under this presumption that owners need not discourage "harmless" trespass, courts give landowners the benefit of the doubt in easement cases that use of the property was permissive, rather than adverse. In Daniels v. Blake,[23] the Rhode Island Supreme Court found that Daniels could not maintain his claim of prescriptive easement over Blake's property because Daniels use of the land (to reach the shore of the Barrington River) was only occasional (seasonal), and (based on the fact that the two parties were initially friendly) because usage was originally permissive.

An additional limitation on the use of the prescriptive easement technique is a Rhode Island statute which limits the establishment of right-of-way easements to those associated with the "passage of carriages",[24] obstensibly erecting a barrier to the establishment of footpath right-of-ways by the presciptive easement route.

Given the practical barriers established by the courts to limit the establishment of right-of-way easements by prescription, use of the doctrine as a vehicle for expanding coastal access is restricted to highly specialized situations whose factual circumstances can sustain the scrutiny of the courts.

4. Customary Usage

Another common law theory, the doctrine of customary usage, was relied upon in a landmark Oregon case to vastly expand coastal access along that state's shoreline. Despite its successful employ in the Oregon case, however, the doctrine holds limited promise for replication of such widespread gains in states such as Rhode Island where shoreline developmental conditions and legal traditions differ substanitially from those of the west coast states.

The doctrine of customary usage or custom (for short) has roots in medieval English law, where it evolved as a means for protecting rights of public use and passage over land prior to the recordation of property interests (deeds, etc.) The doctrine holds that a very long and continuous use of a defined geographic area, may, under the correct circumstances, ripen into a recognizable property right.[25] To demonstate such a right of customary usage, the petitioner must meet seven evidentiary burdens. Specifically, it must be shown that the use in question was: (1) ancient-dating back so long that no one remembers otherwise; (2) continuous and uninterrupted; (3) peaceable and free from dispute; (4) resonable and in keeping with the character of the land; (5) certain-- as to the location of the land involved; (6) obligatory--occuring without question; and (7) consistent with the general rules of law and order of the jurisdiction.

As mentioned above, the most significant application of the doctrine of custom to the question of coastal access in recent times occurred in the Oregon case, State ex. rel. Thornton v. Hay,[26] decided in 1969. Hay, the operator of a beachfront tourist camp, fenced off a portion of the beach in front of his facility, restricting its use to his patrons. The State of Oregon sought to enjoin Hay from fencing the dry sand portion of the beach (between the mean high tide line and the vegetation line) relying on the customary usage doctrine. The Oregon Court in a sweeping decision, found that the dry sand portion of all open-ocean beaches in Oregon was indeed subject to a right of customary public usage, based upon public use and enjoyment of these areas since the advent of the state's history.

Despite the major ramifications which the ruling in Thornton had for coastal access in Oregon, the doctrine of customary usage has not been taken up in meaningful way by other jurisdictions, where the absence of developed case law relying upon the doctrine, and the heavy, if not insurmountable, burden of proving uninterrupted public beach usage since recorded history signficantly restrict its viability.

B. Constitutional, Statutory and Regulatory Provisions Related to Coastal Access in Rhode Island

In addition to doctrines of the common law, aspects of the codified law, including constitutional provisions, statutory enactments and administrative programs and procedures, also relate to the protection and expansion of public coastal access. Pertinent provisions of Rhode Island's codified law relating to coastal access are briefly summarized in this section.

1. The Rhode Island Constitution

Early Rhode Islanders, drawing their livelihood from the sea and the bay, were quick to formalize their rights to the shoreline in a legal document. The original colonial Charter of 1663 included an express grant from the sovereign of citizens' rights to fish along the coast. This grant was amplified in the Constitution of 1843 through inclusion of Section 17 of Article I, which formalizes the public trust doctrine rights of Rhode Islanders:

> "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."

As described previously, the term "privileges of the shore", while not originally defined by the framers of the state constitution, was given substance and interpretation through the ruling of the state Supreme Court in the case Jackvony v. Powell.[27]

During the Constitutional Convention of 1986, the question of coastal access emerged as a major concern of delegates and the public. Delegates considered a number of ways in which the constitutional language could be modified to enhance public rights to the shore, including definition of the term "shore" to include the dry sand portion of the beach up to the vegetation line. While consensus could not be reached on including the dry sand within the public domain by defintion, Convention delegates did accept a more modest proposal that provided for incorporation of the Jackvony definition of "privileges of the shore" within Article I, Section 17. This language was placed before the state's voters as one of 14 proposed Constitutional amendments in November, 1986, and carried by an overwhelming majority. A second amendment, passed by the Convention and approved by the voters, is also intended to improve coastal access. This provision, states explicitly that state and local regulation and control of land use "... in furtherance of the protection of the rights of the people to enjoy and exercise the rights of fishery and the privileges of the shore... shall not be deemed to be a public use of private property".[28] This provision in essence, directs Rhode Island courts to liberally construe regulation of private property which advances coastal access objectives as being within the legitimate purposes of government under the police power, and as not constituting a "taking" of property without compensation.

2. Coastal Resources Management Act

Efforts to enhance public coastal access in Rhode Island occur within the larger framework of coastal resources allocation and management established by the General Assembly under Chapter 46-23 of the General Laws. Adopted in 1971, Chapter 46-23 establishes the Rhode Island Coastal Resources Management Council (CRMC), a 17 member body appointed by the Governor, Lieutenant Governor and the Speaker of the House, to represent state, local and private interests in the resources of the state's coastal zone. The CRMC's broad powers to manage the coastal resources of the state include a mandate to formulate plans and policies and to adopt regulations necessary to compliment its various management programs. As described in section I. C., the CRMC has also been delegated responsibility for the investigation and designation of coastal public rights-of-way.

In exercising its broad mandate, the Council has developed the Rhode Island Coastal Resources Management Program (CRMP), a resource-based plan establishing policies and management standards for activities occuring in coastal waters and on specified shoreline features. The CRMP is supplemented by "Special Area Management" (SAM) plans adopted by the Council for intensified management of specified geographic areas, such as the salt pond region along the state's south shoreline. The CRMP and associated SAM plans constitute the basis for the Council's regulatory authority over development activities proposed within 200 feet of coastal waters or shoreline features.

While several policies of the CRMP relate to the preservation of public coastal access, the Council has not elected to aggressively promote the expansion of access through its regulatory program. Unlike states such as California, Washington and Connecticut, Rhode Island's coastal regulatory program has not, as a general rule, conditioned the grant of a permit to develop or otherwise alter coastal resources upon a stipulation that public access be provided. Moreover, despite the board charge to plan for coastal resources explicit in its mandate, the CRMC has not developed a comprehensive approach to the question of public access to coastal resources, but has instead relied heavily upon the work of its Subcommittee on public rights-of-way. Despite calls from the State Planning Council that the CRMC "explore other avenues of expanding coastal access,"[28] the CRMC has relied upon the on-going work of the Subcommittee, while doing little which has actually expanded (i.e., provided new) access. Indeed, knowledgeable marine affairs experts have questioned whether the CRMC efforts on coastal access have produced any net gain..."Because the effort is underfunded and has not been a top priority....it is difficult to see what progress has been made in the decade CRMC (has had responsibility for rights-of-way research)".[29]

In short, Rhode Island has not developed a comprehensive approach to the access question, (involving planning and research, regulation and dedication, acquisition) but instead has relied upon the (painstaking) legal research of the CRMC's Rights-of-Way-Subcommittee to verify the legitimacy of existing rights-of-way.

3. The State Guide Plan

Chapter 42-11 of the Rhode Island General Laws establishes a statewide planning program within the Department of Administration and charges it with responsibility for strategic planning and preparing the State Guide Plan - a series of functional plans which direct the orderly growth and development of the state. The 1986 Recreation Element of the State Guide Plan[30] is most relevant to the issue of coastal access. This plan recommends a comprehensive approach to the question of expanding shoreline access in Rhode Island.

Finding that... "There can be no higher public recreational priority as we approach a new century", the plan urges that "every approrpriate opportunity to gain, enhance, or expand public access to Rhode Island's shore be capitalized upon".[31] More importantly, however, the plan establishes a policy framework for coordinated coastal access planning, implementation and management involving state and local governments. It also provides fourteen specific recommendations for actions needed to expand public access in a coordinated and responsible fashion. (These recommendations form the basis of Part III of this paper.)

4. Local Land Management Tools

While the discussion of legislative authority related to coastal access has thus far focused upon the powers of state government, it is important to recognize that the state, through its delegation of authority to regulate land development,[32] has provided local governments with significant powers to influence the development of their coastlines. Despite the powers accorded localities to plan for, zone and control subdivision of their land, however; it is not unreasonable to say that Rhode Island communities have not used that authority with great vision or foresight with regard to coastal access needs. Most local comprehensive plans do not specifically address coastal access needs.[33] Indeed, most coastal communities have not even identified a need for coastal access points in their recreation plans, despite the fact that water access is a prerequisite to increasingly popular forms of marine recreation. Unfortunately, when planning and zoning actions do seek to protect coastal access, they are often, as the Black Point controversy demonstrates, too little and too late.

C. The Nollan Decision

Any discussion of the application of codified and common law to the problems inherent in coastal public access would be incomplete without reference to the Constitutional limitations upon governmental actions undertaken in support of any objective, however noble, including coastal access. These restrictions flow from case law interpreting the fifth and fourteenth amendments to the U.S. Constitution, to wit, the prohibitions against governmental "taking" of private property without compensation, or absent due process and equal protection under law. It is on this aspect the law that the nation's highest court has recently spoken in several noteworthy cases. One of the "takings" cases decided during the 1987 term, Nollan v. California Coastal Commission,[34] dealt directly with the legitimacy of governmental attempts to secure and expand public access to coastal resources. For this reason, it is imperative that governmental officials, administrators and planners involved in coastal access provision be familiar with the facts, points of law, and views of the court expressed in Nollan.

1. Overview of the Facts and Travel of the Case

James and Marilyn Nollan had an option to purchase a small (504 sq. ft.) bungalow situated on an oceanfront lot in Ventura, California. The Nollan's option on the lot conditioned its purchase upon their promise to demolish the small house and replace it with a new structure. The lot is located on Faria Beach, on which also fronts two public parks located 1,200-1,800 feet north and south of the Nollan's lot. An eight foot tall seawall separates the beach portion of the property from the rest of the lot.

In February, 1982 the Nollan's applied to the California Coastal Commission for permission to replace the bungalow with a new three-bedroom, 2,464 sq. ft. house with attached two-car garage. The Commission granted administrative approval for the new structure subject to a condition that the Nollan's grant an easement allowing the public to pass along the portion of the lot located between the seawall and the mean high tide. The pass and repass easement sought by the Commission was in furtherance of its objective to guarantee lateral access along Faria Beach. Similar stipulations had been successfully attached by the Commission to 43 other permits along the beach prior to the Nollans.

The Nollans appealed imposition of the easement condition to the California Superior Court which ruled in favor of the Nollans and remanded the case to the Commission for a full hearing on whether a single family home would have a direct adverse impact upon public access to the beach. Subsequent to the hearing, the Commission re-affirmed its imposition of the easement condition based upon its finding that the new, larger house contributed to the development of a wall of residential stuctures which would block the public's visual access to the beach and psychologically inhibit the public's exercise of its access rights to Faria Beach.

The Nollan's returned to court, further alleging that the easement condition violated the "takings" clause of the Fifth and Fourteenth Amendments. The Court again ruled in their favor, holding that the record of the Commission's hearing did not provide a sufficient factual basis to sustain the imposition of the permit condition. The Commission next appealed the decision of the trial court to the California Court of Appeals. While the appeal was pending, the Nollans exercised their purchase option on the lot, tore down the bungalow and built their desired residence, all without notice to the Commission.

The Court of Appeals reversed the lower court, finding that replacement of the small cottage with a significantly larger structure would create a burden on coastal access which California statutes required the Commission to alleivate through imposition of the easement condition. The court also dismissed the Nollan's "taking" challenge, because the easement did not deprive them of all reasonable use of their property. The Nollans appealled to the U.S. Supreme Court raising only the "taking" claim.

2. The Decision

In a 5 to 4 decision, the Supreme Court ruled in June, 1987 in favor of the Nollans. The Court found that the access requirement constituted a "permanent physical occupation" of their property which, while (potentially) permissible as a governmental police power regulation, was invalid in this case because the Commission failed to demonstrate a direct connection, or nexus, between the condition imposed under the aegis of regulation and the substantial advancement of legitimate state interests. While agreeing that the Commission had authority to deny outright the Nollan's application, and by logical extension, to impose a lesser restriction as a condition to its approval, the court held that the "lack of nexus between the condition and the original purpose of the building restriction converts that purpose (into) ... The obtaining of an easement to serve some valid governmental purpose, but without payment of compensation... an 'out-and-out plan of extortion'".[35]

At base, the majority of the Court was unconvinced that the Commission's imposition of a lateral beach access requirement bore a rational relationship to the burdens created by the Nollan's action which it sought to remedy.

> "It is quite impossible to understand how a requirement that people already on the public beaches be able to walk across the Nollan's property reduces any obstacles to viewing the beach created by the new house. It is also impossible to understand how it lowers any 'psychological barrier' to using the public beaches, or how it helps to remedy any additional congestion on them caused by construction of the Nollan's new house".[36]

3. Implication of the Decision for Coastal Access Provision

While the seemingly broad holding in Nollan has implications which may significantly impinge upon all aspects of governmental regulation, its direct and immediate effect is upon land use regulation, and specifially upon the use of mandatory dedication as a vehicle for securing coastal public access rights. Viewed from a most positive prospective, Nollan can be construed as permitting such coastal access exactions in instances where regulatory bodies can demonstrate a direct link between the burden imposed by new development upon the public's interest in accessing the coastline, on the one hand, and the access donation sought in remedy on the other. For large scale development projects such as subdivisions and commerical developments, which pre-empt (relatively) large stretches of shoreline with new development (as opposed to the replacement of an existing structure as was the case in Nollan), this may be (as Justice Brennan's dissent indicates) an easier burden to demonstrate. Indeed, by citing the body of state court decisions which deals with subdivision exactions,[37] the decision may be backhandedly endorsing the exaction of access in cases where the donation can be shown to be in response to an effect "specifically and uniquely attributable"[38] to the development. If this is indeed what the Court is suggesting, it will impose a higher standard than that relied upon by the California Coastal Commission. However, a "tougher" agency burden on access exactions need not be regarded as entirely onerous. Indeed, local governmental agencies which control subdivisions have accommodated themselves to variations of the "specifically and uniquely attributable" test, and many communities throughout the country (including several in Rhode Island) have crafted successful subdivision exaction programs.

Another beneficial outcome of Nollan may be more detailed and thorough agency planning for coastal access which will inevitably be required if data, impact assessments and access standards sufficient to sustain the "precise fit" test are to be developed. By limiting the use of the mandatory dedication option for expanding access, Nollan may also stimulate support for other means of providing access such as public acquisition programs, and multiple use of existing public holdings.

To find other "positive" elements in the decision access planners and governmental regulators in general have to look to the dissents. Justice Brennan's lenghty dissent recounts the evolution of the courts standards for "takings" cases and argues rationally and eloquently that the test devised by the majority in deciding Nollen represents a dangerous new direction that, over the long run, even the court itself will regret going in. Finally, Justice Blackman's clarification that Nollan does not implicate in any way the public trust doctrine is helpful to the access cause.

Depsite these attempts to put the "best face possible" upon the decision, Nollan is a signficant setback for the cause of expanding coastal public access. It limits the discretion of administrative agenices to require access exactions as a matter of routine policy in coastal developments, and places a substantial burden upon agenices to precisely tailor the access requirement to the character and magnitude of each development's impact upon access. It will require successful exaction programs to be soundly grounded upon detailed planning and impact assessment, which is both time consuming and expensive.

The most troublesome impacts of Nollan, however, may well lie, much like the impacts of the Nollan's new view-blocking home, in the psychological realm. Just as Nollan's new home may frustrate less than intrepid shoreline-seekers from attaining their goal, the strong admonitions of the court may intimidate and dissuade public agencies from vigorous insistence upon protection of the public interest in the shoreline. This chilling

effect may be most severe upon small state regulatory programs such as Rhode Island's, and even more drastically, upon the (still tentative) attempts of local governments to grapple with coastal access preservation as part of their land management responsibilities.

In a similar vien, Nollan will embolden developers and real estate interests in their opposition to access requirements. The powerful interests which are reshaping the coastline of Rhode Island and the nation have "deep pockets" and will unquestionably use the threat of Nollan suits to dissuade public agencies, which often have little or no recourse to legal resources (or to budget resources sufficient to support defense of such suits), from persisting in seeking access donations as development permit conditions. This intimidating effect on agencies' boldness to insist upon the public interests they are mandated to uphold, may be the most adverse outcome of the Nollan decision over the long term.

* * * * * *

Unquestionably, the growing pressures of private development and usage of the coastline necessitates public sector intervention to maintain a balance between the competing public and private interests in the shore.

While tools such as common law devices and acquisition programs, theoretically, can address access needs, the time and high cost involved in implementing them and the high value of coastal real estate limits their effectiveness as solutions. Realistically, it should not be unreasonable to expect new coastal development which truly interferes with or infringes upon the public's ability to utilize the resources of the shoreline to participate in solutions which preserve and expand access. That the nation's highest court has erected a new barrier to agency flexibility and creativity in the search for an equitable sharing of coastal access responsibilities and burdens, is disheartening, but should not be devastating. Nollan does set new limits, but it does not entirely erradicate the mandatory dedication option. With the proper documentation of project impacts, and a careful matching of burdens and remedies, access exaction should remain viable, especially in larger projects. All whose responsibilities include stewardship of public trust rights to the shoreline need to interpret Nollan as applying to the unique circumstances of the case, and to maintain the courage to champion coastal access dedication in new developments where it is appropriate.

III. DESIGNING A POST-NOLLAN COASTAL ACCESS PROGRAM FOR RHODE ISLAND

As described in Part I, Rhode Island's efforts to preserve and expand coastal access opportunities have been pursued along several distinct, and largely unconnected paths. Since 1979, the CRMC's rights-of-way research and designation process has progressively removed legal ambiguities which have surrounded many traditionally-used access routes. DEM's coastal land acquisitions over the last decade have significantly increased the quantity of public land fronting on the shoreline, particularly along Narragansett Bay and on Block Island. A handful of progressive coastal communities have developed plans for expanding public usage of their shorefronts in concert with revitalization of economically underutilized or derelict areas. Despite these measures, however, public concern over dwindling coastal access remains high and the prevailing sense is that the shoreline is relatively inaccessible, and is becoming more rather than less so.

Clearly, coastal access considerations must be accorded a higher priority in Rhode Island's future coastal development, and also a higher profile among the many responsibilities assigned to agencies involved in managing the coastline. Most basically, a comprehensive approach must be developed which coordinates and utilizies to best advantage the resources, authorities and energies of the several state and numerous local agenices having interests and/or jurisdictions affecting coastal access and to develop a concensus on access needs and priorities for addressing them.

The 1986 Recreation Element of the State Guide Plan recommended that coastal access be the state's highest recreational priority in the closing years of the twentieth century[39]. The plan sketched, in a series of policies and recommendations, the outlines of a comprehensive approach to the access question involving planning, designation, access expansion and acquisition, information and education, and maintenance and enforcement. The remainder of this paper builds upon the framework provided in the Recreation Guide Plan by updating and further elaborating its recommendations for a comprehensive coastal access program.

A. Program Premise

Development of a coastal access program suited to the needs of the Ocean State as it approaches the 21st century must begin from the premise that broad-based, coordinated and sustained governmental action is requisite to the practical exercise and meaningful enjoyment of the Constitutionally guaranteed "privileges of the shore" by present and future Rhode Islanders. The protection and expansion of coastal access must be seen as an important public "need" that state and local governments have an affirmative responsibility to address. It is also necessary that the response developed recognize from the outset the complexity of the questions and problems involved in coastal access. The interplay of common law property rights, legislative authorities, differing agency missions, and several jurisdictions of government and the private sector will dictate a comprehensive approach which synthesizes the efforts of all of entites involved toward progress on a common objective.

The premise of an activist government on the access question may appear to fly in the face of the Nollan decision. No doubt many will counsel that the defeat of the California Coastal Commission in the Nollan case implies that courts will be more willing to affirm the pre-eminance of private property rights over the public interest in the coastal zone and will exhibit less tolerance of governmental attempts to actively assert the public's rights of access (or other public interest) to coastal resources. Those who promote this view, however, must be challenged to demonstrate a how lesser governmental role will insure that Rhode Islander's can continue to enjoy their coastal

franchise in the future. As urged in Part II, the response to Nollan should not be retrenchment, but recalculation and rededication. Moreover, in seeking to apply Nollan's admonitions to Rhode Island, regard must be given to the advanced stage of development of California's coastal access program relative to the efforts of Rhode Island in this realm. While Nollan may have indeed set new limits on what an agrgressive program such as California's can henceforth require, it has by no means overturned the vast progress which California (and other states with well-developed programs) have acheived, nor should it dissuade Rhode Island from developing a comprehensive program of its own.

B. Program Elements

A successful access strategy requires government to assume many roles: land steward, planner, developer, educator, adovcate, arbitrator, and enforcer. At a minimum, the program must encompass elements of access planning, priority setting and policy development; access designation and acquisition; access development and maintenance; access security and landowner protection; and public education and information. Each of these components is discussed below:

1. Access Planning and Policy Development

To achieve maximum benefit, it is essential that access protection and expansion efforts be guided by a planning process which assesses both resources and needs and establishes methods and priorities for providing needed access areas and facilities at various locations. Planning for access should integrate the following factors:

-- an assessment of the demand for various types of access along different sections (or types) of shoreline. How are people using the coastline now, and how is this usage to change in the future? If shore segments are "underutilized", is this because there is no intrinsic usage protential or capability or is low usage attributable to lack of access?

-- the establishment of standards for different types of access areas and facilities required for different shoreline characteristics and resources. Standards should differentiate access needs based upon expected usage parameters (intensity, duration, seasonality, activity) and site capacities and capabilities.

-- identification of important shoreline resources such as shellfish beds, recreation areas, scenic view sites, prime fishing spots, and educational and research areas to which access must be maintained and improved;

-- an inventory of the locations, characteristics, and capabilities of current access sites and areas, both formal and informal; and

-- identification of opportunities for provision of new, expanded or improved access.

Most essential will be the basing of access needs not only upon current shoreline characteristics but also upon a vision of what the future shoreline will be like and what the public's need to access various shore features will be in the future based upon the best forcasts of population, water quality and coastal development trends. The plan which results should be an expression of how well the public's need for access to the shoreline at different points is being met, and a priority-ordered program for addressing identified deficiencies and incorporating new access into shoreline development and redevelopment in order to meet future needs.

The 1986 Recreation Guide Plan recommended development of a State Coastal Access Plan. While such a plan should be prepared as an element of the State Guide Plan, staff and funding constraints have prevented our undertaking this task to date. To do an adequate job on such a plan, we estimate that two-staff years and up to $150,000 would be needed.

In addition to the preparation of an overall access plan for the coastline, the planning element should have two other objectives: (1) the establishment of criteria by which to identify and assess the impact of new coastal development on coastal access needs, and (2) the development of design and construction standards for the various types of access sites and facilities to be provided (or improved) in accordance with the overall plan. The first of these objectives will be essential to support governmental efforts to obtain access donations in connection with new development.

The preparation and adoption of a coastal access plan would (in addition to the obvious guidance it would provide to subsequent elements of the access program) do two important things: 1) it would provide a higher profile for access in coastal management generally, signalling communities and the private sector that access is to be an important factor in all new coastal development; and 2) by specifically identifying the public's access interests, it would provide information to coastal developers that would both allow and obligate them to avoid or mitigate impacts upon access.

2. Access Protection and Expansion Strategies

The comprehensive coastal access plan should become the guide for coastal access protection and expansion initiatives of state and local governments. Maximizing the potential of existing accesses and providing new access where needed should become an integral component of the coastal development and redevelopment process, and should be given priority within the state's coastal management, outdoor recreation, and development incentive/assistance programs. A variety of techniques should be pursued:

a. Right of Way Research and Designation:

Investigation of the legal standing of traditionally utilized and presumtively valid rights-of-way to the shoreline should continue, but will likely produce diminishing returns. In its eight years of research of ROW's in twenty of the twenty-two coastal communities, the CRMC's ROW research effort has focused largely upon previously-identified and the best documented right-of-way sites. In its research and public hearing processes information was obtained on a large number (up to 500) of additional sites [40]. While these leads are promising, the reality is that these "new" sites will require a great deal of additional research in order to clarify their status and sustain successful designations. Many of these potential new sites involve private lands and will require the construction of cases built upon the doctrines of prescriptive easement and /or implied dedication. Designation of these sites by the CRMC is likely to induce a higher incidence of appeals to the courts (than has thus far been experienced) where the evidentiary burdens to be met, as described in Part I of this paper, can be formidable. Thus, the continuation of the ROW program will predictably require increasingly greater investments of time and resources to methodically research and defend designations; will likely see fewer designations made (compared to the number of sites investigated); and may encounter increased risks of having its designations overturned by the courts.

To contain costs and best focus limited resources, a "triage", or setting of priorities for research of the "new" sites is in order. Initial screening by CRMC staff and perhaps a para-legal consultant could prioritize sites on the basis of the following factors:

- immediacy of threat of site development or other preemption;
- availability of coastal access in vicinity of site; and
- estimation of sufficiency of documentation available on site in question to sustain evenutal designation.

Under its current legislative charge, the ROW Subcommittee faces an increasingly difficult task with a steadily shrinking and tenuous federal funding source. The level of resources available is clearly inadequate to accomplish the task within a reasonable time period. The state must soon decide if the ROW program, as currently structured, is a worthwhile investment. If it is, a completion date should be established for the project and sufficient resources provided to complete the job within the selected timeframe.

b. Acquisition

Direct acquisition of coastal land (or of access rights) for public usage must continue to be a major element in Rhode Island's coastal access expansion program. Acquisition is appropriate for sites in which the public interest requires more than the simple right to traverese the land (e.g. protection of an important coastal resource, provision of intensive recreation opportunities, etc.). Acquisition has, of necessity, become more selective and strategic in the past five years as coastal land costs have soared, and choice coastal sites diminished in number. Large coastal acqusitions have grown beyond the capabilities of any single entity and require the collaboration and support of several sponsors, using a number of the funding techniques. For example, Goosewing Beach, a highly important wildlife, open space and recreation resource rumored to be soon up for sale in Little Compton, has an estimated cost of up to $12 million[41], a sum that exceeds the $10 million which the 1987 Open Space Bond Issue made available for the Department of Environmental Management's entire (statewide) acquisition program.

The $45 million available for local open space and recreation projects under the 1987 Open Space Bond holds great potential for significantly expanding the public's access to the coastline through local purchase of small, but important coastal open space and recreation sites, and by the construction of new recreation facilities such as boat ramps at existing coastal sites. The Bond funds provide cost-sharing in projects of up to 75% for land purchases and 50% for recreation facility development. Moveover, the General Assembly specifically included "coastal floodprone areas[42]" as eligible targets of the acquisition program, and such sites will receive additional weighting in the evaluation and ranking of projects. All but one of the state's coastal communities have voted local bond money to match the state grant program. Hopefully this new availability of state and local funding will produce many new public recreation and open space sites providing access along the coast. A goal of obtaining at least one new coastal access point per coastal community should not be unrealistic.

State acquisition of new coastal accesses for fishing and boating is possible under the Sports Fish Restoration Program of the Department of the Interior. In distinction to most federal programs under the Reagan era, this grant source has significantly increased in the last five years as a result of new excise taxes and user fees imposed on motor boat fuels, fishing tackle, and imported yachts and pleasure craft. Nearly $1.5 million in funding is currently available to Rhode Island this year under this Program. DEM's Division of Fish and Wildlife is utilizing funding provided by the Fish Restoration Program to conduct a study assessing saltwater fishing access in the state and identifing new potential access sites as well as opportunities for improvements (new boat ramps, etc.) at existing accesses. This funding source will provide the bulk of the funds necessary to maintain and operate the converted Jamestown Bridge fishing pier.

c. Provision of Access in New Development

Apart from outright acquisition, the greatest opportunity for protecting old and providing new public access to Rhode Island's shoreline lies in capturing the access potential which exists when shoreline land usage changes. The process of planning, designing and approving a new shoreline development represents a narrow window of opportunity to effect changes to the coastline that will endure for a generation or longer. These changes can be either beneficial or detrimental to the public's interest in accessing and using the shorefront. Regulatory review procedures under the state's Coastal Resources Management Program and local zoning and subdivision regulations represent the best available channels for insuring that the public's interest in coastal access (as well as other matters) is respected and advanced through the development process. At a minimum, the regulatory program must make the public's interest in maintained and improved coastal access explicit, and must provide for consideration of a new project's effects upon access. This is where a formally-adopted, detailed coastal access plan which outlines public objectives for different sections of the shoreline is instrumental.

Capitalizing upon such opportunities can rely upon formal and informal tecniques, but requires considerable skill and savvy. Formal requirements that developers of new coastal projects donate access rights or land or a fee for accessways have been successfully employed by a number of regulatory bodies including the San Francisco Bay Conservation and Development Commission, the State of Connecticut and, of course (up until Nollan) the California Coastal Commission. Absent a formal requirement that access be provided, informal negotiations and moral persuasion can still be relied upon during the development review process to obtain access in new projects. Give and take on project design details is common during the review of projects, particularly those which do not meet the letter of existing regulartory standards and require a grant of relief of some form. In obtaining access through such negotiations on project design, care must be observed that the grant of a zoning exception or other relief not be made a "quid pro quo" for access or other concessions made by the developer. Courts have overturned such neatly packaged deals as invalid "contract zoning"[43].

While Rhode Island has not developed a formal procedure for obtaining new coastal access through review of new developments, several recent developments illustrate that it is acheiveable. The most dramatic of these is Transcontinental Development Corporation's plans for redevelopment of the petroleum tank farm land at Kettle Point in East Providence into a 600 unit residential community. Regardless whether Transcontinential was motivated out of a sense of corporate responsibility or out of its own self interest to smooth the way for regulatory approval of its proposal, the result will be provision of a public promenade around the shoreline perimeter of the site connecting with the East Bay Bikeway which will be constructed through the site. Despite its reluctance to rely upon such techniques in the past, and not without regard to the setback of Nollan, Rhode Island should nevertheless make greater use of its state and local regulatory processes to acquire new coastal access points as part of new coastal developments.

Strategies for improving Rhode Island's capability to capture coastal access opportunties during the review of new developments include:

— Incorporation of a water-dependancy requirement for new development into the Coastal Resources Management Program. This strategy, relied upon by several other coastal management programs including Connecticut's, combines a requirement that new shoreline development be water-dependant with a definition of coastal access as a water-dependent activity. Program

regulations allow non-water dependant uses, such as many forms of commerical, industrial, and multi-family residential to be sited at the coastline only if they incorporate public access as an ancillary use meeting the water-dependancy requirement. Connecticut feels that this approach also protects it from Nollan-type challenges...."In Connecticut, therefore, a municipality can require public access a component part of a development proposal necessary for the project to meet the threshold requirements of water-dependancy under the Act. In the California case, on the other hand, the Court was striking down a public access easement as an after-the-fact condition imposed on a development proposal that would have other wise been permitted. The difference is critical."[44]

— Subdivision review and approval. Section 45-23-3 of Rhode Island's General Laws authorizes local planning boards to establish rules for approving new subdivisions which (among other purposes) allow for "...secure(ing) appropriate allotments of land area in new developments for all the requirements of community life... and to conserve natural beauty and other natural resources". A number of Rhode Island communities rely upon this provision to secure donations of land for community recreation needs. Moreover, local planning boards have considerable discretion to influence the layout of roads, pedestrain paths and drainageways prior to approving new plats. If coastal access needs were identified in a local comprehensive plan, there is no reason why the Planning Board should not interpret these as "requirements of community life" and require provision of accessways in new coastal subdivisions, meeting at least the needs of the development's residents. While modern design practices discourage extending streets to dead-ends at the water (a common practice of the now-disreputable gridiron development pattern which provided perhaps 75% of the designated shoreline right-of-ways in the state); there is no reason why paths extending from the closest road parallel to the water should not be required as they are by California's subdivision law, or why drainage easements extending to the water's edge should not also be required to also allow public foot passage. Courts have prohibited arbitrary dedication requirements, but such exactions designed to offset the specific impacts or burdens of a new development (as opposed to meeting community-wide needs) are widely accepted as permissible.[45]

— Mitigation for Private Use of Public Trust Doctrine lands:

The filling, wharfing out, or construction of piers over submerged public lands is properly discouraged by the Coastal Resources Managment Program, but can be permitted in cases where overriding public interests, such as promotion of necessary public works or economic development, are demonstrated. Such permission should not be given lightly, and, when granted, should include a requirement for compensation or mitigation for the loss of public resources (including the pre-emption of lateral or perpendicular coastal access). Section 160 of the CRMP establishes a procedure by which fees may be assessed in connection with filling of tidal waters. Fees may be assessed on a case-by-case basis based upon a professional appraisal of four factors: (1) the degree of preemption, (2) the degree of irreverseability; (3) the value of the opportunities lost; and (4) the economic return of the project to the applicant. This provision should be modified to require, as a first priority the replacement or mitigation of the access (and other) opportunities lost as a result of the filling or wharfing out. Only if it were demonstrated to be impractical to successfully mitigate the loss of access should compensation by

fee be allowed (A fee should still be levied equal to the fair market value of the area filled or preempted, plus the value of public rights which cannot be replaced or successfully mitigated, pro-rated over the useful life of the facility with payments indexed to inflation.)

While proposals to fill or wharf out over public trust resources may be infrequent, they predicably will occur from time to time, and may, after regulatory analysis and public scrutiny, occasionally be found to be justified. When they are, there should be a mitigation policy in place to guide the replacement or improvement of public access, and any irreplacable values should compensated for.

d. Access Potential of (Non-Recreation) Public Coastal Lands:

While the Department of Environmental Management controls the vast majority of public land which fronts on Rhode Island's shoreline, other departments and agenices of state agenices such as the Blackstone Valley District Commission, which controls some 50 + acres on the Seekonk River, the Board of Governors for Higher Education which owns shoreland at Casey Point, and the National Guard which has land at Fort Varnum. Other "non-traditional" access points potentially exist at highway and rail bridge crossings of the tidal waters controlled by the Department of Transportation. While unsanctioned public usage of some of these sites has traditionally occurred, there is nothing to assure its continuation in the future. Since the agenices involved have no mandate or particular interest in providing public access to the shore on their lands where it is feasible, many access opportunities that are currently used informally could be lost in the future if agencies dispose of the land, develop new facilities on it which block access, or purposely fence in or exclude the public (to provide security for agency operations or perhaps in repsonse to neighbors complaints over public use).

Realizing the access potential of such sites on a permanent basis will require both planning and advocacy. Publicly-owned sites which are not part of the state's recreation system but are nonetheless currently being used by the public on an informal basis should be identified by the planning element of the coastal access program. Once identified, the agency with jurisdiction over the site should be appraised of the importance of its land for providing access and requested to cooperate in retaining and perhaps formalizing the allowance of access. In a similar fashion, agencies responsible for publicly-owned sites where access is currently restricted, or which offer potential for additional access should be called upon to provide it. Such requests must be made judiciously and with forthought and research into predictable agency concerns and/or objections to allowing or encouraging access across their property. In many, indeed perhaps most, instances initial agency reaction will be resistance to what they perceive to be a demand upon its resources which is not in furtherance of its primary mission. Such protestations must be met, not only with the moral arguement that all public agenices have a general public service obligation (in addition to a specialized mandate); but also with constructive solutions or answers to real or perceived problems with allowing access. This will require a willingness and a capacity on the part of the access advocacy agency to participate in designing, managing and operating the access on other agencies' land. In addition, legislation requiring coastal land-holding agenices to cooperate in the provision of access on their property may be a good idea.

While it happens infrequently, public agenices do dispose of public land to other public agenices, quasi-public entities and non-profit organizations, and/or the private sector. When such transfers involve shorefront land, it is paramount that access opportunities of these properties not be lost. Regardless of the attractiveness or unattractivenss of the site, or whether or not the site has traditionally been used for

access, it is imperative that public access rights be retained in some fashion for shorefront property.

The case of the former State Pier in Pawtucket is instructive. When this four acre site was transferred to the City of Pawtucket for redevelopment in the late 1970's it usage (as a derelict oil depot) and location on a fairly polluted water body, made its public access value marginal at best. Yet, through review by the Division of Planning and the State Properties Committee, transferral of the site was conditioned upon preservation of the public's right to access the water. As water quality conditions in the Seekonk River improved, and subsequent to the closing of a marina which had been established on the site, public usage of the site has grown, particularly as a fishing access point. Now on good days throughout the fishing season, fishermen can be seen lined up virtually shoulder-to-shoulder at this site. The site has become the coastal access spot in Pawtucket. The site is proposed to soon become the location of a 60 unit condominium development, a center piece in Pawtucket's plan to revitalize its waterfront. The developer has proposed a two-part project with the second phase providing a waterfront resturant and marina to comply with the public access requirement. While it remains to be seen what will become of the fishermen who have "claimed" the site as their own, it is readily apparent that without the state's forthought to attach the access condition to the property conveyance, this site could have easily become another "residents only" enclave along Rhode Island's increasingly private shoreline.

A second example of the access potential of surplus public property, and one that almost slipped away, is that of the (old) Jamestown Bridge. Abandonment of this facility did not involve transferral of state land, and thus did not come before the State Properties Committee. Local pressure was strong to demolish the bridge to preclude continued public usage of the site. In the end, an act of the General Assembly was required to authorize and direct the Department of Transportation to retain this facility for conversion into a recreational fishing pier. The saga of the fishing pier that almost wasn't calls attention to a need for a comprehensive assessment of the access potential of all publicly-owned land, regardless of its current usage. An affirmative responsibility for state and local agencies to act to protect shoreline access opportunities where they exist should also be mandated by law whenever property is transferred, or changed in usage.

One aspect of this requirement should be a prohibition on local abandonment of paper steets or street-ends which extend to the water and afford access. Abandonment of such a paper street end, was recently approved in Narragansett, but should not be allowed to become a widespread practice. The "Mapped Streets Act" should be amended as necessary to require a city or town council to make an affirmative finding prior to abandonment of a street that such abandonment will not adversely affect the public's ability to reach the shoreline in the vicinity of the street in question.

e. State Development Assistance Programs

While the state's new program of open space acquisition and recreation development grant assistance will directly provide new coastal access opportunities; other state development assistance programs have largely unrecognized potential for making occasional and indirect, but nonetheless real, additions to public coastal access. Two programs presenting possibilities for expanding access to the coastline (and to the shoreline of inland waterbodies as well) are the wastewater treatment facility improvement program and the grants made to water supply systems to construct new drinking water transmission lines. The opportunities for providing access at sewage treatment facilities have traditionally been neglected. The federal Environmental

Protection Agency produced a study illustrating compatible recreation uses which could be accommodated at wastewater facilities,[46] but has never seriously enforced its guidelines on multiple usage. Potential uses include boat launch ramps and canoe put-ins, passive parks, and even picnic areas (a well-operated treatment facility is not unaesthetic). Now that major responsibility for the grant program is passing to the states, Rhode Island is moving to create a revolving loan program to assist such projects. State regulations for this program should require applicants to assess the capacity of assisted projects to provide multiple benefits, including coastal access where appropriate, and to realize such potential as a condition of a grant or loan.

Similarly, grants for new water transmission pipelines should be conditioned upon an examination of the public access potential (and other public recreation opportunities) to be created by virtue of the new facility's location. If such an assessment were mandated, new shoreline access could potentially be created at the landfalls of pipelines which cross water bodies, such as the new trans-bay pipeline.

3. Access Development, Maintenance and Enforcement

A third essential component of a comprehensive coastal access strategy is a program for development of appropriate facilities and improvements at selected access sites, as well as on-going operation, maintenance and security support. The negative reactions of neighboring landowners to access sites can generally be attributed to problems created by the absence of user facilities or lack of defined responsibility for routine maintenance and operation considerations.

A program to provide user facilities at access sites should be directed by standards developed by the planning element of the overall coastal access program. While the Coastal Resources Management Council has authority under section 46-23-6 of the General Laws to "designate for acquisition and development by the Department of Environmental Management land for tidal rights-of-way parking facilities....", it has cited a lack of resources as precluding it from advising the Department of Environmental managment on the development potential of right-of-way it has designated.[47] The DEM has conducted a preliminary reconnaissance of the existing conditions and facilities provided at access sites around upper Narragansett Bay.[48] In addition, as previously mentioned, the Department's Division of Fish and Wildlife has undertaken a study of the potential for development of new boating access facilities at existing public sites on the coast. These initial efforts should be the beginning of a larger systematic assessment of the need for, and capability of, right-of-ways and other access sites to accommodate facilities. Development of needed facilities on state controlled right-of-ways and other state properties should, depending upon the magnitude of funding found to be required, be programmed via the DEM Capital Development Program, or funded directly from the Recreational Area Development Fund.

Facilities to be considered for future development at access sites include signage (both on-site identification and informational signs and off-site directional signs), pedestrian improvements including paths, trails, walkways, and stairs, parking and other vehicular facilities; user conveniences such as benches, sanitary facilities, and trash receptables; safety and security features such as fencing, gates (if the accessway is to be closed during certain periods), and lighting; and active recreational features such as boat ramps, docks, and fishing piers. Certain access sites may be appropriate for provision of special features to enable mobility-restricted and other handicapped individuals to enjoy the coastal experience. For example, the State of California utilizes the low cost-technique of unrolling snowfencing on the beach to allow people in wheelchairs to get beyond the paved areas and "access" the beach proper.

The decision of what facilities to provide at which access sites should reflect a careful analysis of the factors of existing and anticipated usage; intrinsic capability of the site and surrounding natural features; the predominant development character of the environs of the access site; size, configuration, and physical features of the site; ability to service and secure facilities provided; and the geographic availability of facilities. While the planning element of Rhode Island's access program should establish these standards, several models are available, including those relied upon by the states of Washington[49] and California[50,51] and by the San Francisco Bay Conservation and Development Commission,[52] which could be modified to fit Rhode Island's unique characteristics.

Design of the facilities selected for construction must be tailored to the characteristics of the site in question and to the rigors of the coastal environment (such as flood hazards) generally. Because of the potential for disharmony between accessway users and adjacent landowners, considerable attention should be given to design features which minimize the psychological "intrusiveness" which landowners may feel the accessway creates. Landscaping and the careful placement of facilities on the site are two important methods of minimizing the chances of access-user/access-neighbor conflicts.

Assuring the proper maintenance and provision of security at coastal access sites will be instrumental to the realization of their full capabilities to accomodate users, as well as to protect the rights of neighboring property owners to a clean and peaceful coastal environment. The experience of other states indicates that predominant among operation and maintenance concerns is the problem of litter control, and indeed the complaints most frequently heard from property owners abutting right-of-ways in Rhode Island involve trash left behind by access users. Dealing with litter at access sites should be a two-fold strategy. First, site specific litter control should be instituted based upon the level of usage of each access site and the number of complaints received from users and/or abutters. Some rural sites receiving little usage may require no trash facilities or litter control measures. Other heavily-used sites in urban environments may need daily litter removal and clean up during the heavy usage season. Secondly, since the littering of access ways is just one aspect of a larger societal problem that degrades all our public environments, litter control at access sites must be part of an overall strategy to systemically attack Rhode Island's litter problem. Targeted access site clean-ups, such as that sponsored in Narragansett last year by Rhode Island Shoreline Access Concern (RISAC), as well as the general annual clean-up of the entire coastline supported by Save-the-Bay, Audubon, and other environmental groups need to be institutionalized with support from the state's OSCAR program. The forthcoming recomendations of the Source Reduction Task Force will present an opportunity for Rhode Island to become a leader in establishing public policy for reducing the overpackaging of consumer products and controlling the trend towards non-degradable containers which exacerbate both the litter and solid waste disposal problems. Environmental education and the teaching of respect for all public lands must also play a role in stemming litter at its source.

4. Access Promotion and Public Education

A coastal access program which lacks a public information component is incomplete. Indeed, perhaps the greatest failure of Rhode Island's efforts in the coastal access arena over recent years, has been the inability of its programs to offer a continuing source of readily available and reliable information to access "consumers". All the land acquired, and all the right-of-ways designated have produced only a marginal effect in the public's perception of how accessible the coastline is.

The last generally distributed public information product on coastal accessways was the map produced in the mid-1970's by the Department of Natural Resources based upon the work of the Special Legislative Commission on Right-of-Ways. The most recent map of the state's recreation sites and areas was produced in 1979. The vast majority of designated right-of-ways remain unmarked and unsigned. There are virtually no roadside signs directing residents and tourists to access points. Combine this dearth of information on public coastal areas, with the highly visable transformation of the shoreline by development, and is it really any wonder that the average Rhode Islander feels increasingly cut off and disenfranchasied from the coast?

Fortunately, progress is being made on the publication of informational maps and guides to coastal access. The Marine Advisory Service at the University of Rhode Island has initiated preparation of a guide to access sites modelled after the products which other states such as California, Florida, and Massachusetts have produced. Available in booklet form for a modest fee, this document will show the locations of access sites (both right-of-ways and public recreation sites), describe how to get to them, and provide pertinent information which potential users need to know (parking and facility availability, restrictions on usage, etc). The Coastal Resources Management Council is also working on a statewide map showing the locations of all right-of-ways designated to date. Both these guides should be brought to fruition and given widespread distribution as soon as possible. Beyond these efforts, a continuing commitment must be made to public access information and education. Published information products must be frequently updated and reprinted. Directional signage to major access points should be provided by the state Department of Transportation and local communities (depending upon the jurisdiction of the highway involved). Other means of bringing coastal access information to the public via cable television and home videos should be explored. Integrated into all information products should be a message of access user responsibility to inculcate a respect for the rights of neighbors and other users and for proper usage of the coastal environment.

5. Landowner Protection

The utilization by the public of private land to reach the shoreline, while a time-honored custom in Rhode Island, admittedly creates a risk to the landowner of legal action should a person using the property be injured. While this risk is probably insignificant if calculated in a rational fashion; nevertheless, the fear of a law suit, whether rational or not, can be a stigmatizing influence upon landowners, even those with a desire to hospitably accommodate public access. Perhaps as a consequence of the media-highlighted "liability insurance crisis", the issue of landowner liability is being cited as (one) reason for opposition to efforts to expand usage of designated rights-of-way and for not providing access in some coastal development projects.

While a concern, landowner liability may not be the obstacle it is sometimes presented as to be to the utilization and expansion of coastal accessways in Rhode Island. Indeed, this may be one aspect of the coastal access question on which Rhode Island is ahead of some other states. In 1977 the Rhode Island General Assembly enacted the Landowner Libility Law[53] which provides for the limitation of liability of landowners who register with the Department of Environmental Management their voluntary permission for opening their lands to the general public without charge for recreational purposes. While the Act did not specifically embrace coastal access per se, its definition of "recreational purposes" is broadly encompassing and would likely cover most activities which public shoreline access points should legitimately be utilized for.

One modification of the law may be desirable to further promote coastal access. Instead of requiring all coastal landowners who desire the protection of the law to register with the Department of Environmental Management, the limitation of liability could be automatically applied to any land designated as a public right-of-way by the Coastal Resources Management Council pursuant to section 45-23-6(E). (Coastal landowners who wish to indemnify themselves against claims where access is occurring on undesignated paths and trails would still be free to register with DEM.) With this amendment, designation of property as a public right-of-way would have the effect of offering a private landowner a compensatory, automatic benefit, instead of being regarded as a singular burden.

While the landowner liability law has been on the books for a decade, it has been largely neglected. The hikers and horsemen who advocated its passage felt it should apply automatically to landowners who allow recreation (by not posting their property against trespassing) and grew dissuaded by the difficulty in persuading landowners to register their properties. Coastal access advocates should take up the drive to publicize and promote this law, possibly in coalition with trail recreation groups, who still have a lot to gain through greater reliance upon this law.

IV. SUMMARY AND CONCLUSION

This paper has looked at the background and current status of Rhode Island's efforts to improve the public's ability to get to and utilize its shoreline; and has proposed a program of expanded initiatives directed at affording coastal public access a top governmental priority. Particular attention has been given to the legal context which controls coastal access and to the implications which a recent decision of the U.S. Supreme Court has for future coastal access expansion efforts.

While a public interest in access to the shoreline has been continuously recognized under legal systems extending back to Roman times, the law has always struggled with the tension between public and private rights in coastal resources. The Public Trust Doctrine asserts common law public rights in the shoreline and obligates the soverign (state) to uphold the public interest, at the same time that a Constitionally-protected "wall" of private property fronting the shore frustrates public enjoyment of the privileges of the shore. Common law theories of implied dedication, customary usage, and prescriptive easement have been relied upon to facilitate the practical realization of public shoreline rights, however the evidentiary burden required and the case-specifice nature of these devices has largely limited their broad application.

Complimenting the common law are elements of the codified law-constitutional provisions and statutes-which affirm and further explicate the public's rights in coastal and marine resources. Statutory authorities encompass regulatory programs, such as Rhode Island's Coastal Resources Management Program, which seek to define and protect the public interest in the use and development of coastal areas.

Into this complex field of law, the 1987 Supreme Court decision in Nollan v. California Coastal Commission has introduced a new caution on governmental attempts to protect and advance the public's interest in coastal access. The requirement of Nollan that regulatory burdens upon private parties be precisely matched the the effect of the activity regulated, will, without doubt, require more through agency planning and analysis and exhaustive substantiation of development impacts. It may significantly limit the flexibility of government to regulate many aspects of private activities, however the long-term implications in this regard must await future decisions of the Court in related cases. The greatest danger in the interim, and one that should be resisted by governments, is that the Nollan decision will chasten agency efforts to protect legitimate public interests, while enboldening developers to resist reasonable and equitable solutions to the problems created by development.

Rhode Island's traditional approach to coastal access has relied upon two primary strategies: intensive research leading to designation of right-of-ways providing perpendicular access to the shoreline, and direct governmental acquisiton of coastal sites for recreation. A comprehensive coastal access program for Rhode Island, this paper proposes, should include not only research and land purchase, but planning and policy development; broad-based access expansion strategies; appropriate facility development and provision of proper maintenance and security at accesses; public information and promotion of greater usage of coastal access opportunities, and protection of private landowners and neighbors of accessways from unnecessary liability exposure or deprecative behavior of access users.

These recommendations are not innovative or novel. They are based upon general recommedations made in the 1986 Recreation Element of the State Guide Plan. Development of specific suggestions has largely relied upon the experience of other state and regional access programs, and successful strategies developed where pressing needs

have inspired creative solutions to many of the same access problems that are now emergent in Rhode Island.

In sum total, the recommendations presented herein suggest only a broad outline, for a new program, and are intended to stimulate further discourse. The next, and most critical, step should be delineation of the specifics of a program, including assessment of the need for additional legislation or program authorities, decisions on assigning agency and jurisdictional responsibilities for various aspects of the program, and the determination of appropriate resource levels and sources to support a broadened effort. Most critical will be the translation of the public's desire to reach and enjoy the coastline and abstract fears about its ability to continue to do so, into a broad-based political consensus concerning the need for an adequately-supported, comprehensive and coordinated public coastal program for the Ocean State.

NOTES:

1. Data from 1970 and 1980 U.S. Census of Population.

2. R.I. Division of Planning and R.I. Department of Environmental Management. Ocean State Outdoors: Recreation and Conservation Strategies for Rhode Island. September, 1986 at 3.26.

3. See Graber, P.H.F., "The Law of the Coast in a Clamshell" in Shore and Beach v. 48, No. 3. October, 1980 for more extensive discussion of coastal geography and the law.

4. An overview of the various types of coastal access is contained in An Evaluation of Public Access to Washington's Shoreline, (Washington Dept. of Ecology) September, 1983.

5. State of Rhode Island: Public Rights of Way to the Shore. March, 1970.

6. "Designation of All Public Right of Ways to the Tidal Areas of the State—Progress Report for 1983-84 Submitted by the Subcommittee on Right of Ways, Coastal Resources Management Council."

7. State Planning Council, "Review of the Annual Report of the Coastal Resources Management Council on Rights of Way to the Shore—Supplement to Agenda Item No. 7, December 8, 1983".

8. Graber. Supra at 8.

9. Ibid.

10. 146 U.S. 387 (1982).

11. Id at 454.

12. 12 R.I. 348 (1979).

13. Ibid.

14. 19 R.I. 114 (1985).

15. 67 R.I. 218, 21 A.2d. 554 (1941).

16. Id at 228, 558.

17. Special Legislative Commission to Study Lateral Access Along the Shoreline of Rhode Island. Final Report. (1980). at 14.

18. Nixon, D. "Statement Before Subcommittee on Oversight and Investigations of the Committee on Merchant Marine and Fisheries on Public Access to the Shoreline of Rhode Island". June 29, 1987 at 6.

19. Id at 7.

20. 52 R.I. 280, 160 A. 466 (1932).

21. Nixon, Supra at 9.

22. Id at 11.

23. 89 R.I. 103, 99 A. 2d. 7 (1952).

24. R.I. General Laws Section 34-7-4.

25. Special Legislative Commission... Supra at 7.

26. 254 Ore. 584, 462 P 2d 671 (1969).

27. R.I. Constitution, Article I, Section 16.

28. State Planning Council, Supra at 3.

29. Nixon, Supra at 22.

30. R.I. Division of Planning, Supra at 3.26.

31. Ibid.

32. R.I. General Laws, Chapters 45-22; 45-23; and 45-24.

33. Several leading communities, including Providence, East Providence, Bristol and Pawtucket have produced plans for their waterfront areas which seek to systematicly expand public access to and usage of their waterfronts in connection with revitalization efforts.

34. 55 L.W. 5145.

35. Id at 5148.

36. Ibid.

37. Ibid.

38. 22 I11. 2d. 375, 176 N.E. 2d 799.

39. R.I. Division of Planning, Supra at 3.26.

40. R.I. Coastal Resources Management Council. Briefing.49/50. July-Oct. 1987

41. Providence Journal. Dec. 14, 1987.

42. Public Laws of 1987 Chapter 87-425, Section 6 (b) (1)

43. See Montgomery Co. v. National Capital Realty Corp., 267 Md. 364, 297 A.2d 675 (1972)

44. Connecticut Coastal Area Management Program, Land's End. Fall 1987.

45. The leading case in Rhode Island is Frank Ansuini v. City of Cranston, 107 RI 63, 264 A. 2d 910 (1970), in which the Supreme Court favorably construed the powers of

Planning Boards under sections 3 and 6 of chapter 45-23 to include involuntary donations of land but limited such donations to such portion of the land to be divided as may be needed for such public purposes as will result form the specific activities of the developers.

46. U.S. Environmental Protection Agency/U.S. Department of the Interior. Recreation and Land Use: The Public Benefits of Clean Waters. Washington, D.C., 1980. pp. 20-24

47. R.I. Coastal Resources Management Council, Supra

48. Bolden, R., Pointek, L., and Benedict, J. Public Points of Access to the Shore on the Upper Narragansett Bay. R.I. Department of Environmental Management. 1986.

49. Washington Department of Ecology. An Evaluation of Public Access to Washington's Shore. 1983.

50. Calfifornia Coastal Commission, Coastal News. v. 3 No. 6 Oct/Nov. 1987.

51. Neuwirth, D. and Mikkelsen, T. Public Beaches: An Owner's Manual. California State Coastal Conservancy. 1987. pp. 26-65.

52. San Francisco Bay Conservation and Development Commission. Public Access Design Guidelines, 1985.

53. R.I. General Laws. Chapter 32-6.

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