

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

WEEKAPAUG FIRE DISTRICT,

Plaintiff,

v.

C.A. No. _____

TOWN OF WESTERLY; the WESTERLY TOWN :
COUNCIL and MARY E. SCIALABBA, JOY L. :
CORDIO, DYLAN J. LAPIETRA, WILLIAM J. :
AIELLO, PHILIP M. OVERTON, JR., KEVIN J. :
LOWTHER, II, and ROBERT L. LOMBARDO, in :
their official capacities as members of the Westerly :
Town Council; IRENE LYNCH, in her capacity as :
DIRECTOR OF FINANCE for the Town of :
Westerly; RHODE ISLAND COASTAL :
RESOURCES MANAGEMENT COUNCIL and :
CATHERINE ROBINSON HALL, DONALD T. :
GOMEZ, JOSEPH RUSSOLINO, KEVIN FLYNN, :
STEPHEN IZZI, PATRICIA REYNOLDS, and :
RAYMOND C. COIA in their capacities as :
members of the Rhode Island Coastal Resources :
Management Council; JEFFREY WILLIS, in his :
capacity as the Executive Director of the Rhode :
Island Coastal Resources Management Council; :
RHODE ISLAND OFFICE OF THE ATTORNEY :
GENERAL; PETER F. NERONHA, in his :
official capacity as the Attorney General of Rhode :
Island; CAROLINE CONTRATA; and SPRAY :
ROCK TRUST (J) AND (N), :

Defendants.

COMPLAINT

Plaintiff Weekapaug Fire District (the “District” or “Plaintiff”) hereby states as follows by and for its Complaint against Defendants the Town of Westerly (the “Town”); the Westerly Town Council and Mary E. Scialabba, Joy L. Cordio, Dylan J. Lapietra, William J. Aiello, Phillip M. Overton, Jr., Kevin J. Lowther, II, and Robert L. Lombardo in their official capacity as members

of the Westerly Ton Council (the “Town Council”); Irene Lynch in her capacity as Director of Finance for the Town of Westerly (together with the Town and the Town Council, the “Town Defendants”); the Rhode Island Coastal Resources Management Council (“CRMC”); Catherine Robinson Hall, Donald T. Gomez, Joseph Russolino, Kevin Flynn, Stephen Izzi, Patricia Reynolds and Raymond C. Coia in their capacities as members of the CRMC; Jeffrey Willis in his capacity as the Executive Director of the CRMC (together with CRMC and the CRMC members, the “CRMC Defendants”); the Rhode Island Office of the Attorney General (“RIAG”); Peter F. Neronha in his official capacity as the Attorney General of Rhode Island (“Attorney General Neronha,” and together with RIAG, the “RIAG Defendants”); Caroline Contrata (“Contrata”), and Spray Rock Trust (J) and (N) (the “Trust”) (collectively, “Defendants”):

Nature of the Action

This is an action to quiet title pursuant to the provisions of R.I. Gen. Laws §§ 34-16-1 *et seq.*, for damages for slander of title, and for declaratory, injunctive, and related relief.

Collectively, Defendants have acted individually and/or in concert to assert property rights over a private strip of land that has, without interruption, been privately owned since at least 1884. The Town Defendants have abused the CRMC process in order to appease their constituents by asking CRMC to make a determination as to whether this strip of land is public or private, despite the Town’s actual knowledge that this land is private. This is in spite of the fact that the Weekapaug Inn Beach (the “Beach”) that would-be users of the SAE claim to be prevented from accessing is already accessible *via* a nearby maintained boardwalk, which by permission is fully open to the public, except for nine (9) hours per day during the summer months. Still, capitalizing on the growing public pressure, the RIAG Defendants and Contrata intervened in the CRMC matter in order to pursue their own personal and/or political agendas against the District.

For its part, CRMC has failed to follow its own process in making this determination to the detriment of the District and in contravention of law and public policy. The CRMC process has become, in essence, a vehicle to cloud title to the District's property for an improper purpose of re-allocating privately owned property to the public in service of a political agenda.

For these and other reasons, the District brings this Complaint and asks this Court to grant the relief it seeks on all counts and for which CRMC cannot, and will not, provide an adequate remedy.

Parties

1. Plaintiff Weekapaug Fire District (the "District" or "Plaintiff") is a fire district located within the Town of Westerly that was created by a legislative charter of the State of Rhode Island in 1937, as amended, and functions as a quasi-municipality.

2. Defendant Town of Westerly (the "Town") is a municipal corporation in the State of Rhode Island.

3. Defendant Westerly Town Council ("Town Council") is an elected government body in the Town of Westerly with the power to manage the affairs and interests of the Town, pursuant to R.I. Gen. Laws § 45-5-1.

4. Defendants Mary E. Scialabba, Joy L. Cordio, Dylan J. LaPietra, William J. Aiello, Philip M. Overton, Jr., Kevin J. Lowther, II, and Robert L. Lombardo are sued in their official capacities as members of the Town Council.

5. Defendant Irene Lynch is sued in her capacity as the Director of Finance, and equivalent of Treasurer, for the Town of Westerly.

6. Defendant Rhode Island Coastal Resources Management Council (the "CRMC") is a state agency created pursuant to R.I. Gen. Laws §§ 46-23-1 *et seq.*

7. Defendants Catherine Robinson Hall, Donald T. Gomez, Joseph Russolino, Kevin Flynn, Stephen Izzi, Patricia Reynolds, and Raymond C. Coia are sued in their official capacities as members of the CRMC.

8. Defendant Jeffrey Willis is sued in his official capacity as Executive Director of the CRMC.

9. Defendant Rhode Island Office of the Attorney General (“RIAG”) is an “agency” or “public body” within the meaning of R.I. Gen. Laws § 38-2-2(1).

10. Defendant Peter F. Neronha is sued in his official capacity as the Attorney General of Rhode Island.

11. Defendant Caroline Contrata is an individual who resides in 22 Mariner Heights, Apt. 1, in Westerly, Rhode Island.

12. Spray Rock Trust (J) and (N) (the “Trust”) is named as a party with an interest by way of easement in the strip of land that is the subject of this Complaint. The Trust owns property located at 21 Spray Rock Road in Westerly, Rhode Island. The Trust has an easement to encroach upon the District-owned strip of land.

13. Upon information and belief, all known and unknown persons who may claim an interest in the property to which this quiet title action pertains have been named as defendants in this action. Plaintiff knows of no other persons who will or may assert any claims relating to the rights, title, and interests at issue here, and they name under R.I. Gen. Laws § 34-16-9 any unknown persons with such an interest.

Jurisdiction and Venue

14. This Court has jurisdiction over the District’s claims pursuant to the common law equity powers of the Superior Court to confirm, ascertain and declare property rights and the Rhode

Island Uniform Declaratory Judgments Act, §§ 9-30-1 *et seq.* This Court also has jurisdiction pursuant to R.I. Gen. Laws § 8-2-13 and § 34-16-1 *et seq.*

15. Jurisdiction and venue are also proper in this Court pursuant to R.I. Gen. Laws § 42-35-15.

Factual Allegations Common to All Counts

A. The Spring Avenue Extension.

17. The Spring Avenue Extension (“SAE”) is a fifty (50) feet wide strip of land, alley, or way that appears on Assessor’s Plat 169 of the Town of Westerly, running southerly from Spray Rock Road (formerly known as Spring Avenue) in Weekapaug to the ocean beach, and bounded easterly by Lot 10 and westerly by Lot 11. *See Exhibit A*, Current GIS Map of the Town of Westerly.

18. The SAE has been located entirely on privately owned property since at least 1884.

19. The Beach adjacent to the impassable SAE is currently accessible *via* a boardwalk, just a few feet away. The Beach is fully open to the public, for free, with the exception of nine (9) hours per day between mid-June and mid-September.

B. The Root Chain of Title.

20. By Deed of Harris P. Chapman, 2d and Susan K. Chapman dated June 9, 1884 and recorded in the Land Evidence records of the Town of Westerly on June 20, 1884 at Book 25, Page

511, John A. Taylor obtained title to a 166 3/10 acres parcel of land.¹ See **Exhibit B**, Title Report of Jeffrey St. Sauveur, Pilgrim Title, at ¶ I, A.²

21. The Deed includes a map drawn in the Land Evidence records entitled: “Map of a Farm in Westerly, R.I., Harris & Susan Chapman to John A. Taylor, Area 166 3/10 Acres, Scale 800 feet to an inch, John L. Kenyon, Surveyor (the “Kenyon Map of Farm”). This Kenyon Map of Farm does not depict any individual building lots or internal streets or ways thereon.

22. The first conveyance of John A. Taylor was to Gertrude Stevens. It is dated September 3, 1884 and recorded at Book 27, Page 41 of the Westerly Land Evidence Records. It references a different map by John L. Kenyon dated April 1, 1884 (the “1884 Kenyon Plat”). It describes the property conveyed as:

“all those certain pieces or parcels of land & premises hereinafter particularly described situate, lying and being in the townships of Westerly, County of Washington, State of Rhode Island designated on a map of Weekapaug Point made by John L. Kenyon, Surveyor & dated April 1st, 1884 to be filed in the office of the Town Clerk of Westerly, R.I. as lots numbers twenty eight and twenty nine. . . Together with a perpetual right of access to the Atlantic Beach over & upon the several private roads as laid down in said map.”³

23. Between 1884 and 1902, John A. Taylor sold certain portions or parcels of the land by additional deeds, each of which makes reference only to the 1884 Kenyon Plat.

¹ In an effort to avoid the attachment of numerous exhibits to the Complaint, the District respectfully requests that, for purposes of the Complaint, this Court take judicial notice of the various references to Town Land Evidence Records. For ease of reference, Plaintiff also attaches herein as **Exhibit B** a title report containing further information from the Town Land Evidence Records. The District expects this will aid in the preservation of judicial economy.

² This Title Report, **Exhibit B** hereto, is also being submitted in satisfaction of the requirements of *R.I Gen. Laws* § 34-16-2.

³ The 1884 Kenyon Plat was never recorded in the Land Evidence Records of the Town of Westerly.

24. With each of those subdivisions, John A. Taylor gave each of the grantees an express easement, as a *private* right, to the Atlantic Ocean over such roads or paths as now are or may hereafter be laid opened according to law.

25. The form of the grant of *private* easement in each deed suggests that the only way any grantee could enjoy access to the Atlantic Ocean was by grant from the fee owner/subdivider of the original 166.3 acres. If there was a public way to the Atlantic Ocean within the original 166.3 acres, then the grant of a *private* easement would have been unnecessary. *See id.*, at p. 4.

26. Following the sales referenced in Paragraph 23, *supra*, John A. Taylor owned the remaining 133 acres, which he mortgaged. That mortgage was recorded in Book 25 at Page 514.

27. Mechanic's Savings Bank, as assignee of the mortgage, foreclosed on the 133 acres owned by John A. Taylor. By power of sale under that mortgage, Peter Palmer took ownership of those 133 acres, including the SAE, on April 11, 1910. This deed was recorded in Book 39 at Page 689.

28. Peter Palmer conveyed all 133 acres, including the SAE, to the Weekapaug Beach and Land Improvement Company by deed dated January 21, 1911, and recorded on February 10, 1911 in Book 40 at Page 253.

29. On May 19, 1925, the Weekapaug Beach and Land Improvement Company changed its name to the Weekapaug Beach Company ("WBC").

30. In 1963, WBC granted "certain roads and pass-ways" to the District by deed dated October 9, 1963 (the "1963 Deed").

31. The 1963 Deed included all or portions of Meadow Avenue, Shawmut Avenue, Taylor Lane, South Williams Avenue, North Williams Avenue, and Knowles Avenue. The deed was recorded in the Town Land Evidence Records at Book 84, Page 183.

32. In 2008, the District acquired all of WBC's shares.

33. On October 27, 2015, WBC (then owned by the District) officially deeded the SAE to the District. That deed is recorded in the Town Land Evidence Records at Book 2015, Page 17527 (the "2015 Deed").

C. The SAE Continues to be Treated as a Private Way Between 1945 and 1964.

34. In addition to the grant of *private* easement by John A. Taylor during the original subdivision of the relevant plat, there were sixty-four (64) other instances of *private* rights of way being granted over the SAE by WBC between 1945 and 1964. See **Exhibit B**, at Part II.

35. Twenty-one (21) of these grants (those granted between 1945 – 1950) reference the Map of Property Belonging to The Weekapaug Beach Company, Weekapaug, Westerly, Rhode Island, March, 1939 by Rossi & Lewis, recorded in Plat Book 7, Pages 30-31 on December 5, 1941 (the "1939 First Plan").

36. Forty-three (43) of these grants (those granted between 1952 – 1964) reference the Map of Property Belonging to The Weekapaug Beach Company, Weekapaug, Westerly, Rhode Island, June, 1948 by Rossi & Lewis, recorded in Plat Book 7, Pages 60-61 (the "1948 Plan").

37. The 1939 First Plan and the 1948 Plan each contain an insert showing SAE as a right of way to the Atlantic Ocean and state: "***Owners of Lots shown on this Subdivision*** have a right of way to the Atlantic Ocean over Spring Avenue Extension shown as a 50ft. right of way on Insert Plan." (Emphasis added.)

38. The WBC consistently conveyed to its grantees a general right to use the streets and ways shown on the referenced plat for all purposes for which streets are generally used in the Town of Westerly, but separately and expressly granted a *private* right of way over the SAE

“shown as a right of way on the Insert Plan as delineated on said Plat” as defined in either the 1939 First Plan or the 1948 Plan. *See id.*, at p. 13.

D. The Town, the Federal Government, and Other Entities Have Consistently and Expressly Treated SAE as Private.

39. As early as 1914, and as recently as 2011, the Town, the Federal Government, and other public and private entities have treated SAE as privately owned property such that each of these bodies deemed it necessary to pursue an easement when seeking to use part of the SAE and surrounding area for any reason.

40. The Town sought an easement from WBC to lay and maintain water lines, mains and pipes in Shawmut Avenue, Meadow Avenue, Spring Avenue (without limitation), and Ninigret Avenue, dated May 8, 1914 and recorded on June 13, 1914 at 3:05 pm in Book 42 at Page 267.

41. The WBC granted a utility easement to the Narragansett Electric Company to lay and maintain electrical and telephone utilities, including poles, by instrument dated May 14, 1940 and recorded on July 10, 1940 at 9:00 am in Book 59 at Page 511.

42. The WBC granted an easement to lay and maintain communication lines, wires, conduits pipes and fixtures to the United States of America, as Grantee, over a strip five (5) feet in width specifically through the SAE by instrument dated August 28, 1942 and recorded on September 4, 1942 at 3:05 pm in Book 61 at Page 110.

43. The District granted an easement to the SAE’s westerly abutting lot owner, The Spray Rock Trust (N) and The Spray Rock Trust (J), as Grantees, regarding the maintenance of two stone walls located within the SAE, dated January 7, 2011 and recorded January 13, 2011 in Book 1885 at Page 702.

44. Importantly, this most recent instrument shows that, as recently as 2011, the Fee Owner of the SAE (the District) and the abutting lot owner(s) were treating SAE as privately

owned. There is also no record evidence that the Town has sought to remove the two stone walls located within the SAE, which have apparently been present there for decades, as an encroachment on a public way.

E. WBC Dedicates Spring Avenue North and the SAE Becomes Impassable.

45. In 1938, a hurricane caused the SAE to become impassable. It also destroyed structures near SAE that then-existed on the Beach itself, including the large and growing Weekapaug Inn.

46. In 1939, WBC, as Grantor, expressly dedicated to the Town, as Grantee, fee title to the portion of Spring Avenue located “north of Nin[i]gret Avenue” as described by metes and bounds with reference to the “Map of Weekapaug Beach, belonging to The Weekapaug Beach and Land Improvement Co. Westerly, August 27, 1920 Scale 80 feet to an Inch by Thomas McKenzie, C.E.” recorded in Plat Book 1 at Pages 22-23 (the “1920 McKenzie Plan”), wherein (i) the Town accepted the land conveyed for highway purposes, and (ii) Grantor agreed to extend Spring Avenue further northerly to Weekapaug Heights Road, an already existing public way, said Deed dated January 31, 1939 and recorded on February 3, 1939 in Book 58 at Page 519 (“Spring Avenue North Deed”).

47. The SAE was expressly excluded from the conveyance of the remainder of the northern portion of Spring Avenue in the Spring Avenue North Deed to the Town.

48. The 1920 McKenzie Plan shows the streets and ways including Spring Avenue clearly labeled. No street thereon is labeled either “private” or “public.” The SAE is not labeled as “Spring Avenue Extension” but is shown only as a 50’ wide strip of land. See **Exhibit B**, at ¶ V, 2.

49. The metes and bounds description in the Spring Avenue North Deed turned out to be inconsistent with the 1920 McKenzie Plan referenced in that Deed, however, as it excludes from the street description a significant portion of property situated between Spring Avenue (north of Ninigret Avenue) and Quonochontaug Pond. See **Exhibit C**, Affidavit of Land Surveyor, Nathan D. Lauder.

50. Accordingly, the 1920 McKenzie Plan was revised in April 1939 by Rossi & Lewis Engineers to address and resolve this inconsistency, and recorded on October 16, 1939 in Plat Book 6 at Pages 91-92 (the “1939 Revised Plan”).

51. A comparison of the 1939 Revised Plan and the 1920 McKenzie Plan shows that the revision was made simply to conform the plan document to the description of Spring Avenue (north of Ninigret Avenue) that was utilized in the Town Deed. See *id.*

52. The 1939 Revised Plan is different from the 1939 First Plan (*see supra*, ¶ 35), which is a subdivision plan with respect to other property of WBC north of the 1920 McKenzie Plan and South of Spring Avenue. See *id.*

53. As of April 1939, Spring Avenue was not a public street, road, or way.

54. The WBC demonstrated a deliberate, continued, and unambiguous intention to exclude SAE from dedication as a public street, road, or way.

F. The Town Continues to Treat SAE as a Private Way.

55. The Town never undertook to challenge WBC’s recorded 1963 Deed to the District.

56. The Town never undertook to challenge WBC’s explicit grant of the SAE to the District through the 2015 Deed.

57. The Town never performed any maintenance on the SAE, which the Town has admitted.

58. The Town confirmed that no maintenance records of the SAE exist in response to a request made pursuant to Rhode Island’s Access to Public Records Act (“APRA”) by producing an internal email from August 9, 2023 and, later, by letter from the Town Clerk. *See* **Exhibit D**.

59. The SAE has never appeared in the Town’s official listing of roads.

60. The Town’s Harbor Management Plan, listing various rights of way in Westerly, does not include SAE.⁴

61. The Town never removed or sought to remove any structures on SAE.

62. The Town in 2008 engaged an attorney with expertise in property titles, Charles Soloveitzik (“Soloveitzik”), to study and opine upon the legal ownership of the SAE in 2008.

63. Soloveitzik’s report (the “Soloveitzik Report”) concluded that SAE was private property owned solely by WFD. *See* **Exhibit E**.

64. Subsequently, after the Soloveitzik Report was issued, WBC filed a “Notice of Revocation and Withdrawal of Incipient Dedication of Spring Avenue, Westerly, Rhode Island” with respect to the SAE on September 29, 2008, recorded in the Town Land Evidence Records at Book 1755, Page 317 (the “Precautionary Revocation”).

65. No further action was taken by the Town regarding SAE for the next twelve (12) years, until 2020.

G. There is No Other Evidence of Public Use of the SAE as a Right of Way.

66. The record, currently before CRMC, as discussed below, reflects no evidence of public use sufficient to make the SAE a public right of way.

⁴ Due to the voluminous content of some of the governmental documents, links will be provided instead, again, in the interest of judicial economy. *See* <https://westerlyri.gov/DocumentCenter/View/6393/Westerly-Harbor-Management-Plan>.

67. For example, during the CRMC discovery phase, the District deposed Contrata's witness, Jeanne Armstrong Circosta, who allegedly had seen fishermen use the SAE mainly from 1963 to 1972.

68. Yet, Ms. Circosta's deposition transcript record reveals, among other things, that (1) she identified a path completely different than those previously referenced and relied upon by public right-of-way advocates in the CRMC proceeding; (2) she never saw the path itself; (3) she only saw fishermen coming onto the Beach off a notch in sea grass near the ocean; (4) she never saw them entering the path from the street or any parking lot; and (5) her presence during the summer season was very limited, most years only consisting of weekends in April, May, and September.

69. The expert reports exchanged between the parties to date in the CRMC matter similarly reveal that SAE is not a public right of way, but rather has always been treated as private.

70. Further evidence similarly shows that there has not been public use of the SAE whether on foot or by vehicle.

71. The District also has secured dozens of witnesses who are willing and ready to provide live testimony that, throughout many decades, not a single person has used the SAE. Most of these witnesses have been disclosed and no one sought to interview or depose any of them until December 20, 2023.

72. Additionally, dating as far back as the 1930s, Dr. James C. Niederman and his wife, Miriam C. Niederman, spent significant time in Weekapaug during summer months and signed declarations stating that they never saw anyone using SAE. *See **Exhibit F***, Declarations of the Niedermans.

73. Sworn testimony from various now-deceased residents of the District confirms that SAE has not been in use since at least 1921. See **Exhibit G**, Affidavits of Weekapaug Residents.

74. For example, William C. Lane, who was born in 1921 and visited Weekapaug every summer throughout his entire life, attested under oath that SAE “was never opened as a road, and has [] never been a means of public access to the beach.” Mr. Lane further stated that, “the SAE *was never used as a road* either before or after 1938.” **Exhibit G**, at p. 2 (emphasis added).

75. Another District resident, Robert C. Buffum, who at one time owned WBC and operated the Weekapaug Inn in the District, testified that, especially since the hurricane in 1938, SAE has been a “dune and impassable by vehicles,” and has “been fenced off for many years, restricting access by pedestrians.” **Exhibit G**, at p. 4.

76. Mr. Buffum further testified that even District members themselves “had no need for access over” the SAE. **Exhibit G**, at p. 4.

H. Facing Public Pressure, the Town Refers the Matter to CRMC.

77. During discussions throughout 2020, counsel from the Westerly Town Solicitor’s Office acknowledged the Soloveitzik Report, reiterating to the Town Council that counsel’s conclusion was that the SAE belonged to the District.

78. However, immense public pressure continued to grow from “coastal access” advocates and activists.

79. As a result, on October 6, 2020, then-Council member Caswell Cooke refused to accept both the Town Solicitor’s opinion or the Soloveitzik Report. He acknowledged that he would continue to pursue designation of the SAE as public **until there was a court decision on the issue.**

80. Ultimately, despite the Town's possession of information and analyses confirming that SAE was a private way, the Town faced continued public pressure and ultimately referred the SAE to CRMC for a determination as to whether SAE was a public right of way.

81. The Town did this despite its full knowledge and discussion of the Soloveitzik Report and the Town Solicitor's position.

82. Following the Town's referral, the CRMC opened a file for the SAE's purported designation as a public right of way, File No. 2020-11-084, despite its own guidance that CRMC does not have the power or authority to create or determine ownership of property. *See* R.I. Gen. Laws § 46-23-6(5); *see also* A Citizen's Guide to Assisting in the Right-of-Way Designation Process by the CRMC.

83. In fact, CRMC's only mandate with regard to rights of way is to make a determination of whether a public right of way already exists. *See id.*

84. In making this determination, CRMC is required by statute to consider:

- i. Land evidence records;
- ii. The exercise of domain over the parcel such as maintenance, construction, or upkeep;
- iii. The payment of taxes;
- iv. The creation of a dedication;
- v. Public use;
- vi. Any other public record or historical evidence such as maps and street indexes;
- vii. Other evidence as set out in § 42-35-10. *See id.*

85. In considering the potential designation of a public right-of-way, CRMC, per its own guidance and procedures, is required to take the first step of "determin[ing] whether [the SAE] is suitable to go through the right-of-way designation process. This determination is made by

conducting extensive research on the site's history. This research is currently conducted by the CRMC in partnership with a municipality[.]”⁵

86. Regardless of its clear mandate, CRMC has sustained this proceeding while continuously ignoring the overwhelming and definitive proof that SAE is privately owned and not used by the public, and it refuses to follow its own procedural guidance to the harm of the District.

87. The CRMC similarly has continuously refused to clarify whether the proceeding was to be treated as a contested hearing or not, leaving the District unaware of its rights, without proper process, and unable to find the right avenues through which to ultimately present its case.

88. Finally, CRMC acknowledged that the Town was the petitioner in the proceeding, with the District as respondent.

I. The RIAG Inserts Itself For Political Gain and Without Basis.

89. During this time, inexplicably, RIAG Defendants sent a December 2022 letter to CRMC stating its unsubstantiated belief that the SAE was a public right of way. RIAG Defendants sent that letter without ever contacting the District to receive its point of view.

90. In response to this letter, the District, through its counsel, submitted several APRA requests for information substantiating RIAG Defendants' position, which RIAG Defendants effectively denied. To date, no such substantiation has been received by the District.

91. Litigation regarding RIAG Defendants' wrongful conduct under the APRA is pending in Superior Court in Providence County, Case No. PC-2023-05721. In fact, RIAG Defendants have continued to dodge and evade their obligations under the APRA by delaying the

⁵ See Shoreline Public Access Frequently Asked Questions in CRMC's website: <http://www.crmc.ri.gov/publicaccess/faqs.html#:~:text=The%20first%20step%20in%20discovering%20and%20designating%20rights-of-way,by%20conducting%20extensive%20research%20on%20the%20site%E2%80%99s%20history.>

court proceeding in moving to dismiss on meritless and vexatious procedural grounds and objecting to expediting the matter, to which the District is entitled under the APRA, § 38-2-9(c).

92. The limited documents that RIAG Defendants did provide demonstrate no further evidence, analysis, or theory that would support its assertion in the letter that the SAE is a public right of way.

93. However, over the District's written objections, months later, the CRMC then allowed RIAG Defendants and Contrata to join the CRMC proceeding as intervening parties.

94. As to Contrata, counsel for CRMC stated that she should be permitted to formally join the proceeding solely because she "had an attorney" – Attorney Michael Rubin, a former decades-long RIAG attorney who was already well known to CRMC and already had submitted hundreds of pages of advocacy regarding the SAE on his own behalf. In reality, Mr. Rubin needed Contrata to be his client more than she needed him to be her lawyer.

95. Further still, on August 11, 2023, the District sent a letter to counsel for RIAG and Contrata in the CRMC proceeding, specifically asking them to provide the District with an accounting of the evidence each party had collected to-date in support of their positions that SAE was a public way. *See* **Exhibit H**.

96. Both parties declined to do so, choosing instead to continue to delay, muddle, and overburden the District through the CRMC process. *See, e.g.*, RIAG's Response, **Exhibit I**.

J. The District Investigates for Evidence from Other Involved Sources and Finds None.

97. The District undertook such efforts with a variety of other interested parties in an attempt to understand what, if any, evidence other parties may have regarding the public use of SAE.

98. Throughout September 2023 – November 2023, the District sent multiple letters to Save The Bay and the Rhode Island Saltwater Anglers Association, both parties who have claimed to support the Town, Contrata, and RIAG’s position that the SAE is public. See **Exhibit J**, Letter to Save The Bay and Response, and **Exhibit K**, Letters to the Rhode Island Saltwater Anglers Association.

99. None of these other interested parties has presented any such evidence in support of these claims.

K. The CRMC Declines to Undertake Preliminary Staff Investigation.

100. Despite this, the District has continued to try and impose fair process on this proceeding and has continued to press the CRMC to follow its own rules and the guidelines set forth in CRMC’s enabling legislation and the Administrative Procedures Act.

101. As part of this effort, the District reminded CRMC of its obligation to conduct a preliminary staff investigation to determine whether there was enough support that SAE was a public right of way to warrant moving forward with a full hearing. See **Exhibit L**, District’s Letter to CRMC, and ¶ 87, *supra*. The CRMC declined to conduct such an investigation.

102. When counsel for the District asked CRMC to follow its own process and undertake this preliminary investigation, CRMC stated that the outcome would be that the threshold for a full hearing on SAE was satisfied, without providing any basis for such outcome.

103. This matter has already been before CRMC for three years, and it is likely to continue for an extended period of time (perhaps several more years, not including any appeals that may be taken) without court intervention.

104. Historically, matters before CRMC can take years, if not decades to resolve.⁶

⁶ There are several examples of CRMC proceedings that took years, or even decades, to resolve, including the 18-year battle regarding the *Champlin Realty Associates v. CRMC* matter, which has been pending before the superior court

105. Further still, RIAG and AG Neronha went so far as to intervene in the *Champlin Realty Associates v. CRMC* matter because of what RIAG perceived to be a lack of an “established, transparent, regulatory process” at CRMC and demand that “any facts the agency relied on to support its decisions must be clear.”⁷ Conveniently, and ironically, RIAG and AG Neronha do not seem to share those concerns about CRMC in the instant matter where it aligns with their political agenda.

106. Continuing with the CRMC proceeding would be wasteful, time consuming, burdensome, duplicative, and futile because CRMC does not have authority to determine already established ownership of the SAE as a matter of law. Therefore, this Court has exclusive jurisdiction over the SAE ownership dispute.

COUNT I
Quiet Title
(Against All Defendants)

107. The District repeats and realleges all previous paragraphs as if set forth herein.

108. The District owns and has valid title to a fee simple interest in the SAE by deed.

109. The Town Defendants, RIAG Defendants and Contrata falsely claim that SAE is a public right of way and have acted in furtherance of this claim as follows, including, but not limited to:

and Supreme Court in various iterations throughout the last 18 years. In addition, CRMC and private landowners were engaged in a separate legal battle over a right-of-way that began in 1976 and was not resolved until it came before the Supreme Court in 1991 (*see Raiciffe v. CRMC*, 584 A.2d 1107 (R.I. 1991)).

In another recent example, a Barrington couple had to file a complaint in this Court because CRMC failed to abide by statutory requirements in providing them with a timely response to their Petition for Declaratory Ruling. That matter has been pending before CRMC for more than two years and CRMC’s failure to abide by its statutory obligations is still being litigated in this Court. *See Sheffield v. CRMC*, C.A. No. PC-2023-01199.

⁷ See RIAG Press Release dated February 18, 2021: <https://riag.ri.gov/press-releases/attorney-general-petitions-intervene-rhode-island-supreme-court-case-involving>

- a. The Town Defendants improperly referred the SAE to the CRMC for consideration despite the Town's actual knowledge that SAE is private and nevertheless continues to pursue their alleged right to SAE;
- b. Contrata intervened in the CRMC in support of SAE's potential designation as a public right-of-way and has publicly advocated for such designation, as has her counsel;
- c. the RIAG Defendants have similarly intervened in the CRMC in support of the SAE's potential designation as a public right-of-way and publicly advocated for such designation; and
- d. the RIAG Defendants also have effectively denied the District's requests for information and/or records requested through the APRA regarding SAE and that would support the RIAG's position that SAE is a public right-of-way.

110. The CRMC opened a matter for the SAE's purported designation as a public right of way, File No. 2020-11-084, despite clear evidence that SAE is private and despite its own guidance that CRMC does not have the power or authority to create or determine ownership of property.

111. The CRMC also failed to follow its own procedural guidance to allow for a fair process in the SAE matter by declining to conduct a preliminary staff investigation, permitting RIAG Defendants and Contrata to intervene without a proper legal basis, and more.

112. The Town Defendants, RIAG Defendants and Contrata's actions and/or omissions in furtherance of SAE's potential designation as a public right-of-way are a cloud on the District's fee simple title to the SAE.

113. The District wishes to affirm its title, property rights and interests in SAE, and to remove any clouds on such title.

114. As a result of Town Defendants, RIAG Defendants, CRMC Defendants, and Contrata's actions, Plaintiff has incurred and will continue to incur significant legal fees and/or other damages.

COUNT II
Declaratory Judgment
(Against the Town Defendants, RIAG Defendants, Contrata, and the Trust)

115. The District repeats and realleges all previous paragraphs as if set forth herein.

116. The District owns and has valid title to a fee simple interest in the SAE by deed.

117. The Town Defendants, RIAG Defendants and Contrata falsely claim that SAE is a public right of way and have improperly acted in furtherance of this claim.

118. Pursuant to *R.I. Gen. Laws* § 34-13.1-2, based on the foregoing chain of title far exceeding forty years, the District is entitled to a declaration that it has marketable title which extinguishes all other claims of interest.

119. The Court should further declare that the District is the sole owner in fee simple of the SAE.

120. The Court also should declare that Town Defendants, RIAG Defendants and Contrata are barred from calling into question the validity of the District's ownership of SAE and from asserting a public right-of-way over the SAE through the mechanism of the CRMC process.

121. In light of the foregoing, the District should not be forced to litigate the SAE issue as a regulatory matter before the CRMC, which process (including any appeals) could be lengthy, wasteful, expensive, duplicative, and otherwise unduly burdensome on the District.

122. As a result of the actions and/or omissions of Town Defendants, RIAG Defendants and Contrata, Plaintiff has incurred and will continue to incur significant legal fees and/or other damages.

COUNT III
Declaratory Judgment
(Against CRMC)

123. The District repeats and realleges all previous paragraphs as if set forth herein.

124. The District owns and has valid title to a fee simple interest in the SAE by deed.

125. Pursuant to *R.I. Gen. Laws* § 34-13.1-2, based on the foregoing chain of title far exceeding forty years, the District is entitled to a declaration that it has marketable title which extinguishes all other claims of interest.

126. The CRMC does not have the power or authority to create or determine ownership of property.

127. The CRMC has failed to comply with its own procedures in the SAE matter by, among other things, failing to address the District's requests to undertake a preliminary fact-finding process, permitting Contrata to intervene without a valid basis on the record in the SAE matter through her lawyer, Michael Rubin, Esq., similarly allowing RIAG to intervene without a valid basis on the record in the SAE matter, as well as failing to make the preliminary determination.

128. The Court should declare that CRMC has violated its own guidance and procedures, and that it has failed to provide a fair and proper process in the SAE matter.

129. The court should also declare that CRMC has no authority to continue with the SAE matter, File No. 2020-11-084.

130. In light of the foregoing, the District should not be forced to litigate the SAE issue as a regulatory matter before the CRMC, which process (including any appeals) could be lengthy, wasteful, expensive, duplicative, and otherwise unduly burdensome on the District.

131. As a result of CRMC's actions and/or omissions, Plaintiff has incurred and will continue to incur significant legal fees and/or other damages.

COUNT IV
Slander of Title
(Against the Town Defendants, the RIAG Defendants, and Contrata)

132. The District repeats and realleges all previous paragraphs as if set forth herein.

133. The District owns and has valid title to a fee simple interest in the SAE by deed.

134. The Town Defendants, RIAG Defendants and Contrata, without basis and in the face of contradicting evidence, inaccurately and falsely claim that SAE is a public right of way and have improperly acted in furtherance of this claim.

135. The Town Defendants, RIAG Defendants and Contrata have no reasonable or probable cause to believe that SAE is a public right-of-way, in light of the extensive evidence of the District's exclusive ownership of the SAE.

136. By their actions, the Town Defendants, RIAG Defendants and Contrata have slandered the District's title to SAE and thereby damaged the District.

137. The District has suffered and will continue to suffer monetary damages based on such slander of title of the SAE.

138. Additionally, as a result of Town Defendants, RIAG Defendants and Contrata's actions, Plaintiff has incurred and will continue to incur significant legal fees and/or other damages.

COUNT V
Abuse of Process
(Against the Town Defendants)

139. The District repeats and realleges all previous paragraphs as if set forth herein.

140. The District owns and has valid title to a fee simple interest in SAE by deed.

141. The Town Defendants, without basis and in the face of contradicting evidence, including the Soloveitzik Report produced by its own title expert, falsely claim that the SAE is a public right of way.

142. Aware of the District's ownership of SAE pursuant to the Soloveitzik Report and other evidence, Town Defendants nevertheless instituted a proceeding against the District before CRMC by referring the SAE for potential designation as public right-of-way.

143. The Town Defendants instituted the CRMC proceeding for political gain, in response to public pressure.

144. The Town Defendants' actions in instituting the CRMC proceeding were frivolous and malicious.

145. By their actions, Town Defendants have damaged the District.

146. Additionally, as a result of Town Defendants' actions, Plaintiff has incurred and will continue to incur significant legal fees and/or other damages.

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Defendants, and grant the following relief:

1. An order quieting title to SAE from claims of the Town Defendants, RIAG Defendants, CRMC Defendants, and Contrata to SAE clouding the District's title to it;
2. An order declaring that the District owns the SAE in fee simple;

3. An order declaring that the District holds marketable title extinguishing all other claims of interest;
4. An order declaring that Town Defendants, RIAG Defendants and Contrata are barred from calling into question the validity of the District's ownership of the SAE and from asserting a public right-of-way over the SAE;
5. An order declaring that CRMC has violated its own guidance and procedures and failed to provide a fair and proper process in the SAE matter;
6. An order declaring that CRMC has no authority to continue with the SAE matter, File No. 2020-11-084;
7. Judgment in favor of Plaintiff and against Town Defendants, RIAG Defendants and Contrata for slander of title awarding damages;
8. Judgment in favor of Plaintiff and against the Town Defendants for abuse of process awarding damages, including punitive damages;
9. Attorneys' fees pursuant to R.I. Gen. Laws § 9-1-45;
10. All litigation costs and interest; and
11. All other further relief as this Court deems appropriate.

Jury Demand

Plaintiff requests a trial by jury on all claims so triable.

WEEKAPAUG FIRE DISTRICT

By its Attorneys,

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