

Roger Williams University

DOCS@RWU

Sea Grant Law Fellow Publications

Marine Affairs Institute

8-2017

Legal Context for Construction of Bristol Veterans' Home Universally-Accessible Fishing Pier

Jourdan Thompson

Rhode Island Sea Grant Law Fellow

Follow this and additional works at: https://docs.rwu.edu/law_ma_seagrant



Part of the [Administrative Law Commons](#), [Environmental Law Commons](#), [Land Use Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Thompson, Jourdan, "Legal Context for Construction of Bristol Veterans' Home Universally-Accessible Fishing Pier" (2017). *Sea Grant Law Fellow Publications*. 69.

https://docs.rwu.edu/law_ma_seagrant/69

This Article is brought to you for free and open access by the Marine Affairs Institute at DOCS@RWU. It has been accepted for inclusion in Sea Grant Law Fellow Publications by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.



Legal Context for Construction of Bristol Veterans' Home Universally-Accessible Fishing Pier

Prepared by Jourdan Thompson, Rhode Island Sea Grant Law Fellow
August 2017

This study reviews the legal requirements governing design and construction of a proposed universally-accessible fishing pier located at the Rhode Island Veterans' Home in Bristol, Rhode Island. The pier would provide veterans and other members of the public with accessible recreational fishing opportunities. However, federal, state, and local approvals will be required before the project can move forward. This study provides an overview of required permitting and approvals by the Coastal Resources Management Council (CRMC), Town of Bristol, and U.S. Army Corps of Engineers (USACE). In addition, it considers the role of the Rhode Island Department of Environmental Management (RIDEM) and federal Americans with Disabilities Act (ADA).

INTRODUCTION

Constructing a universally-accessible fishing pier in proximity to the Rhode Island Veterans Home (Veterans' Home) will enhance recreational fishing opportunities both for disabled veterans and the public at large. The Veterans' Home is a 110-acre complex on Mount Hope Bay in Bristol, Rhode Island.¹ The Veterans' Home provides care and housing, with approximately 200 beds, for Rhode Island war veterans.² The Veterans' Home regularly provides recreational fishing trips for its residents, which use the universally-accessible fishing pier located in Colt State Park. However, this pier does not have sufficient capacity to allow all participating residents to use accessible fishing stations, and it is not contiguous to the home.³ Construction of a fishing pier behind the Veterans' Home would provide veterans with additional universally-accessible recreation opportunities. In addition, such a pier would be the first public fishing pier in Rhode Island to be located on Mount Hope Bay.

¹ Rhode Island Veterans Home Community Living Center, <http://www.vets.ri.gov/includes/benefits/counseling/rivh.php> (last visited August 9, 2017).

² *Id.*

³ Proposal for Hassenfeld Community Engagement Project, *Feasibility Assessment/Design for a Universally-Accessible Fishing Pier at Bristol Veterans' Home 3*, Community Partnerships Center at Roger Williams University (2016).



A team of Roger Williams University students, faculty, and staff from multiple departments and academic disciplines (“RWU Team”), has begun assessing a proposal to construct a universally-accessible fishing pier in proximity to the Veterans’ Home.⁴ The proposed pier site is co-located with the recently redeveloped Mount Hope Boat Launch⁵ on land behind the Veterans’ Home. The site is currently leased by RIDEM from the Veterans’ Affairs Division of the Rhode Island State Department of Human Services.

To successfully build a universally-accessible fishing pier behind the Veterans’ Home, project proponents must comply with a range of legal requirements. This report reviews key legal issues related to the proposed pier, including: (1) RIDEM support through the Federal Aid in Sport Fish Restoration Act; (2) CRMC Assent; (3) compliance with town ordinances, including planning and zoning requirements; (4) USACE permitting; and (5) compliance with ADA requirements.

THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RIDEM is the chief steward of the state’s natural resources, protecting the state’s resources through the development and enforcement of environmental laws, including those related to recreational fishing.⁶ RIDEM is critical to the proposed Veterans’ Home universally-accessible fishing pier because it is the lease holder of the proposed site.⁷ In addition, RIDEM implements the Federal Aid in Sport Fish Restoration Act (SFR Act), which provides federal funds for state projects related to sport fishing and could be used to support the proposed fishing pier.⁸

⁴ See generally *id.*

⁵ Gail Mastrati, *DEM, State and Local Officials Celebrate Grand Opening of New Mount Hope Boat Launch in Bristol*, State of Rhode Island Department of Environmental Management, Aug. 16, 2010, <http://www.dem.ri.gov/news/2010/pr/0816101.htm>. RIDEM recently replaced the Mount Hope Bay boat launch with a new 60-foot wide concrete ramp and two courtesy floating docks. The total project cost was \$998,211 and was fully funded by the Federal Aid in Sportfish Restoration Fund. *Id.*; see also Gail Mastrati, *DEM to Host August 16 Grand Opening of Mount Hope Boat Launch Improvement Project in Bristol*, State of Rhode Island Department of Environmental Management, Aug. 12, 2010, <http://www.dem.ri.gov/news/2010/pr/0812101.htm>. See also 16 U.S.C.S. § 777c(b) (Federal Aid in Sportfish Restoration Fund).

⁶ The Rhode Island Department of Environmental Management, <http://www.dem.ri.gov/director/> (last visited July 15, 2016).

⁷ Gail Mastrati, *DEM, State and Local Officials Celebrate Grand Opening of New Mount Hope Boat Launch in Bristol*, State of Rhode Island Department of Environmental Management, Aug. 16, 2010, <http://www.dem.ri.gov/news/2010/pr/0816101.htm>.

⁸ See generally *Federal Aid in Sport Fish Restoration Act*, U.S. FISH AND WILDLIFE SERVICE <https://www.fws.gov/laws/lawsdigest/FASPORT.HTML> (last visited Sep. 6, 2017) (summarizing act).

The proposed Veterans' Home universally-accessible fishing pier is eligible for federal support under the SFR Act. The Act governs expenditures from the Sport Fish Restoration and Boating Trust Fund (Fund), which is supported by taxes and import fees on fishing equipment and motorboat fuel.⁹ The Secretary of Interior implements the SFR Act, including through apportionments from the Fund to the states.¹⁰ The SFR Act requires that 58 percent of the annual fund appropriations must be apportioned to the states.¹¹ States must use the apportioned funds to support up to 75 percent of projects under an approved fish and wildlife resource management plan or for specific approved projects, including "construction of structures or facilities."¹² RIDEM has used the Fund to support numerous similar projects, including the Mount Hope Boat Launch located at the proposed fishing pier site and the universally-accessible fishing pier at Colt State Park.¹³

RIDEM is unlikely to seek federal support for the proposed fishing pier unless the proposal meets a variety of conditions. As indicated in a meeting with RIDEM staff, these conditions include: (1) availability of funding; (2) presence of fish at the location; (3) no navigation conflicts with the existing boat launch; (4) demand and need for the facility given the existing universally-accessible fishing pier at Colt State Park; (5) agreement for municipal responsibility for long-term maintenance of the facility; and (6) town support for the project.

COASTAL RESOURCES MANAGEMENT COUNCIL

Development of the proposed universally-accessible fishing pier would require a Council Assent by the CRMC because it would be work within the Council's area of jurisdiction and would involve activities subject to permitting. In addition, the project would require a special exception as it is not a use currently allowed in the location under consideration. The project therefore would need to meet all standards required for issuance of a special exception.

⁹ 26 U.S.C. § 9504.

¹⁰ 16 U.S.C. § 777.

¹¹ 16 U.S.C. § 777c.

¹² 16 U.S.C. § 777e.

¹³ Gail Mastrati, *DEM, State and Local Officials Celebrate Grand Opening of New Mount Hope Boat Launch in Bristol*, State of Rhode Island Department of Environmental Management, Aug. 16, 2010, <http://www.dem.ri.gov/news/2010/pr/0816101.htm>; Gail Mastrati, *DEM Begins Reconstruction of Fishing Pier at Colt State Park*, State of Rhode Island Department of Environmental Management, Aug. 7, 2013, <http://www.dem.ri.gov/news/2013/pr/0807131.htm>.

Rhode Island created the CRMC in 1971¹⁴ and provided that its primary responsibility “shall be the continuing planning for and management of the resources of the state’s coastal region.”¹⁵ In carrying out this responsibility, the CRMC has the power to (1) “issue, modify, or deny permits for any work in, above, or beneath the areas under its jurisdiction..., [and] (2) issue, modify, or deny permits for dredging, filling, or any other physical alteration of coastal wetlands and all directly related contiguous areas which are necessary to preserve the integrity of the wetlands. . . .”¹⁶ The CRMC is also charged with coordinating federal, state, local, and private activities in carrying out its resource management programs.¹⁷

Rhode Island statutes and the CRMC’s Coastal Resources Management Program (CRMP) regulations identify the activities that require a Council Assent.¹⁸ Any person wishing to “conduct activity or activities specified in §46-23-18 [of the Rhode Island statutes] shall file an application for a permit with [CRMC] upon forms furnished by [CRMC].”¹⁹ Section 46-23-18 applies to dredging and transportation or disposal of dredged materials.²⁰ Additionally,

A Council Assent is required for any alteration or activity that are proposed for (1) tidal waters within the territorial seas (including coastal ponds, some of which are not tidal but which are coastal waters associated with a barrier beach system, and are physiographical features); (2) shoreline features; and (3) areas contiguous to shoreline features. Contiguous areas include all lands and waters directly adjoining shoreline features that extend inland two hundred (200) feet from the inland border of that shoreline feature.²¹

If the CRMC finds that a proposed project under its jurisdiction has “a reasonable probability of conflict with adopted resources management plans or programs, and/or has the potential to damage the coastal environment, the Council shall require that an Assent

¹⁴ Coastal Resources Management Council, <http://www.crmc.ri.gov/aboutcrm.html> (last visited July 17, 2017).

¹⁵ 46 R.I. Gen. Laws § 23-6(1)(i).

¹⁶ 46 R.I. Gen. Laws § 23-6(4)(i-iii).

¹⁷ 46 R.I. Gen. Laws § 23-6(1)(ii)(F).

¹⁸ The CRMP uses “Assent” in lieu of “permit.” This study therefore adopts the same term.

¹⁹ 46 R.I. Gen. Laws § 23-18.1(a).

²⁰ 46 R.I. Gen. Laws § 23-18(b) (“No person, either as principal, agent, or servant, or any firm, corporation or any other entity, shall, within the tidal waters of the state, conduct or cause to conduct dredging, transportation and/or disposal of dredge materials without a permit issued by the coastal resources management council, a water quality certification issued by the department of environmental management pursuant to chapter 12 of this title and any permit required by the army corps of engineers. In addition, no person, either as principal, agent, or servant, nor any firm, corporation or any other entity, shall dispose of dredge materials other than in tidal waters without any permit, approval or certification that may otherwise be required.”).

²¹ 16-2-1 R.I. CODE R. § 100.1.

be obtained.”²² A Council Assent is also required for certain inland activities²³ and for activities that “may alter the character of any freshwater wetland in the vicinity of the coast.”²⁴

The proposed Veterans’ Home universally-accessible fishing pier will require a Council Assent. The project is located in tidal waters and the shoreline, including dredging and placement of dredged material to support the pier and its connection to the shore. In addition, substantial work would be required that is within the coastal area—including the potential incorporation of a path from the Veterans’ Home to the pier, which could affect freshwater wetlands in the vicinity of the coast.²⁵ Impacts from these activities could affect coastal resources.

The CRMP sets out requirements for projects to receive a Council Assent based on the water classification and the type of proposed activity. The CRMP classifies state waters based on types of uses that will be allowed therein.²⁶ In an effort to preserve and maintain Rhode Island’s coast, the CRMP designates “large stretches of waters or coastline for conservation and low-intensity use. . . .”²⁷ The site proposed for the Veterans’ Home universally-accessible fishing pier is designated as Type 2: Low-Intensity Use.²⁸

Type 2 waters should be expected to retain their high scenic values and established patterns of low-intensity use.²⁹ Typically, Type 2 waters are located in residential areas, “where docks are acceptable, but more intense forms of development, including more marinas and new dredging projects, would change the area’s character and alter the established balance among uses.”³⁰ Therefore, such alterations and uses are prohibited in Type 2 waters.³¹ Applications for a Council Assent for alterations or activities in Type 2 waters “shall describe the measures taken to mitigate the impacts on the scenic quality of

²² 16-2-1 R.I. CODE R. § 100.2. *See also* 16-2-1 R.I. CODE R. § 100.1 (projects that require a CRMC Assent are “...any alteration or activity that are proposed for (1) tidal waters within the territorial seas (including coastal ponds, some of which are not tidal but which are coastal waters associated with a barrier beach system, and are physiographical features); (2) shoreline features; and (3) areas contiguous to shoreline features.” Contiguous areas include all lands and waters directly adjoining shoreline features that extend inland two hundred (200) feet from the inland border of that shoreline feature.).

²³ 16-2-1 R.I. CODE R. §§ 100.2, 320.

²⁴ *Id.* § 100.4.

²⁵ 16-2-1 R.I. CODE R. § 320.

²⁶ 16-2-1 R.I. CODE R. § 200.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 16-2-1 R.I. CODE R. § 200.

³⁰ *Id.*

³¹ *Id.*

the area.”³² The CRMP provides Guidelines for the Protection and Enhancement of the Scenic Value of the Coastal Region that describe how “to preserve, protect, and where possible, restore the scenic value of the coastal region.”³³

The potential Veterans’ Home universally-accessible fishing pier is considered high intensity use and thus is not permitted in Type 2 waters.³⁴ The proposed fishing pier appears likely to be categorized under either section 300.3 (“Residential, Commercial, Industrial, and Recreational Structures”)³⁵ or section 300.4 (“Recreational Boating Facilities”).³⁶ Neither category of use is permitted in Type 2 waters without obtaining a special exception from the Council.³⁷

The CRMC may grant a special exception to allow a project that could not otherwise be permitted. To obtain a special exception, the applicant must demonstrate that the project meets all three elements of the following standard.

(1) The project must “serve[] a compelling public purpose which provides benefits to the public as a whole as opposed to individual or private interests,” and must be one of three listed types of activities, including “an activity that provides access to the shore for broad segments of the public.”³⁸

(2) “All reasonable steps shall be taken to minimize environmental impacts and/or use conflict.”³⁹

(3) “There is no reasonable alternative means of, or location for, serving the compelling public purpose cited.”⁴⁰

The CRMC may grant special after proper notice is given, a public hearing has been held, and a record of the hearing has been considered by CRMC.⁴¹ A fishing pier may be able to satisfy the requirements for a special exception, as it would be designed to provide access to the shore for the public, could be designed to minimize environmental impacts and use conflicts, and may be no alternative means or location for serving the public purpose. For

³² 16-2-1 R.I. CODE R. § 330.

³³ 16-2-1 R.I. CODE R. § 330.

³⁴ *Id.*

³⁵ 16-2-1 R.I. CODE R. § 300.3.

³⁶ 16-2-1 R.I. CODE R. § 300.4.

³⁷ 16-2-1 R.I. CODE R. § 300.3; 16-2-1 R.I. CODE R. § 300.4.

³⁸ 16-2-1 R.I. CODE R. § 130.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 16-2-1 R.I. CODE R. § 130.

example, the Council has recently assented to a special exception for similar project proposed in Rocky Point State Park in Warwick.⁴²

Finally, applicants proposing new construction must demonstrate that “all applicable requirements of the [Rhode Island State Building Code] including those pertaining to construction within flood hazard zones will be met.”⁴³ At the time of application, applicants must submit the building form with signature by the local building official.⁴⁴ The CRMC application for a fishing pier in Bristol, Rhode Island would thus require the signature of the town building official.

CRMC provides applicants the opportunity to discuss a proposed project with staff by filling a pre-application form located on the CRMC website.⁴⁵ CRMC additionally offers a Preliminary Determination report that will provide discussion of the permits of the proposed project.⁴⁶ All permitting applications are reviewed by the CRMC’s permitting staff, which conducts pre-application conferences and prepares recommendations for Council members.⁴⁷ Town of Bristol

The proposed fishing pier cannot be constructed unless it complies with the town of Bristol’s code and ordinances. The most relevant local government authorities in this case include zoning ordinances, the Soil Erosion, Runoff, and Sediment Control ordinance (“SESC ordinance”) and the approval of the Harbor Department.

Zoning Ordinances

The proposed project land is considered to be a part of a Historic Preservation and Conservation Zone (“HPC zone”).⁴⁸ The purpose of the designation of a HPC zone is to “preserve and protect the existing uses of historic properties of importance to the town; and to allow them to be used in a planned manner and permit certain minimal additions to those existing uses; while protecting and preserving the cultural, historic and environmental resources of the property and the town.”⁴⁹

⁴² Tim Faulkner, *Public Piers Planned for Rocky Point and Shooters*, EcoRI (May 11, 2017), <https://www.ecori.org/smart-growth/2017/5/11/public-piers-advance-for-rocky-point-and-shooters>.

⁴³ 16-2-1 R.I. CODE R. § 300.3.

⁴⁴ *Id.*

⁴⁵ Coastal Resources Management Council, <http://www.crmc.ri.gov/applicationforms.html> (last visited July 15, 2016).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Town of Bristol, <http://www.bristolri.us/DocumentCenter/Home/View/1093> (last visited July 14, 2017).

⁴⁹ BRISTOL, R.I., TOWN CODE § 28-356 (2017), https://library.municode.com/ri/bristol/codes/code_of_ordinances?nodeId=PTIVCO.

A project can occur in the HPC zone only if it is a permitted use. Section 28-357 of the town Zoning Ordinances identifies the “Permitted Uses and Dimensions” in HPC zones and refers to the “Permitted Use Table” in the ordinances.⁵⁰ The Permitted Use Table does not have a classification specifically for fishing piers, and the classification of the proposed fishing pier therefore is not certain.⁵¹ However, a fishing pier may potentially be considered be a community center: “A community center means a place, structure, area, or other facility used for and providing nonprofit recreational, social, fraternal, and/or educational programs generally open to the public and designed to accommodate and serve significant segments of the town.”⁵² Community centers are permitted in the HPC zone.⁵³ Other potentially applicable use classifications, such as “boatyard/marina,” are not permitted uses in a HPC zone⁵⁴ and would require a variance or special use permit.⁵⁵

Section 28-358 of the zoning ordinances addresses parking in the HPC zone and requires compliance with parking minimums set forth in the ordinances for different use types.⁵⁶ The ordinances require that an “outdoor recreation facility” provide one parking space “per 5 persons that the outdoor facilities are designed to accommodate at maximum capacity.”⁵⁷

The potential fishing pier site is considered an historic institution as defined in the zoning ordinances. “Land or structures owned or leased by . . . the State of Rhode Island or one of its instrumentalities shall [] require the preparation and approval of an institutional master plan (as hereinafter defined) and shall be deemed to be an ‘historic institution.’”⁵⁸ The proposed fishing pier may or may not be compatible with the existing institutional master plan for the Veterans’ Home. If amendment is needed, section 28-359 sets out the requirements for an institutional master plan.⁵⁹

Soil Erosion, Runoff, and Sediment Control Ordinance

Bristol has promulgated an SESC ordinance within the Bristol Town Code to prevent soil erosion, excessive surface water runoff and sedimentation from occurring.⁶⁰ The SESC

⁵⁰ *Id.* § 28-82.

⁵¹ *Id.*

⁵² *Id.* § 28-1.

⁵³ *Id.* § 28-82.

⁵⁴ BRISTOL, R.I., TOWN CODE § 28-82 (2017).

⁵⁵ *Id.* § 28-409.

⁵⁶ *Id.* § 28-358 (citing Article VIII of the zoning ordinances).

⁵⁷ *Id.* § 28-252.

⁵⁸ *Id.* § 28-357.

⁵⁹ *Id.* § 28-359.

⁶⁰ BRISTOL, R.I., TOWN CODE § 29-1 (2017).

ordinance requires proper provision for storm water disposal and soil erosion during and after construction.⁶¹

The SESC ordinance is likely to apply to the potential Veterans' Home fishing pier project because the project is likely to disturb existing vegetation. The ordinance applies to "any situation involving disturbance to the terrain (and its contours) and topsoil or vegetative ground cover."⁶² Any person wishing to "disturb any existing vegetation, grades, or contours of land in a manner which may increase the potential for soil erosion . . ." must apply for a "determination of applicability from the building official."⁶³ If the building official determines that the ordinance is applicable, the applicant must submit a SESC plan.⁶⁴ The SESC plan must "describe the location, nature, character, and time schedule of the proposed land-disturbing activity in sufficient detail to allow the building official to determine the potential for soil erosion, surface water runoff, and sedimentation resulting from the proposed project."⁶⁵

The SESC plan must be approved by the building official or the town planning board.⁶⁶ Upon receiving the SESC plan and application form, the building official within five business days "shall send a copy of such to review authorities, which shall include the superintendent of public works, the planning board administrative officer and the zoning enforcement officer for the purpose of review and comment."⁶⁷ Additionally, the planning official may "submit copies of the plan to other local departments or agencies, including the planning board, the superintendent of wastewater, the conservation commission, and/or an engineering consultant. . . ."⁶⁸ If the review authorities do not respond within 15 business days, the plan is considered approved.⁶⁹ If an engineering consultant is required to assist with review, then the timeframe of review "may be extended for an additional 15 days."⁷⁰

Harbor Department

The Bristol Harbor Department coordinates and administers all activities taking place in harbors and waterways on the coastal shoreline and within the boundaries of the town.⁷¹

⁶¹ *Id.*

⁶² *Id.* § 29-2.

⁶³ *Id.* § 29-3.

⁶⁴ *Id.*

⁶⁵ BRISTOL, R.I., TOWN CODE § 29-26.

⁶⁶ *Id.*

⁶⁷ *Id.* § 29-28.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ BRISTOL, R.I., TOWN CODE § 29-28.

⁷¹ *Id.* § 8-3 (2017).

The department patrols the harbors and waterways and enforces federal, state, and local laws.⁷² The area under consideration for this project is under the jurisdiction of the harbor department.⁷³ However, the town harbor regulations do not appear to contain provisions that would affect construction of the proposed fishing pier. Nonetheless, consultation with the harbormaster could avoid navigation conflicts associated with a project.

U.S. ARMY CORPS OF ENGINEERS

The proposed fishing pier may require a permit from USACE pursuant to the Rivers and Harbors Act and the Clean Water Act. The USACE “regulates construction and other work under Section 10 of the Rivers and Harbors Act of 1899, and has authority over discharge of dredged material into the ‘waters of the United States’ . . . under Section 404 of the Clean Water Act.”⁷⁴ The Rivers and Harbors Act of 1899 states that “it shall not be lawful to build or commence the building of any . . . pier . . . in any . . . navigable river, or other water of the United States, . . . except on plans recommended by the Chief of Engineers and authorized by the Secretary of War. . . .”⁷⁵ Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged or fill material into water of the United States, including wetlands.⁷⁶ An applicant, before applying for a permit, must show that steps have been taken to avoid and minimize impact to wetlands, streams and other aquatic resources.⁷⁷ USACE implements both of these permitting programs through a single, unified process.

The USACE New England District has issued regional general permits for certain activities that do not have more than a minimal adverse effect on the aquatic environment.⁷⁸ Activities that are not eligible for authorization under a general permit must obtain an individual permit from the USACE.⁷⁹ All individual permits will be reviewed by the USACE.⁸⁰ The USACE evaluates individual permit applications under the public interest review and environmental criteria set forth in the Clean Water Act⁸¹ and guidance

⁷² *Id.*

⁷³ *Id.* § 8-5 (2017).

⁷⁴ U.S. Army Corps of Engineers, <http://www.nae.usace.army.mil/Missions/Regulatory.aspx> (last visited July 18, 2017).

⁷⁵ 33 U.S.C. § 403.

⁷⁶ 33 U.S.C. § 1344; *see also* United States Environmental Protection Agency, <https://www.epa.gov/cwa-404/section-404-permit-program> (last visited July 17, 2017).

⁷⁷ United States Environmental Protection Agency, <https://www.epa.gov/cwa-404/section-404-permit-program> (last visited July 17, 2017).

⁷⁸ U.S. Army Corps of Engineers, <http://www.nae.usace.army.mil/Missions/Regulatory.aspx> (last visited July 18, 2017).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ 33 U.S.C. § 1344(b)(1).

established by the Environmental Protection Agency.⁸² The USACE permitting may also require consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service when required due to impacts on threatened and endangered fish and wildlife or essential fish habitat.⁸³

The USACE has issued 21 general permits for Rhode Island.⁸⁴ The potential Veterans' Home fishing pier project may fall within General Permit (GP) 17, which covers certain "new or expanded developments & recreational facilities."⁸⁵ To qualify for this GP, project proponents would need to ensure that the project qualifies for the GP and would be required to comply with all general and specific conditions and to provide pre-construction notification to the USACE prior to the project.⁸⁶

AMERICANS WITH DISABILITIES ACT

Over 55 million Americans have a disability. Many have these Americans have become disabled while serving in the military.⁸⁷ Disabled Americans, including veterans, are often limited from participating in basic activities.⁸⁸ The ADA "is a federal civil rights law that prohibits discrimination against people with disabilities."⁸⁹ "The ADA requires that all newly constructed and altered state and local government facilities, place of public accommodation, and commercial facilities be readily accessible to, and usable by, individuals with disabilities."⁹⁰

The Architectural and Transportation Barriers Compliance Board (Access Board) issues guidelines to ensure facilities are accessible for people with disabilities.⁹¹ The Access Board is "a federal agency that promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards for the

⁸² United States Environmental Protection Agency, <https://www.epa.gov/cwa-404/section-404-permit-program> (last visited July 17,2017).

⁸³ *Id.*

⁸⁴ USACE, DEPARTMENT OF THE ARMY GENERAL PERMITS FOR THE STATE OF RHODE ISLAND AND LANDS LOCATED WITHIN THE BOUNDARIES OF THE NARRAGANSETT LAND CLAIM SETTLEMENT AREA (2017), http://www.nae.usace.army.mil/Portals/74/docs/regulatory/StateGeneralPermits/RI/Rhode_Island_General_Permits_2017.pdf.

⁸⁵ *Id.* at 22.

⁸⁶ *See id.*

⁸⁷ U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, ADA UPDATE: A PRIMER FOR STATE AND LOCAL GOVERNMENTS (2015), https://www.ada.gov/reg2010/titleII_2010/title_ii_primer.html#responsibilities.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ UNITED STATES ACCESS BOARD, ACCESSIBLE FISHING PIERS & PLATFORMS: A SUMMARY OF ACCESSIBILITY GUIDELINES (2003), <https://www.access-board.gov/attachments/article/590/fishing.pdf>; 28 C.F.R. § 35.151.

⁹¹ *Id.*

built environment, transportation, communication, medical diagnostic equipment, and information technology.”⁹² These guidelines are adopted by the Department of Justice as the standards for compliance with the ADA’s mandates.⁹³

The Access Board has issued accessibility guidelines for state and local facilities, including recreation facilities. These guidelines include specific guidelines for fishing piers.⁹⁴ To legally build a fishing pier, all design requirements must be in compliance with these ADA accessibility guidelines, which ensure that newly designed and constructed or altered facilities are universally-accessible.

CONCLUSION

Construction of a universally-accessible fishing pier in proximity to the Veterans’ Home may substantially increase recreational fishing opportunities for both disabled veterans and the public at large. Successful development of a fishing pier project will require compliance with a range of federal, state, and local laws, regulations, and ordinances. This study identifies and reviews key legal issues related to construction of the fishing pier, including: (1) RIDEM support through the Federal Aid in Sport Fish Restoration Act; (2) CRMC Assent; (3) compliance with town ordinances, including planning and zoning requirements; (4) USACE permitting; and (5) compliance with ADA requirements. Early attention to these issues during project conceptualization and design and consultation with regulators can avoid future challenges in obtaining required permits and approvals.

⁹² United States Access Board, <https://www.access-board.gov/> (last visited July 19, 2017).

⁹³ 36 C.F.R. § 1191.1.

⁹⁴ 36 C.F.R. § Part 1191, App. D at 1005; *see also* U.S. Dep’t of Justice, *2010 ADA Standards for Accessible Design*, <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#c10> (providing standards).