

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
SUPREME COURT

CHAMPLIN'S REALTY ASSOCIATES	:	
	:	
v.	:	
	:	
MICHAEL TIKOIAN, ET AL.,	:	No. 09-113-M.P.
	:	No. 09-114-M.P.
TOWN OF NEW SHOREHAM	:	No. 09-115-M.P.
	:	(consolidated)
	:	
v.	:	
	:	
COASTAL RESOURCES MANAGEMENT COUNCIL	:	

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*On Writ of Certiorari from Order and Judgment Entered  
by the Providence County Superior Court  
C.A. Nos. PC06-1659 and PC06-3900 (consolidated)*

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**BRIEF OF AMICUS CURIAE, THE NATURE CONSERVANCY**

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## INTEREST OF THE AMICUS CURIAE

### A. The Nature Conservancy

The Nature Conservancy (“The Conservancy”) is a leading conservation organization, working worldwide to protect ecologically important lands and waters for nature and those who enjoy nature. Since its founding in 1951, The Conservancy has protected more than 119 million acres of land and 5,000 miles of rivers worldwide. It now operates more than 100 marine conservations projects globally. With more than one million members in all fifty states and thirty countries worldwide, The Conservancy’s mission is to preserve the plants, animals and natural communities that represent the diversity of life on earth, by protecting the lands and waters they need to survive. In Rhode Island, The Conservancy has worked in support of its mission by protecting or restoring over 31,000 acres of land, since 1965.

### B. The Nature Conservancy’s Interests on Block Island

In the course of protecting 31,000 acres of land in Rhode Island, The Conservancy has invested millions of dollars in Block Island to protect the island’s diverse array of habitats. Block Island has been a priority for The Conservancy for many years. In 1989, The Conservancy named Block Island one of its Last Great Places. The Block Island habitats support more than forty state and federal rare or endangered species, (including the globally endangered American burying beetle), and provide resting grounds for migrating birds along the Atlantic flyway in the spring and fall. The ocean waters near the island also provide important habitat for marine species, such as the globally threatened leatherback turtle and right whale. These habitats are being lost on Block Island as a result of development, habitat disturbance, climate change and water pollution. Thus, The Conservancy’s work is essential to sustaining the natural resources of the island.

Among its important natural resources, the Great Salt Pond is Block Island's crown jewel. A favorite for recreational boaters, the Great Salt Pond is a fragile coastal habitat that in recent years has suffered considerable environmental degradation such as harmful algae blooms created by water pollution. These algae blooms are noxious to many important marine species such as the American lobster and quahogs.

The Conservancy, in partnership with the U.S. Fish and Wildlife Service, the North American Wetlands Conservation Association, the State of Rhode Island, the Block Island Conservancy and the Block Island Land Trust, has purchased over 150 acres of land that include nearly two miles of frontage on the Great Salt Pond and an additional 250 acres of land in the watershed area. A map depicting the parcels of land conserved by The Conservancy in partnership with other federal, state and local conservation organizations is attached to The Conservancy's Supplemental Appendix (the "Supplemental Appendix") at Tab 1. In light of The Conservancy's established commitment to preserving and perpetuating the Great Salt Pond as a communal resource for the island, the State and its visitors, The Conservancy's amicus brief is meant to present to the Court, and the parties to the dispute, a reminder of the real-world consequences of this particular, protracted legal battle.

C. The Nature Conservancy's Interest in the Instant Dispute

The Court has been asked to review the Superior Court's decision (Vogel, J.) in two companion cases, C.A. Nos. PC06-1659 and PC06-3900 (consolidated), arising from the application of Champlin's Realty Associates ("Champlin's") to the Coastal Resources Management Council ("CRMC") to expand its existing marina in the Great Salt Pond of Block Island. Specifically *on writ of certiorari* the Court has been asked to review the lower court's decision concerning the following two issues (1) whether the Harbor Management Plan of the

Town of New Shoreham (the “Town”) bars Champlin’s proposed expansion; and (2) whether certain *ex parte* contacts with CRMC members required their recusal and reversal of the CRMC’s final decision denying the Champlin’s application.

In connection with the CRMC’s consideration of the Champlin’s application, The Conservancy wrote to Michael Tikoian (“Tikoian”), Chair of the CRMC, to express its opposition to any further expansion of Champlin’s marina.<sup>1</sup> However, at this time, and by this brief, The Conservancy takes no position in favor of any party, any legal challenge or any question presented to the Court on writ of certiorari. Instead, The Conservancy seeks only to remind the Court of the public trust doctrine that is ingrained in our jurisprudence. Given the impact any decision will have on the natural resources held in trust for the use and enjoyment of the citizens of this State and the public at large, The Conservancy believes that consideration of this doctrine should be an integral part of any legal remedy fashioned by this Court.

### **THE PUBLIC TRUST DOCTRINE**

Boiled down to its very essence, The Conservancy understands that this dispute concerns the scope of the CRMC’s decision-making authority. In particular, this Court is being asked to review the lower court’s conclusion that the July 3, 2006 CRMC Full Council Decision (the “CRMC Decision”) was in error and that Champlin’s application should be granted. CRMC exercises exclusive jurisdiction in purely tidal areas extending from the territorial sea limit (three miles offshore), to two hundred feet inland from any coastal feature, *see* R.I.G.L. § 46-23-6; *see also* Town of Warren v. Thornton-Whitehouse, 740 A.2d 1255, 1259 (R.I. 1999). As such, this Court’s review of the lower court’s decision necessarily impacts, a portion of the State tidal

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<sup>1</sup> A true and correct copy of The Conservancy’s February 1, 2006 letter to Tikoian is attached to the Supplemental Appendix at Tab 2.

lands.<sup>2</sup> In light of its nature, and the inevitable impact any decision of the Court will have on the Great Salt Pond and attendant tidal lands, this dispute must be viewed in the context of “an ancient, and still vital doctrine of the law of this state, namely the public trust doctrine.” See Champlin’s Realty Assoc. L.P. et al. v. Tillson, 823 A.2d 1162, 1165 (R.I. 2003).

An axiomatic principle of the common law, the public trust doctrine recognizes the unique resource that tidal waters constitute, and that they are held by the sovereign in trust for the use and benefit of all citizens. R.I. Const. Art. I, § 17<sup>3</sup>; see also The Greater Providence Chamber of Commerce v. State of R.I., 657 A.2d 1038, 1042 (R.I. 1995); Palazzolo v. State of R.I., No. WM 88-0297, 2005 R.I. Super. LEXIS 108, \*27 (R.I. Super. Ct., July 5, 2005) (Lands under tide waters “are of great value to the public for the purposes of commerce, navigation and fishery ... the title and control of them are vested in the sovereign for the benefit of the whole people.”) (quoting Shively v. Bowlby, 152 U.S. 1, 57-58 (1894)). A true and correct copy of the *Palazzolo* decision is attached to the Supplemental Appendix at Tab 3.

At the inception of the CRMC proceedings in the underlying dispute, the public’s inviolate rights in the Great Salt Pond under the public trust doctrine were center stage. For example, by its Decision, the CRMC observed that the Great Salt Pond is utilized intensely by

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<sup>2</sup> For example, as CRMC notes in its brief, the lower court’s decision allows Champlin’s to proceed with its expansion into three acres of the Great Salt Pond. Although it is undisputed that such expansion will have a direct impact on the water quality of the Great Salt Pond or the navigational channels therein, at this time, there is no management plan in place that governs the means by which such expansion will occur.

<sup>3</sup> Article I, Section 17 of the Rhode Island Constitution states in relevant part:

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

the recreational boating public and also provides fish and shellfish spawning and juvenile rearing grounds. *See* CRMC Decision, Fact No. 20 (Jt. App. of Appellants Tab 6, Bates No. 000136)<sup>4</sup>; *see also* December 5, 2008 CRMC Engineering Review (Jt. App. of Appellants Tab 19, Bates No. 000263) (“Public trust “resources” are directly impacted by this proposal . . . Specific impacted public trust resources include fisheries/shellfish [], navigation [], and passive recreations uses such as swimming, paddling, sailing, etc.”). Ultimately, the CRMC concluded that Champlin’s, as a littoral owner, had failed to meet its burden under the public trust doctrine. In the CRMC’s opinion, Champlin’s did not demonstrate that its proposed marina expansion would not result in significant impacts on the abundance and diversity of plant and animal life, would not unreasonably interfere with, impair or significantly impact existing public access to or use of the tidal waters and the shore, and would not result in significant conflicts with water-dependent uses and activities such as recreational boating, fishing, swimming, navigation and commerce. *See* CRMC Decision, Findings of Fact Nos. 24 and 82. (Jt. App. of Appellants Tab 6, Bates Nos. 000137, 000143). Although once the backbone of the CRMC Decision, public trust considerations have since fallen victim to an impassioned legal, and oftentimes political mêlée in this case.

This Court is well aware of the public trust interests in the Great Salt Pond, having been asked to affirm those interests once before in the *Tillson* matter. Tillson, 823 A.2d at 1165 (although the Great Salt Pond was granted and ceded to the Town of New Shoreham pursuant to 1887 R.I. Acts & Resolves 617, Rhode Island retained its responsibility and right to protect the

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<sup>4</sup> The CRMC Decision made other specific references to the public trust resources: Fact No. 70: “the use of an additional 3.08 acres of the Great Salt Pond for dockage of a limited number of vessels is not an effective use of public trust resources”; Fact No. 73 and 75: “Champlin’s provision of launch services, the use of its beach and the use of its dingy dock to enhance public access to the shore in exchange for the expansion of its use of public trust resources is an inadequate public access plan.” (Jt. App. of Appellants, Tab 6, Bates Nos. 000142, 000143).

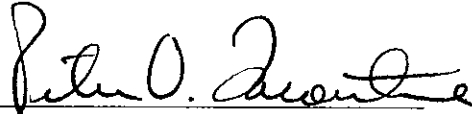
public trust under the public trust doctrine). Given the public's sacrosanct rights in the Great Salt Pond, the legal questions presented for the Court's consideration in this dispute should be viewed in light of the overarching question whether the proposed expansion of the Champlin's marina will create any interference with the public trust rights of fishery, commerce and navigation. *See* The Greater Providence Chamber of Commerce, 657 A.2d at 1044; *see also* Hall v. Nascimento, 594 A.2d 874 (R.I. 1991); Night Sisters Corp., Inc. v. Hog Island, Inc., No. 04-0380, 2007 R.I. Super. LEXIS 31 (R.I. Super. Ct. Feb. 6, 2007), a true and correct copy of which is attached to the Supplemental Appendix at Tab 4. Indeed, "Rhode Island decisional law and this Court have never cast aside the public trust doctrine." The Greater Providence Chamber of Commerce, 657 A.2d at 1042. The Conservancy has submitted this amicus brief in the hopes of recasting this dispute so that the true luminary, the Great Salt Pond, and the inextricable public rights in its tidal resources, remain in their rightful position of prominence.

### CONCLUSION

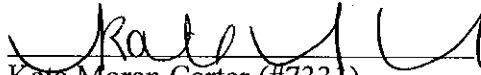
As the Court reviews the briefs and arguments presented by the various parties in this dispute, The Conservancy asks it to consider the impact that any decision will have on the Great Salt Pond and its important public trust resources and to fashion a remedy that is protective of these resources and best enables the sovereign to maintain these unique resources for the use and benefit of the citizens of today and tomorrow.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the within Brief of Amicus Curiae of The Nature Conservancy was mailed via first class mail, postage prepaid, on the 31<sup>st</sup> day of August, 2009, to each of the following:

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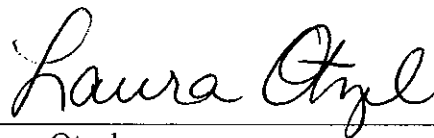
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