



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

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October 16, 2006

Re: Response to Public Comments on the Urban Coastal Greenways Program - Version 16

Dear Interested Party:

On behalf of the Coastal Resources Management Council I would like to thank the many individuals and organizations that submitted written comments on the Council's Version 16 of the Urban Coastal Greenways (UCG) policy. There were a number of thoughtful suggestions offered to the CRMC and in many cases we modified the policy accordingly. Subsequent to the public hearing notice that the Council would consider changes to the RICRMP, the Council adopted Version 16 of the UCG as proposed by staff on October 10. The policy is now available on the CRMC website: [www.crmc.ri.gov](http://www.crmc.ri.gov).

What follows is the CRMC's response to the written comments that were submitted to the Council following the August 9 public notice. The submitted comments are included below, along with the CRMC response in bold text. If you have any questions, please feel free to contact James Boyd of my staff for further discussion or clarification.

Thank you again for your participation in this process and for taking time to develop and submit your comments on the UCG policy.

Sincerely,

  
Grover J. Fugate, Executive Director  
Coastal Resources Management Council

jrb/lam

## **CRMC Response to Public Comments received on or before September 11, 2006**

### **Submitted by Donald Pryor**

Thanks for the opportunity to comment again (attached) on these regulations. Time ran out on preparing a good cover letter but effort and progress on this is appreciated.

Don Pryor

### Issues Regarding Proposed Buffer Regulations

1. public access (particularly development zone and IHRZ option B-1) – Simple reading suggests that the statement “must meet all standards within UCG sections 150 and 200-250” requires public access as described in section 150.5. According to the decision trees, that statement applies to all development zone options except option 1 and also applies to IHRZ option B-1. However the decision trees include other statements that appear to undermine that simple interpretation. For instance, for IHRZ option B-1, the decision tree also includes the statement “public access strongly encouraged”. Is public access required or merely “strongly encouraged”? Similarly, for the development zone, the decision tree for each option other than 1 includes a “public access” suboption calling for public access to be provided in accordance with UCG section 150.5. The text on page 42 reiterates and reinforces an interpretation that “meet all standards within UCG section 150” does not mean provide public access as described in section 150.5. For the development zone, except for option 4, this interpretation is consistent despite its apparent inconsistency. For option 4, the decision tree states that public access requirement can be waived but it is unclear what public access requirements are applicable (if any, unless the public access suboption is chosen and then, presumably, no waiver would be appropriate). Similarly, for the IHRZ, if “meet standards within UCG section 150” does not require public access, it is unclear what public access requirement is waived or may be waived. Clearer statements of public access requirements are needed.

**CRMC Response: Pursuant to U.S. Supreme Court case law (e.g., *Dolan v. Tigard* and *Nolan v. California Coastal Commission*), the CRMC cannot require public access on private property. The CRMC, however, can encourage public access by providing applicants several permitting options as provided in the UCG policy.**

2. mitigation in lieu of public access (200) – The proposed regulations define mitigation as “the purchase and establishment of a habitat conservation or habitat restoration project”. However, in 200.2, it appears that only restoration projects are considered. Trading an acre of public waterfront access for two acres of a restoration project (particularly one that required relatively little effort per acre) may not serve the public interest. A greater degree of comparability should be required. Provisions should allow for purchase of conservation lands or easements as mitigation. In such cases, delay for completion plus a growing season would not be necessary. This section refers to public access requirements which are somewhat unclear as mentioned above. If this section applies to other than development zone options, that should be made clear. Mitigation requirements should not be in addition to compensation requirements.

**CRMC Response: Actually, the purchase of conservation lands is described under UCG Section 200.1 as a suitable method of mitigation in addition to the establishment of habitat restoration projects. Moreover, there is no “trading of public waterfront access” – the CRMC seeks to establish public access where ever feasible. Keep in mind that this program is trying to establish public access on land that is currently and will continue to be privately owned. Public access through a UCG will be protected by an easement granted to the CRMC as a permit condition.**

3. compensation percentage (230.1) – The draft regulations indicate that this issue is unresolved despite considerable public comment. Responses (p. 8) states: “The higher percentage rate, however, will have to be decided by the full Council during consideration of the proposed UCG policy.” This should be researched and its impacts on the effects of the overall set of regulations estimated. It should not be left to an uninformed vote.

**CRMC Response: The 20% rate in the initial UCG policy was recommended by the Economic Development Corporation, but subsequent recommendations (Trust for Public Lands and Save The Bay) suggest a 50-75% rate. The Council’s Policy and Procedures Subcommittee has been apprised of the issue.**

4. compensation fund (230.1) – The draft regulations do not identify mechanisms and procedures for operation of such a fund. Responses (p. 8) states: “The mechanics for collection and disbursement of the trust funds still need to be worked out and it is expected that will happen during the next legislative session.” Regulations should only be based on appropriate statutory foundations.

**CRMC Response: We expect that appropriate legislative mechanisms will be in place to facilitate collection of such compensation fees.**

5. 15 day review – The normal 30-day public notice period should be maintained unless specific measures are undertaken to improve the efficiency of public notice mechanisms.

**CRMC Response: The 15-day review period proposed is consistent with the notice period provided for major land development projects pursuant to RIGL § 45-23-42. Moreover, most of the existing and ongoing projects within the Capital Center District (within CRMC jurisdiction) were processed administratively as category A projects.**

6. building shading (130.4) – What does “minimize” mean? (“The design of new structures and buildings should minimize shading of the shoreline and UCG, such that the shoreline and UCG are not overwhelmed by tall and dense structures built to the setback line that rise vertically without relief from that line...RICRMC may negotiate and enter into agreements with Metro Bay region municipalities to allow for increased density on a development in exchange for appropriate building massing on the site.”) Without further definition, this provision is very difficult to administer objectively.

**CRMC Response: It is a policy that provides guidance, it is not a regulatory standard. Building design is left for local review and approval. The policy puts applicants on notice to address the issue.**

7. design manual (many references) – The design manual has not been made available despite being invoked repeatedly in these proposed regulations. At least a draft of the design manual should be released before the regulations are adopted.

**CRMC Response: A draft of the UCG Design Manual will be released as soon as completed. It is expected to be available soon.**

8. additional certification (150.4(e), 150.6(b)) – This version of the proposed regulations has added new certification requirements. UCG Management Plan are required to be prepared by a RI-licensed landscape architect (150.4(e)). A new additional requirement (150.6(b)) is that UCG project stormwater plans (perhaps different from buffer management plans or perhaps not) must be prepared by persons having the applicable URI Cooperative Extension certification in the design of LID stormwater techniques. Plan requirements should be consolidated and licensing/certification should be coordinated with the board of landscape architects.

**CRMC Response: The “certification” is not a professional license; rather it will provide a mechanism to ensure that projects incorporate LID techniques to the maximum extent practicable, as required under UCG Section 150.1(b).**

9. brownfields (220) (and floodplains) – Section 220 recognizes that normal stormwater and LID techniques might not be compatible with some brownfield sites (see also responses p. 5). While flexibility is needed to accommodate specific situations, general guidance should be developed and provided. If this is not incorporated in the buffer design manual, CRMC should work with DEM to state basic considerations and expectations. Floodplain areas should be covered as well as brownfields. A target date should be set (within a year or so).

**CRMC Response: CRMC has been working, and will continue to work, with DEM to address brownfield sites.**

10. historic preservation conflict/green roofs – The issue of an apparent conflict between vegetation requirements and historic restoration standards should be resolved with the state Historic Preservation and Heritage Commission staff before these regulations are adopted (see also responses pp. 4-5 and p. 9).

**CRMC Response: The CRMC has met with HPHC to address vegetation and historic issues. A new provision has been proposed for the Council’s consideration reflecting the agreement between CRMC and HPHC.**

11. encroachments – Wording in 150.1(d)1., 150.3(b), and 150.3(g) appears to be inconsistent or to imply an unwarranted penalty. 150.1(d)1. states: “At no time shall there be any private structures or encroachment into or above the UCG.” 150.3(g) states: “Encroachments into the UCG shall only be allowed by the RICRMC for:

1. public access
2. physical access to the coastal feature for public recreation
3. emergency vehicle access
4. public utility corridors
5. structural shoreline protection
6. UCG or utility maintenance corridors.”

However, 150.3(b) states: “Applicants may utilize an averaging method where compensatory UCG width is provided in some areas to allow encroachments within the standard UCG width in other areas.” This would seem appropriate if encroachments were for private uses (presumably prohibited) but compensation for the public uses listed in 150.3(g) seems unwarranted.

**CRMC Response: UCG Section 150.3 will be modified to remove the word “encroachment,” as it is used inappropriately there. The proposed changes will clarify the policy.**

12. parking and automobile storage prohibition dropped from IHRZ (180.3) – Dropping this prohibition contradicts the general requirement in 150.8(a). Clearly, no parking prohibition is appropriate where there are public roadways along the river (within 50 ft) but there is no clear reason for dropping the prohibition if no roadway is present. Similarly there is no clear reason for dropping the automobile storage requirement regardless of roadway presence.

**CRMC Response: The parking prohibition has not been dropped from the IHRZ, all prohibitions listed in 150.8 apply to all UCGs regardless of their zone location. The prohibitions listed in 180.3 apply to the area within 50-feet of the shoreline, which includes the UCG. This provision was requested by the Woonasquatucket River Watershed Council. In almost all cases within the IHRZ, the UCG will be less than 50 feet. The prohibitions in 180.3 are more protective as they apply**

**beyond just the UCG. Parking is still prohibited within the UCG itself, but within the IHRZ, parking may be located closer than 50 feet.**

13. Woonasquatucket/street buffers – Present maps (in the document and online) appear not recognize any restoration or conservation potential within the IHRZ (although one parcel was noted in the responses). In addition to that parcel, the river bank of the Woonasquatucket River along Kinsley and Promenade Streets should be recognized. That area is as worthy of habitat effort as many of the others that have been designated in the area. Invasive species removal and management would have significant habitat and scenic value.

**CRMC Response: Actually, the habitat coverage along the Woonasquatucket River west of Route 95 shows the area along the river as “Conservation -2.” This is most easily observed on the SAMP mapper software that is publicly accessible at: <http://204.17.79.245/website/samp1/Run.htm>.**

14. Moshassuck – Present maps do not follow river, but veer off to west before Orms St. This should be corrected and the area subject to these regulations properly identified.

**CRMC Response: The present boundary is consistent with CRMC’s jurisdiction, which extends along the tidally-influenced portion of the river up to the dam located at Charles Street.**

15. shoreline protection (150.7) – Elevation changes in the floodplain should be strongly discouraged because of engineering challenges and effects of raising water levels elsewhere. Soft edges should be explicitly preferred unless hardening is shown to be necessary.

**CRMC Response: Elevation changes are permissible under current FEMA regulations. Additionally, DEM regulations that require capping of contaminated soils at brownfield sites, many of which are located along the shoreline, result in increased grade elevations at these sites.**

16. structures over river (150.8) – The prohibition on structures over the water should be explicitly stated not to be applicable to water-dependent uses.

**CRMC Response: Good point. A policy modification will be proposed to address the issue.**

Submitted by The Providence Foundation

September 11, 2006

Grover Fugate, Executive Director  
Coastal Resources Management Council  
4808 Tower Hill Road – Suite 3  
Wakefield, RI 02879

Re: Urban Coastal Greenways Policy, Draft 16

Dear Mr. Fugate:

The Providence Foundation has appreciated the opportunity to discuss issues on the various Urban Coastal Greenways policy drafts. We believe that Draft 16 is much improved from earlier drafts, and appreciate your willingness to reach out to us and hear our concerns.

We do have a few suggested amendments to Draft 16, and these are attached.

We look forward to working with CRMC in the future.

Sincerely,



Daniel A. Baudouin  
Executive Director

cc: John Boehnert

1. Section 150.1 – Standards Applicable to Entire Development (a). The 15% minimum vegetative requirement should exclude existing structures (similar to the trigger requirements in 140.1(b)(1)).

**CRMC Response: The 15% vegetation requirement applies to the entire site whenever the threshold requirements in UCG Section 140 are met.**

2. Section 151(d). Construction Setback. It should be clear that the construction of a building is permitted within the construction setback provided that the applicant can demonstrate that it will not result in privatization of a precluded public use of the Urban Coastal Greenway.

**CRMC Response: UCG Section 150.1(d) already provides that relief.**

3. Section 150.5 – Public Access Standards for all Urban Coastal Greenways (c)(1). Where the development parcel is separated from coastal feature by public access paths and public roads, the primary (alongshore) public access and construction setback

requirements SHOULD be waived as opposed to the wording in the draft, which says that it MAY be waived.

**CRMC Response: By keeping the provision as MAY, rather than SHOULD, the Council has the discretion to require public access and setback standards in unusual cases that don't fit the normal circumstances when a project is separated from a coastal feature by a public roadway or pathway. Nevertheless, in most all cases under the circumstance noted, the public access and setback requirements will be waived.**

4. Section 230 - Urban Coastal Greenways Trust. Due to the cost of Brownfield site remediation, the 20% of value may be excessive.

**CRMC Response: The 20% value was originally suggested by the RI Economic Development Corporation as a reasonable rate to impose upon applicants. There are, however, other parties recommending significantly higher values rates of 50-75%.**

## CRMC Response to Public Comments submitted after September 11, 2006

Submitted by Save the Bay

September 14, 2006

Grover J. Fugate  
Executive Director  
RI Coastal Resources Management Council  
Oliver Stedman Government Center  
Suite 3  
4808 Tower Hill Road  
Wakefield, Rhode Island 02879

### ***Re: Urban Coastal Greenways Regulations Draft 16***

Dear Director Fugate:

Save The Bay is once again pleased to have the opportunity to offer comments on the *Urban Coastal Greenways Policy for the Metro Bay Region*. We want to acknowledge the importance of the outlined goals and the tremendous amount of work that has gone into its creation. A continuous Urban Coastal Greenway does not occur by happenstance; access to the shoreline is not a given and in many cases, views are not appreciated until they are gone. Individual cities and towns may not naturally orient their planning to the northern parts of Narragansett Bay, even though the benefits to the whole of considering this aspect are undeniable. This policy and the development of the *MetroBay Special Area Management Plan* are very important tools for protecting Narragansett Bay and for creating a common planning framework for Upper Bay communities at a time when waterfront development and use of the waters of the Bay are intensifying.

What follows are our comments on the various aspects of the policy. There are several aspects of this draft that we are particularly pleased to see:

- Coastal and Freshwater wetlands protection
- Establishment of an Urban Coastal Greenways Trust
- Provisions to encourage continuous access
- Language reinforcing requirement for public benefits when variances considered

The areas in which we recommend revisions include:

- Public Notice provisions
- Compensation calculations

Our comments follow in the sequence in which they are found in the policy.

*Executive summary and throughout* While Save The Bay supports and endorses the effort to respond to the unique urban conditions and requirements, the fifteen day public comment period running throughout the *UCG* continues to be a concern. We are not contesting the process



for handling projects in the Capital Center District, but the *UCG* will cover many other projects which will stand alone without the planning overlay review and overarching standards for consistency applicable to the Capital Center District. We again recommend strongly that the *CRMC* preserve the thirty day public comment period consistent with other policies and regulations. Fifteen days is an extremely short period of time to obtain, review files and prepare comments even for an organization like Save The Bay. For the general public, it is unacceptably short. As noted in §120, “providing opportunities for public involvement in the decisions regarding coastal management” is an explicit charge for *CRMC*.

**CRMC Response: Point noted. Nevertheless, the 15-day review period currently proposed is consistent with the notice period provided for major land development projects pursuant to RIGL § 45-23-42. Moreover, most of the existing and ongoing projects within the Capital Center District (within CRMC jurisdiction) were processed administratively as category A projects. These projects are for the most part far larger than other expected projects within the Metro Bay Region.**

Save The Bay appreciates the reaffirmation and clarification of coastal and freshwater wetlands protections in §130.3. We also note the improvements to §130.4 and §130.5 because the functional aspects are highlighted in the changes, creating a more appropriate role vis-à-vis municipalities.

**CRMC Response: Thank you for your comment.**

The evaluation of adjoining parcels and projects as one in the original language of §140.2(a) was a much stronger standard. Save The Bay prefers the *Draft 15* wording. Similarly, §140.2(b) and (c) should reflect the premise of reviewing projects in their entirety and not piecemeal. We suggest changing the first sentence in §140.0(b) to “The entire extent of a development project must be submitted to the *RICRMC*, as part of any application, including a Preliminary Determination, regardless of parcel ownership.” We also feel that it is important to retain the requirement that “the applicant shall provide the *CRMC* with plans for meeting the *UCG* requirements on the entirety of the lot at the time of application.” Subsequent revisions may be allowed, but it is important that applicants demonstrate that the requirements can be met at the time of the initial development proposal.

**CRMC Response: The currently proposed language in Version 16 provides CRMC the authority to review the extent of a project and ensure that a UCG can be accommodated on a project site, including phased development.**

Save The Bay notes the reference to sea level rise in §150.7, but asks how it will be determined and taken into account in practice and how the potential impacts of building higher on neighboring properties, overall storm threat and cumulative impacts will be taken into consideration.

**CRMC Response: The storm hazard section of the Metro Bay Region SAMP is still in preparation and it would be premature to speculate on revised design standards due to sea-level rise until the final analysis is completed. Projects may be constructed now, but still must meet FEMA standards.**

Due to potential confusion or ambiguity, Save The Bay recommends the following language replace the current §150.8(b): “Any structure proposed over tidal waters continues to be governed by the requirements set forth in *RICRMP* §130.”

**CRMC Response: Additional text to this section is proposed to clarify the policy.**

*Section 180.4 Option C(c)* delegates authority to an individual member of the Council without full Council approval and is very problematic. Save The Bay recommends the elimination of the sentence “These variances may be granted administratively with concurrence of the CRMC Chairman.”

**CRMC Response: The proposed language is the exact language adopted by the CRMC in accordance with its Memorandum of Understanding with the Capital Center Commission and applies only to projects within the Capital Center District.**

*Section 210.3* references the applicant or its predecessor. Save The Bay encourages encompassing previous owners and making predecessor plural with an (s).

**CRMC Response: The proposed language is consistent with existing variance language in the *RICRMP*.**

Although legislation detailing the Urban Coastal Greenways Trust has not yet been passed, Save The Bay recommends using specific language referring to the coordination among and between municipalities, public or private land trusts and/or nonprofit corporations whose goals include the protection and preservation of open space, habitat or environmentally sensitive areas.

**CRMC Response: Agreed, thank you for the comment.**

As noted in the Redline version of *Draft 16*, in the section regarding compensation calculations, Save The Bay is still calling for a multiplier in the range of 50% to 75% of the value of the property, in order to prevent under valuating the resource. We also note that the staff identified this as an issue for the full Council to take up at the hearing on September 26th. Save The Bay also questions whether basing the calculation on a single representative waterfront value per municipality is adequate. A further breakdown and sampling of parcels by zone would be likely to capture some potentially important differences in values.

**CRMC Response: Thank you for the suggestion.**

(The compensation rate found in §170.3 *Option 2(e)* may need to be reevaluated depending on the final chosen multiplier. For example, should the multiplier end up greater than 50%, twice the rate could create problems.)

**CRMC Response: Good point. This will be re-examined once the Council determines the rate.**

Save The Bay appreciates the addition of more specific language in §230.1(b); but still recommends eliminating factor #2: “location within the same municipality and proximity to the development site”. This undermines the unique power of the SAMP to maximize the habitat restoration values across the Metro SAMP region as a whole.

**CRMC Response: Agreed. See proposed modification above.**

STB supports the addition of new and additional public benefits in §230.2, but urges the Council to be very strict in applying this standard.

**CRMC Response: Thank you for the comment.**

Thank you for this opportunity to submit comments and for your consideration.

Sincerely,

Jane Kenney Austin  
Director of Policy and Advocacy

Submitted by Woonasquatucket River Watershed Council

September 26, 2006

Mr. Michael Tikoian, Chair  
Coastal Resources Management Council  
4808 Tower Hill Road  
Wakefield, RI 02879

Dear Mr. Tikoian:

The Woonasquatucket River Watershed Council appreciates the significant time and effort applied by the Council staff to the development of the Urban Coastal Greenway guidelines. The latest draft addresses the multiple issues raised during staff dialogues with many groups and individuals, and for the most part effectively balances the factors influencing economic development and environmental issues within the area. We are pleased that many of our concerns were addressed in this draft, and support the Council's proactive proposal to address the many competing interests in our urban environment.

We remain concerned about the impact on the Woonasquatucket River. While it is a critical natural resource contributing to the revitalization efforts in Providence, it is a low flow river, lacking the mixing capacity of the Seekonk and Providence Rivers, and thus its ecosystem is much more vulnerable to pollution.

Section 180.4 Option B-2 allows, without a variance, a reduction in the UCG from 50 to 20 feet. Since public amenities, including a potential walkway and other amenities, are permitted to be located within the UCG, we continue to stress that this will not provide for a sufficient buffer to protect the river. We request that this provision be a variance, and that the minimum buffer be 25 feet. This will allow for more protection of the river with a minimal impact on any development. The 25 foot buffer is consistent with the City of Providence proposed zoning ordinance as submitted by the administration to the City Council. (The proposed 25 foot width was the recommendation of a subcommittee representing a variety of business and environmental interests, and was subsequently proposed by the planning department and accepted by the zoning commission for the draft ordinance).

We appreciate the time and effort the Council staff has devoted to this complex process and their responsiveness to stakeholder feedback. We look forward to continuing our work with Council staff in restoring the Woonasquatucket as a healthy ecosystem and natural asset within our urban environment. Thank you for your consideration.

Sincerely,

Jennifer Pereira, Executive Director