



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 3
Wakefield, R.I. 02879-1900

(401) 783-3370
FAX: (401) 783-3767

August 18, 2006

Re: Response to Public Comments on the Urban Coastal Greenways Program - Version 15

Dear Interested Party:

On behalf of the Coastal Resources Management Council I would like to thank the many individuals and organizations that have submitted written comments or presented oral comments at the Council's May 22 public workshop concerning Version 15 of the Urban Coastal Greenways (UCG) policy. Since then, we have met with a number of groups, including the Providence Foundation, the Woonasquatucket River Watershed Council, the municipalities, and others, to discuss their comments and proposed revisions to the UCG policy. There were numerous thoughtful suggestions offered to the CRMC, and we have been responsive in modifying the policy, as evidenced by the extensive changes between Versions 15 and 16, now available on the CRMC web site.

What follows is the CRMC's response to the written comments that were submitted to the Council during the public notice period and at the May 22 public workshop, and which are presently posted on the CRMC website. Many of you commented on similar topics or specific issues; consequently, we grouped our response according to the topic or specific section of the UCG policy. While we endeavored to respond to all the major issues, we answered, to the extent practicable, all other questions pertaining to the policy and its implementation. In some cases, we may not have responded directly to a question, but may have made a change in the policy as suggested. If you feel we did not respond adequately to your specific issue or question, 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

General Comments

Several comments suggested that “the regulations should not duplicate activities of other government agencies” with examples given of the Capital Center Special Development District and the East Providence Waterfront Development District. The CRMC intends to develop the UCG policy to be as consistent as possible with these existing development guidelines, and has modified the draft policy (See UCG Version 16) accordingly. Additionally, the CRMC signed a Memorandum of Understanding (MOU) with the Capital Center Commission in 2005 regarding new development within the Capital Center District. UCG Section 180.3, Option C reflects that MOU and applies only to projects within that district.

With regard to public notice, several comments suggested that the proposed 15-day public notice period for UCG projects was too narrow and that any notice should be consistent with the existing 30-day notice period. The intent of the UCG policy is to streamline and create an administrative process of review provided proposed projects meet the UCG performance standards. Precedent has already been established for such a process, as major downtown projects within the Capital Center District have been (and still are) reviewed administratively as Category A applications for several years, which require no notice period.

We received comments questioning whether the proposed UCG program really streamlines the regulatory process, whether the compensation requirements under UCG Section 230 were advisable, and stating that the proposed UCG program was an “unprecedented step toward state regulation of land use.” We have designed the proposed UCG policy as an option in the Metro Bay Region to well-established RICRMP setback and buffer requirements. As stated in the policy, the RICRMP buffers were not originally intended for urban areas, therefore, a better approach was needed. Hence, the UCG policy provides the flexibility needed in urban areas, where mixed-use development is encouraged, while protecting coastal resources and generating public access along the shoreline. The UCG policy provides an administrative review process, consistent with the intent of the Marine Resources Development Plan, and in fact does streamline the regulatory process by promoting better coordination among state and municipal review bodies. It is expected that as the UCG policy comes into effect and is used over a period of time, it will be amended to become even more efficient.

The statement concerning state authority such that the UCG policy is “an unprecedented step toward state regulation of land use” is not true. In fact the CRMC has been regulating density of development in North Kingstown, South Kingstown, Charlestown, Narragansett, and Westerly, as part of the Salt Pond Region and Narrow River Special Area Management Plans (SAMP), for almost two decades. In working with these communities, the CRMC convinced several to amend their zoning regulations to be consistent with the SAMP density requirements. These SAMP regulations require that projects meet certain density requirements according to the defined areas in which they are located, among other requirements. We have not proposed any density requirements in the Metro Bay Region (that will be left to the municipalities); however, the UCG regulations will have certain performance-based requirements depending on the zone in which a project is located.

Comments were submitted stating that the UCG regulations “ignore important considerations of recreation and public space.” We disagree. The intent of the regulations is to provide more public

space where none presently exist along the urban and former industrial waterfronts. Other than the proposed UCG policies, there is no other mechanism at the state or municipal level that can accomplish this task of improving public access along our urban coast line. Additionally, UCG Section 140 has been modified to exempt public development on publicly owned land (e.g. recreational facilities).

Some have suggested that it is unwise to redevelop the former industrial shoreline with new mixed use structures in hurricane flood-prone areas. We note, however, that any new construction is controlled by the municipalities and will have to meet current FEMA standards such that new structures will be elevated above expected flood levels. The requirement for greenways or buffers along the shoreline also aides in keeping structures back from storm hazard areas. In addition, we are currently engaging hurricane and flood hazard experts to provide the best available hazard information for the Metro Bay SAMP. The CRMC will also be sponsoring a Coastal Construction Course this September (recently announced on the Metro Bay listserv) to address critical elements of design to enhance storm resiliency. In the final analysis, all of the updated coastal hazard information may result in new municipal and state building standards for the Metro Bay Region to minimize storm-related damage.

UCG Maps

A number of comments were submitted concerning the designation of certain parcels on the Metro Bay Region zone and conservation/restoration maps. In particular, it was noted that several inconsistencies or potential conflicts existed between the proposed designations and existing municipal development plans. Upon further review of these initial designations and consideration of recommendations from the municipalities, organizations, and individuals, the zone and conservation/restoration maps will be amended accordingly. We intend to modify parcel designations on the next iteration of maps as noted below.

Cranston

- Stillhouse Cove - parcels 2-1976; 2-2174 - change from Residential to APC
- Pawtuxet Cove - parcels 1-82; 1-263 - change from Residential to APC

East Providence

- Kettle Point - parcels 108-2-1 and 109-1-1 - change from APC to Development
- Chevron property - parcel 18-2-1 - change from APC to Development

Providence

- Fields Point - parcel 56-297 - change from APC to Development
- India Point - parcel 18-72 - change from Development to APC based on SCORP designation as open space and proximity to India Point Park
- Woonasquatucket River - parcel 27-87 - change from no designation to “Restoration 3” on Figure 4 (Habitat Map) for consistency with City’s Sasaki Plan designation
- Designate Capital Center District on maps

With respect to comments regarding parcels designated as, for example, “restoration” on one map and “development” on another, these designations are not mutually exclusive. It is possible to have a parcel that has the “potential” for restoration efforts (if desire, funding, and other

resources are available), yet still be designated for development. Furthermore, the web-based SAMP mapper (<http://maps.provplan.org/sampmapper/>) is a user-friendly tool to assist anyone interested in reviewing information pertaining to the Metro Bay Region. As with any web-based map, reviewers are informed that these products are intended for informational purposes only and applicants should review official maps printed within the regulations or available at the CRMC offices. With respect to amending these maps or for that matter any portion of the UCG policy, the CRMC will follow its already established amendment procedures (i.e., public notice and comment period followed by a council hearing).

UCG Figures

In review of the figures included within the UCG policy document, we concluded that Figures 8, 9, 10, and 11 do not serve a useful purpose within the policy document. Most of these, however, will be included within the Urban Coastal Greenway Design Manual (presently under development) that applicants can use to help meet the UCG regulatory requirements. In addition, the removal of these figures reduces the overall file size of the document, making downloads more rapid.

Section 130 – Metro Bay Region Policies

Several comments suggested that CRMC would be reviewing building design under building massing and framing elements of UCG Sections 130.4 and 130.5. The CRMC does not intend to review architectural elements; rather it will rely on local governments to determine conformance with local zoning requirements. The intent of these two sections was to minimize the shading effect on the coastal feature by tall buildings constructed directly adjacent to the shoreline, and to maximize views to and across the waterfront. UCG Section 130.4 will be renamed as "Shoreline Shading." With regard to "Framing Elements," the CRMC will rely upon the existing guidelines stated in RICRMP Section 330 and rename Section 130.5 "Visual Elements." Note that UCG Sections 130.4 and 130.5 do not require any specific standards.

It was suggested that UCG Section 130.3 be made clearer with regard to the application of freshwater wetland rules and coastal wetland mitigation for projects within the Metro Bay Region. We have renamed this section "Coastal and Freshwater Wetlands" and modified the text to clarify the intent and purpose of the policy.

The waiver of UCG requirements for water-dependent uses will be determined in accordance with the RICRMP. It is not a new procedure.

Section 140 – Activities That Trigger Urban Coastal Greenway Requirements

Some comments suggested that existing buildings that will be preserved by redevelopment (i.e., for historic tax credit) should be excluded from the UCG requirements. We agree that such structures should not be subject to the proposed rules, unless the project meets the thresholds established in UCG Section 140. The CRMC has modified this section and will eliminate the 15 parking space threshold and replace it with an increased percentage of gross floor space, as is used in some communities. The addition of 20,000 square feet of new impervious surface will

also trigger the UCG requirements. Language has also been added (new UCG Section 140.3) to allow projects that do not meet the threshold established in that section, but require a CRMC permit, to voluntarily apply the UCG requirements.

In regard to Section 140.2, now UCG Sections 140.2(b) and (c), we have modified the language to make clear that the CRMC intends to review adjoining parcels under similar ownership for the purpose of evaluating overall project impacts and jurisdictional issues. The UCG requirements would only be applied to another parcel when a project on that parcel meets the threshold standards established in UCG Section 140.1. Additional language has been added to clarify that for phased projects the UCG will be applied to the entire project site as phases are proposed, and that the applicant cannot create their own hardship that would preclude installation of the UCG for future phases.

Under the exemptions provided in UCG Section 140.5, now Section 140.4, we have clarified language to specify “building footprint” area.

Section 150 – Metro Bay Region Coastal Development Standards

There appears to be some confusion regarding the available options for buffer or greenway implementation. The applicant’s first available option is to abide by RICRMP standards for Section 140 (setback) and 150 (buffers) that include limited variances and buffer management options, and likely more stringent buffer widths. The second option is to abide by the UCG standards, which include public access and low impact development techniques.

There were several comments regarding construction setbacks as specified in UCG Section 150.1(d). CRMC will be modifying this section so that a standard 25-foot setback will be required, which is consistent with RICRMP Section 140. Projects should be appropriately set back from the inland edge of the greenway to provide for any necessary maintenance activities and any other municipal required safety access. This setback requirement also provides an area for individual residents to establish private patio areas, etc., without infringing upon the public greenway space. Additionally, restaurants and cafes should be placing outdoor dining areas within the setback and not within the greenway. The setback, however, may be reduced depending on the project design and subsequent use, but the applicant must clearly demonstrate that there will not be any negative impact to public use of the Urban Coastal Greenway. We believe that buildings can relate well to the water and shoreline without encroaching onto the UCG. In regard to UCG Section 150.3, the CRMC does not agree that 150.3(e)(6) and 150.3(f) should be eliminated.

It was suggested that the 15percent vegetation requirement for the entire project site in Section 150.1 is not practical. We disagree, as the vegetation requirement may be satisfied solely by the UCG (on smaller lots) or through a combination of the UCG and additional plantings elsewhere on the property, including green roofs. Despite areas that may be municipally zoned for 100% lot coverage in Providence, we believe that green roofs will enable applicants to meet the 15percent vegetation coverage standard. There are many examples of successful green roof applications in New England and elsewhere. Additionally, the CRMC will be meeting with the state Historic Preservation and Heritage Commission staff to resolve any potential conflicts between the

vegetation requirement and historic restoration standards. Comments were also submitted concerning the “minimal use of high maintenance lawn sods and grasses.” This applies to the UCG area where the planting of low ground covers, shrubs and trees are preferable, and not the entire site.

A recommendation was submitted to add the word “unavoidable” in UCG Section 150.2(d) such that compact UCG widths could only be used if unavoidable. The reviewer’s intent here is to ensure the maximum buffer along the coastal feature. While we don’t disagree in concept, the UCG policy has been designed so that applicants have a choice in applying the RICRMP buffer standards or the proposed UCG widths. In some cases, applicants may choose a more compact UCG width, but must meet the performance standards and meet compensation requirements in UCG Section 230.

It was noted that Section 150.4(b) requires 60percent of the UCG to be wholly vegetated, which may not be practicable due to the narrower UCG widths within the Inner Harbor and River Zone. Accordingly, we intend to simplify and are modifying the standard to require that other than the pedestrian or bike pathway within the UCG, all other portions must be vegetated.

A recommendation was submitted under UCG Section 150.5 to locate the public access component outside of the 20-foot wide UCG area on parcels located within the Inner Harbor and River Zone to facilitate a fully vegetated buffer area between the project and the waterway. While the recommendation is logical from the standpoint of improving water quality along the Woonasquatucket River, we believe that the public access component can be incorporated within the UCG and still achieve water quality improvement on project sites by requiring appropriate stormwater management and encouraging low impact development (LID) techniques.

Concern was expressed in regard to the provision in UCG Section 150.5(b)(3)(i) for parcels that abut a coastal feature, albeit separated by a public road or walkway, in that the public access and setback requirements may be waived. It was indicated that the UCG requirements should not apply at all to such parcels, even though they may still be with the 200-foot coastal jurisdiction. We agree that the public access and setback requirements may be waived (as noted in the policy, now Section 150.5(i)(3)(i)), but all other requirements such as 15% vegetative cover and stormwater management, as well as any other pertinent RICRMP requirements, will be applicable to the parcel. We have modified the section as recommended to clarify the intent and purpose. Language has also been added to UCG Section 150.5(g), now 150.5(h), which allows the public parking space requirement to be waived, provided the project is directly adjacent to other publicly available parking areas.

A number of comments concerned stormwater management (See section 150.6), and how its review will be coordinated with other agencies and municipalities. All projects within the Metro Bay Region will be reviewed by the CRMC as elsewhere in the state’s coastal areas, in accordance with RICRMP Section 300.6 and the existing state stormwater guidance manual (See *RI Stormwater Design and Installation Standards Manual*). The primary purpose of the UCG is to encourage the incorporation of LID stormwater techniques (e.g., bioretention, green roofs, etc.) within Metro Bay Region projects. We recognize that some LID techniques may not be compatible with some brownfield sites due to infiltration concerns; however, other LID

techniques can be used for these areas. Stormwater review of proposed projects will be coordinated with DEM and the Narragansett Bay Commission. The CRMC is developing an Urban Coastal Greenways Design Manual that will assist developers in meeting the UCG requirements. This manual, in part, will highlight a number of accepted stormwater management LID practices for projects located within the Metro Bay Region. Additionally, applicants will be referred to the existing DEM Urban Environmental Design Manual. The proposed standards will not be more stringent than the existing state stormwater standards, including RICRMP Section 300.6, but encourage the use of well-established LID techniques used in other parts of the country. In regard to the state's Coastal Nonpoint Pollution Control Program, RICRMP policies back in the late 1990's were modified, namely Section 300.6, to meet federal § 6217 requirements. The UCG policies do not need to reiterate what is already established and implemented. In regard to the pending updated RI Stormwater Manual, CRMC has completed its review task, and the draft manual, which has been publicly available and last updated this past May, can be found online at:

<http://www.dem.ri.gov/programs/benviron/water/permits/ripdes/stwater/index.htm>. The final promulgation of the manual is dependent upon action at DEM.

The intent of UCG Section 150.7(b) and (c) regarding structural shoreline protection standards is to promote the use of materials for seawall construction that is consistent with existing historic seawall structures (i.e., granite blocks) along the Metro Bay waterfront.

It was recommended that UCG Section 150.8, regarding prohibitions for certain activities within the UCG, not apply during construction activity. Language has been added to clarify this provision as requested. In addition, we have added this provision to apply within 50 feet of a shoreline feature for parcels located within the Inner Harbor and River Zone.

It was recommended that the prohibition on structures over a tidal river channel or Narragansett Bay in Section 150.8 be subject to CRMC approval rather than an outright ban. Such construction under the UCG regulations is prohibited unless it serves a compelling public purpose (i.e., expressly for public infrastructure or public access) in accordance with RICRMP Section 130 and approved by the CRMC.

Section 170 – Area of Particular Concern

Recommendations were submitted for UCG Section 170 to add additional information within the Figure 3 decision tree to specify a 25-foot minimum buffer and vegetative and stormwater requirements similar to requirements for other zones. We have modified the text in the section and the decision tree figure accordingly.

Section 180 – Inner Harbor and River Zone

It was recommended that the B-1 standard be 20 feet rather than 50 feet. The CRMC determined that in the limited areas where there were no existing public roadways or walkways along the coastal feature, it was appropriate to have a 50-foot wide greenway. Additionally, these areas west of Route 95 are different than the downtown Riverwalk area due to the extensive natural vegetation along the Woonasquatucket River. Nevertheless, applicants may still choose a

compact UCG (20 feet wide) for these areas, but must provide compensation in accordance with UCG Section 230 and adhere to all applicable UCG and RICRMP standards. Also, after further analysis, we have eliminated the 20percent vegetation requirement for the Option B-2 projects and now apply the 15percent standard applicable to all other areas.

In regard to the waivers for parking and secondary access standards (UCG Sections 150.5 and 180.3) on parcels separated from the coastal feature by a public road or walkway, we disagree that it should be an “absolute” waiver. Circumstances may differ from site to site, and the CRMC will review projects and discretionally apply waivers.

In regard to recommendations that all lands bordering the Woonasquatucket River should be included within the IHRZ-B designation, we note that any parcel without a public road or pathway along the shoreline feature, regardless of existing status, will be subject to the provisions under IHRZ-B. Therefore, the UCG policy is proactive and anticipates future changes. Moreover, as with any CRMC policy, it can be modified to address unanticipated future issues, as needed.

It was suggested that the compact UCG width under Option B-2 be changed from 20 to 25 feet and be a variance request. While it would be desirable to obtain a larger UCG width, we believe the 20-foot greenway width is both reasonable and consistent with existing conditions along the river, and combined with stormwater management requirements, will achieve water quality improvement goals. We disagree that the choice of a compact UCG should be a variance request. The intent of the UCG policy is to establish performance-based standards to obviate the need for variances to the maximum extent practicable. We have also added language to make clear that the choice of a compact UCG requires compensation in accordance with UCG Section 230.

A request was made to eliminate Option B-3 concerning variance requests. After further analysis, we have decided to remove variance requests under both Options A and B, since we believe the 20-foot compact UCG is the minimum width for the Inner Harbor and River Zone. The exception, however, is for the Capital Center District where projects may seek a variance subject to Section 520.5 of the CRMC Providence Harbor SAMP and Memorandum of Understanding between the CRMC and the Capital Center Commission.

Section 190 – Development Zone

It was recommended that the standard UCG width for the Development zone be 50 feet rather than the proposed 100 feet. The CRMC determined that 100 feet was appropriate as a starting point because many development sites would require larger buffers under the current RICRMP 150 standards. Again, applicants may choose a compact 50-foot UCG, which is consistent with requirements of the East Providence Waterfront Development District standards.

A question was raised as to whether compensation is required for small lots under UCG Section 190, Option 4. The answer is yes, in that the applicant would have to provide compensation in accordance with UCG Section 230 for the difference between the compact UCG (50 feet) and the selected UCG width that is less than 50 feet.

Section 200 – Mitigation Requirements in Lieu of Public Access

A comment was submitted suggesting that the one-year period between restoration and construction on a development site was too onerous. While it may be interpreted that way, we note that the applicant has a choice under the UCG policy in deciding how to proceed with a development project. Mitigation is not required if an applicant chooses to include a UCG with public access as part of the development project.

Section 220 – Brownfield Development within the Metro Bay Region

Comments were submitted suggesting that the UCG requirements pertaining to brownfield development sites were not flexible enough considering the expense and other regulatory burdens for such sites. The CRMC has already amended its Management Procedures to cap the application fee at \$5,000 for brownfield sites. Additionally, the UCG policy will be modified to incorporate more flexibility in the application of the regulations when such regulations are impractical or pose a risk due to site remediation requirements.

Section 230 – Compensation Options for UCG Requirements

With respect to the compensation issue under UCG Section 230, such compensation will be made directly to the Urban Coastal Greenways Trust Fund for use in acquiring, in fee simple, development rights or the outright purchase of important high priority habitats within the Metro Bay Region. Any fees paid into the fund do not result in a “more favorable decision” on the application, nor does the fee benefit an agency; rather it benefits the public trust resources. The UCG policy has been designed so that the compact greenways (buffers) are an option available to developers at a cost; (i.e., if you want to get closer to the water, you must be willing to compensate the state to do so, and at the same time expand the state’s ability to acquire additional protected coastal habitat). 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.

A recommendation was submitted to increase the currently proposed 20percent property value multiplier when compensation options are being considered. Apparently, it is more typical to capture between 50-75percent of the fee simple value of property to provide a higher value of resource protection. The higher percentage rate, however, will have to be decided by the full Council during consideration of the proposed UCG policy. A suggestion was made to modify UCG Section 230.1(b) to clarify the intent and purpose of this section. Changes have been made to the text accordingly.

A request was made to apply compensation funds for habitat conservation or habitat restoration projects within the Woonasquatucket River watershed area outside of the Metro Bay Region. While this is a laudable initiative, compensation funds at this point can only be directed within the Metro Bay SAMP boundaries for restoration and conservation efforts along the Providence, Seekonk, Moshassuck, and Woonasquatucket Rivers. Compensation funds will be expended first within the community where the development project is located and preferably along the same

water body, and if no suitable conservation or restoration efforts are available nearby, then the compensation funds will be directed to an effort within the Metro Bay Region.

It was recommended that UCG Section 230.3 concerning Coastal Greenway Credits be eliminated, as it was confusing and unclear. We agree, and have removed this section from the current draft policy.

Section 280 – Definitions

Comments were submitted concerning parcels along the Woonasquatucket River requesting that they be identified as High Priority Restoration Areas. It was noted that the existing vegetation along the river west of Route 95 serves as an important habitat and buffer area, but needs invasive species removal and management. The land along the river bank, which for the most part is on a coastal feature, has been designated as High Priority Conservation Area. The CRMC agrees that a buffer management plan is needed for this area to remove any extensive areas of invasive species and replant with native shrubs, ground covers, and trees. A buffer management plan for the Woonasquatucket River along Kinsley and Promenade Streets will be developed in the future as part of the Metro Bay Region SAMP.

A request was also made to designate the parcel bound by Promenade, Rathbone, Hemlock, and Valley Streets as a high priority restoration area due to the potential for restoring and day-lighting the Pleasant Valley Parkway that discharges into the Woonasquatucket River. This parcel was identified in the Providence Sasaki Plan as a potential site for restoration efforts. Accordingly, we will designate this parcel as restoration on the habitat maps.

Miscellaneous

A question was raised as to whether detention ponds would be allowed in the greenway. The short answer is no. Stormwater retention/detention ponds and other traditional stormwater best management practices must be located within the setback area or other portion of the site. Nonetheless, LID stormwater techniques, such as bioretention areas or stormwater gardens, etcetera, may be installed as part of the UCG area (See UCG Section 150.6).

Another issue raised was the potential restoration of the vegetation adjacent to the Woonasquatucket River along Kinsley and Promenade Streets, especially in terms of removing invasive species. The proposed UCG policies do not currently provide a specific management plan for the removal of invasive species and replanting of other native and sustainable vegetation along the river bank. The UCG policy was developed for the land area adjacent to the coastal feature, while the vegetation in question is located on the river bank that is part of the coastal feature, and accordingly, would not normally be altered as part of a proposed project. We do plan, however, to develop a management plan for the vegetation on this portion of the river as part of the Metro Bay SAMP. We envision a gathering of stakeholders to include the Woonasquatucket River Watershed Council, RI Historic Preservation and Heritage Commission, Providence city planners, area property owners, and others, as part of the vegetative management plan development process. An announcement will be made on the Metro Bay listserv when we can arrange for such a meeting.