

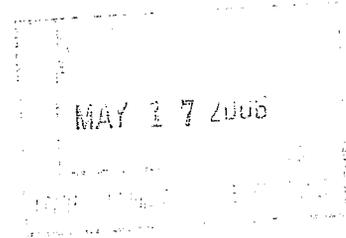
T H E P R O V I D E N C E F O U N D A T I O N

30 Exchange Terrace ■ Providence, Rhode Island 02903 ■ 401. 521. 3248 fax 401. 751. 2434

E-mail: dbaudouin@provchamber.com



May 16, 2006



Mr. Grover J. Fugate
Executive Director
Coastal Resources Management Council
Oliver H. Stedman Government Center
4808 Tower Hill Rd, Suite 3
Wakefield, RI 02879-1900

Re: Urban Coastal Greenways Regulation for the Metro Bay Region
(Draft 15) Public Comments

Dear Grover:

I am writing on behalf of The Providence Foundation as a trustee and chairman of the committee which reviewed the above-referenced draft regulations to enclose a position paper adopted by The Providence Foundation Board of Trustees on May 10, 2006 with regard to these regulations.

Our committee would very much appreciate the opportunity to meet with you and other staff to specifically discuss our comments.

To arrange such a meeting, it would be appreciated if your office could contact Dan Baudouin, Executive Director of The Providence Foundation. His contact information is as follows:

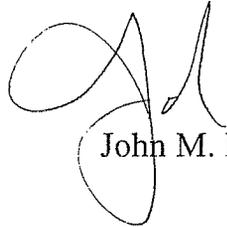
Daniel A. Baudouin
Executive Director
The Providence Foundation
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30 Exchange Terrace
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dbaudouin@provfoundation.com

Mr. Grover J. Fugate
May 16, 2006
Page 2

I thank you for your continuing courtesy and cooperation in proactively addressing the comments of the business community.

All best wishes.

Sincerely,

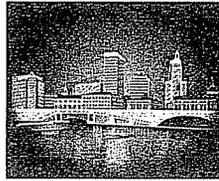
A handwritten signature in black ink, appearing to be 'JMB', written over a circular stamp or mark.

John M. Boehnert

JMB:mjo
Enclosure
cc: Mr. Daniel A. Baudouin (w/enclosure)

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MAY 17 2006



Position Paper Adopted by Board of Trustees on May 10, 2006

Urban Coastal Greenways Regulation

for the Metro Bay Region

Draft 15

Coastal Resource Management Council (CRMC)

First, we commend CRMC for its comprehensive and thorough approach to the creation of a Greenways Policy for the Metro or Upper Bay Region. We believe that it is necessary and can produce long-term benefits for the community.

The Providence Foundation appreciates the opportunity to comment on the latest draft. The Foundation thanks CRMC for incorporating many of the Foundation's earlier comments submitted on earlier drafts. However, the Foundation believes that there is substantial room for improvement in the Draft 15 Regulation. We are submitting several recommendations under general principles which we have promoted through the review process to date.

A. The Regulation Should Not Duplicate Activities of Other Government Agencies

1. First and foremost, we recommend that Sections 130.4 Massing and 130.5 Framing Elements be deleted because they require building design review by CRMC. We believe that building design review is adequately performed by local communities. We therefore recommend that CRMC enter agreements with the municipalities whereby the municipalities agree to consider these building massing and framing elements as part of their permitting process for development within urban coastal greenways areas.

2. Secondly, storm water management review could be conducted by RIDEM, Narragansett Bay Commission, the local communities and CRMC. It should be clear which agency should be responsible and what the guidelines are. The regulation does not address or clarify this jurisdictional issue. With regard to the standards set forth in Section 150.6, we are asking for the CRMC's clarification as to whether these standards are more stringent than currently required by the Department of Environmental Management and the Narragansett Bay Commission, and if so, why those existing standards are not sufficient.

3. Additionally, the Draft Regulations must recognize that certain municipalities already have developed, or are developing, detailed and carefully considered guidelines for development in specific areas, such as the Capital Center Special Development District in downtown Providence, and the East Providence waterfront development area.

The Draft Regulations should explicitly recognize this and provide that in such areas, CRMC may enter into a memorandum of agreement or understanding with these regulatory agencies to allow their regulations to govern development in such areas when they are not inconsistent with CRMC requirements.

4. 150.3(e) regarding designs for public safety and 150.3(f) regarding fire lanes should be deleted as duplicative regulations. CRMC has no authority over public safety issues.

B. The Regulations Should Reflect the Urban Character of the Metro Region

1. First and foremost, Section 150.1(d) and throughout 180.3 require 25' construction setbacks in addition to the UCG unless blank walls or parking structures abut the greenway. While we understand that in suburban or rural areas this provision reduces encroachment onto the greenway, in Providence we encourage buildings to relate to the riverwalks and parks with public entrances, windows and activities. The construction setback requirement should be eliminated.

2. The standard UCG for the Inner Harbor and River Zone should be 20' not 50' as stated in Option B-1 (page 35). Twenty feet (20') matches the existing Riverwalk in downtown.

3. The standard width in the Development Zone should be 50', not 100'.

4. The area of the site should not include buildings that already exist and will be preserved by redevelopment.

C. The Regulations Should Encourage Brownfield Redevelopment

Section 220.1(b) discusses the unusual economic constraints posed by brownfield sites and the need for flexibility on the part of the regulation and CRMC. However, Section 220.2(a) states that brownfield sites shall adhere to all greenway standards particularly regarding the UCG width. We believe that the two sections are inconsistent and that 220.2(a) should be eliminated. For these special sites, where the economic costs of environmental remediation may be so excessive that extremely high density development is the only economical way to allow these parcels to be put back into service, the CRMC regulations should provide that the Council can waive the urban coastal greenways requirement if necessary to allow development of the site. This is simply a case where the benefits of an urban coastal greenways may well be outweighed by the benefits of remediating environmentally contaminated parcels, restoring them to the tax rolls, and providing for economic development of the sites. The Draft Regulations should also make it explicit that DEM retains primary jurisdiction over the development of Brownfield sites.

MAY 17 2005

D. The Implementation of the Regulation Shall Be Practical in an Urban and Buildup Environment

1. The 15% vegetative requirement may not be practical in an urban setting particularly with 100% lot coverage requirements.
2. The 15% vegetative requirement and the required list of plant materials may conflict with City of Providence's tree canopy requirements and may conflict with historic restoration requirements.
3. Section 150.4(b) requires that 60% of the UCG be wholly vegetated. This may not be possible with planned walkways/bikeways in the narrower UCG in the Inner Harbor/River Zone.
4. In the Inner Harbor and River Zone, if the greenway is reduced to 50', then 20% of the entire site must be vegetated. This is not practical for existing historic sites and others considering other regulatory requirements. The standard setback should be 50'.
5. Section 150.1(a) specifies a requirement that fifteen percent (15%) of the surface area within the development parcel must include sufficiently sustainable landscaped areas providing vegetative coverage. We question whether this fifteen percent (15%) requirement is feasible in many of the parcels in the Inner Harbor and River Zone given that many of these sites are zoned for 100% lot coverage. Accordingly, we think that this requirement must be relaxed or eliminated when zoning of right allows 100% lot coverage or zero build to lines. Additionally, can you provide background as to the scientific support for the fifteen percent (15%) requirement?

In this same section, there is a reference to a "minimal use of high maintenance lawn sods and grasses". While this may be appropriate in urban contexts, certain of the areas covered by these Draft Regulations impact substantial areas that may be developed for residential use where lawns are entirely appropriate. Certain areas within the East Providence Waterfront Commission's jurisdiction are examples. The regulations should reflect this and allow use of grasses.

6. In Section 150.1(d), certain setback requirements are set forth. Do these conflict with the Capital Center Commission setbacks as allowed under the Memorandum of Agreement between CRMC and the Capital Center Commission?

7. Section 150.5(b)(3)(i) provides that where existing public access pathways and public roads occur between the coastal feature and the development parcels, the primary (along shore) public access and construction setback requirements may be waived. This indicates that where the development parcel is separated from the coastal feature by a public road, that the urban coastal greenways regulations nevertheless apply. This is contrary to the understanding we had at our meeting with Grover Fugate, where he indicated that where a public road separates the coastal feature from the development parcel, even though the development parcel is within two hundred feet (200) of the inland edge of the coastal feature, the urban coastal greenway regulations do not apply. Grover's interpretation is also consistent with the definition of an Urban Coastal Greenway as a "land area... adjacent to a coastal feature" Accordingly, this section

should be modified. (An example of such a parcel would be parcel 12 of the Capital Center Commission in Downtown Providence). (This concept is also found elsewhere in the Draft Regulations, as in Section 180.3). We strongly recommend that the Draft Regulations be revised to make it clear that they do not apply to development parcels that do not abut a coastal feature or to that portion of the development parcel which is separated from the coastal feature by a roadway.

8. In Section 150.5(c) where it notes that the Council “prefers” that all new development provide primary (alongshore) public access along the urban coastal greenways, it may be appropriate to clarify that the Council “prefers but does not require”... such public access.

E. The Regulations Shall Apply to Developments Based on Reasonable Criteria

In some cases, we believe that CRMC has extended the applicability of regulations in an unreasonable manner.

1. In Section 140.1(b), defining redevelopment, it should be made explicit that the increase in structural lot coverage triggering the urban coastal greenways requirements refers to an increase by twenty percent (20%) or more of lot coverage by buildings or accessory buildings.

In the same subsection, the addition of fifteen (15) or more parking spaces to an existing commercial, industrial, multi-residential, or mixed use development or structure would trigger application of urban coastal greenways requirements. This is far too restrictive, as this activity may involve no building expansion, no use changes, no material construction, and it may involve no changes to impervious areas on site, or only modest changes.

2. Section 140.2 provides that where a property owner owns adjoining lots, these lots should be evaluated as one project for the purpose of applying the urban coastal greenways requirements. However, the two lots could be used for very different purposes and may not be capable of being an integrated project. Additionally, one lot may be a very small lot and the other one may be a very large lot, with the result that a small project on the small lot would extend the regulations over the entire abutting larger lot. While this concept is applicable under the current buffer regulations, that is understandable where in suburban areas you may be dealing with subdivisions on commonly owned abutting property. The situation in dense urban areas is often very different, and this requirement is overbroad.

4. Section 140.5(c). Exemption. Two hundred square feet should be changed to “two hundred square feet in building footprint.”

5. Section 140.5 sets up certain exemptions to the urban coastal greenways requirements. One of these exemptions is new development of individual structures less than 200 square feet in total area. This should be less than 200 square feet in building footprint not total area.

6. In Section 150.5(d) you also may wish to add maritime storage to this list of exempted activity.

7. Section 180 Inner Harbor and River Zone

Without in any way undermining the comments set forth above under Section 150, we note that in Section 180.3, regarding options within the Inner Harbor and River Zone, where existing public access pathways or public roads occur between the coastal feature and the development parcels, the primary (alongshore) public access and construction setback requirements should be waived, rather than leaving this discretionary with the Council. We believe that a similar waiver should be provided for the secondary access paths where there are public roads or sidewalks adjacent to the development parcel. Given the availability of public access, there is no need to make this a discretionary waiver but rather it should be an absolute waiver. Again, however, we believe that where the development parcel does not abut the coastal feature, the Draft Regulations should not apply, and where the majority of development parcel is not contiguous to a coastal feature because of separation by roadway, the Draft Regulations should not apply to the non-contiguous parcel.

F. Maps should be Consistent and Clear

Figure 2. Urban Coastal Greenways Zone Map does not seem to be consistent with Appendix 4. Map of High Priority Conservation Area and Restoration Areas. Redevelopment Zones/Inner Harbor Zones on one are listed as Restoration Areas on the other. Clarification is needed.

Also, the criteria for designation as a particular area should be stated.

G. Miscellaneous

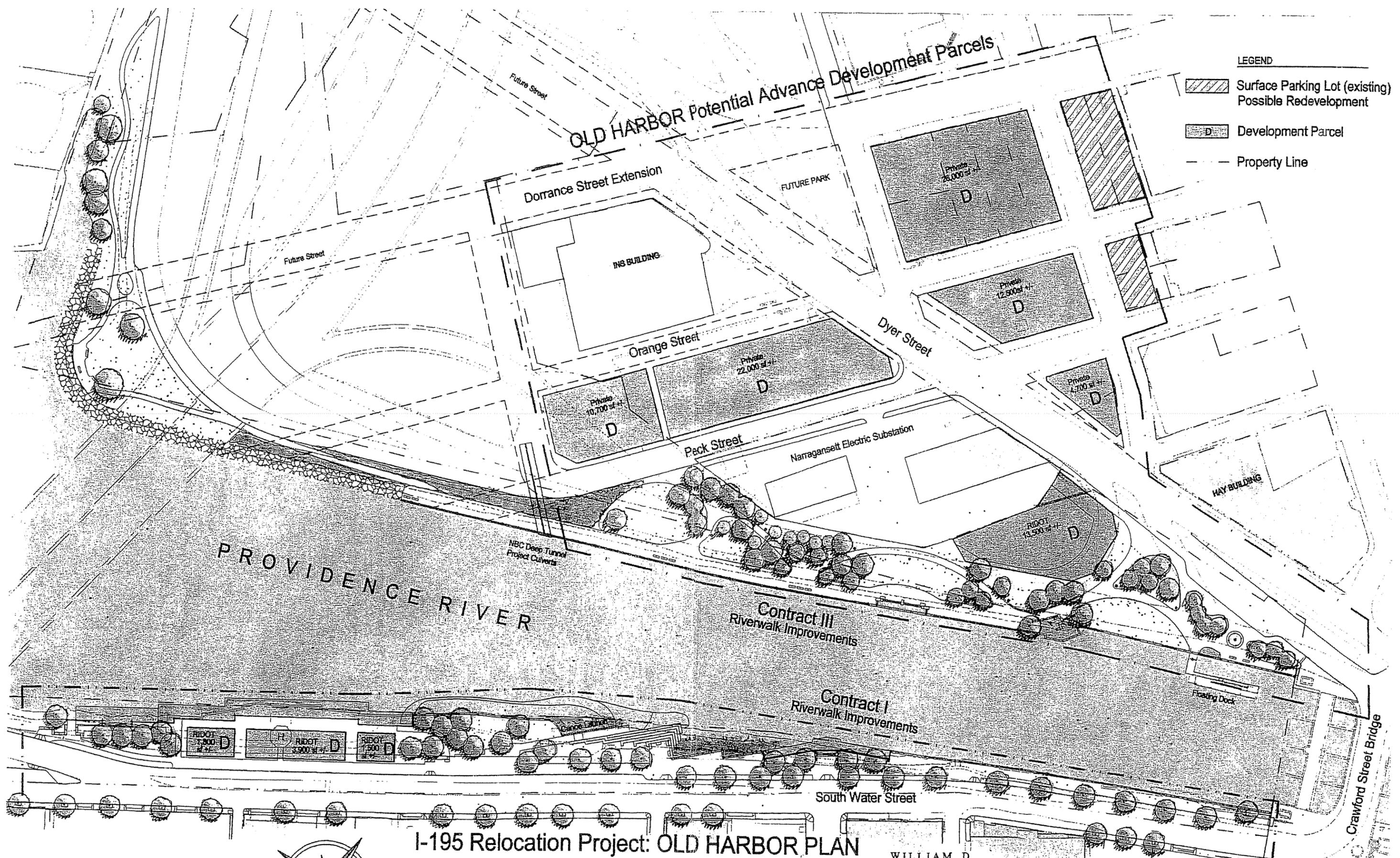
1. Are retention ponds allowed in the greenway?
2. On page 19, Section 150.1(c)(2), “in conformance with law” should be added after “defacto.”
3. On page 23(c), the requirement in the last sentence may lead to unsafe ponding of storm water.
4. On page 25, Section 150.7(b) and (c), “aesthetically pleasing” and “visually appealing” are not defined and subject to arbitrary requirements.
5. Section 150.5(g) provides that where an applicant has chosen to include public access, certain parking spaces are required. Given that many of the areas impacted are dense urban areas, subject to public transportation, you may wish to “encourage” this rather than “require” it, as it may cause some developers to opt not to provide public access because of the additional parking requirement, particularly in dense urban settings where developable land is limited.
6. The habitat restoration under mitigation in 200.2 could require a 1-year period between restoration and construction on the development site. This will delay projects

substantially and may be impractical, particularly if the restoration is integrated with development.

7. On South Water Street in Providence, there are three very small waterfront parcels by Doubloon Street. They are owned by the RI Department of Transportation and their redevelopment with small-scale buildings is part of the Old Harbor/I-195 relocation plan. A boardwalk was recently constructed as part of RIDOT's Contract 1 on the 195 contract and provides public access along the water. Can the UCG be from the land's end of the boardwalk to the water? Please refer to the attached plan.

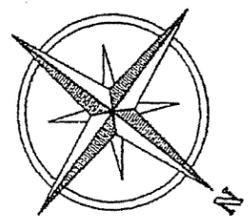
8. Section 150.8 prohibits storage or stockpiling of mulch, composite, organic materials, or construction materials in an urban coastal greenways. It should be clarified that this activity does not apply during construction activity on the site prior to completion of the development project subject to the urban coastal greenway.

9. Section 150.8(b) provides that no structure, building, roof or skywalk may be constructed over a tidal river channel or Narragansett Bay. We recommend that this not be an absolute prohibition but rather require express CRMC approval, since certain development activities fostering public access may appropriately extend modestly over tidal water. Areas along Allens Avenue may be an example.



- LEGEND**
-  Surface Parking Lot (existing)
Possible Redevelopment
 -  Development Parcel
 -  Property Line

Scale: 1" = 100'-0"
January, 2000



I-195 Relocation Project: OLD HARBOR PLAN
CONTRACTS I & III
 Scheduled Completion: Fall 2001
 Potential Advance Development Parcels

WILLIAM D
 WARNER
 ARCHITECTS
 & PLANNERS
 LOCUST VALLEY FARM
 595 TEN ROD ROAD
 EXETER, RI 02822



Maguire Group Inc.
 Architects/Engineers/Planners
 One Davol Square
 Providence, Rhode Island 02903



Received 5/18 via email

WOONASQUATUCKET RIVER WATERSHED COUNCIL

May 18, 2006

Mr. Grover Fugate, Executive Director
Coastal Resources Management Council
4808 Tower Hill Rd.
Wakefield, RI 02879

Re: Draft 15 Urban Coastal Greenways for Metro Bay Region

Dear Mr. Fugate:

We appreciate the opportunity to submit comments to the latest draft of the proposed Urban Coastal Greenway policies for the Metro Bay Region. While the Woonasquatucket River Watershed Council (WRWC) supports the initiative of the CRMC targeting these highly visible areas for preservation, restoration, and a continuous green buffer along our coastal waterways, we believe the draft is deficient in its protection of our highly vulnerable urban waterways which are critically important for the health of the bay, the urban habitat, and our urban residents. We respect the need to balance the multiple issues facing our urban rivers, and believe that our comments and suggestions maintain a healthy balance while addressing the vulnerability of our urban waterways.

Our comments, as stated in our previous letter pertaining to version 14(c), are based in the context of ongoing efforts to restore the Woonasquatucket River and maximize its benefits as a natural, recreational, and historic resource for our communities:

1. Flooding from the October 2005 rains revealed a critical need for improved flood storage and greater consideration of the flood plain in this corridor.
2. As the Woonasquatucket flows through the fringe of coastal plain that supports urban density, its velocity is low which reduces mixing and the river's capacity to handle non-point pollution without a deleterious affect on water quality.
3. There are ongoing restoration initiatives within the Woonasquatucket River Watershed, including the Woonasquatucket River Greenway. To date 62 acres of land, including two brownfield sites, have been restored and/or targeted for beneficial reuse, recreational resources, and flood storage areas. These sites include wetland and riparian buffer restoration projects. There are opportunities for linkage to this regional greenway within CRMC's jurisdictional area.
4. The restoration of anadromous fish passages is a focus of efforts by the WRWC, CRMC, the NRCS, and DEM. Maintaining and improving water quality is a critical element for this initiative. The WRWC, private and public property owners, and the NRCS hope to complete

- fish passages and/or dam removal on the first five obstructions along the river within the next four years, with the first passage scheduled for completion this year.
5. Increasingly the river is being restored as a recreational resource in this area. A canoe launch slightly upstream of the targeted area offers unobstructed canoe passage from Donigian Park in Olneyville to Waterplace Park.
 6. The Woonasquatucket River Watershed has experienced significant wetland and riparian buffer losses over the years. This plan and proposed non-industrial redevelopment offers the opportunity to redress those losses.
 7. The Sasaki plan proposed restoration of the parcel bounded by Rathbone and Hemlock Streets as a public greenspace. This would complement studies which we are planning to restore the Pleasant Valley stream.

The WRWC requests your consideration of the following comments on version 15 of the Urban Coastal Greenway plan.

Inner Harbor and River Zone Requirements – Page 7, Figure 4

Options A-1 and A-2

We support the vegetation requirements for parcels where public access infrastructure exist between project and coastal feature but request that CRMC consider requiring that a certain percentage of the vegetation be situated between the development site and the coastal feature to maximize water quality benefits, as suggested in the UCG presentation in January of this year.

Option B-2

- We believe that Option B2 should be a Variance Request.
- Add requirement that applicant must compensate for any reduction in UCG width, as described in Section 230 of UCG Policy.
- This option should mention the 100% stormwater management requirement.
- Applicant may not include public access requirements within the 20 foot UCG.

We believe that changing the minimum buffer to 25 feet could allow for a 10 foot wide public access.

Option B-3

- As discussed below, we believe this option should be deleted. At a minimum, the requirements should include the following:
- Applicant may not include public access requirements within the 15 foot UCG.
- This option should mention the 100% stormwater management requirement.
- We would like further clarification of the suggestion that twice the public access be provided. Increasing public access is not a suitable substitute for vegetation requirements, especially if, as noted on page 36, the requirement can be met at any site within the development.
- If this variance provision remains, the minimum vegetated Urban Coastal Greenway should not go below 15 feet at any time, with provision only for secondary shoreline access (e.g. canoe launch).

Section 150.5 Public Access Standards for all Urban Coastal Greenways (p. 22)

Part a) should be amended as follows:

a) The Public access component shall be located with the UCG identified for the project, with the exception of Inner Harbor and River Zone Requirements Options B-2 – compact Urban Coastal Greenway and B-3, Variance Request.

c) We would appreciate a meeting with CRMC to discuss the special characteristics of urban paths and the importance of having a pervious hard service to meet the public needs in the urban coastal area which offers ADA access and is conducive to multiple users.

Section 150.8 Prohibitions

As we noted in previous statements, these are important restrictions to protect our rivers from contaminated runoff. Unfortunately, the options for the Inner Harbor and River Zone do not provide the protection needed, especially for low flow rivers where there is minimal dilution. We request the following changes in this section:

a) Certain activities and uses shall be prohibited within the Urban Coastal Greenway, or within 50 feet of the shoreward edge of the coastal feature, whichever is greater.

Section 180.3 Inner Harbor and River Zone Standards

The IHRZ-B should include all lands that border directly on the river within the Metro SAMP area. This would add the area bounded by Atwells Avenue, Valley Street and Eagle Street. We recognize that there has been a recent development (Eagle Square) bordering both sides of the river at this site, but future changes are always possible. We believe this document should be proactive and anticipate future changes along the river by including this area in the IHRZ_B zone.

IHRZ-A: Public roadway and or pathway exist between the project and coastal feature:

Option A-1:

b) As we noted in our comments on Figure 4, the vegetation requirements should be directed toward the side of the property closest to the river to maximize runoff protection.

IHRZ_B: Public roadway or walkway does not exist between the project and coastal feature

Option B-2: compact UCG Width (25 feet)

- We believe this option should be reclassified as a Variance Request and be considered a Category B application. The parcel sizes and depths do not qualify this area for UCG reductions without cause.
- b) Under this option, the UCG width may be reduced to a minimum of twenty-five (25) feet. This buffer would allow for a 10 foot wide public access while retaining a vegetated buffer of 15 feet.

- If 20 feet is retained, the the following should be added:
- Public access requirement may not be met within the UCG minimum requirement.
- e) 1. We do not believe that distributing public access requirements around a development site should be considered an adequate compensation for loss of a vegetated buffer.
- Add f) Compensation in accordance with UCG Section 230.

Option B-3: Variance Request

- We request that this option be deleted.
- b) We note that the minimum UCG requirement for small lots is 20 feet, a category that does not apply to any parcel within the IHRZ B zone. The small lot exemption will likely apply for the most part to parcels that border larger rivers which have more flow and less vulnerability to polluted runoff. This should not be an option in this area.
- e) 1. Increasing public access is not a suitable substitute for vegetation requirements, especially if the requirement can be met at any site within the development. ***If this is retained, the UCG public access requirement should not be allowed within this UCG.***

Section 230. Compensation Options for UGG Requirements

(b) We continue to request that CRMC consider allowing compensation funds to be applied to habitat conservation and/or habitat restoration projects on the impacted river system outside of the Metro Bay SAMP boundary. (As we note below, we have identified opportunities for restoration within the Metro Bay SAMP boundary, but they have not been included in your plan.) If a proposed development impacts the Woonasquatucket River, yet the compensation is utilized to make improvements on another system, the Woonasquatucket has not been made whole by this transaction. In the case of the Woonasquatucket, the WRWC is spearheading ongoing restoration work in the watershed to improve water quality and habitat functions and could provide lists of potential sites and projects.

Section 280. Definitions

280.13 “High Priority Restoration Areas” (HPRAs) are those areas identified by the RICRMC as parcels within the Metro Bay Region that should be restored for their habitat value.

We continue to request that the buffer between the river and Promenade and Kinsley Avenue be designated a high priority restoration area. This stretch is a flyway for migratory birds. With local, state and federal partners, including CRMC, the WRWC is pursuing restoration of anadromous fish to the River, heightening the significance of this stretch for fish passage. This area needs removal of invasive species and native wetland plantings.

Adjoining property owners are appropriately dismayed by the unattractive appearance. We believe that the restoration of this area to improve its function as a wildlife habitat and wetland/buffer is important for the health of the river, and will address the concerns of the developers.

We also request that the lot bounded by Promenade, Rathbone, Hemlock and Valley Street be designated a high priority restoration site. We are aware of significant interest in the redevelopment of

this site. It offers an opportunity for the daylighting of the Pleasant Valley Parkway stream which discharges into the river at this site. This offers an opportunity to demonstrate how environmental restoration can complement site redevelopment. The stream will enhance the site while still providing sufficient space for redevelopment.

We appreciate all of your efforts throughout this process and for your consideration of our comments.

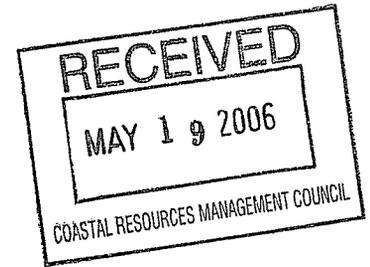
Sincerely,

Jennifer Pereira
Executive Director

Jane Sherman
WRWC Board



received 5/19
by us mail



May 18 , 2006

Coastal Resources Management Council
Oliver H. Stedman Government Center
Suite 3 – 4808 Tower Hill Road
Wakefield, Rhode Island 02879-1900
Attn: Grover Fugate, Executive Director

Re: Comments to Urban Coastal Greenways for the Metro Bay Region
Policy Draft Version 15 dated April 17, 2006

Dear Mr. Fugate:

The Coastal Resources Management Council's (the "Council" or "CRMC") efforts to establish a streamlined and pragmatic policy for Urban Coastal Greenways (the "Policy") are welcomed by the East Providence Waterfront Special Development District Commission (the "Waterfront Commission"). We applaud the Council for its efforts to foster redevelopment of urban areas and for its sensitivity to the redevelopment challenges along the coast of East Providence.

The Executive Director of the Waterfront Commission, Jeanne Boyle, has previously met with CRMC staff and suggested several policy and technical revisions to the proposed draft. In addition to those previously communicated revisions, please accept the following additional comments to the above-referenced draft:

Background - East Providence Waterfront Commission and Plan.

After five years of careful local and state planning, the Waterfront Commission came into formal existence in 2004. The Waterfront Commission's primary purpose is to develop and implement a waterfront development plan (the "East Providence Waterfront Plan") for the City of East Providence. The East Providence Waterfront Plan is our blueprint for the most suitable redevelopment of the East Providence waterfront from economic, environmental, public access and aesthetic perspectives. In

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short, the East Providence Waterfront Plan was painstakingly crafted over the past seven years to provide a comprehensive planning tool to promote responsible development and improve the quality of life for the residents of East Providence and Rhode Island.

The Waterfront Commission is not a local board. The Waterfront Commission was established pursuant to state law and with the unanimous support of the East Providence City Council. Its members are a cross section of East Providence residents and residents of other Rhode Island municipalities, among them senior policy representatives from the Rhode Island Department of Transportation, the Rhode Island Department of Environmental Management, and the Rhode Island Economic Development Corporation and including the City Manager of the City of East Providence. Waterfront Commission members are subject to Gubernatorial appointment with Rhode Island Senate confirmation or East Providence City Council approval, or both. The Waterfront Commission is a professional board with the ability to fairly and impartially implement the East Providence Waterfront Plan.

Concerns about Inconsistencies and Conflict between CRMC and the East Providence Waterfront Plan. The East Providence Waterfront Plan has many of the same provisions that the draft CRMC Policy has -- public access, stormwater management and buffer zones. However, the Commission is concerned that the draft CRMC Policy is not fully consistent with the East Providence Waterfront Plan. These inconsistencies could create conflict between our East Providence Waterfront Plan and the CRMC Policy, potentially undermining the Waterfront Commission's efforts to promote the most productive and beneficial reuse of our waterfront as envisioned by the East Providence Waterfront Plan.

Examples of Inconsistencies and Conflict. One example of inconsistency is shown in Figure 2 of the draft Policy, which currently provides that the former AMOCO site is classified as an "Area of Particular Concern" while the immediately adjacent former ARCO site is classified as a "Development Zone." (Both the AMOCO and ARCO sites have been used as oil repositories and petroleum distribution facilities.) However, under the East Providence Waterfront Plan, both properties are located within the same East Providence waterfront sub-district -- the Kettle Point Sub-District -- and are targeted for the same type brownfields redevelopment. Since our Waterfront Commission did not distinguish between the two properties, we see no reason why the Council should make any distinction between the two under the draft Policy -- both should clearly be part of a Development Zone, as that is the use envisioned by the Waterfront Commission.



Another example of inconsistency is the former Chevron property. Under Figure 2 of the draft Policy, this appears to be properly classified as a Development Zone property, but the Chevron property, its historic use and current condition, are virtually indistinguishable from the ARCO and AMOCO properties. All three of these former oil properties - - AMOCO, ARCO and Chevron - - should be classified as Development Zone because this is what the Waterfront Commission hopes and expects these properties to become.

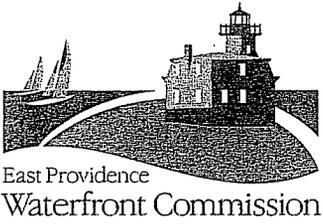
A third example of inconsistency appears in Appendix 4 where the ARCO property is designated an area targeted for restoration and the AMOCO property is designated an area targeted for conservation. While the Waterfront Commission supports restoration and conservation efforts along the East Providence coast generally, both the AMOCO and ARCO properties, like the Chevron properties and several others along the East Providence coast, are expressly designated by the Waterfront Commission for appropriate brownfield development in accordance with the East Providence Waterfront Plan. We respectfully request that the CRMC revise the classifications in Appendix 4 as they appear to be incompatible with the East Providence Waterfront Plan.

Finally, we would like to call to your attention that the East Providence Waterfront Plan provides design and architectural review guidelines for development along the East Providence coast. Moreover, the Waterfront Commission, following a lengthy and competitive RFP and interview process, has engaged independent architectural, engineering and traffic advisors to ensure appropriate waterfront design within our waterfront district. We believe that that Waterfront Commission, following the East Providence Waterfront Plan and with the assistance of these advisors, should be responsible for waterfront design elements consistent with local and state rules and statutes.

Conclusion. Our Waterfront Commission exists to promote responsible economic development throughout the East Providence waterfront, especially in brownfields areas. We very much appreciate that the CRMC Policy is intended to encourage responsible clean-up and redevelopment of our often contaminated industrial coastline. We respectfully request that the CRMC revise its draft Policy as noted above to eliminate inconsistencies that would make our redevelopment mission more difficult while creating confusion for those parties who are considering redeveloping properties in accordance with the East Providence Waterfront Plan.

We encourage CRMC staff to follow up directly with our Executive Director to ensure that the CRMC Policy and the East Providence Waterfront Plan and both compatible and consistent.

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www.eastprovidencewaterfront.com



Thank you for your efforts; with the modifications proposed above, the already very sound CRMC draft Policy would be substantially improved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick A. Rogers". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Patrick A. Rogers, Chairman

East Providence
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May 19, 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 for the Metro Bay Region
Draft 15***

Dear Director Fugate:

Save The Bay supports the general focus and thrust of this policy and the effort to respond to urban conditions and requirements. In keeping with our shared goals of public access, improved water quality and habitat restoration, we would like to offer the following comments.

Because of the Rhode Island Supreme Court Decisions in *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255 (R.I. 1999) and *Champlin's Realty Associates, L.P. v. Tillson*, 823 A.2d 1162 (R.I. 2003), it is necessary for the CRMC and the municipalities to work together throughout their shared jurisdiction. This draft of the policy reflects increased attention to the areas of overlapping authority. Coordination between the municipalities and CRMC on issues such as massing, density, framing and parking discussed in §130.4, §130.5 and §150.5(g) will be critical if future development in the Metro Bay area is to feature robust design that protects and enhances the waterfront.

Save The Bay notes the significant safeguards enumerated in §140.2-§140.4, as well as the public access protections in §150.0(c). It is important to evaluate a development proposal in its entirety, including adjoining lots and phased projects to avoid fragmentation and other adverse impacts. Save The Bay supports the establishment of strict criteria for receiving variances (§210.2), particularly the provision that “the proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts.”

§170.2 is a key policy encouraging the preservation of existing natural resources. §150.4(e) reflects this as well.

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Brownfield redevelopment in coastal areas poses particular challenges. §220 addresses some of these challenges and highlights the importance of clear coordination between DEM and CRMC, as well as the municipalities, given DEM's jurisdiction over site restoration and CRMC's jurisdiction over site development.

Save The Bay endorses the restoration and conservation areas concept, although we have not independently assessed each HPRA and HPCA for general determinations on the Coastal Resource Center's research. We understand the need for stability in identifying these sites, but also expect the evaluation and identification of such areas will be on-going.

Proposed Changes:

Public Notice

We understand the program is intended to streamline the regulatory process; however, the proposed fifteen day public comment period is too narrow and Save The Bay urges the public comment period to remain consistent with other CRMC comment periods of thirty days.

Wetlands/Salt Marshes

Save The Bay encourages clarification regarding Freshwater Wetland Rules and RICRMP §300.12 Coastal Wetland Mitigation. It is our understanding that these regulations remain in full force and effect whether the RICRMP or UCG Policy is followed. Please consider stating that explicitly and changing the language in UCG §130.3 to reflect the language of the existing regulations with regard to avoid, minimize and mitigate potential adverse impacts.

Areas of Particular Concern Option 2

Save The Bay suggests including the 25ft minimum buffer width as well as the stormwater and vegetative cover requirements for all properties as clarification in the Figure 3 Decision Tree.

Access

The policy language in §150.5(b)(2) is confusing. Save The Bay suggests the following:

“RI CRMC may allow reduced public access requirements within lots containing preexisting public access, provided there is no net loss of access and the following standards are met.”

Compensation

Save The Bay recommends using the name ‘Urban Coastal Greenways Trust’ to correspond with the proposed legislation (S2365). We would also propose a higher multiplier than the current 20%. It is our understanding that development rights typically capture between 75% and 90% of the value of the property. Therefore, a reasonable multiplier would be closer to that range so as not to undervalue the resource.

With regards to §230.1(b), Save The Bay favors the language below, which provides more specific guidance in how the funds are spent:

"Compensation fees paid to the [trust] shall be used only for the acquisition of property interests (fee simple, conservation easements, and other lesser interests) that serve the purposes of coastal habitat conservation or for coastal habitat restoration, within a designated HPCA or HPRA (see Appendix 4) within the Metro Bay Region. The CRMC shall prioritize the use of these funds based upon three factors."

Save The Bay also prefers the elimination of factor #2, as it works against efforts to maximize the impact and value habitat and restoration activities by targeting the most important areas within the Metro SAMP area as a whole.

Possible Compensation Measures (230.2)

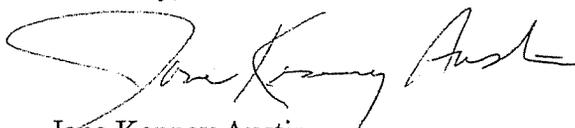
It is important that amenities, enhancements or activities by the owner which are considered as compensation measures truly create new and additional public benefits.

Coastal Greenway Credits (230.3)

The mechanisms are unclear and further, Save The Bay is concerned with the perverse incentives potentially created for current APC property owners. Under this scheme the incentives are shaped by the expectation of future development and constrained only by the UCG standards which would have applied anyway, rather than the wider array of conservation and restoration approaches that could be considered within the compensation channels of §230.1 (Metro Bay Regional Habitat Fund/Urban Coastal Greenways Trust). We also believe that problems could arise with the evaluation of credits in such a small size market. As a result, Save The Bay is opposed to the language as written. Save The Bay's earlier recommendations regarding the structure of the Habitat Fund/Trust were intended to make this type of credit unnecessary. Furthermore, too many different compensation mechanisms begin to make the program confusing and unwieldy.

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

Sincerely,



Jane Kenney Austin
Director of Policy and Advocacy

Received by email 5/19

28 Doane Avenue
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May 19, 2006

Mr. Grover Fugate
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Re: Proposed Regulations; Urban Coastal Greenways for the Metro Bay Region

Dear. Mr. Fugate,

Thank you for the opportunity to comment on the proposed buffer regulations. They address resources of great importance to citizens in municipalities bordering upper Narragansett Bay. The proposed regulations would have a significant impact on the evolution of communities surrounding the upper Bay and the Bay itself.

Clearly a large amount of effort has been devoted to developing this regulatory proposal. The Council deserves great credit for raising these matters for public discussion and decision. However, particularly given their potential importance, I believe that it is critical that the regulations receive thorough reconsideration before proceeding further. The following comments address questions of goals and expectations, complexity, consistency, conservation, and other issues in some detail.

I hope that comments offered by the full range of interested parties are shared publicly and that vigorous discussion of buffer issues will lead to activities, policies and regulations that will serve public interest in the best possible way.

Again, thank you for the opportunity to comment.

Sincerely,

Donald Pryor

Goals and Expectations

Preeminent Goals

According to section 120.6, “the preeminent goals of this UCG policy are to prevent further degradation of coastal waters by treating stormwater (through vegetative means where possible), to protect and/or restore coastal habitats, and to ensure public access to the urban shoreline while preserving an aesthetically appealing view from both the water and the shore.”

Stormwater aspects are discussed below (under “Consistency”). Briefly, stormwater management efforts are required under federal, state, and municipal laws. Rather than adding another layer of regulations, the challenge for government is to make existing levels of effort more effective. These proposed regulations could contribute more toward that objective by putting forth a collaborative approach.

Habitat restoration is discussed below (under both “Consistency” and “Conservation”). No overall plan for restoration is proposed. Some restoration opportunities such as Burgess Cove, the Pleasant Valley Parkway stream, and the banks of the Moshassuck and Woonasquatucket appear to be ignored. What can be accomplished, even in terms of acres affected much less actual habitat value gained, is unclear. Where buffer requirements are reduced, conservation would be a closer equivalent than restoration yet the proposed buffer regulations do not propose an appropriate mechanism for conservation.

Ensuring public access may have been the greatest expectation for these proposed regulations. However, the proposed regulations appear to be extremely vague on this point. Nowhere does there seem to be a clear statement of requirement. Section 120.4 says that the council “encourages” public access. Section 130.1 says it “strongly encourages” public access. Section 150.1(c) expresses a “preference” for public access. It goes on to state perhaps the most clear requirement for public access: “Public access shall always be required 1) when the proposed project impinges on public trust resources; 2) on sites that have become functional or de facto public access areas (i.e., picnic or fishing areas); and 3) on CRMC-designated rights-of-way or previous easements under RICRMP section 335.” Section 150.5 deals with standards for public access but its only statement about requirement for access (150.5(c)) says the council “prefers” that developments provide public access. RICRMP Section 335 (which, according to section 120.7 of the proposed buffer regulations, would stay in effect for all zones and options) requires applicants to “provide, where appropriate, access of a similar type and level to that which is being impacted as a result of a proposed activity or development.”

Expectations

Each of the three “preeminent goals” should have some attached metric by which to judge success or evaluate effectiveness. Under a range of expected conditions, what would be the expected effect on stormwater pollution? How could it be measured? What would be the effect on habitat and how might that be measured? Public access might be the clearest to define and measure. What expectations should the public have? How

would they vary across the range of expected development? What mix between access and restoration/conservation or other mitigation might be expected?

In addition to the three “preeminent goals” mentioned above, the proposed regulations mention several other objectives such as recreation, flood plain protection, etc. What metrics and expectations might apply to those aspects?

Complexity

1. Streamlining?

Despite intent to “clarify and streamline the regulatory process for urban coastal development” (section 100), the proposed regulations increase the scope of CRMC regulations and their overlap with municipal zoning authorities and state environmental regulations.

An alternative approach would for CRMC to work more in cooperation with municipalities. The agency could work with municipalities toward rules, regulations and guidance that are as consistent and non-overlapping as possible.

2. Compensation

An innovative aspect of the proposed buffer regulations is to seek monetary compensation in return for reduced buffer requirements. First, to many people, the precedent of officially requiring payment to government for a more favorable decision is a very troubling one. DEM recently withdrew a proposal merely to accelerate decision processes (not affect the decision itself) in return for compensation. (The broad flexibility of the proposed regulations, the use of “may”, and mention of undefined “waivers” and “special exemptions” compounds concerns.) In this case, compensation funds would be directed toward restoration and conservation efforts. Unfortunately, most experience in recent decades is that compensation is distinctly less preferable than avoidance or mitigation. Working on-site or near-site to achieve equivalency with requirements has been more satisfactory if avoidance is not possible. Natural resource damage assessments have come to aim more at equivalency than monetary valuation because of experience with many damage incidents. Similarly, wetlands mitigation banking has had mixed results (see NRC report “Compensating for Wetland Losses under the Clean Water Act”).

The proposed regulations could be rewritten to give greater emphasis on compliance with clear requirements. In cases where compliance cannot be achieved, on-site or near-site equivalence could be the primary alternative.

3. State Authority

The proposed urban buffer regulations are an unprecedented step toward state regulation of land use. For the first time, a state agency will be issuing regulations that are not only specific to particular municipalities in the state but actually zone land (not submerged land) within municipalities. The new state land use plan, Land Use 2025 (2006) (p. 5-3), notes that the RI Comprehensive Planning and Land Use Regulation Act (1988) “codifies

a message conveyed to state planners in the 1970s: *all land use activity is local*. With the exception of federal and state-owned property, and environmental protection regulations, all decisions about which land uses to permit are made at the municipal level.” Can the proposed urban buffer regulations be construed as entirely environmental protection regulations? And, if so, do the regulations have a sufficiently broad base to provide guidelines for development of the urban waterfront – i.e., is environmental protection the only aspect that can be considered in deciding about urban waterfront development?

An alternative approach might be for a state agency to set forth general requirements, to provide technical assistance and resources to municipalities, and review actions taken by municipalities for compliance with requirements.

Consistency

State CZM programs have the authority to enforce federal consistency – to insist that federal and federally-funded actions be done in a manner that is consistent with state laws, regulations, and plans. To what degree is the state similarly bound to act in a manner that is consistent with municipal laws, regulations, and plans, particularly those mandated by the state?

Below are five specific areas where consistency could be improved:

1. Municipal Comprehensive Plans and Ordinances

The RI Comprehensive Planning and Land Use Regulation Act (1988) requires Rhode Island cities and towns to have locally-adopted comprehensive plans that must be updated at least once every five years. According to Land Use 2025 (p. 5-2):

“municipal plans are required to be reviewed by the state for consistency with state goals and policies; in turn state agency projects and activities are to conform to local plans that have received state approval. Adopted local plans also set the basis for the exercise of key local implementing powers for land use – zoning and development review ordinances.”

The proposed urban buffer regulations do not indicate or demonstrate intent to conform with municipal comprehensive plans. For instance, Providence’s Comprehensive Plan calls for a 100 foot buffer along the Seekonk north of the Henderson Bridge. The proposed regulations designate that section as an Area of Particular Concern in which the standard buffer width would be 150 feet. However, the proposed regulations would allow the buffer to be reduced to as little as 75 feet. Providence’s Comprehensive Plan (page 197) calls for development of “conservation and protection plans for environmentally sensitive areas along rivers and in parks”. Although the proposed buffer regulations focus on restoration and conservation and areas are designated, no plan is evident. Providence’s Comprehensive Plan (page 188) calls for development of “a plan that promotes shoreline recreational access and usage and maintenance of open space areas along the waterfront”. Recreation is mentioned in the proposed buffer regulations but not apparently given consideration in the proposed requirements.

City of Providence ordinance 425.3 (supplementary regulations) requires:

425.3 *Land adjacent to water bodies*. Where a water body exists on or adjacent to a lot or development, there shall be a vegetated buffer, at least twenty (20) feet wide, adjacent to the entire length of the water body. This buffer shall include trees and plant material that will

filter stormwater runoff and help to improve the quality of the water body. No parking or buildings are permitted within this buffer. However, a walking path or bicycle path may be included within this buffer.

Can CRMC require less than 20 feet? Does the more protective city regulation prevail? Should the city and state regulations be made consistent by recognizing the existing regulation?

2. Recreation and Public Space

The proposed urban buffer regulations ignore important considerations of recreation and public space. The proposed buffer regulations mention neither of these terms among the purposes listed in section 120.5. However, the state has adopted "Ocean State Outdoors: A Comprehensive Outdoor Recreation Plan" (2003, aka "SCORP") as well as "A Greener Path: Greenspace and Greenways for Rhode Island's Future" (updated 1995). These plans were adopted as part of the State Guide Plan. They state goals and policies adopted by the state and required to be considered by municipalities. For instance, the SCORP calls to "identify and create a pedestrian and bicycle linkage between India Point Park and the Providence Riverwalk", to "identify connections from the Blackstone River Bikeway into Providence", and to "implement plans for the Woonasquatucket River bikeway". The proposed regulations make no mention of those goals nor do they provide means to accomplish them. The SCORP calls to "identify coastal sites for acquisition based on recreation potential, ecological function and public access". The proposed buffer regulations apparently do not take into consideration recreational potential.

The designation of "Areas of Particular Concern" and "Development Areas" bear little relation to plans such as East Providence's "Recreation, Conservation and Open Space Plan" (2001) except for Bold Point. Neither do the proposed urban buffer regulations express any intent to cooperate with, consider or comply with municipal plans developed under the State Guide Plan. Areas currently used for recreation and recognized as such on the HPCA and HPRA map included in Appendix 4, such as the eastern part of the Exxon-Mobil property, are nevertheless designated as "Development Areas". On the other hand, single-family residences on the west side of Sunnyside Avenue just north of the Exxon-Mobil property are designated "Areas of Particular Concern", with the proposed regulations presenting what appear to be significant limitations on the use of those properties. No comparable restrictions are proposed in the city's plan

3. Habitat, Restoration and Conservation

Rhode Island completed its Comprehensive Wildlife Conservation Strategy in September, 2005. However, the proposed buffer regulations, despite their focus on restoration and conservation, make no linkage to the Wildlife Conservation Strategy. The proposed buffer regulations also make no link to Rhode Island's Coastal and Estuarine Land Conservation Plan of September, 2004 or Rhode Island's Estuary and Coastal Habitat Restoration Strategy. The Habitat Restoration Team, which serves as a technical advisory committee for the strategy, has received only a presentation of the restoration and conservation elements of the proposed buffer regulations. A thorough review by the team might better establish linkages and improve overall prospects for restoration and conservation outcomes.

4. Stormwater Management

Stormwater standards proposed by the urban buffer policy are a notable example of either duplication or inconsistency with both municipal and state regulations. All the municipalities covered by the "Metro Bay Region" have adopted municipal stormwater ordinances in compliance with DEM's administration of the federal Clean Water Act and permits issued under RIGL 46-12. CRMC's proposed urban buffer regulations as related to stormwater (section 150.6) make no mention of these existing regulations nor do they reflect intent to be consistent with such regulations.

The proposed regulations invoke an "Urban Coastal Greenway Design Manual" which is described as "in preparation" as a mandatory guide for best management practices. No drafts of such a manual have been made public nor has a timetable for its release been suggested.

The proposed regulations also refer to the RI Stormwater Design and Installation Standards Manual. This manual has been under revision through a cooperative effort of DEM, CRMC, and local municipalities. Unfortunately, although nearly completed, the revised manual has been stalled for more than a year. An important missing element is a chapter that was to be prepared by CRMC. According to the CRMC Performance Report for State Cooperative Agreement NA04NOS4190056 for the period July 1, 2004 through June 30, 2005, CRMC entered into a cooperative agreement with Drs. Jon Boothroyd and Tom Boving of URI to assist with the revision of the RI Stormwater Manual. It was noted that "production of the manual was held up to accomplish this" (review and revision by the URI team). Further, the performance report stated that "the manual is expected to be delivered during the next report period with the changes offered by the Council through Drs. Boothroyd and Boving." Yet, no progress on the manual has been made public for more than a year.

The proposed regulations make no mention of CRMC's Coastal Nonpoint Pollution Control Program. Although stormwater in most municipalities is now treated as point source pollution, it was major focus of this program at the time this was adopted.

CRMC should consult with DEM, EPA and municipalities with the intent to devise a single, unified set of procedures and guidelines for management of stormwater. A single agency should have lead authority.

5. Floodplain Management

Despite a stated purpose (120.5(c)) "to minimize flood impacts and shoreline erosion", the proposed buffer regulations show little indication of carrying out that intent. Section 270.4 discusses flood control, mentioning that "better flood protection can be achieved through the management of open space in the flood plain". Yet the proposed regulations do not appear to distinguish between activities in the flood plain and those outside, nor do they focus on management of open space (except the buffers themselves). Section 270.5 mentions "the benefits of open space with regard to flood protection, minimization of development in flood prone areas, habitat, and public recreation". Yet, other than habitat, the proposed regulations do little to secure those benefits. Section 220.2(d) mentions

brownfields as sites where it may be desirable to limit infiltration. No mention is made of flood plains in that section and no similar statement exempting flood plains from infiltration requirements seems to be made elsewhere. Yet developers have stated that they are being advised by authors of the RI Stormwater Manual that limiting infiltration may be the appropriate strategy in some flood plain areas. Much of the western end of the Woonasquatucket area is in the flood plain. Do the requirements of 150.6 concerning stormwater management consider floodplain issues? Specifically, does the requirement (150.6(c)) that untreated stormwater shall not drain directly into coastal waters apply equally to floodplain and non-floodplain areas?

Conservation

The proposed buffer regulations, as presently described in section 230, would use collected funds for both conservation and restoration through the RI Coastal and Estuarine Habitat Restoration Trust Fund. However, the RI Coastal and Estuarine Habitat Restoration Trust Fund (RIGL 46-23.1-3) does not appear to deal with conservation – the statute restricts the use of funds for restoration. The definition of restoration in RIGL 46-23.1-2(4) is:

“‘Restoration’ means the act, process, or result of returning a habitat to an approximation of its condition prior to disturbance. Restoration activities may include, but are not limited to, the reestablishment of physical parameters, including reestablishing or maintaining hydrology, whether by reestablishing river or tidal flow, restoring flood regimes, or reestablishing topography; control of exotic, non-native or invasive species of plants or animals; revegetation through native plantings or natural succession; removal of barriers or construction of fish ladders to provide passage for spawning or migrating fish; or controlling, reducing or eliminating other specific adverse impacts”.

1. Restoration May Mean Open Water

The “restoration” definition included in the trust fund statute – “returning a habitat to an approximation of its condition prior to disturbance” – is very difficult to apply to the Metro Bay area since a large percentage of the waterfront area is filled. Open water would be its condition prior to disturbance.

2. Conservation Preference

Conservation, rather than restoration, may be the preferable choice as a trade-off for reduction of the buffer requirement. However the proposed buffer regulations, at this point, do not appear to set up the sort of mechanism required for conservation – arrangement with a third party such as a land trust to hold, monitor, manage, and enforce easements or ownership. The restoration trust fund has not previously been involved with conservation.

3. Separate Trust Fund

Legislation proposed to authorize handing of funds for the greenways program (S 2365) does not address these problems – it says only that collected funds shall be deposited into the trust (i.e. the RI Coastal and Estuarine Habitat Restoration Trust Fund). An amendment to create a complementary but separate trust fund has been suggested but has not been formally proposed.

4. Disbursement of Trust Funds

Section 230.1 calls for applicants to pay fees into a “Metro Bay Regional Habitat Fund via the Rhode Island Coastal and Estuarine Habitat Restoration Trust Fund”. It is not clear what “via” means – would it be considered a “disbursement” or grant and, thus, have to meet the requirements in statute or not?

5. Technical Advisory Committee Procedures

The technical advisory committee to advise the council, as called for in the existing statute, has not reviewed the greenway program. Further, the committee does not appear to comply with the requirements of the open meetings law. In fact, there seems to be some question about the composition of this committee and whether it is, in fact, the same as the Habitat Restoration Team.

6. Needed Legal Language

Review of RIGL 46-23.1 (The Coastal and Estuary Habitat Restoration Program and Trust Fund) suggests a number of changes to set up an appropriate mechanism for the urban greenway program:

- a. the title of the chapter should be expanded to recognize the urban greenway program or, alternatively, a separate, parallel chapter should be proposed
- b. section 23.1-1 (Findings and Purpose) should be expanded to include the urban greenway program
- c. section 23.1-2 (Definitions) should be expanded to include a definition of conservation (as well as the definitions of HPCAs, HPRAs and the Metro Bay Region as proposed in S 2365) – also consideration should be given to expanding the definition of restoration to encompass appropriate work of that nature in the upper bay area.
- d. section 23.1-3 (Trust Fund) should be expanded or, if a separate chapter is proposed, complemented by another section describing a separate trust fund for the urban greenway program. This trust fund should be constructed to allow funds to be received from the Coastal and Estuarine Habitat Restoration Fund (state-wide) but not vice versa. Both funds need to be restricted in uses but appropriate differences in restrictions between the two funds need to be clear. Should the same technical advisory committee provide advice on both?
- e. section 23.1-4 (Allocation) should be reviewed
- f. section 23.1-5 (Establishment), or a parallel section, should contain appropriate language concerning the establishment of a trust fund for the urban greenway program. S 2365 proposes to recognize the “Urban Coastal Greenways Program” as “established pursuant to council regulations” rather than as specified in legislation for the Coastal and Estuarine Habitat Restoration Fund. Statutory establishment is preferable.

7. Land Trust Requirements

Entities receiving funds from a new trust should have clear responsibilities, including monitoring and enforcement. There should be reporting requirements. Consideration should be given to including language similar to RIGL 42-17.1-2 (bb) and (cc) (which apply to DEM):

“(bb) To establish and maintain an inventory of all interests in land held by public and private land trust and to exercise all powers vested herein to insure the preservation of all identified lands.

(1) The director may promulgate and enforce rules and regulations to provide for the orderly and consistent protection, management, continuity of ownership and purpose, and centralized records-keeping for lands, water, and open spaces owned in fee or controlled in full or in part through other interests, rights, or devices such as conservation easements or restrictions, by private and public land trusts in Rhode Island. The director may charge a reasonable fee for filing of each document submitted by a land trust.

(2) The term "public land trust" means any public instrumentality created by a Rhode Island municipality for the purposes stated herein and financed by means of public funds collected and appropriated by the municipality. The term "private land trust" means any group of five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode Island as a non-business corporation for the purposes stated herein, or a national organization such as the nature conservancy. The main purpose of either a public or a private land trust shall be the protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other natural features, areas, or open space for the purpose of managing or maintaining, or causing to be managed or maintained by others, the land, water, and other natural amenities in any undeveloped and relatively natural state in perpetuity. A private land trust must be granted exemption from federal income tax under Internal Revenue Code 501c(3) [26 U.S.C. § 501(c)(3)] within two (2) years of its incorporation in Rhode Island or it may not continue to function as a land trust in Rhode Island. A private land trust may not be incorporated for the exclusive purpose of acquiring or accepting property or rights in property from a single individual, family, corporation, business, partnership, or other entity. Membership in any private land trust must be open to any individual subscribing to the purposes of the land trust and agreeing to abide by its rules and regulations including payment of reasonable dues.

(3) Private land trusts will, in their articles of association or their by-laws, as appropriate, provide for the transfer to an organization created for the same or similar purposes the assets, lands and land rights and interests held by the land trust in the event of termination or dissolution of the land trust.

(B) All land trusts, public and private, will record in the public records of the appropriate towns and cities in Rhode Island all deeds, conservation easements or restrictions or other interests and rights acquired in land and will also file copies of all such documents and current copies of their articles of association, their by-laws, and annual reports with the secretary of state, and with the director of the Rhode Island department of environmental management. The director is hereby directed to establish and maintain permanently a system for keeping records of all private and public land trust land holdings in Rhode Island.

(cc) The director will contact in writing, not less often than once every two (2) years, each public or private land trust to ascertain: that all lands held by the land trust are recorded with the director; the current status and condition of each land holding; that any funds or other assets of the land trust held as endowment for specific lands have been properly audited at least once within the two (2) year period; the name of the successor organization named in the public or private land trust's by-laws or articles of association; and any other information the director deems essential to the proper and continuous protection and management of land and interests or rights in land held by the land trust.

In the event that the director determines that a public or private land trust holding land or interest in land appears to have become inactive, he or she shall initiate proceedings to effect the termination of the land trust and the transfer of its lands, assets, land rights, and land interests to the successor organization named in the defaulting trust's by-laws or articles of association or to another organization created for the same or similar purposes. Should such a transfer not be

possible, then the land trust, assets, and interest and rights in land will be held in trust by the state of Rhode Island and managed by the director for the purposes stated at the time of original acquisition by the trust. Any trust assets or interests other than land or rights in land accruing to the state under such circumstances will be held and managed as a separate fund for the benefit of the designated trust lands.”

The proposed legislation (S 2365) does not address the issues arising around conservation, land trusts, etc.

Other Buffer Questions/Issues

1. Zone Designations

Why isn't Cranston's Stillhouse Cove designated APC, as would appear most appropriate? An active dock area owned by ProvPort just north of Save the Bay's facility is designated APC when Development would seem most appropriate. Why has Burgess Cove restoration potential not been recognized by APC designation? The Pleasant Valley Parkway stream (through the Veterans' Hospital grounds) is culverted through the SAMP area along the Woonasquatucket. Restoration efforts could daylight the stream and renew its habitat value. The proposed buffer regulations do not recognize this potential. The Woonasquatucket River Watershed Council, the Sasaki plan, and others have advocated its restoration. Community Boating -- 109 India St -- is included in a Development Zone. It would be more appropriate as APC, together with the adjacent India Point Park.

2. Dual-Zoned Parcels?

Can a parcel be partly in a Development zone and partly in an APC zone? How would that work with respect to these regulations? J&W's planned athletic fields are an example. ProvPort's southernmost parcel (mentioned above) also appears divided between two zones. The property at 1 Noyes Avenue in East Providence also appears to be split between APC and Development Zones. In addition, the East Providence parcel proposed to be developed by Picerne (Chevron property, south of P&W "port" site) appears to be dual-zoned.

3. Maps

Are web maps official? If not, how and where will official maps be made available? What procedures will be used to revise them? Some layers of the web maps (specifically "priority lands", the restoration and conservation designations) are marked "non-regulatory". What is the meaning of that?

How and when will the area where I-195 is presently located be delineated for redevelopment? If that is to be a separate process, how will it interface with the proposed buffer regulations? Are there commitments by DOT or others that might affect the proposed buffer regulations -- for instance, is DOT committed to continuing the Riverwalk and would these regulations call for design changes?

Why doesn't the SAMP area at its northern end follow the Moshassuck River? The eastern boundary should follow North Main Street.

4. Vegetation Management

How are management requirements for buffer areas different under the different options? Section 150.2(c) states a general intent to “allow at least two options for implementation of a vegetated area on a proposed development. In each Zone (with the exception of the Inner Harbor and River Zone), Option 1 requires the creation of a naturally vegetated buffer that is to be left undisturbed. Additional options within each Zone allow for more managed area (and “Urban Coastal Greenway”), in exchange for various public amenities or water quality enhancements.” However, management requirements under options other than 1 are not clearly described. Section 150.4 describes vegetation standards but does not clarify allowed management activities for various options. Neither does section 240 seem to answer such questions. The Urban Coastal Greenway Design Manual is not available. Section 280.17 defines “Managed Landscape”. Perhaps that term could be used more consistently and obviously to describe allowable management activities.

5. Parks and Recreation Fields

If Johnson & Wales were to put a 200 sq ft structure on their planned playing field west of Save the Bay, would that invoke buffer requirements? (>80,000 sq ft parcel in APC → 150 ft buffer). If so, would playing fields and related uses be allowed in the buffer area? 150.3(g) seems to say no. Should there be a playing field exemption?

Providence’s Gano Street playing fields are in an “Area of Particular Concern”. In an APC, a >80,000 sq ft parcel would require a 150 ft buffer, naturally vegetated and undisturbed. It could be reduced to 75 ft with public access, compensation to CRMC, and full council assent. That would still take a big chunk out of the park. Could the park be exempt? Activities that trigger the regulations are development. The proposed regulations specifically exempt “new development of individual structures less than 200 sq ft in total area”. Would a dugout trip that trigger?

Section 280.17 provides a definition of “managed landscape” – areas within buffers where limited landscaping practices are allowed. It specifically prohibits the establishment of lawns except in areas designated for public access and recreation. The “managed landscape” term does not appear to be used regularly throughout the proposed regulations. Would it be the appropriate term to apply more consistently to convey requirements and, if so, would that exemption be broad enough to avoid the park and playing field issues mentioned above?

How does the proposed buffer policy fit with Providence’s Waterfront Park Design Competition? Should park areas be exempted? The competition guidelines identify the waterside boundary of the west side park as the Riverwalk, implying that it will continue across the park site. Will that meet the requirements of the proposed buffer regulations? Will the proposed buffer regulations affect the design of the proposed pedestrian bridge? If so, how? (The proposed regulations are not clear on this point.) The map issued also identifies, apparently for development, three very narrow parcels on the east side directly opposite the proposed park. Are those viable parcels for development or would some small lot exemption be given?

Are there ways to encourage connections to neighborhoods? Parks? The buffer regulations do not appear to help implement designs such as Sasaki's or elements of Providence's comprehensive planning.

6. Waivers and Special Exemptions

How are water-dependent use waivers (section 130.1(g)) to be decided? Are there clear criteria that will be applied? What is the process for a waiver? Shouldn't the regulations include a definition and procedure?

If National Grid was to significantly alter or expand its facility between Heritage Harbor and Ship Street (extended), would a 50 ft buffer or public access be required or would some special exemption be granted? (Special Exemptions are mentioned in 150.8(c) but no definition is provided nor process described.) Would a MARSEC exemption (140.5(d)) apply?

7. Public Access

What is the meaning of "twice" with respect to public access (180.3 option B-2 (e)1 and 180.3 option B-3 (e)1)? Is it some measure of square footage or linear footage? Does it weigh primary and secondary access? Is there a consideration of amenities that might be associated with public access?

8. Inner Harbor and River Zone Improvements

Stormwater BMPs, particularly related to existing parking lots directly adjacent to the river, could produce substantial water quality improvements. The proposed buffer regulations do not appear to provide any mechanism to address such challenges. In fact, there are virtually no restoration or conservation opportunities identified for the Inner Harbor and River area. Should there be more consideration of investing fees collected within this area on improvements to the area?

Much of the Inner Harbor and River Zone has a small vegetated "buffer" between the river and a public roadway. Invasive species have taken over in many sections. Restoration work could improve the area. The proposed buffer regulations do not appear to provide any mechanism to address such challenges. Should there be more consideration of investing fees collected within this area on improvements to the area?

8. Publicly-Subsidized Buffers

Should the proposed buffer regulations take into account the possibility that costs associated with the buffer or greenway might be subsidized through, for instance, tax increment financing? (The ALCO proposal is an example) If so, how?

9. Geographic Extent of Regulations

Cursory reading of the proposed buffer regulations leads one to assume that the area covered is the "Metro Bay region". However, more close reading (and logic) seems to say that the proposed buffer regulations apply only if a parcel lies within or partly within the 200 foot CRMC jurisdiction. Yet that is not clearly stated. Section 100 appears to

state geographic extent but remains ambiguous. It states: "Only projects that are located within CRMC jurisdiction are subject to the UCG Regulations, as described in UCG Section 130. The freshwater wetlands program administered by the CRMC will not be subject to the UCG program, however." Is the CRMC jurisdiction referred to the 200 foot CRMC jurisdiction? Even though the freshwater wetlands program is not subject to the UCG program, would projects that fall within the "freshwater wetlands in the vicinity of the coast" area be subject to the UCG program? Presumably the sentence in the proposed regulations should read: "Projects within the area covered by the freshwater wetlands program administered by CRMC will not be subject to the UCG program, however." If that is not correct, how would this program apply to projects in that area but fully outside the 200 foot jurisdictional area? Applications should not be required if the proposed regulations are not relevant.

10. Notice

The proposed buffer regulations should state what the fifteen (15) day public notice period will entail. How would such notice be made and to whom? Would it be limited to letters to abutters? Would there be a wider notice? What information would be provided? What additional information would be available to interested public? The present CRMC permit database on the CRMC web site contains no information on the nature of permits requested since March of this year. Permit requests for the last two months are noted by number and the history of action is provided. However, all the fields describing the permit request are blank.



Conservation Law Foundation

May 20, 2006

Grover Fugate, Executive Director
Coastal Resources Management Council
Stedman Government Center - Suite 3
4808 Tower Hill Road
Wakefield, RI 02879-1900

Re: Urban Coastal Greenways for the Metro Bay Region

Dear Mr. Fugate:

The Conservation Law Foundation submits these comments on the proposed urban coastal greenway program.

Our principal concern is the "pay for a variance" program that this proposal suggests. We agree that the resources addressed in the UCG plan are of great public value and importance. We further agree that choices for development and protection of these areas will have huge impact on the health of the bay and surrounding habitat resources. The health of these public resources is a significant part of what gives value to the properties subject to the rules. These legitimate public interests – for environmental health, public health and safety and public access – need to be protected. The proposal as now written creates an incentive for private interests to pay money in exchange for relaxed protection.

There certainly are circumstances where the general rules cannot be made to work and variances are appropriate. That is why CRMC has a variance program. And CLF agrees that when a variance is appropriate and the public's legitimate interests reduced as a result of attempts to accommodate site specific concerns it is appropriate for an applicant to contribute to addressing the public's interests in another way. However, the mechanism proposed in this plan for such contribution makes it far too easy for a property owner to opt out of the rules and instead pay a modest fee to avoid what would otherwise be its obligations.

There are two significant problems with such a plan:

- 1) So long as the opt out fee is much smaller than the economic value to the property owner of avoiding the rules, the opt out fee will be paid instead of complying with the rules. No explanation is given for the very modest assessment of 20% of value as the cost of relaxed regulation. At this level, the fee is less of a compensation for unavoidable problems than it is a minor cost of doing business. The fee should be set at a level that will make it

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MAINE: 14 Maine Street, Brunswick, Maine 04011-2026 • 207-729-7733 • Fax: 207-729-7373

NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

economically unattractive except when a variance is unavoidable, which is the standard that should be applied for a variance.

2) Programs that require compensation either through in lieu fee or restoration/mitigation have been notoriously unsuccessful. Study after study has confirmed that these programs do not work. See e.g., Compensating for Wetland Losses Under the Clean Water Act (2001), National Research Council, National Academy Press, Washington, D.C. While paying a fee into a fund has not guaranteed that projects to compensate for lost ecological values are actually completed, allowing private entities to do the mitigation themselves has an even worse track record. Many studies show that the compensation measures on pages 47-48 are unlikely ever to produce real results. Creation of wetlands is a challenging task, to say the least. Restoration has a somewhat better record of success for compensation, although still poor, in part because the economic incentive for follow through and long term management is lost once the project for which compensation is sought is complete.

These problems can be solved if the standard for variance is high and awarded only when the variance is unavoidable, and the compensation that is required for obtaining a variance equals or exceeds the economic benefit to the applicant of avoiding the rules. Furthermore, when compensation is required, private efforts to create or restore wetlands should not be allowed as offsetting compensation unless the applicant is required to post a performance bond and to create the compensatory wetland before the principal project proceeds.

On a related point, it would be helpful to clarify the statement on page 3: "The freshwater wetlands program administered by the CRMC will not be subject to the UGC program, however." While we certainly agree that wetlands should be governed by the rules CRMC now applies, this one sentence statement could be clarified to specify that all applications proposing to alter wetlands will be governed under the rules in CRMC's current regulations.

Thank you for the opportunity to submit comments.

Sincerely,

Cynthia Giles

**To: Grover Fugate, Executive Director
Coastal Resources Management Council**
Fr: Audubon Society of RI, Eugenia Marks, Sr. Policy Director
Re: Comments on Draft 15, Urban Coastal Greenways, Metro SAMP
Dt: May 22, 2006

Thank you for this opportunity to comment again on these regulations.

Section 150.1 (a). Please add the concept that planting beds should be constructed in a way that allows stormwater from the paved areas to drain into the planting beds.

Section 150.2 (d). Suggest adding the word “unavoidable” as “Reductions in standard Urban Coastal Greenway widths shall only be acceptable if unavoidable and the applicant....”

Section 150.4. We agree with the provisions for retaining native existing trees, non-invasive ornamentals and 60% native plants. We would be pleased to see 75% natives required. The regulations might note what percentage refers to: plant stems or area covered by particular species.

Section 150.5 (b) 2. Stating the positive first would be better:
”It is the policy of the RICRMC to allow is no net loss of access; however, reduced public access requirements may be permitted within lots containing preexisting public access that satisfies the requirements of the Urban Coastal Greenways Policy, provided that there with compensation.”

Section 150.5 (c) We object to the wording and concept “The Council prefers...” and asks that the Council require unless some standard of exception is met.

Section 150.6 We suggest adding “(e) All stormwater treatments shall include capture of debris such as plastic bags, bottle caps, cigarette filters, and the like.” If not deemed appropriate for this section we strongly urge a section somewhere in the regulations that will say “Every effort shall be made through various strategies to prevent plastic bags, cups and other debris from entering the aquatic habitat adjacent to the UCG.”

Section 180.3 IRHZ-A (b). We strongly object to reducing the UCG width to 20 feet in this area. We favor retaining the compromise 25-foot UCG width throughout IHRZ-A

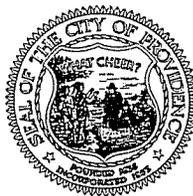
Small lot exemption. We think that the standard for depth of lot should be 250 feet because a 10 foot setback from the street plus a 25 foot setback from the coastal feature still allows a 200 foot deep building with some margin for foundation landscape or sidewalk treatment. (f) in this section again has 20-foot UCG to which we object.

We appreciate that many hours of negotiating and writing are represented by this draft. We urge the CRMC staff to consider our suggestions which are made to protect the public trust in the shore as protected by common law and the Constitution of the State of

Rhode Island; to assure water quality through provisions of Section 319 and other sections of the federal Clean Water Act; and to promote public health and aesthetics that will improve the economy of the metro area.

Thank you for this opportunity to comment.

Eugenia Marks, M.A., Senior Director for Policy

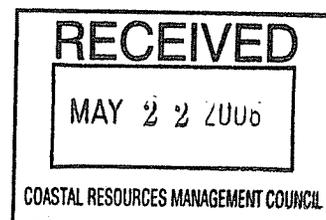


Department of Planning and Development

DAVID N. CICILLINE
Mayor

May 22, 2006

Mr. Grover Fugate- Executive Director
RI Coastal Resource Management Council
Stedman Government Center, Suite 3
4808 Tower Hill Road
Wakefield, RI 02879-1900



Re: Urban Coastal Greenways for the Metro Bay Region – Draft 15

Dear Mr. Fugate:

Thank you for the opportunity to comment on Draft #15 of the “Urban Coastal Greenways” (UCG) policy of the updated Providence Harbor Special Area Management Plan (*SAMP*). I feel that it is important to preface my comments by acknowledging the significant progress that has been made in the most recent draft. Many of the ideas we discussed in our last meeting have been reflected in Draft 15. However, I do believe that further improvements must be made to best achieve the stated goals of the UCG policies. We look forward to working with you and the CRC to make those adjustments together.

The City supports the development of the UCG policies as a way to improve the environment and improve public access along the waterfront with the added benefits of acknowledging the differences between the urban and suburban areas of the state and providing a streamlined process to developers with clear standards and predictable outcomes. While progress has been made in draft 15, there are still areas which require further changes prior to adoption. In particular, it is of great concern to the City that some of the proposed regulations still appear to be more appropriate in suburban environments. These regulations have the potential to not only affect private development projects, but city park and recreation projects as well. Another major concern is the number of regulations that duplicate issues currently regulated by other agencies, including municipal governments. Duplication inevitably results in conflicting regulations, which then adds time to the review process for conflict resolution. As I have expressed in the past, one of the major hurdles that cities face in redevelopment is the added cost due to land values, structured parking and environmental remediation, among other things. A truly streamlined and predictable development review process for waterfront parcels in urban areas could serve as a major step in reducing the timeframe for development approvals, thereby reducing overall development cost.

As far as specific comments, the City generally concurs with the recommendations submitted by The Providence Foundation on May 16, 2005. I have attached a copy to this letter for reference purposes. In addition, the City has the following questions and comments:

- Section 130.2: This section needs to be clarified as to what is required in preserving and

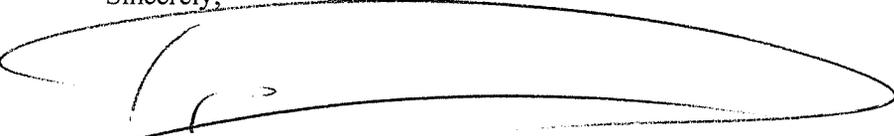
- enhancing high priority habitat areas – does this have the impact of a conservation zone on land use?
- Section 150.1(e): Illumination regulations appear to prohibit any light spilling over property lines; this may not be feasible, a maximum intensity of light at the property line would be more feasible and enforceable.
 - Section 150.2(c): The vegetation regulations do not appear to allow for hardscape, which is particularly critical in the Inner Harbor and River Zone where that pattern has already been established by the riverwalk.
 - Section 150.3(h): Duplication of review between CRMC and municipalities for screening of parking
 - Section 150.8: Need to clarify that ports are exempt from the use prohibitions.
 - Section 170.3: Why is the standard buffer width determined by lot size?; Under Option 2 – a reference is made to Section 220, which is Brownfields, not variances
 - Figure 10: The plan depicted does not reflect city standards or requirements – it is a more suburban type of development.
 - Section 190.3: Why is the standard buffer determined by lot size?
 - ~~Section 190.3: Small Lot Exemption: (b) How does this provision impact future subdivisions that do not change or reduce the lot depth? The way the regulation is written, they would not be eligible as small lots even if no changes were made to lot depth. (c) The definition of small lots should also include those properties with easements that are located within 300 feet of the shore; (f) and (g): If a lot meets the variance criteria, is compensation still required?; (h)(5) Change “may” to “shall.”~~
 - Section 200.1: This section requires mitigation for “lost” public access on the development site. What constitutes “lost” public access?
 - Section 210.4: Please clarify this section. It is unclear as to what types of variances you are requiring the applicant to seek from the municipality.
 - Section 230: Is compensation required for small lot exemptions? In general, it must be noted that the City remains concerned regarding the potential impact of requiring financial compensation on properties that are already more expensive to develop than greenfield sites.
 - Section 230.3: While attempting a transfer of development rights is an admirable goal, it is extremely complex to achieve. With regard to the credits, what incentive is there for a developer to purchase since use of the credit does not in any way reduce the total amount of compensation required.

I recognize the difficulty of tailoring a statewide policy to individual municipalities. As such, I continue to suggest that creating the ability for municipalities to enter into Memorandums of Understanding with the CRMC would be one way in which we could achieve our shared goals. The MOUs would allow more specific regulations tailored to each city as well as a streamlined review process. This would provide cities the ability to use existing leverage with developers while leaving the more general statewide policies in place if a developer fails to meet the regulations agreed upon in the MOU. Additionally, it has the benefit of eliminating any duplication or conflicts in regulations and curtailing the ability of developers to play our agencies against each other.

Mr. Grover Fugate
May 22, 2006

We look forward to working with you and your staff to resolve these concerns, as well as on the overall SAMP.

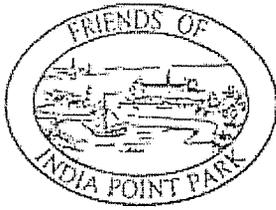
Sincerely,



THOMAS E. DELLER, AICP
Director

TED/LMP

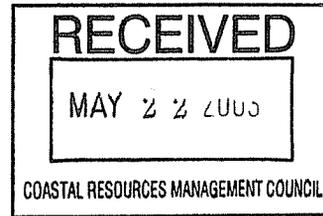
C: Gary Bliss, Director of Policy
Daniel Baudouin, Providence Foundation
Lori Capaldi, RIEDC
Linda Painter, DPD
Robert Azar, DPD
Jeanne Boyle, East Providence
Michael Cassidy, Pawtucket
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May 22, 2006

Mr. Grover Fugate, Executive Director
Coastal Resources Management Council
4808 Tower Hill Road
Wakefield, RI 02879



Dear Mr. Fugate:

We appreciate the chance to submit comments on draft 15 of the Urban Coastal Greenways Policy (UCG) for the Metro Bays Region. We also appreciate the thought and analysis that has gone into the draft as CRMC wrestles with the difficult task of protecting the environment during development along the urban waterfront.

We urge you to re-designate the UCG's treatment of the waterfront area adjacent to India Point Park to better reflect CRMC's mandate under RIGL 46-23-1 to conduct "comprehensive and coordinated long range planning" of our coastal environment for the benefit of "this and succeeding generations." This is a critical place for CRM to exercise its responsibility, as stated in the RI Government Owner's Manual, to "direct new development away from sensitive areas and into already developed areas."

India Point Park is the only significant expanse of shoreline open to the public in Providence. Located at the head of Narragansett Bay, the Park and the waterfront area south of the relocated I-195 offer the best water views down the Bay in the city, views that will become much more accessible with the completion of the highway project and the linear park over the Seekonk River. India Point Park truly is, as Mayor Cicilline has called it, "the entering crown jewel of the city."

It is critical to the city's future that the area south of the new I-195 be considered as a whole, and that both its environmental significance and its potential as public space be considered carefully before it is designated for private development.

We feel strongly that the draft UCG's designation of two key areas adjacent to the Park as Development Zones does not consider either the environmental or the public space aspects of the area with the care and thoroughness they deserve, especially considering that the decision to allow development would be irrevocable: once the area is developed, it would be lost as open space for the foreseeable future, if not forever. This is our last chance to create the kind of dramatic, expansive waterfront public space adjacent to downtown – such as Boston's Esplanade, Pittsburgh's Point State Park, or Chicago's Lakefront – that reap such major benefits for other cities.

The draft UCG would designate as Development Zones, rather than Areas of Particular Concern (APC), a small area just north of the eastern end of the Park, and about five acres at Fox's Point on the shoreline west of the Park. Because the shoreline area would qualify for the "small lot exemption," the width of the coastal buffer around Fox's Point could be reduced to as little as 20 feet with no public access required.

We recommend that CRMC re-designate these areas as Areas of Particular Concern for these reasons:

1. Insure Continuous Waterfront Greenway. The UCG correctly notes that we have “a rare opportunity to create a continuous greenway” along the upper Bay waterfront. The Environmental Impact Statement for the I-195 project endorses this goal (p. 3-62), and the state’s Outdoor Recreation Plan (SCORP) includes this emphatic objective: “A [pedestrian and bicycle] linkage between India Point and the Providence River system must also be accomplished” (p. 4.30).

As the East Bay Bikepath and the Providence Riverwalks have shown, greenways have proven to be extremely popular as an invaluable public attraction, recreational resource, vehicle for increasing nearby property values, and catalyst for economic development. Continuous waterfront greenways in other cities have reaped similar major benefits, such as 6 miles of riverfront greenways in Hartford; 11 miles in Rapid City, SD; 12 miles in Burlington, VT; 17 miles in Boston; and 20 miles in Chattanooga.

Fox’s Point is the crucial missing link in the greenway that will stretch from Bristol through East Providence and Providence and up the Woonasquatucket River. By designating Fox’s Point a development zone, the UCG could prevent completion of the continuous waterfront greenway, which would diminish its significant civic, environmental, and economic benefits. By allowing a buffer as narrow as 20 feet with no public access required, the UCG could block the continuous greenway altogether, or at least put a crimp in it at the city’s most dramatic waterfront promontory.

2. Protect Expansive Water Views. One of the UCG’s “three primary goals” is protecting and enhancing the “general aesthetic value” of the urban shoreline and the “unique views” it affords citizens and visitors (p. 9). India Point’s expansive views down the Bay are the best water vistas from an interstate highway in the Ocean State, vistas that will become significantly more dramatic with completion of the highway projects and burial of the waterfront power lines. These views underscore the state’s appeal to the 10 million travelers who use I-195 annually, and bolster our \$4.8 billion tourism industry, the state’s second largest.

When Mary Elizabeth Sharpe first proposed a public park at India Point in a 1962 *Providence Journal* article, she extolled the “sweeping views down the Bay” that it would afford. Unfortunately, the UCG’s development designation for Fox’s Point and the Gano Street parcel could result in buildings that would significantly diminish those views, hemming them in at both ends, and reducing their unique aesthetic value – and their economic value.

3. Increase City’s Tax Base. It is well known that water views significantly increase property values. But those benefits are dramatically reduced when buildings massed at the shoreline block the views of those behind them. The 19 acres of land that the relocation of 195 will free up north of the highway will increase the city’s tax base far more significantly if the land south of I-195 is kept for public space, allowing a wider arc for more water views from buildings north of the highway.

India Point Park will be the nexus for the state’s three major bike trails coming up the East Bay from Bristol, down the Blackstone from Woonsocket, and across the state from the Connecticut border, making it an important cycling center for the state. Cyclists entering the city from East Providence on the Washington Bridge now enjoy a dramatic view down the Bay, which will be greatly enhanced by burial of the power lines and completion of the Bridge’s linear park. Unless the UCG’s development designation for the area next to the Radisson Hotel results in buildings that block it. The existence of the unfortunately located 7-story hotel south of the highway is not a reason to compound the damage: two wrongs would not make a right.

4. Implement City’s Comprehensive Plan. The 1992 Old Harbor Plan calls for expanding India Point Park west to the Providence River and rezoning Fox’s Point as public space (p. V-3, VII-7). The City Council adopted the Old Harbor Plan “as part of the Official Comprehensive Plan” on December 27,

1994. The UCG's designation of Fox's Point for development would therefore be inconsistent with the city's Comprehensive Plan.

The Old Harbor Plan recognizes the potential of Fox's Point as a public attraction that could bring significant civic and economic benefits to the city. A major selling point for the route chosen for the relocation of 195 was that "it is the only alternative that allows for the full implementation" of the Old Harbor Plan, according to 195 Environmental Impact Statement (p. S-2). Carrying out the Plan is an important justification for the \$450 million highway relocation, the state's largest public works project.

5. Broaden Definition of APC. The UCG's definition of "Area of Particular Concern" gives no consideration to the flooding risks, and too little consideration to the recreational value of the India Point/Fox Point area. While the definition refers to "areas of significant recreational value" (p. 30), the ranking system used for determining APC designation covers only wildlife habitat, and does not mention recreational value (Appendix 3). Nor does the APC definition mention flooding risks, which is particularly troubling for the India Point area located at the bulls eye of storm surges marching up the Bay.

A. Importance of Urban Recreation. The stated purpose of this *urban* coastal greenways policy is to tailor it to the "specific challenges of urban environments" and to respond to the "large scale coastal redevelopment" being proposed in the urban upper Bay (p.9). It is therefore inconsistent and illogical for the UCG not to give full consideration to the particular importance of recreation in urban areas, where the per capita needs are greater.

Important as wildlife habitat is to cities, the APC ranking system's lack of recreational value doesn't do justice to the critical importance of the area around India Point Park, which is used by 112,000 people annually, according to the Providence Parks Department, a number the Department expects to double in the next decade with completion of the highway projects. (See attached letter.)

Providence as a whole is lacking in public park space. The city is already the seventh most densely populated center city in the country, according to Census figures, it is the second fastest growing among the country's 10 densest cities, and it is currently experiencing a dramatic building boom. But Trust for Public Land figures indicate that Providence ranks below average in park acreage per capita among the 10 densest cities. The city's relatively young median age of 28 and many large immigrant families make it especially in need of more parks and recreational facilities, which are critical to the city's livability, especially the physical and psychological health of citizens with little other access to nature.

B. Reduce Flooding Risks. One of the UCG's stated purposes is "to minimize flood impacts" (p.11), and its findings of fact mention that municipalities in the Metro Bay recognize the "benefits of open space" for flood protection, and of minimizing "development in flood prone areas" (p.56). The devastating 1938 and 1954 hurricanes have shown that the Providence waterfront is highly vulnerable to flooding, due in part, according to the city's Comprehensive Plan, to "the funnel-like shape of Narragansett Bay, which amplifies the height of a storm surge as it moves up the Bay, resulting in the highest flood levels in the state occurring along the Providence River" (p.69). The funnel effect of the Bay will be more pronounced than in the past because several hundred acres of salt marshes have been filled in the last 50 years. As SAMP material indicates, a FEMA official as called the upper Bay the Achilles heel of the Northeast.

It is illogical for the UCG to designate for development areas on the velocity zone of the floodplain without factoring in the flooding risks, which are even greater for Fox's Point because it is located *immediately outside* the Hurricane Barrier, where hurricane experts say the wave action of the storm surge after hitting the Hurricane Barrier is likely to be more powerful than elsewhere. Putting development at Fox's Point "is asking for trouble," according to a federal hurricane expert. It is also

inconsistent with CRMC's statutory mandate to conduct "comprehensive and coordinated long range planning."

The state's recently adopted Land Use Plan recommends "acquiring particularly vulnerable areas for conservation uses to preclude construction there" (p. 3-18), and it urges that best practices be adopted where construction is permitted to address the floodplain's capacity to store floodwaters. The Department of Environmental Management's Urban Environmental Design Manual, released in January, 2005, lists best practice standards "based on current research," including the requirement that floodplain development should not decrease the area's capacity for flood storage (Appendix, p. 12).

The Newport tide gauge, the most accurate in the Bay, indicates that the sea level has risen 10 inches in the last 75 years, according to URI Professor Jon Boothroyd, which is extremely significant. A 1991 FEMA study states that a one foot sea level rise could increase flood damage by 36-58%. Recent major studies of Boston, New Jersey, and New York City all predict that a 2-3 foot sea level rise is likely by 2100, and recommend restricting building on the floodplain. The upper Bay is probably more vulnerable than Boston or New Jersey because both the north-south orientation of Narragansett Bay and its narrow, funnel shape will likely intensify the storm surge hitting the Providence area.

If Fox's Point is not an example of a "sensitive area" that CRMC has a responsibility to "direct new development away from," what is? The UCG's neglect of flooding risks and CRMC's emphasis on *response* to hurricanes, while neglecting *planning to prevent* hurricane damage, leave the state unnecessarily at risk. We urge you to be far more thoroughly pro-active in this area. The Princeton study contains this prescient sentence: "In New Jersey, and in the US at-large, there remains a significant lack of public understanding of the predictability of coastal hazards and hazard mitigation. Episodic flooding events due to storm surges are often perceived as "natural disasters," not failures in land use planning and building code requirements" (p. 24).

We appreciate the opportunity to comment on this draft of the UCG and urge you to re-designate the India Point/Fox's Point area for the reasons we've discussed. Thank you for your attention.

Sincerely,



David Riley, Co-Chair
Friends of India Point Park



Department of Public Parks

"Building Pride In Providence"

April 19, 2004

Mr. David Riley
Co-chair, Friends of India Point Park
87 John Street
Providence, Rhode Island 02906

RE: *User Information on India Point Park*

Dear David—

Our staff has done quite a bit of research and interviewing recently to develop updated estimates of the visitors at India Point Park. Here are our estimates and observations:

Activities & Estimated Park Visitors, 2003

- Picnicking, jogging, walking, biking, kite flying, rollerblading, sunbathing, frisbee tossing, informal ball throwing—45,000
- Playground—15,000
- Soccer games—12,000
- Cape Verdean Festival—9,000
- Major concerts—20,000
- Small special events—4,000
- Walkathons—2,500
- Community boating—2,500
- Sloop Providence—800
- Cruise ship visits—1,200

Estimated Total—112,000 park visitors in 2003



India Point Park, page 2.

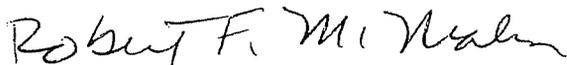
Park Users

Up until the early 1990's, India Point Park was for 360 days of the year primarily a neighborhood park serving the Fox Point neighborhood and some of Providence's East Side. The annual Cape Verdean Festival and the former Waterfront Festival drew thousands to the park *once a year* from all over southern New England. But with gradual improvements in the park and with more Providence visitors discovering the waterfront, India Point Park is experiencing *greater daily use* from many of Providence's neighborhoods and from nearby East Providence and Pawtucket. The park's location on the Providence waterfront with a view of the Providence Harbor and with over 3,600 feet of shoreline has made India Point Park a regional attraction to enjoy a park visit with cool breezes.

The soccer field and the newly installed unique playground at the Gano Street end of the park have been major stimulants to attract park users from Providence's growing Latino population. On several recent Sunday afternoons at the park, almost 1,000 visitors were in the park during the afternoon with almost half of them speaking Spanish.

When the RT 195 improvements are completed, India Point Park will enjoy increased access to the Fox Point neighborhood and all of Providence, we expect the park's use to easily double by 2010 when the highway improvements are completed.

Very truly yours,



Robert F. McMahon
Acting Superintendent of Parks