TOWN OF WARREN, RHODE ISLAND
514 Main Street
Warren, RI 02885-4369
Phone: (401) 245-7554

Office of Town Manager

January 17, 2023

Kimberly Korioth
RI Infrastructure Bank
235 Promenade Street
Suite 116
Providence, RI 02908

RE: Draft Regulations / Ocean State Climate Adaptation and Resilience Fund (RICR-30-05-01)

Dear Ms. Korioth,

I am writing with comment on Rhode Island Infrastructure Bank's draft regulations for the newly created Ocean State Climate Adaptation and Resilience fund, known as OSCAR (RICR-30-05-01).

The Town of Warren, through letters of testimony and Town Council resolutions, supported passage of the OSCAR legislation starting in 2018, when the bill was first introduced. I testified in person at least two legislative hearings during that period as part of the town's efforts to protect and ensure environmental health while maintaining and improving public access. The Town of Warren's support for climate adaptation project grants stems from our experience with a wide range of adaptation and resilience initiatives, including, but not limited to: stormwater and wastewater system improvements, coastal wetlands, and relocation of vulnerable homes and businesses out of flood-prone areas of our town. The Town greatly appreciates that the OSCAR program, which passed into law in 2021 and received funding in 2022, is a grant program that will not require municipal match of dollars.

The Town respectfully submits the following comments on the draft OSCAR regulations:

Section 1.4 B. Grant Awards – As drafted, "Request for financial assistance shall be submitted in writing by the Chief Executive Officer or other authorized officer of the Applicant to the Council and the Department in accordance with the open solicitation process pursuant to R.I. General Laws 46-23.3-6."

Comment: It would be of significant help to the Town and other municipalities if an application form was required by the regulations. Such a form should provide clarity for both the applicant and the Technical Advisory Committee and create a more efficient process for all involved.

Section 1.6 Grant Application Review, specifically that applications shall be reviewed based on "preferences that align with the state's prevailing economic development plan."

Comment: Our concerns here are 1) the OSCAR law contains nothing about economic development plans, be they state or local. The OSCAR law does clearly spell out that the fund is for: projects on public that advance adaptation and resiliency of natural systems; 2) how can municipalities be expected to prepare and submit plans that "align with the state's prevailing economic development plan" when no single plan exists. The Town recommends that any references to "preferences that align with the state's prevailing economic plan" be removed.

Thank you for considering the Town of Warren's comments to the draft regulations for the new OSCAR program. We look forward to applying for project grants to assist the Town in conducting measures that will help its environment adapt to rapidly changing conditions caused by climate change.

Sincerely,

Kate Michaud

Kate Michaud, AICP CC-P
Town Manager
Town of Warren, Rhode Island

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January 5, 2023

Jeffrey M. Willis
Executive Director
Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879

Via email to jwillis@crmc.ri.gov

Re: Objection to the proposed OSCAR Regulations- 650-RICR-30-05-01

Dear Mr. Willis,

Save The Bay worked with the General Assembly, regulatory agencies (including CRMC), municipalities and community groups to win passage of the statute and then secure OSCAR's first $4 million for grants. We believe it is imperative that the regulations guiding project selection and grant funding adhere to the OSCAR statute. Save The Bay has reviewed the draft regulations for the Ocean State Climate Adaptation & Resilience Fund, and submits the following comments.

We believe it is imperative that the regulations guiding project selection and grant funding adhere to the OSCAR statute. The legislative intent of the Ocean State Climate Adaptation and Resilience Fund (OSCAR) is set forth in R.I Gen. Laws 46-23.3-2 (1) and accurately summarized in the public notice issued by the Coastal Resources Management Council (CRMC).

"The purpose of the proposed regulations is to establish the Ocean State Adaptation and Resilience Fund (OSCAR) which will provide funding for adaptation and resilience projects on public lands. *Grants from OSCAR will help to advance projects that protect or enhance coastal or riverine habitat* that help to address climate change impacts (emphasis provided)."

The legislature clearly defined adaptation and resilience projects, established a technical advisory committee to review applications, enunciated the criteria to be considered, and granted joint authority to the Department of Environmental Management (DEM or the Department) and CRMC to determine which projects would be funded. DEM and CRMC are required to consider the recommendation of the Technical Advisory Committee and notify the RIIB of the projects to be funded. The role of the Rhode Island Infrastructure Bank (RIIB or the Bank) is solely to administer the fund.

The proposed regulations do not carry out the intent of the statute: They attempt to add additional criteria or requirements in Section 1.6 C. (i.e., "overall spending targets by project type; preferences for projects that align with

the state's prevailing economic development plan." [1] There is nothing in the statute that permits creating spending targets by type or considering "prevailing economic development plan." The intent of the statute is to award funds for projects that provide ecological benefits to coastal or riverine habitats: It is not an economic development fund.

Another section of the regulations exceeds that statutory authority granted to the three agencies. Section 1.10 of the proposed regulations attempts to give the "Bank, Council, and/or Department" the authority to waive or vary any provisions of the regulations or change requirements. Section 46-23.3-4(d)[2] lists the factors to be taken into consideration by the technical advisory committee in "prioritizing the selection of projects" and provides the TAC, DEM and CRMC jointly with the obligation to consider the statutory factors delineated. The law requires that the statutory factors shall be considered and therefore may not be waived. The TAC, DEM and CRMC are all constrained by the statute and are given the authority to consider additional factors consistent with the statutory intent.

Further, the attempt to empower each agency the authority to waive, vary or add requirements is not permitted by the law. CRMC and DEM may jointly include additional criteria in evaluating projects consistent with the statutory intent, but may not do so individually. Moreover, the Bank does not have the statutory authority to even determine which projects are funded, let alone change or waive requirements.

Attached please find our detailed redlined comments on the draft regulations for your consideration. Some of the comments are directed at clarifying the language, however, our main concern and objection to the draft regulations is that they do not effectuate the plain language or legislative intent of the statute and exceed the statutory authority provided to the three agencies.

Thank you for considering Save The Bay's comments on these draft regulations. We would welcome the opportunity to work with you to address our concerns.

Sincerely,

Topher Hamblett
Director of Advocacy

Cc: The Hon. Ryan Pearson, Majority Leader, RI Senate
The Hon. Camille Vella-Wilkinson, House Committee on Finance

[1] Even if the criteria were authorized it is unclear how "spending targets by types" is defined or how the "state's prevailing economic plan" is defined.

[2] The factors include consistency with sea level rise projections, coastal habitat restoration strategy, nonpoint source pollution control plan, enhancing public access, creation of replacement of habitat losses that benefit fish and wildlife resources, and water quality improvements.

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May 22, 2023

Coastal Resources Management Council
Attn: Raymond Coia, Chairman
Jeffrey Willis, Executive Director
Oliver Stedman Government Center
4808 Tower Hill Road
Wakefield, RI 02879

Via email to jwillis@crmc.ri.gov

Re: Objection to the proposed OSCAR Regulations- 650-RICR-30-05-01

Dear Chairman Coia, Director Willis, and Members of the Council,

Save The Bay worked with the legislature to develop the Ocean State Climate Adaptation and Resilience Fund (OSCAR). The legislative intent is specified in R.I Gen. Laws 46-23.3-2 (1).

"The purpose of the proposed regulations is to establish the Ocean State Adaptation and Resilience Fund (OSCAR) which will provide funding for adaptation and resilience projects on public lands. *Grants from OSCAR will help to advance projects that protect or enhance coastal or riverine habitat* that help to address climate change impacts (emphasis provided).

The legislature clearly defined adaptation and resilience projects, established a technical advisory committee to review applications, enunciated the criteria to be considered and granted joint authority to the Department of Environmental Management (DEM or the Department) and the Coastal Resources Management Council (CRMC) to determine which projects would be funded. The role of the Rhode Island Infrastructure Bank (RIIB or the Bank) is solely to administer the fund and DEM and CRMC are required to notify the RIIB of the approved projects to be funded.

The proposed regulations to do not carry out the intent of the statute: The proposed regulations attempt to add additional criteria or requirements in Section 1.6 C. (i.e., "overall spending targets by project type; preferences for projects that align with the state's prevailing economic development plan.") [1] There is nothing in the statue that permits creating spending targets by type or consideration of a "prevailing economic development plan". The intent is to of the legislation is to award funds for projects that provide ecological benefits to coastal or riverine habitats.

[1] Even if the criteria were authorized it is unclear how "spending targets by types" is defined or how the "state's prevailing economic plan" is defined.

In addition, Section 1.10 of the proposed regulations attempts to give the Bank, Council, and/or Department" the authority to waive or vary any provisions of the regulations or change requirements. Section 46-23.3-4(d) lists the factors to be taken into consideration by the technical advisory committee in "prioritizing the selection of projects" and provides the TAC, DEM and CRMC jointly with the obligation to consider the statutory factors delineated. The statutory factors shall be considered and may not be waived. The TAC, DEM and CRMC are all constrained by the statute and are given the authority to consider additional factors in furtherance of the statutory intent.

Further, the attempt to give each agency the authority to waive, vary or add requirements is not permitted by the law. CRMC and DEM may jointly include additional criteria in evaluating projects but not individually. Moreover, the Bank does not have the statutory authority to even determine which projects are funded, let alone change or vary requirements.

We worked with the Rhode Island Infrastructure Bank to revise an earlier draft of the regulations and not all our changes were accepted (see attached). However, it was represented to us that our requested changes were made to sections 1.6.C and the language we objected to (i.e., "overall spending targets by project type; preferences for projects that align with the state's prevailing economic development plan") was removed.

After further discussions with the RIIB, on February 8, 2023, we sent the following modified revision to Section 1.10. "Where deemed appropriate by the Bank, Council, and/or the Department, waiver, modification or variation of any provisions herein may be made or additional requirements may be added, **provided however that any waiver, or variation is consistent with R.I. Gen. Laws 43-23.3-1 et seq."** The regulations contained in the CRMC agenda for the May 23, 2023 meeting do not include the revisions agreed upon.

Save The Bay submits that the draft regulations before the Council do not effectuate the legislative intent plainly stated in the statute and exceed the statutory authority provided to the three agencies. The regulations as drafted are not a valid exercise of delegated legislative authority.

Sincerely,

Topher Hamblett
Director of Advocacy

Attached: Save The Bay Comments on OSCAR Regulations, January 4, 2023

Laura Miguel

From: Topher Hamblett <thamblett@savebay.org>
Sent: Tuesday, May 23, 2023 1:35 PM
To: Jeff Willis
Cc: Gray, Terry (DEM); lmiguel@crmc.ri.gov; Jeff Diehl; Ryan J Holt; kkorioth@riib.org; Kendra Beaver
Subject: Re: OSCAR Regulations: Save The Bay Objection

Director Willis and Chairman Coia,

It is our understanding that the red-lined version attached to this evening's Council agenda is the version that the Council will be considering tonight.
Save The Bay has no objection to that red-lined version attached to this evening's Council agenda.

Thank you,

Topher Hamblett
Director of Advocacy

On Mon, May 22, 2023 at 2:46 PM Topher Hamblett <thamblett@savebay.org> wrote:

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savebaynarragansett | @savethebayri | +savethebayri

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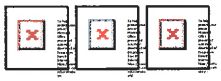

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