

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
PUBLIC NOTICE

Pursuant to the provisions of to R.I. Gen. Laws Chapter 42-17.1 and Public Law 1987, chapter 425, as amended, and consistent with the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the Rhode Island Department of Environmental Management hereby gives notice of its intention to afford the public an opportunity to offer written comment and to request the scheduling of a public comment hearing at which oral and written comments may be offered concerning the Department's intention to repeal the following rules and regulations :

RULES AND REGULATIONS FOR OPEN SPACE
AND RECREATIONAL AREA BONDS
ERLID # 1042

Written comments concerning the proposed repeal of the above regulations will be accepted at the Office of Legal Services, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908 on or before 4:00 p.m. on September 18, 2014. A public hearing on the proposed repeal of the above regulations will be held if the Department receives requests for such a hearing from twenty-five (25) or more people, a governmental agency or subdivision, or an association having not less than twenty-five (25) members on or before 4:00 p.m. on September 18, 2014. If a public hearing is to be conducted, a public notice will be posted announcing the date, time, and place of such hearing.]

The Department has determined that small businesses should not be adversely impacted by the proposed repeal of the above regulations. The public comment period is being afforded to solicit comment on the proposed repeal of the above regulations and to allow public input from small businesses or any cities or towns, which may nevertheless believe that they may be adversely affected. Small businesses are requested to comment on the proposed repeal of the above regulations as to how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the subject regulations will be available for examination from August 18, 2014 through September 18, 2014 by mail or at the offices of the Office of Legal Services, which is located at 235 Promenade Street, Providence, RI 02908. Electronic copies of the proposed regulations will also be available on the DEM website at the following web address:

<http://www.dem.ri.gov/programs/director/legal/pdf/openrepeal.pdf>

Signed this 18th day of August, 2014.

Janet L. Coit, Director

Rhode Island Department of Environmental Management
Office of Planning and Development
RULES AND REGULATIONS FOR OPEN SPACE
AND RECREATIONAL AREA BONDS
ERLID # 1042

Summary of Proposed Action

The subject regulations having been promulgated to administer certain open space bond funds that were approved in 1987 and those funds having been allocated by the Department, the need is no longer presented for the continuation of these regulations.

On the basis, of the above, the subject regulations are no longer necessary and should be repealed and eliminated.

~~RULES AND REGULATIONS~~
~~FOR~~
~~OPEN SPACE AND RECREATIONAL AREA BONDS (1987)~~

~~Adopted pursuant to~~
~~Rhode Island Public Law 425, 1987~~
~~January 1988~~

~~RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL~~
~~MANAGEMENT~~
~~235 PROMENADE STREET~~
~~PROVIDENCE, RI 02908~~

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1.00 AUTHORITY AND PURPOSE

1.01 STATUTORY BASIS

Public law 1987, chapter 425; "Open Space and Recreational Area Bonds" authorizes the Department of Environmental Management to administer sixty-five million two hundred thousand dollars (\$65,200,000.00) in state bonds for the purpose of: 1.) acquiring open spaces and recreational areas and 2.) improving and restoring public recreational areas.

1.02 PURPOSE

These rules and regulations establish the procedures by which the Department of Environmental Management will administer the Open Space and Recreational Area Funds (1987).

2.00 DEFINITIONS

ACQUISITION - Purchase by fee simple or development rights in eligible recreational or other open space land.

AGRICULTURAL VALUE - Five or more contiguous acres which are suitable for the production of crops or livestock by reference to soil type or existing use.

COASTAL FLOOD PRONE AREA - Land located within 1,000 feet of the shoreline of a tidal water body and which is designated on Flood Insurance Rate Maps published by the Federal Emergency Management Agency as Special Flood Hazard Area (V-zones and A-zones).

DEVELOPMENT RIGHTS PURCHASE - The acquisition of a conservation restriction as defined in section 34-39-2(a) of the General Laws of Rhode Island sufficient to insure preservation of the property in an undeveloped open space state in perpetuity.

DIRECTOR - The Director of the Rhode Island Department of Environmental Management.

ECOLOGICAL VALUE - Those values that promote and enhance the biological diversity of the State.

EDUCATIONAL VALUE - Opportunities for educating the public in scenic, natural, agricultural and/or ecological appreciation and preservation.

~~LAND AND WATER CONSERVATION FUND - For the purpose of these rules the administrative policies, procedures and guidelines of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578, 78 Stat 897), found in the Land and Water Conservation Fund Grants Manual, will be used in the administration of Recreational Acquisition and Recreational Development.~~

~~LAND TRUST - Organizations incorporated pursuant to Section 7-6-1, et.seq., of the General Laws of Rhode Island, as amended; or organizations meeting the definition of "charitable trust" set out in Section 18-9-4 of the General Laws of Rhode Island, as amended; or organizations duly existing as private non-profit organizations in other states or the District of Columbia among whose purposes is the preservation of open space, as the term is defined in Section 45-36-1 of the General Laws of Rhode Island, as amended. Further all organizations must have been granted preliminary status as a tax-exempt corporation under Section 501 (c) (3) of the Internal Revenue Code and its regulations, as they now exist or may hereafter be amended.~~

~~MASTER PLAN - Adoption and maintenance of a Recreation, Conservation and Open Space plan, within the past five years, which adequately addresses the restoration of historic landscape in order to maintain the landscape architectural integrity of the park. Sufficient detail is needed to delineate the park rehabilitation projects and set the priorities for the projects.~~

~~MUNICIPAL AGENCY - A unit of municipal government or an agency composed of representatives of several municipal governments among whose purposes is the preservation of open space, acquisition of recreation land or development of recreation land; said unit having the operational capability and legal authority to effectuate this purpose.~~

~~NATURAL VALUE - Those geologic, hydrologic and biotic elements that occur in the State without human introduction.~~

~~OPEN SPACE ACQUISITION - The purchase of undeveloped land, or land upon which no man made structure shall be maintained, not less than five (5) contiguous acres. The Natural Heritage Preservation Commission, in its discretion, may waive the acreage requirement in exceptional circumstances.~~

~~PROPERTY - Recreational acquisition and open space acquisition as the terms are used herein.~~

~~RECREATIONAL ACQUISITION - One (1) or more contiguous acre(s) of eligible land. The Recreation Resources Review Committee, in its discretion, may waive the acreage requirement in exceptional circumstances.~~

~~RECREATIONAL DEVELOPMENT - Construction of basic outdoor recreation and support facilities for the improvement and restoration of public recreational areas to serve the general public.~~

~~SCENIC VALUE - Aesthetically appealing landscapes or views composed of natural and/or cultural features.~~

~~STATE AGENCY - A unit of Rhode Island state government among whose purposes is the preservation of open space, acquisition of recreation land or development of recreation land; said unit having the operational capability and legal authority to effectuate this purpose.~~

~~URBAN PARK REHABILITATION - Rehabilitation of parks, listed in section 3.021 of these rules, which shall be carried out pursuant to any applicable master plan dealing with the restoration of historic landscape in order to maintain the landscape architectural integrity of these parks.~~

3.00 ALLOCATION BETWEEN PROJECTS

~~3.01 STATE PROJECTS - State Agencies shall be allocated fifteen million dollars (\$15,000,000.00) of which not more than five million dollars (\$5,000,000.00) shall be utilized for the rehabilitation of state-owned recreation areas and not more than five hundred thousand dollars (\$500,000.00) shall be allocated to private land trusts. Private land trusts may apply and receive funds, from this five hundred thousand dollar (\$500,000.00) allocation, for open space acquisition following the procedures as defined herein.~~

~~3.02 LOCAL PROJECTS - Fifty million two hundred thousand dollars (\$50,200,000.00) shall be allocated overall to municipal agencies.~~

~~3.021 URBAN PARKS REHABILITATION - Five million two hundred thousand dollars (\$5,200,000.00) are allocated for the restoration or rehabilitation of the following parks.~~

- ~~(1) Three million dollars (\$3,000,000.00) for the restoration of Roger Williams Park;~~
- ~~(2) Two hundred thousand dollars (\$200,000.00) for the restoration of Jenks Park in Central Falls;~~
- ~~(3) Four hundred thousand dollars (\$400,000.00) for the restoration of Slater Park in Pawtucket;~~
- ~~(4) Two hundred thousand dollars (\$200,000.00) for the restoration of Cold Spring Park in Woonsocket;~~

- ~~(5) Eight hundred thousand dollars (\$800,000.00) for the restoration of City Park in Warwick;~~
- ~~(6) Two hundred fifty thousand dollars (\$250,000.00) for the restoration of Carousel Park in East Providence;~~
- ~~(7) Two hundred fifty thousand dollars (\$250,000.00) for the restoration of Freebody Park and Miantonomi Park in Newport;~~
- ~~(8) One hundred thousand dollars (\$100,000.00) for the restoration of Wilcox Park in Westerly.~~

~~3.022 LOCAL PROJECTS - Forty-five million dollars (\$45,000,000.00) are allocated for grants to municipal agencies.~~

~~(1) Twenty-two million five hundred thousand (\$22,500,000.00) are allocated for acquisitions of which:~~

- ~~(A) Fifty percent (50%) of the funds are allocated to open space acquisitions and;~~
- ~~(B) Thirty percent (30%) of the funds are allocated for recreation acquisitions and;~~
- ~~(C) The final twenty percent (20%) shall be allocated, at the Director's discretion, to eligible projects, as approved under Section 6.07 of these regulations, with a priority on open space acquisitions and coastal flood prone areas that may be used for recreation.~~

~~(2) Eighteen million dollars (\$18,000,000.00) are allocated for recreation development.~~

~~(3) Four million five hundred thousand dollars (\$4,500,000.00) are allocated to financially restricted communities for open space acquisitions, recreation acquisitions and/or recreation development grants for up to a one hundred percent (100%) grant.~~

3.03 ALLOCATION OF FUNDS

~~3.031 ALLOCATION BY SELECTION ROUNDS: MAXIMUM GRANT AWARD- ACQUISITIONS - Twenty-two million five hundred thousand dollars (\$22,500,000.00) shall be available to municipal agencies for open space or recreational acquisitions. All funds allocated for grants under this section must be obligated no later than November 3, 1990. All funds authorized but not obligated on November 3, 1990 shall revert to the control of the Director for use in furthering state open space acquisitions. For each selection round, the Natural Heritage Preservation Commission shall set the maximum amount of a single grant for open space acquisitions and the Recreation Resources Review Committee shall set the maximum amount of a single grant for recreation acquisitions.~~

~~3.032 ALLOCATION BY SELECTION ROUNDS: MAXIMUM GRANT AWARD— DEVELOPMENT - Eighteen million dollars (\$18,000,000.00) shall be available to municipal agencies for recreation development. The Recreation Resources Review Committee shall set the maximum amount of money available for all municipal agencies during each selection round as well as the maximum amount of a single grant.~~

~~3.033 ALLOCATION BY SELECTION ROUNDS: FINANCIALLY RESTRICTED COMMUNITIES - Four million, five hundred thousand dollars (\$4,500,000.00) shall be available for open space acquisition, or recreation acquisition and/or recreation development. The Natural Heritage Preservation Commission shall set the maximum amount of a single grant for open space acquisitions and the Recreation Resources Review Committee shall set the maximum amount of a single grant for recreation acquisitions and recreation development.~~

~~3.034 ALLOCATION FOR URBAN PARK REHABILITATION - Funds will be allocated upon approval by the Rhode Island Recreation Resources Review Committee of the master plan and identification of the specific projects that comply with the master plan.~~

~~3.035 SCHEDULING OF SELECTION ROUNDS - The Director shall schedule the number, frequency and duration of local funding rounds after consultation with the Natural Heritage Preservation Commission and the Recreation Resources Review Committee; provided that there shall be at least one such funding round per year until all funds are expended.~~

~~4.00 DETERMINATION OF FINANCIALLY RESTRICTED COMMUNITIES~~

~~4.01 FINANCIALLY RESTRICTED COMMUNITIES - Distressed communities will be identified utilizing the system described under the "Distressed Communities Program" section of the report entitled State and Local Government Finances in Rhode Island in the 1980s; the Final Report of the Governor's Advisory Commission to Study the Financial Operations of State and Local Governments and the Interrelationships in Delivering Public Services, released in December, 1982 and known as the Swearer Report. Of the top ten communities on the lists, those that fall into three (3) of the four (4) distress categories will be identified for the purposes of this program as "distressed communities". Figures will be calculated each year using data from the most recent Annual State Report on Local Government Finances and Tax Equalization, compiled by the Department of Administration of the State of Rhode Island. The list of eligible communities will be published once in the Journal/Bulletin, 20 days prior to the first application period after January 1st of each year.~~

5.00 APPLICATION PROCEDURES

~~5.01 APPLICATION FORMS - Applications on forms approved by the Natural Heritage Preservation Commission or the Recreation Resources Review Committee, as applicable, shall be available on request from the Rhode Island Department of Environmental Management, Division of Planning and Development, 22 Hayes Street, Providence, RI 02908.~~

5.02 FILING

~~5.021 RECREATION ACQUISITION AND RECREATION DEVELOPMENT - Applications must be filed within the prescribed period with the Rhode Island Recreation Resources Review Committee, c/o Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Providence, RI 02908.~~

~~5.022 OPEN SPACE ACQUISITION - Applications must be filed within the prescribed period with the Rhode Island Natural Heritage Preservation Commission, c/o Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Providence, RI 02908.~~

~~5.023 URBAN PARKS REHABILITATION - Applications must be filed with the Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Providence, RI 02908.~~

~~5.03 RECORDING - Applications will be accepted any business day during regular work hours up to the filing deadline and shall be date and time stamped upon receipt.~~

~~5.04 FILING DEADLINE - The Director shall set a filing deadline for receipt of applications for each selection round. Applications received after the filing deadline will not be considered for funding during that round and will be returned to the applicant without prejudice. Such applications may be resubmitted during a subsequent selection round.~~

6.00 PROJECT ELIGIBILITY AND PROJECT COST

~~6.01 ELIGIBLE RECREATION ACQUISITION PROJECTS - An acquisition project shall consist of the acquisition of land and/or water for public outdoor recreation, including new areas or additions to existing parks, forests, wildlife areas, beaches~~

~~and other similar areas dedicated to outdoor recreation. Acquisition can be by fee simple title or lesser rights that will insure the desired public use.~~

~~6.02 ELIGIBLE RECREATION DEVELOPMENT PROJECTS - A development project may consist of one improvement or a group of related improvements designed to provide basic facilities for outdoor recreation, including facilities for access, safety, health and protection of the area, as well as those required for the use of the area. In all cases, the project must be a logical unit of work to be accomplished in a specific time frame.~~

~~6.03 OPEN SPACE ACQUISITION PROJECTS - Open space acquisition shall be limited to the purchase of fee simple title to, or conservation restriction over open space where such land has scenic, natural, agricultural, educational or ecological value.~~

~~6.04 ELIGIBLE PROJECT COSTS - Costs incidental to purchasing land or interests in land such as costs of appraisal, survey, title search, title insurance and the purchase itself are eligible; funding of development projects may cover construction, renovation, site planning, demolition, site preparation, architectural services, and similar activities essential for the proper conduct of the project; provided that any such costs are incurred after a grant application has been approved or after the applicant has received a waiver from the Director allowing such costs to be incurred in advance of project approval. Costs incurred prior to the approval of a project are at the applicant's risk and retroactive reimbursement is not assured. The granting of the waiver does not constitute assurance that the project will be approved. It is recognized that some costs must be incurred before a proposed project can be submitted with the required descriptive and cost data; therefore, for development projects, the costs of site planning, feasibility studies, architectural services, preliminary design and preparation of cost estimates may be eligible for assistance, although incurred prior to project approval. All such pre-approval costs incurred within three years prior to project submission are allowable.~~

~~6.05 ELIGIBLE APPLICANTS~~

~~6.051 LAND TRUST - Land Trusts, as defined in section 2.10, may apply for funding from the five hundred thousand (\$500,000.00) allocated in section 3.01.~~

~~6.052 MUNICIPAL AGENCY - Municipal agencies, as defined in section 2.12, may apply for open space acquisition funds. Further, the Recreation Resources Review Committee is responsible for determining eligibility status to participate in recreational acquisitions and recreation development. Eligibility is based upon the adoption and maintenance of an up-to-date~~

~~Recreation, Conservation and Open Space Plan which adequately assesses the current and future recreation and open space requirements and needs. The plan shall include an implementation program and schedule for actions proposed to address issues and needs expressed in the plan.~~

~~6.06 ELIGIBILITY CRITERIA~~

~~6.061 OPEN SPACE ACQUISITION - The Natural Heritage Preservation Commission will review applications and disqualify those that are incomplete or which fail to meet eligibility criteria set forth in its Rules and Regulations, adopted November, 1986, as amended, most particularly at Section 4.07, "Minimum Eligibility Criteria".~~

~~6.062 RECREATIONAL ACQUISITION AND DEVELOPMENT - The Recreation Resources Review Committee will review applications and disqualify those that are incomplete or which fail to meet eligibility criteria set forth in its Open Project Selection Process, of the State Comprehensive Outdoor Recreation Plan, adopted as Element 152 of the State Guide Plan by the State Planning Council on September 11, 1986, under Section 42-11-1, et. seq., of the General Laws of the State of Rhode Island, as amended.~~

~~6.063 The above referenced Commission and Committee may at their sole discretion allow applicants a reasonable period of time to complete incomplete applications.~~

~~6.07 EVALUATION OF APPLICATIONS~~

~~6.071 OPEN SPACE ACQUISITION - The Natural Heritage Preservation Commission will review each qualified application according to its Rules and Regulations, adopted November, 1986, as amended, most particularly at section 5.00, "Evaluation", and shall submit to the Director in order of priority its recommendations for grant awards.~~

~~6.072 RECREATIONAL ACQUISITION AND DEVELOPMENT - The Recreation Resources Review Committee will review each qualified application according to its eligibility criteria set forth in its Open Project Selection Process of the State Comprehensive Outdoor Recreation Plan, adopted as Element 152 of the State Guide Plan by the State Planning Council on September 11, 1986, under Section 42-11-1, et. seq, of the General Laws of the State of Rhode Island, as amended, and shall submit to the Director in order of priority its~~

~~recommendations for grant awards.~~

~~7.00 LOCAL GRANTS~~

~~7.01 AWARDS - The Director shall award grants in the order of priority recommended by the Natural Heritage Preservation Commission from the fifty percent (50%) reserved for open space acquisitions pursuant to section 3.031 and shall similarly award grants from the thirty (30%) reserved for recreational acquisition in order of priority recommended by the Recreation Resources Review Committee pursuant to section 3.031. The Director shall make additional awards from the twenty (20%) of allocated funds to either open space acquisition or recreational acquisition held in reserve. Notwithstanding the above, the Director, with the advice of the rating committees, shall have the authority to adjust such grant awards, so that no one community receives a disproportionate amount of the funds available and so that a reasonable geographic distribution of funds is achieved.~~

~~7.02 NOTICE - Notice of award shall be by registered mail return receipt.~~

~~7.03 MATCHING FUNDS~~

~~7.031 OPEN SPACE ACQUISITION - Grants shall be for 75% of approved project costs. Certification that all other necessary funds are available must be submitted prior to the release of grant funds.~~

~~7.032 RECREATION LAND ACQUISITION - Grants shall be for 75% of approved project costs. Certification that all other necessary funds are available must be submitted prior to the release of grant funds.~~

~~7.033 RECREATION DEVELOPMENT - Grants shall be for 50% of approved project costs. Certification that all other necessary funds are available must be submitted prior to the release of grant funds.~~

~~7.034 URBAN PARKS REHABILITATION - Grants shall be for 100% of approved projects costs, not to exceed the amount allocated by law pursuant to section 3.021.~~

~~7.035 FINANCIALLY RESTRICTED COMMUNITIES - Grants shall be for 100% of the approved open space and recreational acquisition costs and 75% of the approved recreational development costs. Certification that all other necessary funds are available must be submitted prior to the release of grant funds.~~

~~7.036 DONATIONS - Applicants may show the value of interests in land acquired as a local match, provided and to the extent that the value shown as a donation is sustained by competent appraisal and the donation is part of the same project.~~

~~7.04 RECORDS - The notice of award will set forth all grant terms, schedules and conditions including most particularly those relating to record keeping and verification of expenditures.~~

~~7.05 PROJECT PERIOD - The beginning date of a project period will normally be the date of approval. When a waiver has been granted by the Director, the effective date of the waiver shall be used as the beginning date of the project period. A period of one year shall be considered the project period and may be extended up to five years upon approval of the Director.~~

~~7.06 RESTRICTIVE COVENANTS - Grants will only be awarded upon receipt of the recipient's certification, signed by its authorized agent, that it will maintain any property acquired with grant funds in the condition and for the purpose specified in its approved grant application, and that it will do so in perpetuity.~~

~~7.061 OPEN SPACE ACQUISITION - It shall be an explicit condition of the receipt of a grant from the fund for the purchase of open space property that an approved management plan be submitted, as set forth in the Natural Heritage Preservation Commission Rules and Regulations, as amended. If public access is deemed appropriate, by the Natural Heritage Preservation Commission, the recipient shall not discriminate in providing access or in fees charged for access. Signs acknowledging the use of the Open Space and Recreational Area Funds shall be posted on the property.~~

~~7.062 RECREATIONAL ACQUISITION AND DEVELOPMENT - It shall be an explicit condition of a grant from the fund for the purchase of recreation land and/or development of recreation land that the applicant comply with the requirements of the Land and Water Conservation Fund Act of 1965, Public Law 88-578, 78 Stat 897, as defined in Section 2.09 of these regulations. Such requirements include, but are not limited to, general project compliance, criteria for acquisition, criteria for development, access fees, compliance with regulatory statutes, conversion of the property for non-complying use, signs acknowledging the use of the Open Space and Recreational Area Funds, five year compliance inspections and dedication in perpetuity to outdoor recreation. Enforcement power will lie with the Director of the Department of Environmental Management where the Secretary of the Interior or Regional~~

~~Director of the National Park Service is referenced.~~

~~7.07 ENFORCEMENT - Each recipient shall execute a conservation restriction, or similar document, running in favor of the State of Rhode Island and such certification shall further provide that if the recipient at any time fails in its obligation to properly maintain the property acquired in accordance with the purposes and functions for which it was acquired and with the approved management plan, if applicable, the State of Rhode Island may enforce the grant conditions in equity or, at its discretion, may assume title, custody and control to protect its interest.~~

~~7.08 CONVERSION - Any property so acquired or developed shall not be wholly or partly converted to other than the purpose specified in its approved grant application without the approval of the Director. The Director has the authority to disapprove conversion requests and/or to reject proposed property substitutions. Conversion requests will be considered following the prerequisites of the Land and Water Conservation fund Act found in the manual in section 675.9.3.~~

~~8.00 SEVERABILITY - If any section, paragraph, phrase, sentence or clause of these rules and regulations is declared invalid or unconstitutional for any reason, the remainder of the rules shall not be affected thereby.~~

~~9.00 ADOPTION AND FILING - The foregoing rules and regulations, after due notice and hearing, are hereby adopted and filed with the Secretary of State this 14th day of January, 1988, to become effective twenty (20) days thereafter, in accordance with the provisions of Section 42-44.1, 42-17.1, 42-17.3 and 42-35 of the General Laws of Rhode Island, 1956, as amended.~~

~~Robert L. Bendick, Jr.
Director, Department of Environmental Management~~

~~Notice given on: November 20, 1987.~~

~~Hearing Held on: December 8, 1987.~~

Effective: ~~February 3, 1988.~~