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TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 110 – PLANNING AND DEVELOPMENT

SUBCHAPTER 00 - N/A

PART 4 – Rules and Regulations for the Rhode Island Natural Heritage Preservation Commission

4.1 Purpose

These Rules and Regulations as amended, establish the operating procedures for the Natural Heritage Preservation Commission, the Rhode Island Natural Heritage Commission Advisory Committee, and the Rhode Island Department of Environmental Management for administering the Rhode Island Open Space Grants and the Natural Heritage Preservation Revolving Loan Fund, the purpose of which are to preserve, protect and make available for public use important open space and natural land throughout the state.

4.2 Authority

These rules and regulations as amended are promulgated pursuant to R.I. Gen. Laws § 42-17.5-5(c), and in accordance with the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35 in order to disperse funds allocated pursuant to Public Laws 142, 2016, Article 4, including but not limited to the “2016 Green Economy” which authorizes the Department of Environmental Management to administer Thirty Five Million Dollars \$35,000,000.00 in state bond funds and any similar funds that may be allocated by the General Assembly subsequent thereto.

4.3 Definitions

A. For the purposes of these regulations, the following terms shall have the following meanings:

1. "Advisory committee" means the Natural Heritage Preservation Commission Advisory Committee, a committee authorized to advise the Natural Heritage Preservation Commission on natural heritage matters as defined in R.I. Gen. Laws § 42-82-2.
2. "Commission" means the Natural Heritage Preservation Commission, a commission defined in R.I. Gen. Laws §§ 42-17-5.4 and 42-17-5.5.
3. "Conservation commission" means a commission as defined in R.I. Gen. Laws Chapter 35-45.

4. "Department" means the Rhode Island Department of Environmental Management.
5. "Director" means the Director of the Rhode Island Department of Environmental Management as described in R.I. Gen. Laws § 42-17.1.1.
6. "Ecological value" means those values that promote and enhance the biological diversity of the State.
7. "Environmental non-profit agency" means a group or organization formed pursuant to R.I. Gen. Laws § 7-6-1 *et. seq.* or which otherwise qualifies as a tax exempt public charity under the Internal Revenue Service Code 26 U.S.C. § 501(c)(3), whose purpose is the protection and conservation of natural resources as defined in its articles of incorporation.
8. "Land trust" means organizations incorporated pursuant to R.I. Gen. Laws § 7-6-1, or organizations meeting the definition of "charitable trust" set out in R.I. Gen. Laws § 18-9-4; 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 R.I. Gen. Laws § 45-36-1. Further, all organizations must have been granted preliminary status as a tax-exempt corporation under Internal Revenue Service Code 26 U.S.C. § 501(c)(3) and its regulations, as they now exist or may hereafter be amended.
9. "Municipal agency" means one or more units of municipal government whose purpose includes the preservation of open space, acquisition of recreation land or development of recreation land; said unit(s) having the operational capability and legal authority to effectuate this purpose.
10. "Native American tribes" means Native American tribes, bands, nations or other organized group which exercises governmental functions and which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Native Americans because of their status.
11. "Open space" means undeveloped land that has natural, ecological or scenic value.
12. "Watershed council" means an organization recognized by the Rhode Island Rivers Council, responsible for advancing the purposes of R.I. Gen. Laws Chapter 46-28 and implementing the Rivers Policy and Classification Plan adopted as RI State Guide Plan Element 162.
13. As used in these Rules and Regulations, all terms not defined herein shall have the meaning given them in R.I. Gen. Laws Chapter 42-35.

4.4 Allocation of Funds

- A. Grant Funding Allocation: The Department shall schedule the number, frequency and duration of grant funding rounds consistent with the “State Capital Budget Plan.” The Department may establish a maximum per project funding level for any given grant round.
- B. Loan Funding Allocation: The Department may set the maximum amount of funds available for loan during each calendar year from the revolving loan funds.

4.5 Eligible Applicants

Land trusts, conservation commissions, watershed councils, municipal agencies, environmental nonprofit agencies, and Native American tribes, as defined in § 4.3 of this Part may apply for land acquisition funding. The Rhode Island Department of Environmental Management shall be responsible for determining eligibility status to participate.

4.6 Eligible Property

- A. In order to be eligible for funding, a property must not be currently publicly held or in conservation use.
- B. If an applicant is requesting grant funding that will include costs incurred after the announcement of a grant round, but prior to a grant award, the applicant must submit a “Waiver of Retroactivity” request to the Director to be eligible for reimbursement. Waivers of Retroactivity must be requested by the applicant in writing prior to contracting for services or taking title to the property. Costs incurred prior to the approval of a project are incurred at the applicant's risk and retroactive reimbursement is not assured. The granting of a waiver of retroactivity does not constitute assurance that the project will be approved.

4.7 Meetings

- A. Open Meetings: All Commission and Advisory Committee meetings and records shall be conducted in compliance with the Open Meetings Law (R.I. Gen. Laws Chapter 42-46) and the Access to Public Records Act (R.I. Gen. Laws Chapter 36-1).
- B. Chairperson: The Advisory Committee shall elect a Chairperson at the first scheduled meeting of each calendar year.

4.8 Application Procedures

- A. Availability of Application Forms: Application forms shall be available for download on the Department's website and paper copies shall be available upon request to the Department.

- B. Filing of Applications: Applications shall be filed with the Department in a manner specified on the application form.
- C. Application Submission:
 - 1. Grant Applications: Applications for Open Space Grant Awards must be filed within the prescribed period established by the Department.
 - 2. Loan Applications: Loan applications may be submitted at any time throughout the year. The Commission will meet as needed to consider loan applications.

4.9 Application Review/Awards

- A. Grant Application Review: After the application deadline, the Advisory Committee shall have ninety (90) days to evaluate the applications according to the scoring criteria and shall submit a ranked list of recommended projects to the Commission. The Commission will review the recommendations and award grants within thirty (30) days.
- B. Loan Application Review: Following the receipt of an application, the Advisory Committee shall have forty-five (45) days to make its recommendation to the Commission. The Commission shall act on all applications in a timely manner and in no case shall the Commission take more than fifty (50) days after the submission date to inform an applicant of its decision.
- C. Evaluation: The Commission shall develop scoring criteria to evaluate and award applications. The scoring criteria shall include, but not be limited to, consideration of habitat and resource protection. These scoring criteria shall be available for download on the Department's website.
- D. Notice: notice of an award shall be by mail or via email.

4.10 Fund Terms

- A. Grant Terms and Conditions: The notice of an award will set forth all grant terms, schedules, and conditions.
- B. Loan Terms: In addition to any other limitations which may be imposed:
 - 1. No loan shall exceed ninety (90) percent of the purchase price to be paid for the subject property.
 - 2. No loan shall exceed seventy-five (75) percent of the appraised value of the subject property.
 - 3. Each loan agreement shall specify a maximum five (5) year term within which the full amount of the loan shall be repaid, shall require payments

on a quarterly basis, and shall set forth the amounts of each periodic payment. The Natural Commission may alter the repayment terms of the loan in emergency situations.

4. As security for said repayment obligations, the applicant shall execute a “Promissory Note” for the subject property to the Natural Heritage Preservation Commission and to the State of Rhode Island. The applicant will also be responsible for providing a title insurance policy in the amount of the loan. The Natural Heritage Preservation Commission and/or the State of Rhode Island shall have under said “Promissory Note” the right to foreclose upon said property and to sell it to any person and on any terms, which it may, in its discretion, choose. The failure to make periodic payments in a timely manner or to maintain the property in accordance with the management plan shall, at the option of the Commission, make the full balance of the loan immediately due and payable.
- C. **Project Period:** The beginning date of a project period will be the date of project approval. A term of two (2) years shall be considered the project period for all land acquisition projects. The Director may extend the project term for an additional two years after review and recommendation by the Commission. A term of four (4) years will be the maximum term for all acquisition grants and/or loans. If the Director should grant a Waiver of Retroactivity, as outlined in § 4.6 of this Part, the effective date of the Waiver of Retroactivity shall be used as the beginning date of the project period.
- D. **Discrimination:** Any property acquired with funds from this bond authorization shall not discriminate against persons desiring to use said property on the basis of residence, including preferential reservation membership or annual permit system which are prohibited. Project sponsors may impose reasonable limits on the type and extent of use of areas acquired with this fund when such a limitation is necessary for maintenance or preservation of the property and is consistent with the Management Plan as outlined in § 4.11 of this Part.

4.11 Required Documentation

- A. Prior to disbursement of any monies, the Commission shall require the following:
1. **Appraisal:** A fair market appraisal of the value of the property conducted by a certified real estate appraiser.
 2. **Survey:** A Class 1 property boundary survey to the Department’s specifications and conducted by a registered surveyor.
 3. **Title Policy:** Clear title must be established via a title commitment and insured via a Title Insurance Policy for the property. The Title Insurance Policy shall name the applicant and the Department as insureds on the policy.

4. Management Plan: An approved management plan that sets forth such procedures and requirements as are necessary to preserve the open, natural, scenic, agricultural, and ecological values of the property while providing such passive public recreational usage as is consistent with such preservation. More specifically, the plan shall specify the conditions under which public access and passive public recreational usage of the property is to be allowed and controlled. The plan shall be periodically reviewed and amended to reflect changing circumstances and/or new opportunities for preservation, access and/or recreational use. All amendments are subject to the review and approval of the Department.

4.12 Perpetual Conservation Easements and Enforcement

Property acquired with grant or loan funds must be maintained and managed in the condition and for the purpose specified in its application in perpetuity. Each recipient shall execute a conservation easement, as defined in R.I. Gen. Laws § 34-39-2(A), or similar document, running in favor of the State of Rhode Island. Said Conservation Easement shall include a provision that if the recipient at any time fails in its obligation to properly maintain the property in accordance with the purposes and functions for which it was acquired and in conformance with the approved management plan, the State of Rhode Island may enforce the grant or loan conditions in equity or, at its discretion, may assume title, custody and control to protect its interest.

4.13 Severability

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.