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## TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

### CHAPTER 110 – PLANNING AND DEVELOPMENT

#### SUBCHAPTER 00 - N/A

PART 1 - 2000 Open Space Bond Authorization Rules and Regulations

#### 1.1 Purpose

The purpose of these Rules and Regulations is to establish the procedures by which the Department of Environmental Management will administer the 2000 Environmental Management Bonds.

#### 1.2 Authority

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Chapter 42-17.1, Department of Environmental Management, in accordance with section 2000 Pub. Law 55, Article 5, "2000 Environmental Management Bonds" which authorizes the Department of Environmental Management to administer Thirty-Four Million Dollars (\$34,000,000.00) in state bonds according to the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

#### 1.3 Allocation of Funding

- A. Funding under the 2000 Environmental Management Bonds shall be allocated as follows:
1. State Projects - the Rhode Island Department of Environmental Management shall administer Twelve Million One Hundred Thousand Dollars (\$12,100,000.00) in FY 2002 - FY 2006 for land acquisition programs.
    - a. State Land Acquisition - Five Million Eight Hundred Thousand Dollars (\$5,800,000.00) shall be allocated for land acquisition protection which is consistent with the "Greenways, Greenspace" element of the State Guide Plan and the Department of Environmental Management "Land Protection Plan". The Department of Environmental Management's Land Acquisition Committee and the State Properties Committee shall approve projects funded under this section.
    - b. Agricultural Acquisition - Five Million Dollars (\$5,000,000.00) shall be allocated to the Agricultural Land Preservation Commission, established pursuant to R.I. Gen. Laws § 42-82-1, *et.seq.* Said

funds shall be expended by the Rhode Island Agricultural Land Preservation Commission for the purchase of development rights to land having high agricultural value as defined herein. The Agricultural Land Preservation Commission shall choose eligible farms under their Operating Procedures adopted June 1983, as amended.

- c. Public Drinking Water Protection Acquisition - One Million Three Hundred Thousand Dollars (\$1,300,000.00) shall be allocated to the Rhode Island Water Resources Board for the purchase of fee title, development rights and/or conservation easements to land for the protection of public drinking water supplies.
2. Local Projects - the Rhode Island Department of Environmental Management shall administer Eleven Million Four Hundred Thousand Dollars (\$11,400,000.00) in FY 2002 - FY 2006 for local land acquisition grants.
    - a. Open Space Grants - Eight Million Dollars (\$8,000,000.00) shall be allocated to municipal agencies, local land trusts, conservation commissions, watershed councils and non-profit environmental organizations to provide matching funds for fee simple acquisition and/or conservation easements to land that is consistent with the "Greenways, Greenspace" element of the State Guide Plan, Local Comprehensive Plan or a locally adopted land acquisition plan. The Director shall announce Grant rounds. The Rhode Island Natural Heritage Preservation Commission shall set the maximum amount award for a single grant awarded during each round. The Rhode Island Natural Heritage Preservation Commission Advisory Committee will review each application according to the procedures and evaluation criteria outlined in the "Rules and Regulations" of the Natural Heritage Commission of the State of Rhode Island and Providence Plantations as amended and shall submit to the Rhode Island Natural Heritage Preservation Commission in order of priority its recommendations for grant awards.
    - b. Recreation Land Acquisition Grants - Three Million Four Hundred Thousand Dollars (\$3,400,000.00) shall be allocated to municipal agencies to provide matching funds for recreation acquisition grants. Land acquired under this program must have a master plan for the development of the acquired property. The Director shall announce Grant rounds. The Rhode Island Recreation Resource Review Committee shall set the maximum amount award for a single grant. The Rhode Island Recreation Resources Review Committee will review each application according to its eligibility criteria set forth in the 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 January 11, 1990 as amended June 11, 1992 under R.I. Gen. Laws § 42-11-1, *et. seq.*, and shall submit to the Director in order of priority its recommendations for grant awards.

3. Allocation of Bonds Proceeds - Recreational Development \$9,000,000.00
  - a. State Projects - Up to Three Million Dollars (\$3,000,000.00) in FY 2002 - FY 2006 shall be available for the development and/or renovation of state public recreational facilities.
  - b. Local Projects - Up to Six Million Dollars (\$6,000,000.00) in FY 2002 - FY 2006 shall be available to municipalities to provide grants on a matching basis as set forth herein.
    - (1) Distressed Community Grants - One Million Dollars (\$1,000,000.00) shall be allocated to financially restricted communities for recreation development grants for up to 75% of the project cost and up to 100% of the cost for parkland acquisition. The Director shall announce Grant rounds. The Rhode Island Recreation Resource Review Committee shall set the maximum amount award for a single grant. The Rhode Island Recreation Resources Review Committee will review each 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 January 11, 1990 as amended June 11, 1992 under R.I. Gen. Laws § 42-11-1, *et. seq.*, and shall submit to the Director in order of priority its recommendations for grant awards.
    - (2) Recreation Development Grants - Five Million Dollars (\$5,000,000.00) shall be allocated to municipalities for recreation development grants for up to 50% of the project cost. The Director shall announce Grant rounds. The Rhode Island Recreation Resource Review Committee shall set the maximum amount award for a single grant. The Rhode Island Recreation Resources Review Committee will review each 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 January 11, 1990 as amended June 11, 1992 under R.I. Gen. Laws § 42-11-1, *et. seq.* and shall submit to the Director in order of priority its recommendations for grant awards.

4. Roger Williams Park - One Million Five Hundred Thousand Dollars (\$1,500,000.00) shall be allocated for improvements and renovations at Roger Williams Park in Providence as approved by the Director.
5. Reallocation - All funds allocated under § 1.3 of this Part must be obligated no later than June 30, 2005. All funds authorized but not obligated on June 30, 2005 shall revert to the control of the Director for reallocation in accordance with any section of the Bond Authorization.

## **1.4 Applicability**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

## **1.5 Definitions**

- A. For the purposes of these Regulations, the following terms shall have the following meanings:
  1. "Agricultural acquisition" means the purchase of development rights to land that has agricultural value.
  2. "Agricultural value" means five or more contiguous acres of land that is suitable for the production of crops or livestock by reference to soil type or existing use as set forth in the Farmland Preservation Act, of the R.I. Gen. Laws Chapter 42-82.
  3. "Appraisal" means a report by a Certified Rhode Island Appraiser that estimates the fair market value of property.
  4. "Conversation commission" means a commission as defined in R.I. Gen. Laws Chapter 35-45.
  5. "Conservation easement" means a voluntary agreement to restrict the development and/or management of land. The agreement restricts the use of the property in such a way that its natural or man-made features are not altered or developed in a manner that is inconsistent with the easement.
  6. "DEM - Division of Planning and Development" means a division of the Rhode Island Department of Environmental Management that is authorized to administer the Open Space and Recreation Bond Authorizations.
  7. "DEM - land acquisition committee" means an intra-departmental committee of the Department of Environmental Management that make recommendations to the Director in regards to real estate transactions.

8. "Department of Environmental Management" means a department of the state government as described in R.I. Gen. Laws Chapter 42-17.1.
9. "Development rights purchase" means the acquisition of the development rights as defined in R.I. Gen. Laws § 42-82-2.
10. "Director" means the Director of the Rhode Island Department of Environmental Management as described in R.I. Gen. Laws § 42-17.1-1.
11. "Distressed community" means as defined in R.I. Gen. Laws § 45-13-12.
12. "Ecological value" means those values that promote and enhance the biological diversity of the State.
13. "Educational Value" means opportunities for educating the public in scenic, natural, agricultural and/or ecological appreciation and conservation.
14. "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 Section 501(c)(3) of the Internal Revenue Code whose purpose is the protection and conservation of natural resources as defined in its articles of incorporation.
15. "Greenway" means a corridor of protected open space managed for conservation, recreation and/or transportation purposes.
16. "Greenspace" means land and water that is:
  - a. Legally restricted or otherwise dedicated for purposes of conservation of natural resources and which is reserved in an undeveloped state; or,
  - b. Legally restricted or otherwise reserved for purposes of public recreation and of which development is limited to structures and facilities essential to support public recreational usage.
17. "Greenspace acquisition" means the purchase of fee simple, conservation easement or development rights of eligible land for the purpose of creating or maintaining a greenway consistent with the State Greenspace and Greenways Plan.
18. "In-kind services" means noncash contributions provided by the grantee, other public agencies and/or private organizations or individuals. In-kind contributions consist of the value of services directly benefiting and specifically identifiable to the project.

19. "Land and water conservation fund" means 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; 16 U.S.C. 4601-4 *et seq.*, found in the Land and Water Conservation Fund Grants Manual, as amended, will be used in the administration of Recreation Acquisition and Recreation Development Program.
20. "Land protection plan" means the plan adopted in 1996 and as may be amended by DEM entitled Protecting Our Land Resources, to guide the department's land acquisition and protection activities.
21. "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 Section 501 (c) (3) of the Internal Revenue Code and its regulations, as they now exist or may hereafter be amended.
22. "Local comprehensive plan" means the plan adopted by each municipality and approved pursuant to R.I. Gen. Laws Chapter 45-22.2.
23. "Management plan" means a plan that specifically outlines the proposed uses and scheduled management activities to be instituted on an acquired parcel of land. Contents of management plans are based on criteria established by the Natural Heritage Commission.
24. "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.
25. "Natural heritage preservation commission advisory committee" means a committee to advise the Natural Heritage Preservation Commission on natural heritage matters as defined in R.I. Gen. Laws § 42-17.5-6.
26. "Natural heritage preservation commission" means a commission within the Department of Environmental Management as defined in R.I. Gen. Laws §§ 42-17.5-4 and 42-17.5-5.
27. "Natural value" means those geologic, hydrologic and biotic elements that occur in the state without human introduction.
28. "Open space" means undeveloped land that has natural, ecological or scenic value.

29. "Recreation acquisition" means the acquisition of land suitable for recreation development in accordance with a master plan for the development of the acquired property.
30. "Recreation development" means construction of basic outdoor recreation and support facilities for the improvement and restoration of public recreation areas to serve the general public.
31. "Recreation Development Resources Review Committee" or "RRRC" means an administrative body established in 1972 to assume the duties and functions of the former Green Acres Review Committee. The RRRC consists of no less than six and no more than ten representatives selected by the State Planning Council.
32. "Scenic value" means aesthetically appealing landscapes or views composed of natural and/or cultural features.
33. "SCORP" means the State Comprehensive Outdoor Recreation Plan adopted as Element 152 of the State Guide Plan by the State Planning Council.
34. "State agency" means 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.
35. "State greenspace and greenways plan" or "Greenways, greenspace element of the State Guide Plan" means the document entitled "A Greener Path: Greenspace and Greenways for Rhode Island's Future", and designated as Element 155 of the State Guide Plan, as adopted by the State Planning Council pursuant to R.I. Gen. Laws § 42-11-10 including any subsequent revisions or amendments thereof adopted by the State Planning Council.
36. "State guide plan" means goals, policies and plans or plan elements for the physical, economic and social development of the state, adopted by the state planning council in accordance with R.I. Gen. Laws § 42-11-20.
37. "Waiver of retroactivity" means approval by the Director of costs incurred after the announcement of a grant round and prior to a grant award as 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 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.

38. “Water resources board” means a unit of Rhode Island state government whose purposes is to regulate the proper development, protection, conservation and use of the water resources of the state in accordance with R.I. Gen. Laws § 46-15-1.
39. “Watershed” means a watershed is the area of land from which runoff from rain, snow, or irrigation drains to a common body of water.
40. “Watershed plan” means a watershed plan is a document that identifies watershed goals and management objectives along with specific action items that are needed. The plan must be developed in consultation with all the key stakeholders within a watershed including but not limited to: federal, state, local, non-governmental, and the private sector. At a minimum, the watershed plan must be officially recognized by the city or town council who is submitting the open space grant application.
41. “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 of the and implementing the Rivers Policy and Classification Plan adopted as RI State Guide Plan Element 162. 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.

## **1.6 Scheduling of Selection Rounds**

The Director shall schedule the number, frequency and duration of local grant funding rounds consistent with the “State Capital Budget Plan” and after consultation with the Rhode Island Recreation Resources Review Committee and the Rhode Island Natural Heritage Commission.

## **1.7 Applications**

Applications on forms approved by the Rhode Island Recreation Resources Review Committee and the Rhode Island Natural Heritage Commission, as applicable, shall be available on request from the Rhode Island Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Room 320, Providence, RI 02908-5767 or from the DEM Web Site at <http://www.dem.ri.gov/programs/planning/grants/index.php>

## **1.8 Filing**

Applications must be filed within the prescribed period to be established for each local grant funding round by the Department of Environmental Management. Applications must be sent to the Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Room 320, Providence, RI 02908-5767.



## **1.9 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 by the Department of Environmental Management.

## **1.10 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. All filing deadlines will be posted on the DEM Web Site.

## **1.11 Evaluation of Applications**

### **A. Review**

1. The Rhode Island Recreation Resources Review Committee will review each application for recreation acquisition and development grants according to the "Rules and Regulations" outlined in the SCORP/ Open Project Selection Process and shall submit to the Director in order of priority its recommendations for grant awards.
2. The Rhode Island Natural Heritage Preservation Commission Advisory Committee will review each application according to the procedures and evaluation criteria outlined in the "Rules and Regulations" as amended of the Natural Heritage Commission of the State of Rhode Island and Providence Plantations and shall submit to the Rhode Island Natural Heritage Preservation Commission in order of priority its recommendations for grant awards.

### **B. Awards**

1. The Director shall award grants with the advice of the Recreation Resources Review Committee. The Director 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.
2. The Natural Heritage Preservation Commission shall award grants with the advice of the Natural Heritage Preservation Commission Advisory Committee. The Natural Heritage Preservation Commission 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.

### **C. Notice - Notice of award shall be by registered mail, return receipt requested.**

- D. Terms and Conditions - 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.
- E. 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 term of two (2) years shall be considered the project period for all land acquisition projects. A term of three (3) years shall be considered the project period for all recreation development projects. The Director may extend the grant term an additional two years after review and recommendation by the Natural Heritage Preservation Commission and/or the Recreation Resources Review Committee.
- F. Discrimination - Any property acquired and or developed 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 and facilities acquired or developed with this fund when such a limitation is necessary for the maintenance or preservation of the property.

### **1.12 Eligible Projects**

- A. Open Space Acquisition Project: Open space acquisition shall be limited to the purchase of fee simple title or conservation easements over open space where such land is consistent with the "Greenways, Greenspace" element of the State Guide Plan: entitled "A Greener Path: Greenspace and Greenways for Rhode Island's Future" and/or an up-to-date Comprehensive Plan, Greenways Master Plan or Watershed Management Plan or other adopted land acquisition plan that adequately assesses current and future open space requirements and needs. The plans shall include an implementation program and schedule for actions proposed to address issues and needs expressed in the plan.
- B. Recreation Acquisition Project: Recreation land acquisition shall be limited to the purchase of fee simple title to land that will be developed for outdoor recreation purposes in accordance with a master plan for development of the property.
- C. Recreation Development Projects: A development project designed to provide public outdoor recreation.

### **1.13 Eligible Project Costs**

- A. Open Space Acquisition and Recreation Land Acquisition Projects- Costs incidental to purchasing land or interests in land. Eligible project costs are appraisal, survey, title search, title insurance and the purchase itself. Provided that any such costs are incurred after a grant application has been approved or after the applicant has received a waiver of retroactivity 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 a waiver of retroactivity does not constitute assurance that the project will be approved.

- B. Eligible Project Costs Recreation Development Projects - Eligible costs for development projects may cover design, construction, site planning, demolition, reforestation, and landscaping and site improvements essential to the project. Provided that any such costs are incurred after a grant application has been approved or after the applicant has received a waiver of retroactivity 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 a waiver of retroactivity does not constitute assurance that the project will be approved.

### **1.14 Eligible Applicants**

- A. Land Trust, Watershed Councils, Conservation Commissions and Non-Profit Environmental Agencies - as defined in § 1.5 of this Part herein, may apply for land acquisition funding. The Rhode Island Department of Environmental Management shall be responsible for determining eligibility status to participate in the Land Acquisition grant rounds.
- B. Municipal Agency - Municipal agencies, as defined in § 1.5 of this Part herein, may apply for open space, recreation acquisition and recreation development funds. The Department of Environmental Management shall be responsible for determining eligibility status to participate in the Open Space, Recreation Acquisition and Recreation Development Grant Rounds. Eligibility is based upon the adoption and maintenance of an up-to-date Local Comprehensive Plan, Outdoor recreation Plan and/or locally adopted land acquisition 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.
- C. Native American Tribes - Indian 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 Indians because of their status.

### **1.15 Local Grants/Matching Funds**

- A. Open Space - 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.

- B. Recreation Land Acquisitions - 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.
- C. Recreation Development Grants - 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. In-kind services that are used for match are limited to 25% of the total project cost.
- D. Distressed Communities Recreation Development Grants - 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. In-kind services that are used for match are limited to 12.5% of the total project cost.
- E. Donations - Applicants may use the value of donated property interests in land to be acquired or preserved as the local match, provided the value shown as a donation is sustained by a certified appraisal and the donation is part of the same project.

### **1.16 Restrictive Covenants**

Property acquired with grant funds must be maintained and managed in the condition and for the purpose specified in its approved grant application in perpetuity. Each recipient shall execute a perpetual conservation easement, 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 in conformance 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.

### **1.17 Management Plan/Open Space Grants**

An approved management plan meeting the requirements of such plans established in the Rules and Regulations of the Rhode Island Natural Heritage Preservation Commission of the State of Rhode Island and Providence Plantations, November 1986, as amended must be submitted and approved prior to the release of grant funds. If public access is deemed appropriate, the recipient shall not discriminate in providing access or in fees charged for access.

### **1.18 Conversion**

Any property so acquired or developed shall not be wholly or partly converted to a use other than the purpose specified in its approved grant application without the approval of the Director. The Director shall seek recommendations from the Natural Heritage Preservation Commission and the Recreation Resources

Review Committee on all conversions. The Director has the authority to disapprove conversion requests and/or to reject proposed property substitutions.

### **1.19 Recreation Acquisition and Development Grants Management/Maintenance Agreement**

Each applicant must submit with the application a signed maintenance and management agreement stating the applicant's ability to manage and maintain the improved/acquired recreation facility. The city/town council where said project is located must approve the project and maintenance / management agreement by resolution guaranteeing future maintenance/ management of the facility.

### **1.20 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.