

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
PUBLIC NOTICE**

Pursuant to the provisions of Rhode Island General Laws §§ 42-17.1-1, *et seq.*, as amended, and in accordance with the Administrative Procedures Act, Rhode Island General Laws §§ 42-35-1, *et seq.*, the Director of the Department of Environmental Management (DEM) proposes the promulgation of the Rhode Island Department of Environmental Management's "*Rules and Regulations Governing the Preservation and Protection of State Open Space*" and gives notice of intent to hold a public hearing to afford interested parties the opportunity for public comment.

Public comment will be solicited on the following proposed regulations that the Department of Environmental Management proposes to promulgate to comply with the requirements of R.I. Gen. Laws §§ 42-17.9-1, *et seq.*, pursuant to which the Department is to establish by rule, integrated standards and guidelines for preserving and protecting the state's interest in open space values.

The public hearing will commence at 2:00 PM on Friday, October 22, 2010 in Room 300 of the Foundry Building, located at 235 Promenade Street, Providence, RI 02908. The hearing room is handicap accessible. A taped record of the hearing will be made and the DEM will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for this service can be made in writing or by calling (401) 222-6800 or TDD (401) 831-5508. Written comments concerning the regulations proposed for promulgation by the DEM may also be submitted to the Division of Planning and Development, 235 Promenade Street, Providence, RI 02908 no later than 4:00 p.m. on Wednesday, October 20, 2010.

The Department has determined that small businesses shall not be adversely impacted by the proposed regulations. The public hearing is being conducted to solicit comment on the proposals and to allow public input from small businesses or any cities or towns, which may believe that they may be adversely affected. Interested parties are requested to comment on the proposed regulations on how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the proposed regulations will be available for examination from September 20, 2010 through October 20, 2010 by mail or at the office of the Division of Planning and Development, 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 address: <http://www.dem.ri.gov/pubs/index.htm#regprops>.

Signed September 14th, 2010
W. Michael Sullivan, PhD, Director
Department of Environmental Management

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**RULES AND REGULATIONS
GOVERNING THE PRESERVATION AND PROTECTION
OF STATE OPEN SPACE**

RULE 1.00 – AUTHORITY – Pursuant to Rhode Island General Laws § 42-17.9-1 et seq., the preservation of open space and the protection of natural resources are a fundamental interest of the state and an essential function of state government. The within “*Rules and Regulations Governing the Preservation and Protection of State Open Space*” (hereinafter the “*Rules*”) have been promulgated specifically to address the policy goals established by the Act.

RULE 2.00 – PURPOSE – The purpose of these *Rules* is to set standards and guidelines for evaluating actions that would convey or amend state interests or constitute changes in use of state-owned and managed property requiring the approval of the department of administration or the state properties committee in order to preserve and protect the state's interest in open space values and to prevent a net loss of open space values. The *Rules* shall not operate as standalone provisions and are formally triggered by open space provisions contained within the Rules and Regulations of the State Properties Committee.

RULE 3.00 – APPLICABILITY - The *Rules* and associated standards, guidelines, and evaluation criteria shall be imposed upon any state agency proposing a sale, lease, transfer, conveyance, change-in-use, and/or amendment of interest in state-owned property that would result in an impact to open space or natural resource values and shall be applicable to the such actions subject to the provisions of Rhode Island General Laws chapters 37-6 and 37-7 (Public Property and Works “Acquisition of Land” and “Management and Disposal of Property,” respectively). Said *Rules* shall not be deemed either to abridge, impair, or restrict, the planning, management, or regulatory authority of state departments and agencies with responsibility for conserving, preserving, protecting, using, managing and enhancing natural resources under the jurisdiction of such departments and agencies or to contravene location or use decisions specifically provided for in statute or approved by referendum.

RULE 4.00 – LIMITATION - The *Rules* shall apply only to properties or portions of properties where the state is the sole property owner, or the state through a grant, leasehold, or other legal instrument has the functional equivalent of ownership and the state controls the use of the property.

RULE 5.00 - DEFINITIONS - For the purposes of these *Rules*, the following terms shall have the following meanings:

Act: The Preservation of State Open Space Act as set forth in the Rhode Island General Laws § 42-17.9-1 et seq.

Action: The sale, lease for a period greater than one year, transfer, conveyance, change-in-use, or amendment of interest in state-owned property.

Agency: Any department, division, unit, bureau, board, commission, council, committee, institution, or other entity established by the State of Rhode Island not specifically exempted from the provisions of chapters 37-6 and 37-7 of the Rhode Island General Laws.

Application: An Agency's application to sell, lease, transfer, convey, implement a change-in-use, and/or amend an interest in state-owned property.

Chair: The Chair of the State of Rhode Island State Properties Committee.

Change-in-use (or change-of-use): Any change in the use, purpose, or level of activity on any parcel of property or portion thereof.

Committee: The State of Rhode Island State Properties Committee.

Department: The State of Rhode Island Department of Environmental Management or DEM. When used in the context of an action, authorization or application, it shall mean the agent of the Department duly authorized by the *Director* to take such action, grant such authorization or recommend such application for approval.

Director: The Director of the Rhode Island Department of Environmental Management.

Division: The State of Rhode Island, Department of Administration, Division of Planning.

Open Space: Undeveloped or partially developed real property owned by an Agency of the State of Rhode Island that includes, but is not limited to, the following: conservation land, forested land, wetlands, recreation land, management areas, agricultural land, critical habitat, recreational areas, and corridor parks. Such lands may include amenities such as small parks, green buffers along roadways, or any open area that is owned by an Agency. While many parcels are specifically designated as open space, open space may also refer to undesignated, undeveloped land with particular conservation or recreation interest.

Open Space (or Natural Resource) Values: The state's interest in open space values shall mean interests established by law or by investment of public resources and shall include the natural resource, recreational, scenic, habitat and ecological, water supply, agricultural, soil conservation, and forestry values of lands, wetlands, and waters, acquired, preserved, conserved, and/or protected under the provisions of law.

Person: Any individual; corporation; partnership; public utility; nonprofit organization; trust; unincorporated association; federal, state, county or local government, or any agency or subdivision thereof; or any other entity; or any combination of the foregoing.

Property: State-owned real estate.

R.I.G.L.: The Rhode Island General Laws of 1956, as amended from time to time.

Rules: These Rules and Regulations Governing the *Standards and Guidelines for Preservation and Protection of State Open Space*, which govern the administration and enforcement of the *Act*. Unless otherwise expressly stated, any reference herein to the *Rules* incorporates the relevant provisions of the *Act*.

RULE 6.00 – DETERMINATION OF OPEN SPACE VALUES

6.01. Application and Notice.

a. In conformance with the *Rules* as well as the Rules and Regulations of the State Properties Committee, the Department shall complete its review of properly filed Applications and subsequently issue its recommendations thereon.

b. The Agency Application, as filed, shall be a matter of record and shall be considered by the Department in formulating its recommendation to the Committee.

c. Upon its own election, or upon the request of an interested party, the Department may make a request to the Committee to allow for an extended review and comment period as may be necessary.

d. The Director shall establish a mailing list of all interested persons, groups, and agencies who may wish to be notified of all such Applications. The Director shall solicit all interested persons to be included in the mailing list and shall provide for optional notice via electronic mail.

e. The Notice of Application shall include, but shall not be limited to, the name of the Agency seeking permission to sell, lease, transfer, or convey the Property, the future proposed use(s) for said lands, a property description of the Property, and the date upon which the fifteen (15) day comment period shall end.

6.02. Comments - Comments filed with the Department under the provisions of these *Rules* will be considered and reviewed if they are in writing, are legible, contain a discernable name and address of the commenter or objector, are signed, and are received during the fifteen (15) day notice period. The commenter or objector must identify the application number noted in the public notice or must otherwise identify or reference the application about which they are commenting thereon or objecting thereto. The Department will not forward to the Committee those comments or objections to applications which do not contain sufficient information to properly relate the comment or objection to a specific application.

a. A comment will be considered timely filed if received within the fifteen (15) day public comment period. If the last day of the fifteen (15) day notice period ends on a weekend or holiday, the end of the public notice period will be extended through the next business day.

b. Comments and objections may be provided via paper copy (regular mail), facsimile, or via electronic mail.

c. The Department shall determine whether a comment is a comment or objection of a substantive nature pursuant to the *Rules*. In accordance with the *Rules*, a determination that a comment or objection is substantive will necessitate the forwarding of such comment or objection to the Committee. All substantive comments and objections received by the Department will remain part of the Application file.

d. A commenter or objector may withdraw, in writing, his or her objection any time prior to the submission of the Department's recommendation to the Committee.

6.03 – Review Criteria – If a Property is to be sold, transferred, conveyed, changed in use, an interest amended thereon, or leased for a term longer than one year, the Department shall conduct an evaluation and issue findings and recommendations to the Committee taking into account the following review criteria:

a. Whether the Property has significant open space or natural resource values, as defined by R.I.G.L. 42-17.9-3 and determined by a review of the Property's water resources, including proximity to waterbodies, wetlands, or groundwater aquifers, or presence within a coastal zone; agricultural resources, including active or recent agricultural activity and presence of agricultural soils; wildlife habitat resources, including the presence of significant habitat types and the presence of rare or endangered species; geologic or scenic resources; and public recreational resources;

b. Whether the transfer, sale, lease, or change in use of such Property would have a significant impact on the Property's open space or natural resource values and be contrary to the public's interest in the preservation of open space and natural resource values and use, enhancement of environmental quality and functionality, defining and enhancing the sense of place, providing recreational opportunities, and contributing to the quality of life in accordance with R.I.G.L. 42-17.9-1 et seq;

c. If the proposed Action has a significant impact upon the state's interest in open space values, whether such action serves a necessary public interest and is the minimum needed to achieve the purposes of such Action;

d. Considerations – The Department shall consider the following goals during its review of the Application:

i. To protect and support the public's interests in open space values as a means of preserving the use and the enjoyment of the natural resources of the

state, of enhancing environmental quality and functionality, of defining and enhancing the sense of place, of providing recreational opportunities, and of contributing to the quality of life.

ii. To recognize, respect, and protect the interests and investments of non-profit organizations, foundations, federal, state, and municipal government, land-owners, funding sources, and the original grantors and donors in properties acquired and/or managed for open space values.

iii. To assure that the conveyance of interests in state properties with open space values is to the maximum extent reasonably feasible not inconsistent with the state guide plan and elements thereof, and with local comprehensive plans and elements thereof that have been approved as consistent with the state guide plan.

iv. To provide a comprehensive evaluation of open space values prior to the conveyance of state interests in property or formal amendments to or changes in allowed use, with the objectives of preserving and protecting the public's interest in open space.

v. To avoid reducing or abrogating levels of protection accorded to state-owned property acquired and managed for open space, conservation, and/or natural resource values.

vi. To provide a model for public open space protection.

6.05 - Final Approval - Prior to final Committee approval of any proposed Action which would adversely affect open space values on Property that was acquired and/or dedicated to and managed for open space purposes, upon request by the Committee, the Department shall analyze the satisfaction of the requirement that a new and not yet conserved parcel of reasonably equal open space value, fair market value, and acreage shall be acquired by the state for conservation purposes to ensure there is no net loss of open space values. This requirement shall not apply in instances of declared disasters or emergencies or in instances of imminent threat to public health or public safety. The Department must determine the following:

i. That the fair market value of the Property to be converted has been established and the property proposed for substitution is of at least equal fair market value as established by an approved appraisal (prepared in accordance with Uniform Standards of Professional Appraisal Practice) excluding the value of structures or facilities that will not serve an open space purpose.

ii. That the property proposed for replacement contains reasonably equivalent open space values and acreage as that being converted. The replacement property need not provide identical open space values or be located

at the same site, provided it confers reasonably equivalent open space values and acreage.

RULE 7.00 – PERIODIC REVIEW - Said *Rules* shall be reviewed by the Department at least once every five (5) years and shall either be amended or affirmed by the Department as appropriate.

DRAFT

July 16, 2010

**NOTIFICATION FORM
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF PLANNING AND DEVELOPMENT
SMALL BUSINESS REGULATORY IMPACT AND REGULATORY
FLEXIBILITY ANALYSIS**

Title of Regulation: RULES AND REGULATIONS GOVERNING THE
PRESERVATION AND PROTECTION OF STATE OPEN
SPACE

Statutory Authority: R.I. Gen. Laws § 42-17.9-1 et seq.
PRESERVATION OF STATE OPEN SPACE

The Regulation:

The proposed rules would enact regulations governing the administration of state-owned open space lands.

Expected Small Business Impact:

There will be no effect whatsoever upon small businesses. The proposed regulations are aimed to protect the interests of Rhode Island citizens and non-profits who may have financed, as taxpayers or otherwise, the acquisition of open space lands.

Regulatory Flexibility Analysis:

The Department as well as the Division of Planning and Development have determined that no small businesses shall be impacted by the proposed regulations.



**RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT**

235 Promenade Street, Providence, RI 02908-5767

TDD 401-831-5508

July 16, 2010

TO: Peter Dennehy, RI Department of Administration
Sherri Lynn Carrera, RI Economic Development Corporation
Daniel Majcher, Office of the Governor

FROM: Richard M. Bianculli Jr., Legal Counsel, Legal Services
Department of Environmental Management

SUBJECT: Economic Impact and Regulatory Flexibility

Relevant Regulations Affected:

RIDEM Rules and Regulations Governing the Preservation and Protection of State Open Space

Authority:

These regulations are adopted in accordance with Rhode Island General Laws § 42-17.9-1 et seq., as well as Chapters 42-17.1 and 42-17.6, consistent with the requirements of Chapter 42-35, Administrative Procedures Act of the General Laws of 1956, as amended.

Summary of Proposed Regulation Changes:

The Open Space regulations are required pursuant to a statutory mandate contained within R.I. Gen. Laws § 42-17.9-1, et seq. The statute directs the Department, in cooperation with the Rhode Island State Properties Committee, to establish integrated standards and guidelines for preserving and protecting the state's interest in open space values. As such, the Department is required to promulgate these regulations accordingly.

Where to find the specific language changes:

The language changes can be found at <http://www.dem.ri.gov/topics/mftopics.htm> and will be listed as the RIDEM Rules and Regulations Governing the Preservation and Protection of State Open Space

Economic Impact:

Per RIGL § 42-35.1-3

1. Each of the proposed regulations governs the management of state-owned open space lands. As such, the Department believes that none of its proposed rule making has a potential for causing a direct financial impact upon either small businesses or any municipality.
2. There are no anticipated reporting, recordkeeping, or other administrative costs required for compliance with the proposed rules.
3. DEM has not identified a less intrusive or less costly alternative method to achieve the requirements mandated.

Regulatory Flexibility:

Per RIGL §42-35.1-4

The Department considered, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses and determined that there is no alternative approach that would be as effective and less burdensome, given the requirements of upon the Department to manage the open space resources of this State:

- 1) The establishment of less stringent compliance or reporting requirements for small businesses;
- 2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- 3) The consolidation or simplification of compliance or reporting requirements for small businesses;
- 4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
- 5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation. .

The proposed rules and regulations have absolutely no impact on small businesses.

If you have any questions or comments on the proposed Rules, please do not hesitate to contact one of the following:

Lisa Primiano, Deputy Chief, Division of Planning and Development
Lisa.primiano@dem.ri.gov
401-222-4700, Ext. 4307

Richard M. Bianculli Jr., Esq., Legal Counsel
richard.bianculli@dem.ri.gov
401-222-4700, Ext 2023