

**250-RICR-110-00-2**

## **TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 110 – PLANNING AND DEVELOPMENT**

#### **SUBCHAPTER 00 - N/A**

PART 2 - Rules and Regulations for 1989 Open Space and Recreation Capital Development Program

#### **2.1 Authority**

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Chapter 42-17.1, Department of Environmental Management, and in accordance with 1989 R.I. Pub. Laws 552, "1989 Open Space and Recreation Capital Development Program," which authorizes the Department of Environmental Management to administer fifty-three million dollars (\$53,000,000.00) in state bonds according to the following:

- A. State Coastal and Shoreline Acquisition and Recreational Development Program - twenty six million dollars (\$26,000,000.00).
- B. Local Acquisition and Development - fifteen million dollars (\$15,000,000.00).
- C. Farm Land Development Rights - three million dollars (\$3,000,000.00).
- D. Roger Williams Park Restoration - nine million dollars (\$9,000,000.00).

#### **2.2 Purpose**

These Rules and Regulations are to establish the procedures by which the Department of Environmental Management will administer the 1989 Open Space and Recreation Capital Development Program funds.

#### **2.3 Definitions**

- A. "Agricultural acquisition" means the development rights purchase of land that has agricultural value.
- B. "Agricultural value" means five or more contiguous acres which are suitable for the production of crops or livestock by reference to soil type or existing use.
- C. "Coastal flood prone area" means 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).

- D. "Coastal and shoreline acquisition" means the purchase of fee simple or development rights to land adjacent to a fresh or tidal water body, including, but not limited to rivers, ponds, lakes and the ocean.
- E. "Development rights purchase" means the acquisition of a conservation easement as defined in § 34-39-2(a) of the R.I. Gen. Laws sufficient to insure preservation of the property in an undeveloped open space state in perpetuity.
- F. "Director" means the Director of the Rhode Island Department of Environmental Management.
- G. "Ecological value" means those values that promote and enhance the biological diversity of the State.
- H. "Educational value" means opportunities for educating the public in scenic, natural, agricultural and/or ecological appreciation and preservation.
- I. "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, 78 Stat 897, found in the Land and Water Conservation Fund Grants Manual, will be used in the administration of Recreation Acquisition and Recreation Development.
- J. "Land and trust" means organizations incorporated pursuant to § 7-6-1, *et seq.*, of the R.I. Gen. Laws; or organizations meeting the definition of "charitable trust" set out in § 8-9-4 of the R.I. Gen. Laws; 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 § 45-36-1 of the R.I. Gen. Laws. 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.
- K. "Master plan" means adoption and maintenance of a 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.
- L. "Municipal agency" means 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.
- M. "Natural value" means those geologic, hydrologic and biotic elements that occur in the State without human introduction.

- N. "Recreation acquisition" means one (1) or more contiguous acre(s) of land suitable for recreation. The Recreation Resources Review Committee, in its discretion, may waive the acreage requirement in exceptional circumstances.
- O. "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.
- P. "Scenic value" means aesthetically appealing landscapes or views composed of natural and/or cultural features.
- Q. "SCORP" means the State Comprehensive Outdoor Recreation Plan adopted as element 152 of the State Guide Plan by the State Planning Council.
- R. "Shoreline access improvement" means a proposed project that will improve the safety, accessibility and/or convenience of the shoreline access site.
- S. "Shoreline access site" means a site that provides public access to tidal waters or, in some cases, a site bordering tidal waters and providing a view of, but not physical access to, the tidal water.
- T. "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.
- U. "State coastal and shoreline acquisition" means the purchase of fee simple or development rights, by a State Agency, to land adjacent to a fresh or tidal water body, including, but not limited to rivers, ponds, lakes and the ocean.
- V. "Urban park rehabilitation" means rehabilitation of parks, listed in § 2.9(C)(3) of this Part, which shall be carried out pursuant to the approved master plan dealing with the restoration of historic landscape in order to maintain the landscape architectural integrity of these parks.

## **2.4 Allocation between Projects**

- A. State Projects - State Agencies shall be allocated twenty-nine million dollars (\$29,000,000.00).
  - 1. State Coastal and Shoreline Acquisition and Recreational Development - twenty-six million dollars (\$26,000,000.00) shall be allocated for projects which conform to SCORP objectives and priorities.
    - a. Up to ten million dollars (\$10,000,000.00) shall be utilized for the development or rehabilitation of state-owned recreation areas.

- b. Up to one million six hundred thousand dollars (\$1,600,000.00) shall be allocated to private land trusts. Private land trusts may apply and receive funds, from this one million six hundred thousand dollar (\$1,600,000.00) allocation, for coastal and shoreline acquisition following the procedures as defined herein.
      - c. At least fourteen million four hundred thousand dollars (\$14,400,000.00) shall be utilized for State coastal and shoreline acquisition. Projects funded shall be approved by the Department of Environmental Management's Land Acquisition Committee and the State Properties Committee.
    2. Agricultural Acquisition - three million dollars (\$3,000,000.00) shall be allocated to the Agricultural Land Preservation Fund established pursuant to § 42-82-8 of the R.I. Gen. Laws. Said funds to be expended by the Rhode Island Agricultural Land Preservation Commission for development rights purchase of land having good agricultural value as defined herein. The Agricultural Land Preservation Commission shall choose eligible farms under their Operating Procedures adopted June 1983, as amended.
  - B. Local Projects - twenty four million dollars (\$24,000,000.00) shall be allocated overall to municipal agencies.
    1. Urban Parks Rehabilitation - nine million four hundred thousand dollars (\$9,400,000.00) are allocated for the restoration or rehabilitation of the following parks.
      - a. Nine million dollars (\$9,000,000.00) for the restoration of Roger Williams Park.
      - b. Two hundred thousand dollars (\$200,000.00) for the restoration of McCoy Stadium in Pawtucket;
      - c. Two hundred thousand dollars (\$200,000.00) for the restoration of Cliff Walk in Newport.
    2. Local Projects - fourteen million three hundred thousand dollars (\$14,300,000.00) are allocated for grants to municipal agencies.
      - a. Six million seven hundred fifty thousand dollars (\$6,750,000.00) are allocated for acquisitions suitable for public recreation development and/or purchase of fee simple or development rights to land adjacent to a fresh or tidal water body, including, but not limited to rivers, ponds, lakes and the ocean of which:
        - (1) Fifty percent (50%) of the funds are allocated to coastal and shoreline acquisition and;

- (2) Thirty percent (30%) of the funds are allocated for recreation acquisition and;
    - (3) The final twenty percent (20%) shall be allocated, at the Director's discretion, to eligible projects, as approved under § 2.8(B) of this Part, with a priority on acquisition in coastal flood prone areas that may be used for recreation.
  - b. Six million fifty thousand dollars (\$6,050,000.00) are allocated for recreation development.
  - c. One million five hundred thousand dollars (\$1,500,000.00) are allocated to financially restricted communities for coastal and shoreline acquisitions, recreation acquisitions and/or recreation development grants for up to a one hundred percent (100%) grant.
3. Shoreline Access Improvement - three hundred thousand dollars (\$300,000.00) are allocated for shoreline access improvement grants to municipal agencies.

## **2.5 Allocation of Funds**

- A. Allocation by Selection Rounds: Maximum Grant Award - Acquisition- six million seven hundred fifty thousand dollars (\$6,750,000.00) shall be available to municipal agencies for coastal and shoreline or recreation acquisition. All funds allocated for grants under this section must be obligated no later than November 7, 1992. All funds authorized but not obligated on November 7, 1992 shall revert to the control of the Director for use in furthering state acquisitions. For each selection round, the Natural Heritage Preservation Commission shall set the maximum amount of a single grant for coastal and shoreline acquisition and the Recreation Resources Review Committee shall set the maximum amount of a single grant for recreation acquisition.
- B. Allocation by Election Rounds: Maximum Grant - Development - six million fifty thousand dollars (\$6,050,000.00) shall be available to municipal agencies for recreation development. All funds allocated for grants under this part must be obligated no later than November 7, 1992. All funds authorized but not obligated on November 7, 1992 shall revert to the control of the Director for use in furthering state projects. 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.
- C. Allocation by Selection Rounds - Financially restricted communities - one million five hundred thousand dollars (\$1,500,000.00) shall be available for coastal and shoreline acquisition, or recreation acquisition and/or recreation development. All funds allocated for grants under this section must be obligated no later than November 7, 1992. All funds authorized but not obligated on November 7, 1992

shall revert to the control of the Director for use in furthering state projects. The Natural Heritage Preservation Commission shall set the maximum amount of a single grant for coastal and shoreline acquisition and the Recreation Resources Review Committee shall set the maximum amount of a single grant for recreation acquisition and recreation development.

- D. 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.
- E. Shoreline Access Improvement - three hundred thousand dollars (\$300,000.00) shall be available to municipal agencies for improvement of shoreline access sites. All funds allocated for grants under this section must be obligated no later than November 7, 1992. All funds authorized but not obligated on November 7, 1992 shall revert to the control of the Director for use in furthering State projects. The Director shall set a maximum amount of money available for municipal agencies during each selection round as well as the maximum amount of a single grant.
- F. 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.

## **2.6 Determination of Financially Restricted Communities**

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.

## **2.7 Application Procedures**

- A. 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, 235 Promenade Street, 3rd Floor, Providence, RI 02908-5767.

**B. Filing**

1. 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, 3rd Floor, Providence, RI 02908-5767
2. Coastal and Shoreline 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, 3rd Floor, Providence, RI 02908-5767.
3. Urban Parks Rehabilitation - Applications must be filed with the Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, 3rd Floor, Providence, RI 02908-5767.
4. Shoreline Access Improvement - 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, 3rd Floor, Providence, RI 02908-5767.

C. 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.

D. 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.

## **2.8 Project Eligibility and Project Cost**

A. 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.

B. 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.

- C. Coastal and Shoreline Acquisition Projects - Coastal and Shoreline acquisition shall be limited to the purchase of fee simple title to, or conservation easement over land adjacent to a fresh or tidal water body, including, but not limited to rivers, ponds, lakes and the ocean. Such lands must have scenic, natural, agricultural, educational or ecological value.
- D. Eligible Projects - 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 preapproval costs incurred within three years prior to project submission are allowable.
- E. Eligible Applicants
  - 1. Land Trusts - Land Trusts, as defined in § 2.3(J) of this Part, may apply for funding from the one million six hundred thousand dollars (\$1,600,000.00) allocated in § 2.4(A)(1)(b) of this Part.
  - 2. Municipal Agency - Municipal Agencies, as defined in § 2.3(L) of this Part, may apply for coastal and shoreline acquisition, recreation acquisition, recreation development and shoreline access improvement funds. Further, the Recreation Resources Review Committee is responsible for determining eligibility status to participate in recreation acquisition, recreation development and shoreline access improvement. 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.
- F. Eligibility Criteria



1. Coastal and Shoreline 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.
2. Recreation 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 January 11, 1990, under § 42-11-1, *et. seq.*, of the R.I. Gen. Laws.
3. Shoreline Access Improvement - 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 January 11, 1990, under § 42-11-1, *et. seq.*, of the R. I. Gen. Laws. Projects shall comply with the "Rules and Regulations for Shoreline Access Improvement Grants", adopted February 5, 1990, as amended, most particularly at § 2.8 of this Part, "Project Eligibility and Project Cost".
4. The above referenced Commission and Committee may at their sole discretion allow applicants a reasonable period of time to complete incomplete applications.

G. Evaluation of Applications

1. Coastal and shoreline acquisition - The Natural Heritage Preservation Commission will review each qualified application according to its Rules and Regulations, adopted November, 1986, as amended and shall submit to the Director in order of priority its recommendations for grant awards.
2. Recreation 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 January 11, 1990, under § 42-11-1, *et. seq.*, of the R.I. Gen. Laws, and shall submit to the Director in order of priority its recommendations for grant awards.
3. Shoreline Access Improvement - 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 January 11, 1990, under § 42-11-1, *et. seq.*, of the R.I. Gen. Laws, and shall submit to the Director in order of priority its recommendations for grant awards.

## **2.9 Local Grants**

- A. 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 coastal and shoreline acquisitions pursuant to § 2.9(F)(1) of this Part and shall similarly award, in order of priority recommended by the Recreation Resources Review Committee, grants from the thirty percent (30%) reserved for recreation acquisition pursuant to § 2.9(F)(2) of this Part. The Director shall make additional awards from the twenty percent (20%) of allocated funds to either coastal and shoreline acquisition or recreation 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.
- B. Notice - Notice of award shall be by registered mail return receipt.
- C. Matching Funds
  - 1. Local Projects - 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.
  - 2. Land Trust Projects - 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.
  - 3. Urban Parks Rehabilitation - Grants shall be for 100% of approved projects costs, not to exceed the amount allocated by law pursuant to § 2.9(C) of this Part.
  - 4. Financially Restricted Communities - Grants shall be for up to 100% of the approved coastal and shoreline and recreation acquisition costs and up to 100% of the approved recreation development costs. Certification that all other necessary funds are available must be submitted prior to the release of grant funds.
  - 5. 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.

- D. 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.
- 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 period of one year shall be considered the project period and may be extended up to five years upon approval of the Director.
- F. 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.
  - 1. Coastal and Shoreline Acquisition - It shall be an explicit condition of the receipt of a grant from the fund for the purchase of coastal and shoreline 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 Recreation Area Funds shall be posted on the property.
  - 2. Recreation 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. 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 noncomplying 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.
  - 3. Shoreline Access Improvement - It shall be an explicit condition of a grant from the fund for the improvement of a shoreline access site that the applicant comply with the requirements of the Rules and Regulations of the "Shoreline Access Improvement Grants" adopted February 5, 1990, as amended.
- G. Enforcement - Each recipient shall execute a 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 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.

- H. 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.

## **2.10 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.