

THE NATURAL HERITAGE PRESERVATION COMMISSION

Department of Environmental Management

Division of Planning & Development

235 Promenade Street

Providence, Rhode Island 02908

RULES AND REGULATIONS OF THE

NATURAL HERITAGE

PRESERVATION COMMISSION

OF THE

STATE OF RHODE ISLAND AND PROVIDENCE

PLANTATIONS

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**FOR: RHODE ISLAND OPEN
SPACE GRANTS
AND THE REVOLVING LOAN
FUND**

*Adopted Pursuant to Chapters 42-35 and 42-17.5
of the Rhode Island General Laws of 1956, as amended*

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RULES AND REGULATIONS OF THE NATURAL HERITAGE PRESERVATION COMMISSION

RULE 1. PURPOSE

These rules and regulations as amended, establish the operating procedures for the Natural Heritage Preservation Commission and the Rhode Island Natural Heritage Commission Advisory Committee for administering the Rhode Island Open Space Grants and the Natural Heritage Preservation Revolving Loan Fund.

RULE 2 AUTHORITY

Section 42-17.5-5 of the Rhode Island General Laws of 1956, as amended, "Powers and Duties of the commission", requires the commission to "... (c) (2) prepare and adopt rules and regulating loan (SIC) generation, disbursement, loan repayment, and mortgage covenants." (3) establish procedures consistent with the purposes of this chapter to insure the long-term preservation of irreplaceable open land resources and their recreational use by the public.

RULE 3. DEFINITIONS:

For the Purposes of These Regulations, the Following Terms Shall Have the Following Meanings:

(A) **"AGRICULTURAL ACQUISITION"** - The purchase of development rights to land that has agricultural value.

(B) **"AGRICULTURAL VALUE"** - 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 Rhode Island General Laws of 1956, Chapter 42-82 as amended.

(C) **"APPRAISAL"** - A report by a Certified Rhode Island Appraiser that estimates the fair market value of property.

(D) **"CONSERVATION COMMISSION"** - A commission as defined in Chapter 35-45 of the Rhode Island General Laws of 1956, as amended.

(E) **"CONSERVATION EASEMENT"** - 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.

(F) **"DEM - DIVISION OF PLANNING AND DEVELOPMENT"** - A division of the Rhode Island Department of Environmental Management that is authorized to administer the Open Space and Recreation Bond Authorizations.

(G) **"DEM - LAND ACQUISITION COMMITTEE"** - An intra-departmental committee of the Department of Environmental Management that makes recommendations to the Director in regards to real estate transactions.

- (H) **“DEPARTMENT OF ENVIRONMENTAL MANAGEMENT”** - A department of the state government as described in Chapter 42-17 of the General Laws of Rhode Island of 1956, as amended.
- (I) **“DEVELOPMENT RIGHTS PURCHASE”** - The acquisition of the development rights as defined in Section 42-82-2 of the General Laws of Rhode Island as amended.
- (J) **“DIRECTOR”** - The Director of the Rhode Island Department of Environmental Management as described in Section 42-17.1.1 of the General Laws of Rhode Island of 1956 as amended.
- (K) **“DISTRESSED COMMUNITY”** - As defined in Section 45-13-12 of the General Laws of Rhode Island of 1956 as amended.
- (L) **“ECOLOGICAL VALUE”** - Those values that promote and enhance the biological diversity of the State.
- (M) **“EDUCATIONAL VALUE”** - Opportunities for educating the public in scenic, natural, agricultural and/or ecological appreciation and conservation.
- (N) **“ENVIRONMENTAL NON-PROFIT AGENCY”** - A group or organization formed pursuant to Section 7-6-1 et. seq. of the Rhode Island General Laws of 1956 as amended 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.
- (O) **“GREENWAY”** - A corridor of protected open space managed for conservation, recreation and/or transportation purposes.
- (P) **“GREENSPACE”** - Land and water that is: [1] legally restricted or otherwise dedicated for purposes of conservation of natural resources and which is reserved in an undeveloped state; or [2] 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.
- (Q) **“GREENSPACE ACQUISITION”** - 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.
- (R) **“IN-KIND SERVICES”** - 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.
- (S) **“LAND AND WATER CONSERVATION FUND”** - For the purpose of these rules the administrative policies, procedures and guidelines of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578, 78 Stat 897), found in the Land and Water Conservation Fund Grants Manual as amended, will be used in the administration of Recreation Acquisition and Recreation Development Program.
- (T) **“LAND PROTECTION PLAN”** - 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.
- (U) **“LAND TRUST”** - Organizations incorporated pursuant to Section 7-6-1 of the Rhode Island General Laws of Rhode Island of 1956 as amended, or organizations

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

(V) **“LOCAL COMPREHENSIVE PLAN”** - The plan adopted by each municipality and approved pursuant to Chapter 45- 22.2 of the Rhode Island General Laws of 1956 as amended.

(W) **“MANAGEMENT PLAN”** - 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.

(X) **“MUNICIPAL AGENCY”** - 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.

(Y) **“NATURAL HERITAGE PRESERVATION COMMISSION ADVISORY COMMITTEE”** - A committee to advise the Natural Heritage Preservation Commission on natural heritage matters as defined in Section 42-17.5.6 of the General Laws of Rhode Island.

(Z) **“NATURAL HERITAGE PRESERVATION COMMISSION”** - A commission within the Department of Environmental Management as defined in Section 42-17-5.4 and 42-17-5.5 of the General Laws of Rhode Island of 1956 as amended.

(AA) **“NATURAL VALUE”** - Those geologic, hydrologic and biotic elements that occur in the state without human introduction.

(BB) **“OPEN SPACE”** - Undeveloped land that has natural, ecological or scenic value.

(CC) **“RECREATION ACQUISITION”** -The acquisition of land suitable for recreation development in accordance with a master plan for the development of the acquired property.

(DD) **“RECREATION DEVELOPMENT”** - Construction of basic outdoor recreation and support facilities for the improvement and restoration of public recreation areas to serve the general public.

(EE) **“RECREATION RESOURCES REVIEW COMMITTEE” (RRRC)** - 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.

(FF) **“SCENIC VALUE”** - Aesthetically appealing landscapes or views composed of natural and/or cultural features.

(GG) **“SCORP”**- The State Comprehensive Outdoor Recreation Plan adopted as Element 152 of the State Guide Plan by the State Planning Council as amended June 11, 1992.

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

(II) **“STATE GREENSPACE AND GREENWAYS PLAN or “Greenways, Greenspace” element of the State Guide Plan”**- 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 Section 42-11-10 of the Rhode Island General Laws of 1956 as amended, including any subsequent revisions or amendments thereof adopted by the State Planning Council.

(JJ) **“STATE GUIDE PLAN”** - 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 section 42-11-20 of the General Laws of Rhode Island 1956 as amended.

(KK) **“WAIVER OF RETROACTIVITY”** - 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.

(LL) **“WATER RESOURCES BOARD”** -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 section 46-15-1 of the General Laws of 1956 of Rhode Island as amended.

(MM) **“WATERSHED”** -A watershed is the area of land from which runoff from rain, snow, or irrigation drains to a common body of water.

(NN) **“WATERSHED PLAN”** -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.

(OO) **“WATERSHED COUNCIL”** - An organization recognized by the Rhode Island Rivers Council, responsible for advancing the purposes of Chapter 46-28 of the Rhode Island General Laws of 1956 as amended 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 Chapter 42-35, of the State of Rhode Island General Laws of 1956, as amended.

RULE 4. MEETINGS

- (A) **REGULAR MEETINGS:** the Commission at the beginning of each calendar year shall establish the schedule for regular meetings of the Commission.
- (B) **SPECIAL MEETINGS:** The chairperson may call special meetings or cancel regular meetings at any time upon forty-eight (48) hours public notice.
- (C) **NOTICE OF MEETINGS:** Notices of meetings and agendas will be posted at the administrative offices of the Department of Environmental Management and the Department of Administration, not less than forty-eight (48) hours prior to each meeting.
- (D) **OPEN MEETINGS:** All Commission meetings and records shall be consistent with the Open Meetings Law (Chapter 42-46 of the Rhode Island General Laws of 1956, as amended) and the Public Records Act (Chapter 36-1 of the Rhode Island General Laws of 1956, as amended).
- (E) **CHAIRPERSON:** The Natural Heritage Commission and the Natural Heritage Advisory Committee shall elect a Chairperson for each group. The Chairperson shall be elected at the first scheduled meeting each calendar year. Either the Chairperson or designee shall also serve as an ex officio member of the Department of Environmental Management Land Acquisition Committee.

RULE 5. ALLOCATION OF FUNDS

The Commission shall by majority vote of the full Commission, schedule the number, frequency and duration of local grant funding rounds consistent with the "State Capital Budget Plan." The Commission may establish a maximum per project funding level for any given grant round. The Commission may set the maximum amount of money available to be lent during each calendar year from the revolving loan funds. This amount may be increased or decreased during each year by a majority vote of the Commission.

RULE 6. APPLICATION PROCEDURES

- (A) **APPLICATION FORM:** The form that shall qualify an applicant for consideration shall be the form designated "Application" and approved by the Commission.

- (B) **AVAILABILITY OF APPLICATION FORMS** Application forms shall be available to individuals and organizations on request to the Department of Environmental Management.
- (C) **FILING OF APPLICATIONS:** Applications shall be filed with the Natural Heritage Preservation Commission, c/o the Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Providence, RI 02908-5767, or such other address as the Commission designates in the application form instructions.
- (D) **APPLICATION PACKAGE** The application package shall contain a form to be signed by the owner of the property proposed to be preserved which permits the Commission or its staff to inspect and/or appraise the property, an application form approved by the Commission, and any additional information that the Commission may require.
- (E) **APPLICATION SUBMISSION:**
 - (1) Applications for Open Space Grant Awards must be filed within the prescribed period established by the Natural Heritage Preservation Commission.
 - (2) Loan applications may be submitted at any time throughout the year. The Commission will meet as needed to consider applications.

RULE 7. APPLICATION REVIEW / AWARDS

- (A) **GRANT APPLICATION REVIEW** - After the closing date, the Advisory Committee is afforded forty-five (45) days to evaluate the applications according to the scoring criteria and shall submit to the Natural Heritage Preservation Commission in order of priority recommendations for grant awards. The Natural Heritage Commission will review the recommendations and award grants within thirty (30) days.
- (B) **LOAN APPLICATION REVIEW** - After the Advisory Council is afforded a thirty-(30) day opportunity to make its recommendation to the Natural Heritage Preservation 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) **NOTICE** - Notice of an award shall be by mail.

- (D) **TERMS AND CONDITIONS** -The notice of an 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 the Director has granted a waiver of retroactivity, the effective date of the waiver of retroactivity 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. The Director may extend the grant term for an additional two years after review and recommendation by the Natural Heritage Preservation Commission. A term of four (4) years will be the maximum term for all acquisition grants and/or loans.
- (F) **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.

RULE 8. ELIGIBLE APPLICANTS

- (A) **LAND TRUSTS /CONSERVATION COMMISSIONS/ WATERSHED COUNCILS AND NONPROFIT ENVIRONMENTAL AGENCIES** - as defined in “Rule 3 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 “Rule 3 herein”, may apply for open space funds. The Department of Environmental Management shall be responsible for determining eligibility status to participate in the Open Space Acquisition Grant Rounds.
- (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.

RULE 9. EVALUATION

The Natural Heritage Preservation Commission and the Natural Heritage Preservation Commission Advisory Committee for evaluating and awarding grant applications shall use the following scoring criteria. (100 points total)

(A) HABITAT PROTECTION (25 Points)

Critical and/or Uncommon Habitat: The property supports critical and/or uncommon, ecologically fragile habitat, or is a unique ecological community in the state or region.

Habitat/Community Types considered:

Coastal Plain Pond and/or pond shore

Coastal Marsh and associated Estuarine Wetlands

Coastal Interdunal Swale/Wetland

Open Peatland (Bogs and Fens)

Morainal Grassland

Coastal or Inland Dune System

Pitch Pine/Scrub Oak Barren

Floodplain Forest

Calcareous Habitats (forests, outcrops, etc.)

Other:

Common Community Type: The property is representative of typical ecological communities of Rhode Island. This criterion seeks to preserve high-quality examples of common communities that support productive and diverse biological systems.

Habitat Diversity: The property includes managed open land that provides habitat supporting native animals/plants.

Urban Habitat Protection: Property is located in an urban or densely developed area where the habitat, open space, and/or educational values are particularly significant or unique.

Rare/Endangered Species: The property supports or is capable of supporting rare/endangered species. The Rhode Island Natural Heritage Program currently lists species considered under this criterion.

(B) GREENWAY OR REGIONAL LINKAGES (20 points)

Property is contiguous to other protected land.
Property is contiguous to a river/stream as defined in Section 2-1-20(j) of the Rhode Island Fresh Water Wetlands Act.
Property provides public recreational opportunity.
Property connects urban community to protected lands or parks.
Other

The application must reference in detail the linkages that relate to the acquisition proposal. Up to 4 points may be awarded per category reference.

(C) PLANNING CONSISTENCY (20 points)

Acquisition is consistent with Local Comprehensive Plan
Acquisition is consistent with a Local Open Space Plan
Acquisition is consistent with a Regional or Watershed Plan
Acquisition is consistent with all applicable elements of the State Guide Plan

The application must reference in detail the elements of each plan that relate to the acquisition proposal. Up to 5 points may be awarded per plan reference.

(D) RESOURCE PROTECTION (15 points)

Fisheries Resources, Forest Resources, Agricultural Resources, Cultural / Geological or Scenic Resources, Biological Resources.
This category represents the relationship and efficiency between the type of acquisition proposed and the value of the sustainable resource being protected. For example, the acquisition of a conservation easement for agricultural land may also protect a scenic vista; a conservation easement on forestland may provide for a continued timber resource value and also protect the natural habitat and/or biological resource. Acquisition may also provide for public access and/or the protection of a cultural or historical artifact. Up to 15 points may be awarded.

(E) WATER RESOURCE PROTECTION. (15 points)

1. Public Water Supply or Groundwater Recharge Area Protection (10 points) The land is identified on the Drinking Water Supply Map. The map is available on the DEM Web Site at the following location, <http://www.state.ri.us/dem/maps/index.htm>. Up to 10 points may be awarded based on the size of the property and percentage of land located within the watershed of the Public Water Supply or Groundwater Recharge Area.

2. Flood Protection (5 Points) - In the case of coastal areas, property is located within 1000 feet of a tidal water body and is designated

on Flood insurance Rate Maps published by the Federal Emergency Management Agency as Special Flood Hazard Area (V and A zones). In the case of inland areas, property is located in areas prone to flooding or other natural hazards.

(F) MULTI-COMMUNITY APPLICATION (5 points)

The property to be acquired or preserved is located in 2 or more communities. The application for funding requires the consent of the governing boards for each agency listed.

RULE 10. LOAN TERMS AND SECURITY

(A) MAINTENANCE OF FUND AND PROPERTIES

It is the goal of the Commission to maintain sufficient monies in the Natural Heritage Preservation Revolving Loan Fund to ensure the continuous availability of funds for the purposes for which the fund was created. It is also essential that any properties to which monies from the fund have been applied be maintained in perpetuity in their open condition and in accordance with an approved management plan.

(B) LOAN TERMS

In addition to any other limitations which may be imposed, no loan shall exceed ninety (90) percent of the purchase price to be paid for the subject property, no loan shall exceed seventy-five (75) percent of the appraised value of the subject property. Prior to disbursement of any monies from the loan fund, the Commission shall require that an appraisal of the value of the property be conducted by a certified real estate appraiser, that a Class 1 survey be conducted of the subject property's boundaries, and that a clear title be established by a title insurance commitment provided by the applicant.

(C) REPAYMENT TERMS

In addition to any other required terms, 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 Heritage Preservation Commission may alter the repayment terms of the loan in emergency situations. 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.

(D) **MAINTENANCE TERMS**

It shall also be an explicit condition of the receipt of a loan from the fund that any properties to which said monies are applied are managed in accordance with an approved plan which shall set forth such procedures and requirements as are necessary to preserve it open, natural, scenic, agricultural, and ecological values 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 updated to reflect changing circumstances and/or new opportunities for preservation, access and/or recreational use.

RULE 11. MANAGEMENT PLAN

An approved management plan meeting the requirements of such plans established in the Rules and Regulations of the Rhode Island Natural Heritage Preservation Commission, as amended must be submitted and approved prior to the release of grant funds.

RULE 12. RESTRICTIVE COVENANTS

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 Section 34-39-2(A) of the Rhode Island General Laws of 1956, as amended, 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.

RULE 13. ENFORCEMENT

Each recipient of financial assistance shall execute a conservation easement as defined in Section 34-39-2(A) of the Rhode Island General Laws of 1956, as amended, 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 conditions attached to the financial assistance in equity or, at its discretion, may assume title, custody and control to protect its interest.

RULE 14. CONVERSION

Any property so acquired 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 shall seek recommendations from the Natural Heritage Preservation Commission on all conversions. The Director has the authority to disapprove conversion requests and/or to reject proposed property substitutions.

RULE 15. 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.

RULE 16. EFFECTIVE DATE

The foregoing rules and regulations for the Natural Heritage Preservation Commission and Natural Heritage Advisory Committee, after due notice and hearing, are hereby adopted and filed with the Secretary of State this day of , 2001, to become effective twenty (20) days thereafter, in accordance with the provisions of Section 42-17.1, and Chapters 42-35 of the Rhode Island General Laws of 1956, as amended.

Jan H. Reitsma, Director

Date

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