

**250-RICR-110-00-3**

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

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

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

PART 3- Rules and Regulations for Open Space Recreational Greenways Recreational Bikeways 1998 Bond Authorization

#### **3.1 Purpose**

The purpose of these Rules and Regulations is to establish the procedures by which the Department of Environmental Management will administer the 1998 Environmental Management Bonds.

#### **3.2 Authority**

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws Chapter 42-17.1, Environmental Management, and in accordance with Rhode Island Public Law 1998, Chapter 31, Article 5, "1998 Environmental Management Bonds," which authorizes the Department of Environmental Management to administer Fifteen Million Dollars (\$15,000,000.00) in state bonds according to the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

#### **3.3 Allocation of Funding**

Funding under the 1998 Environmental Management Bonds shall be allocated as follows:

- A. \$5,000,000.00 to provide funds to purchase or permanently protect greenways and other open space; and,
- B. \$5,000,000.00 to provide funds for the design and construction of regional bikeways to include the Blackstone Bikeway, the Washington Secondary/Coventry Greenway/Trestle Trail and the South County Bikeway; and,
- C. \$5,000,000.00 to provide Grants and matching funds to local municipalities, land trusts and non-profit environmental organizations for the acquisition, design and construction of local bikeways and recreational greenways.

#### **3.4 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.

### 3.5 Definitions

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

- A. "Agricultural acquisition" means the purchase of development rights to land that has agricultural value.
- B. "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, R.I. Gen. Laws Chapter 42-82.
- C. "Bike path" means the route or right-of-way area, designed for multiple use of non-motorized bicycles, in-line skates, jogging, walking and, in specialized areas; equestrians.
- D. "Bikeway" means a linear, durably surfaced pathway, designed and constructed to safely accommodate usage by bicyclists and pedestrians for the purpose of recreational enjoyment and/or travel within or between communities. Bikeways must be principally separate, off-road facilities, and must connect destinations including public parks and open space areas, municipal and business centers, schools and other public facilities and/or regional or local bikeways. Bikeway, as defined herein includes "bicycle trails or paths" as defined in § 31-1-23 of the R.I. Gen. Laws, but also includes facilities designated to accommodate compatible uses other than bicycles. Bikeways must prohibit motorized vehicle usage except by authorized public safety or maintenance vehicles.
- E. "DEM, Division of Planning and Development" means a division of the Rhode Island Department of Environmental Management that is authorized to administer the 1998 Bond Authorization.
- F. "Department of Environmental Management" means a department of the state government as described in the R.I. General Laws.
- G. "Development rights purchase" means the acquisition of the development rights as defined in § 42-82-2 of the R.I. Gen. Laws sufficient to insure preservation of the property in an undeveloped state in perpetuity.
- H. "Director" means the Director of the Rhode Island Department of Environmental Management.
- I. "Environmental non-profit agency" means a group or organization whose primary purpose is the protection and conservation of natural resources and is formed pursuant to R.I. Gen. Laws § 7-6-1 *et. seq.* or which otherwise qualifies as a tax exempt public charity under § 510(c)(3) of the Internal Revenue Code.
- J. "Greenway" means corridor of protected open space managed for conservation, recreation and/or transportation purposes.

- K. “Greenspace” means 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.
- L. “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.
- M. “Greenways master plan” means a plan adopted by the governing body of an eligible applicant that specifies a vision, goals, policies, actions and priorities for creation and maintenance of a greenway or greenway system to be developed, operated and maintained by the applicant. Greenways Master Plans must include sufficient detail to establish the general feasibility of, delineate specific projects or phases, and identify funding and priorities for creation of a greenway or greenways system. Open Space and Recreation Elements of an adopted Local Comprehensive Plan containing such detail may be submitted by a municipal applicant as its greenways master plan.
- N. “Land and protection plan” means the plan adopted in 1996 by DEM entitled “Protecting Our Land Resources”, to guide the department’s land acquisition and protection activities.
- O. “Land trust” means an organizations incorporated pursuant to § 7-6-1 of the R.I. Gen. Laws; or organizations meeting the definition of "charitable trust" set out in § 18-9-4 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 § 501(c)(3) of the Internal Revenue Code and its regulations, as they now exist or may hereafter be amended.
- P. “Local bikeway” means a bikeway as defined herein that is constructed, owned and operated by state or municipal agencies and/or a non-profit groups which is open to the public and is consistent with the State Greenspace and Greenways Plan, and that is principally designed to:
1. Connect public parks and greenspace areas to municipal and business centers, schools and other public facilities, or otherwise accommodate recreational travel demands, generally within a single municipality, watershed or similar sub-state area,

2. Serve as a collector or feeder to a regional bikeway corridor designated in the State Greenspace and Greenways Plan;
  3. Accommodate bicycle and pedestrian circulation needs within a single park or greenspace area managed for public recreational use and enjoyment.
- Q. “Local comprehensive plan” means the plan adopted by each municipal agency and approved pursuant to Chapter 45-22.2 of the R.I. Gen. Laws specifying the future development of a community.
- R. “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.
- S. “Natural value” means those geologic, hydrologic and biotic elements that occur in the state without human introduction.
- T. “Recreational greenway” means a greenway as defined herein, that is managed principally for public recreational use and enjoyment, but that also provides transportation, conservation, agricultural preservation or other functions as subsidiary benefits. Recreational greenways, include but are not limited to, land, water, and associated facilities (trails, river ways, walkway or paths, signage, etc.) providing a continuous corridor connecting parks, recreational sites, and other destinations within or between communities.
- U. “Rhode Island Greenways Council” means the council as created by R.I. Gen. Laws § 42-125-5.
- V. “Scenic value” means aesthetically appealing landscapes or views composed of natural and/or cultural features.
- W. “SCORP” means the State Comprehensive Outdoor Recreation Plan adopted as element 152 of the State Guide Plan by the State Planning Council.
- X. “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 § 42-11-10 of the R.I. Gen. Laws, including any subsequent revisions or amendments thereof adopted by the State Planning Council.
- Y. “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 § 42-11-20 of the R.I. Gen. Laws.

- Z. "Trail" means a thoroughfare or track across land, used for recreational purposes such as walking, hiking, skating, equestrian activities and bicycling.
- AA. "Watershed council" means an organization recognized by the Rhode Island Rivers Council, responsible for advancing the purposes of Chapter 46-28 of the R.I. Gen. Laws 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 R.I. Gen. Laws.

### **3.6 Scheduling of Selection Rounds**

The Director shall schedule the number, frequency and duration of local grant funding rounds after consultation with the Rhode Island Greenways Council; provided that there shall be at least one such funding round per year until all funds are expended.

### **3.7 Applications**

Applications on forms approved by the Rhode Island Greenways Council, 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 [www.state.ridem.planning](http://www.state.ridem.planning).

### **3.8 Filing**

Applications must be filed within the prescribed period to be established for each local grant funding round by the Rhode Island Greenways Council and the Department of Environmental Management. Applications must be sent to the Department of Environmental Management, Division of Planning and Development, 235 Promenade Street, Room 300, Providence, RI 02908-5767.

### **3.9 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.

### **3.10 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 advertised in the Providence Journal/Bulletin and posted on the DEM Web Site. Applications may be resubmitted during a subsequent selection round.

### **3.11 Evaluation of Applications**

- A. Review - The Rhode Island Greenways Council will review each application according to the procedures and evaluation criteria developed and approved by the Council, and shall submit to the Director in order of priority its recommendations for grant awards.
- B. Awards - The Director shall award grants in the order of priority recommended by the Rhode Island Greenways Council from the 1998 Bond Fund Authorization. The Director, with the advice of the State Greenways Council, 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. 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 two (2) years shall be considered the project period and may be extended up to five years upon approval of the Director.
- 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 maintenance or preservation.

### **3.12 Allocation of Bond Proceeds - Open Space Land Acquisition \$5,000,000.00**

- A. State Projects - the Rhode Island Department of Environmental Management shall administer Three (3) Million Dollars (\$3,000,000.00) in FY 2000 - FY 2004.
  - 1. State Land Acquisition - Two Million Dollars (\$2,000,000.00) shall be allocated for land acquisition protection which is consistent with the "Greenways, Green Space" element of the State Guide Plan and the Department of Environmental Management "Land Protection Plan". One Million Dollars (\$1,000,000) in FY 2001 and One Million Dollars (\$1,000,000) in FY 2002 will be available for State Land Acquisition projects. Projects funded under this section shall be approved by the

Department of Environmental Management's Land Acquisition Committee and the State Properties Committee.

2. Agricultural Acquisition- One Million Dollars 10 (\$1,000,000.00) in FY 2000 shall be allocated to the Agricultural Land Preservation Commission, established pursuant to § 42-82-8 of the R.I. Gen. Laws. 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.
- B. Local Projects - Two Million Dollars (\$2,000,000.00) shall be allocated to municipal agencies, local land trusts and non-profit environmental organizations to provide matching funds for fee simple acquisition, conservation easements or development rights, to land that is consistent with the "Greenways, Greenspace" element of the State Guide Plan. Two Million Dollars in FY 2002 shall be allocated for such grants. Grant rounds shall be announced by the Director, the Rhode Island Greenways Council shall set the maximum amount award for a single grant awarded during each round. The Rhode Island Greenways Council will review each application according to the procedures and evaluation criteria outlined in the "Rules and Regulations" adopted for the 1998 Environmental Management Bonds Authorization and shall submit to the Director in order of priority its recommendations for grant awards.

### **3.13 Eligible Projects**

- A. Open Space Acquisition Projects - Open space acquisition shall be limited to the purchase fee simple title to open space where such land is consistent with the "Greenways, Greenspace" element of the State Guide Plan: the document entitled A Greener Path: Greenspace and Greenways for Rhode Island's Future and will be developed and used for trail and/or bicycle purposes.
- B. Greenway/Greenspace Development Projects - A development project may consist of one improvement or group of related improvements designed to provide public hiking, bicycling or other similar activities within a greenway or greenspace area. In addition, reforestation, landscaping and natural resource restoration in the greenway/greenspace area are eligible.

### **3.14 Eligible Project Costs**

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; 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 a waiver

of retroactivity 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, although incurred prior to project approval. All such pre-approval costs for approved projects incurred within one year prior to project submission are “allowable”.

### **3.15 Eligible Applicants**

- A. Land Trusts/Watershed Councils and Non-profit Environmental Agencies - as defined in § 3.5 of this Part may apply for land acquisition funding. The Rhode Island Greenways Council shall be responsible for determining eligibility status to participate in the Land Acquisition grant rounds. Eligibility is based upon the adoption and maintenance of an up-to-date Comprehensive Land Use Plan, Greenways Master Plan or Watershed Management Plan which adequately assesses the current and future recreation and 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. Municipal Agency - Municipal agencies, as defined in § 3.5 of this Part, may apply for land acquisition funds. The State Greenways Council shall be responsible for determining eligibility status to participate in the Land Acquisition Grant Rounds. Eligibility is based upon the adoption and maintenance of an up-to-date Comprehensive Land Use Plan or Greenways Master Plan or Outdoor Recreation 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. Ineligible Entities - State Boards or Commissions, Executive Department, private commercial businesses and agencies of the federal government.

### **3.16 Eligibility Criteria Open Space Acquisition Projects:**

Open space acquisition shall be limited to the purchase fee simple title, development rights or conservation restrictions over open space where such land is consistent with the “Greenways, Greenspace” element of the State Guide Plan: the document entitled "A Greener Path: Greenspace and Greenways for Rhode Island’s Future".

### **3.17 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. Donations - Applicants may show the value of donated interests in land to be 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.

### **3.18 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. 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 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.

### **3.19 Management**

It shall be an explicit condition of the receipt of a grant from the fund for the purchase of land or any interest therein, that 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 be submitted and approved. If public access is deemed appropriate, by the State Greenways Council, the recipient shall not discriminate in providing access or in fees charged for access. Signs acknowledging the use of the Rhode Island Greenways Program Funds shall be posted on the property.

### **3.20 Conversion**

- A. 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.
- B. All funds allocated for grants under this section 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 use in accordance with any section of the Bond Authorization.

### **3.21 Regional Bikeway Development \$5,000,000.00**

- A. State Regional Bikeways: the Rhode Island Department of Environmental Management shall be allocated Five (5) Million Dollars (\$5,000,000.00) for the design and development of regional bikeways. Said bikeways shall include:
  - 1. The Blackstone River Bikeway and related linkages;

2. The South County bike path;
  3. The Washington Secondary bike path.
- B. All funds allocated for grants under this section 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 use in accordance with any section of the Bond Authorization.

### **3.22 Local Bikeways and Recreational Greenway Development and Acquisition \$5,000,000.00**

The Rhode Island Department of Environmental Management shall be allocated Five (5) Million Dollars (\$5,000,000.00) for the design and construction of local bikeways and recreational greenways. The funds shall be allocated to municipal agencies to provide matching funds for the acquisition, design and construction of local bikeways / bike paths and recreational greenways consistent with the municipal agency's "Local Comprehensive Land Use Plan" and the "State Greenways and Greenspace Plan". FY 2000 - FY 2004 / \$1,000,000 per year as identified in the State Capital Plan. All funds allocated for grants under this section 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 use in accordance with any section of the Bond Authorization.

### **3.23 Project Costs Eligible Project Costs**

Eligible costs for development projects may cover design, construction, site planning, demolition, reforestation, landscaping and natural resource restoration, acquisition 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, although incurred prior to project approval. All such pre-approval costs incurred within one year prior to project submission are allowable.

### **3.24 Eligible Applicants**

- A. Land Trusts - Land Trusts, as defined in § 3.5 of this Part may apply for Bikeway / Greenway Development funding. The State Greenways Council shall be responsible for determining eligibility status to participate in the Greenway Development Grant Rounds. Eligibility is based upon the adoption and maintenance of an up-to-date Comprehensive Land Use Plan or Greenway Master plan which adequately assesses the current and future recreation and open space requirements. The plan shall include an implementation program and

schedule for actions proposed to address issues and needs expressed in the plan.

- B. Municipal Agency - Municipal agencies, as defined in § 3.5 of this Part, may apply for Bikeway / Greenway Development funds. The State Greenways Council shall be responsible for determining eligibility status to participate in the Greenway Development Grant Rounds. Eligibility is based upon the adoption and maintenance of an up-to-date Comprehensive Land Use Plan or Greenway Master 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. Environmental Non-Profit Agency - Environmental Non-Profit agencies, as defined in § 3.5 of this Part, may apply for Bikeway / Greenway Development funds. The State Greenways Council shall be responsible for determining eligibility status to participate in the Greenway Development Grant Rounds. Eligibility is based upon the adoption and maintenance of an up-to-date Greenway Master 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.

### **3.25 Matching Funds**

Local Bikeway Development & Recreation Greenway 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.

### **3.26 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 property. 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.

### **3.27 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. 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 developed in accordance with the purposes and functions for which it was developed, 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. It shall be an explicit condition of the receipt of a grant for a local bikeway or recreational greenway development grant that an approved maintenance and operations plan be submitted and approved by the Greenways Council and Director.

### **3.28 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.