

**670-RICR-00-00-1**

## **TITLE 670 – STATE PLANNING COUNCIL**

### **CHAPTER 00 – N/A**

#### **SUBCHAPTER 00 – N/A**

#### **PART 1 – Rules and Standards of the State Planning Council**

### **1.1 Organization and Operation of the State Planning Council**

#### **1.1.1 Purpose and Authority**

The purpose of this rule is to establish standard operating procedures for the State Planning Council. This rule is promulgated pursuant to R.I. Gen. Laws §§ 42-35-2(a)(1) entitled, “Administrative Procedures” and 42-11-10 entitled, “Statewide Planning Program”. In general, the purposes of the State Planning Council are to provide representation of a broad range of interests and viewpoints in the state planning process, to guide the Division of Planning staff in coordinating planning activities, to approve all elements of the State Guide Plan, and to determine the consistency of certain development activities of State agencies, local government, and the private sector with the State Guide Plan.

#### **1.1.2 Definitions**

- A. The following words and terms shall have the following meanings wherever used in these rules.
1. “Applicant” means any state, local, or private agency or individual seeking approval of a proposal by the State Planning Council.
  2. “Chief” means the highest-ranking administrative officer of the Division of Planning as defined by R.I. Gen. Laws § 45-22.2-4 entitled, “Rhode Island Comprehensive Planning and Land Use Act”.
  3. “Conformance” or “Consistent”, when used in reference to a finding of agreement with the State Guide Plan, means that the proposed document, program, project, or action is in accord with applicable elements of the State Guide Plan in terms of the overall goals and objectives sought, policies employed, and the results anticipated. Differences in procedure or detail that conflict with State Guide Plan objectives or results will not necessarily cause a finding of inconsistency.
  4. “Council” means the State Planning Council as established by R.I. Gen. Laws § 42-11-10.

5. "Days" means calendar days unless otherwise noted.
6. "Division of Planning" means the office within the Department of Administration as established by R.I. Gen. Laws § 42-11-10. The Division of Planning serves as the principal staff agency to the State Planning Council.
7. "Project" or "Proposal" means those plans, programs, actions, activities, or undertakings which must be approved by the State Planning Council.
8. "Solid waste disposal facility" means a land disposal site designed for the final disposition of solid waste. For the purposes of these Rules, this term shall be synonymous with "landfill" and "sanitary landfill", which is a land disposal site employing an engineered method for disposal of solid waste in a manner that minimizes environmental hazards, including the spreading of solid waste in thin layers, compacting the solid waste to the smallest practical volume, and applying cover material at the end of each operating day or at such more frequent intervals as may be necessary. For the purposes of these Rules, a solid waste disposal facility shall not include, resource recovery facilities, waste-to-energy facilities, incinerators, materials recycling facilities, composting facilities, facilities that process construction and or demolition debris, or properties that have historically been used for the final deposition of solid waste that are proposed for closure, upgrade, or consolidation in order to better meet current standards of environmental protection.
9. "State agency" means any office, department, board, commission, bureau, division, authority, agency, public or quasi-public corporation and their subsidiaries, or instrumentality of the State.
10. "State Guide Plan" means all statements of goals, policies, and plans or plan elements adopted by the State Planning Council in accordance with R.I. Gen. Laws § 42-11-10(d).
11. "Technical correction" means a proposed change to text, tabular data, geographic information systems ("GIS") data, and/or cartography of an adopted element of the State Guide Plan based upon newly available information that corrects a factual error or otherwise advances the accuracy, currency, and/or clarity of data, analysis, or cartography and does not affect any goal, policy, strategy, recommendation, performance measure, or implementation action of a State Guide Plan element.

### **1.1.3 Membership**

- A. Members – The membership of the Council is established by R.I. Gen. Laws § 42-11-10(e). In addition, advisors to the Council may be invited to serve by the

Governor or by the Council and may include representatives of federal or regional agencies.

- B. Terms – All members shall serve until their successors are appointed.
- C. Vacancies – When a vacancy occurs, the Secretary shall notify the appointing authority. The Council may suggest to the appointing authority the names of persons to fill any vacancy.

#### **1.1.4 Officers and Duties**

- A. Chair – As stated in R.I. Gen. Laws § 42-11-10(e)(1), the Director of Administration is designated as Chairperson. The Chairperson shall preside at all meetings of the Council. In addition to recognizing members desiring to speak, the Chair may, in his/her discretion, authorize any other person to address the Council. The Chairperson may vote on all issues.
- B. Vice-Chair – As stated in R.I. Gen. Laws § 42-11-10(e)(2), the Director of the Policy Office in the Office of the Governor is designated as Vice-Chairperson. The Vice-Chairperson shall perform the duties and exercise the powers of the Chair in the absence or incapacity of the Chairperson, until such time as the Chair returns or a new Chair is appointed.
- C. Secretary – As stated in R.I. Gen. Laws § 42-11-10(e)(6), the Chief of the Division of Planning is designated as the Secretary of the Council. The Secretary shall make arrangements for all meetings of the Council, shall notify all members thereof, and shall prepare an agenda for each meeting. The Secretary shall keep records of attendance and of the proceedings of the Council, recording all votes and performing all duties incident to the office. The Secretary shall also keep written minutes of the Council meetings, and shall transmit the actions and recommendations of the Council to the Governor or to others as appropriate. The Secretary shall perform the duties and exercise the powers of the Chair in the absence or incapacity of the Chairperson and Vice-Chairperson.
- D. Chair Pro Tem – If the Chair, Vice Chair, and the Secretary are simultaneously absent for any meeting of the Council, a senior member of the Division of Planning shall call the meeting to order. The first order of business shall be the election of a Temporary Chair by the Council to preside for the remainder of that meeting or until the arrival of one of the Officers. Any member of the Council may serve as Chair Pro Tem.

#### **1.1.5 Meetings**

- A. Regular Meetings – Regular meetings shall be held according to the annual schedule adopted by the Council. The time and place of the meetings shall be determined by the Secretary. Meetings may be canceled or rescheduled by the Chair, by the Secretary, or by majority vote of the Council.

- B. Special Meetings – Special meetings may be held as necessary. Any Council member may bring the need for a special meeting to the attention of the Secretary. The Secretary shall then consult the Chair or, in his/her absence, the Vice-Chair, who shall decide if the meeting shall be held and shall designate the time and place for such meetings.
- C. Notices and Agendas – Notices of meetings and agendas will be posted in accordance with R.I. Gen. Laws Chapter 42-46 entitled, “Open Meetings”. Agendas shall also be sent to any person or organization which requests them in writing.
  - 1. Any member of the Council may place an item on the agenda of any regular meeting. Members of the staff, federal or state agencies, and local governments may request to have an item placed on the agenda. Such request must be submitted to the Secretary in writing no later than two (2) weeks before a regularly scheduled meeting. A copy of the agenda shall be sent to each Council member at least seven (7) days before a regular Council meeting.
- D. Quorum – A majority of the membership shall constitute a quorum.
- E. Decorum – All persons appearing before the Council, either on their own behalf or in a representative capacity, shall conform to standards of ethical and orderly conduct. If any person does not conform to such standards, the Council may take appropriate action, including declining the opportunity for such person to appear before it.

#### **1.1.6 Attendance**

- A. Unauthorized Absences – Members who miss more than three (3) consecutive regular meetings without having submitted to the Secretary a notice of any reason for such absence shall be sent a letter by the Secretary inquiring as to the ability of the member to remain active on the Council. In the event of further absence, the Council may contact the appointing authority, asking that the appointment be reconsidered.
- B. Delegates and Designees – R.I. Gen. Laws § 42-6-8 entitled, “Departments of State Government” authorizes any head of a State department to appoint a delegate to serve in their place on any boards or commissions to which the director is appointed. Council members who are serving in the capacity as the head of a State department may appoint a delegate by submitting the delegate’s name in writing to the Secretary and filing the appointment with the Secretary of State. Such delegates have the same power and authority as the member, including the power to vote.
- C. Council members who are not serving in the capacity as the head of a State department shall be allowed to send a designee to participate in Council

discussions; however, such designees do not have the same power and authority as the member, nor are they permitted to vote.

### **1.1.7 Committees**

- A. R.I. Gen. Laws § 42-11-10(f)(5) requires the Council to appoint a permanent advisory committee and authorizes the Council to establish other committees as needed; R.I. Gen. Laws § 42-11-10(f)(6) authorizes the Council to establish and appoint members to an executive committee to oversee the Rhode Island geographic information system.
1. Appointments – Unless otherwise specified in these rules, the Secretary shall prepare a slate of names for committee positions that may include nominations from the floor. Following a one-month consideration period, the Council shall vote to appoint committee members. Appointments shall be for three (3) year terms and members may be reappointed.
  2. Officers – The Council shall annually appoint from the membership of the committee, a chair and vice-chair for a term of one year; however, the Council may delegate the selection authority to the membership of the committee. The Chair may appoint a secretary who need not be a member of the committee. Duties of the officers shall be similar to those set forth for officers of the Council.
  3. Attendance – Committee members who miss more than three (3) consecutive scheduled meetings without having submitted to the Secretary a notice of any reason for such absence shall be sent a letter by the Secretary inquiring as to the ability of the member to remain active on the committee. In the event of further absence, the Council may remove and replace the member.
  4. Meetings – All standing committees shall meet once a month unless otherwise determined by the Council. However, meetings may be canceled by the Committee Chair or a vote of the Committee. Other committees shall meet as required or as determined by the Council. The time and place of the meetings shall be determined by the Secretary. A majority of each committee shall constitute a quorum. Special meetings may be called in the manner provided by § 1.1.5(B) of this Part.
  5. Notices and Agendas – Notices and agendas shall follow the same procedures as set forth in § 1.1.5(C) of this Part.
  6. Minutes – Minutes of each committee meeting will be recorded by the Secretary of the Committee and forwarded to the Secretary of the Council.

7. Vacancies – When a vacancy occurs on the committee either through resignation or for other reasons, the Secretary shall notify the Council. The Council shall appoint a new member to fill the vacancy.
- B. Permanent Advisory Committee – The permanent advisory committee, provided for by R.I. Gen. Laws § 42-11-10(f)(5) shall advise and assist the Council in all matters. This committee is commonly known as the “Technical Committee”.
1. Membership – The number of members of this Committee shall be determined by the Council and may be changed from time to time as deemed necessary by the Council. Members shall be comprised of representatives of State agencies, local government, and the public, who serve as voting members. In addition, the Council may invite others, such as representatives of federal agencies, to serve as non-voting advisory members. Members shall be appointed by the Council in recognition of the expertise which they can bring to Statewide Planning Program activities; contact and liaison with parties affected by or involved in these activities; provision of information which is essential to the proper conduct of the planning process, and representation by agencies or areas not represented on the Council. Nominations and appointments shall be made in accordance with § 1.1.7(A)(1) of this Part.
  2. Duties – In addition to responding to Council requests, the Committee shall advise or assist the Council and the staff by:
    - a. reviewing and commenting on all proposed elements, amendments to elements, or repeal of any element of the State Guide Plan;
    - b. providing advice on any matter referred to it by the Council;
    - c. responding to questions on technical matters;
    - d. providing liaison between the staff and other agencies involved in technical studies; and
    - e. adopting and maintaining a plan for the functional classification of the highway system which conforms to the transportation element of the State Guide Plan.
  3. Prior to a request for State Planning Council action, staff shall present any program or special report that includes goals, policies, or implementation programs to the Committee for review and recommendations. As any major staff study is completed, a draft report shall be prepared and referred to the Committee for review and comment.

C. Rhode Island Geographic Information System (RIGIS) Executive Committee – The RIGIS Executive Committee provided for by R.I. Gen. Laws § 42-11-10(f)(6), shall provide oversight of a Rhode Island geographic information system.

1. Membership – The number of members of this committee shall be determined by the Council and may be changed from time to time as deemed necessary by the Council. Nominations and appointments shall be made in accordance with § 1.1.7(A)(1) of this Part.

2 Duties – The Committee shall provide oversight of the Rhode Island geographic information system by:

- a. formulating policies for the effective administration, management, and coordination of RIGIS;
- b. recommending technical standards and best practices related to GIS data and metadata development, data distribution, web applications, cartography, and other related technologies;
- c. promoting geospatial technologies in Rhode Island by advocating for free, user-friendly access to RIGIS data and derived maps and by encouraging educational courses, training programs, and other learning opportunities related to GIS; and
- d. other measures deemed appropriate.

D. Transportation Advisory Committee – In furtherance of its role as the Metropolitan Planning Organization for the State as designated by R.I. Gen. Laws § 42-11-10(f)(8), and in order to encourage public involvement in transportation planning and programming, the Council shall appoint a Transportation Advisory Committee (“TAC”). The TAC shall have two principal purposes: to encourage early and continuing public involvement in the transportation planning process; and to develop, in conjunction with the Division of Planning, transportation planning documents that are the responsibility of the State Planning Council. This shall include assisting in setting goals, identifying issues, analyzing the advantages and disadvantages of alternative courses of action, evaluating impacts, recommending policies, strategies, or projects, and monitoring progress or results of actions taken.

1. Membership – The number of members of the TAC shall be determined by the Council and may be changed from time to time as deemed necessary by the Council. Members shall reflect a diversity of geographic parts of the state and of transportation interests. Membership shall include at a minimum:

- a. four (4) local government officials;

- b. one representative of the Rhode Island Public Transit Authority;
  - c. one representative of the Rhode Island Department of Environmental Management;
  - d. one representative of the Rhode Island Commerce Corporation;
  - e. one representative of the Rhode Island Department of Transportation;
- (1) In addition, other members may be appointed to reflect transportation user-groups and organizations, environmental advocacy organizations, the construction industry, as well as interested individuals. Nominations and appointments shall be made in accordance with § 1.1.7(A)(1) of this Part.

2. Duties – In addition to responding to Council requests, the TAC shall advise or assist the Council by:
- a. identifying the planning priorities and activities to be carried out in the preparation of the Unified Planning Work Program described in § 1.5.3 of this Part entitled, “Unified Planning Work Program”;
  - b. initiating and overseeing the update of the Long-Range Transportation Plan described in § 1.5.4 of this Part entitled, “Transportation Plan”;
  - c. providing advice on elements of the State Guide Plan that may relate to or be coordinated with transportation plans;
  - d. overseeing the development of the Transportation Improvement Program (“TIP”) described in § 1.5.5 of this Part entitled, “Transportation Improvement Program”;
  - e. coordinate with the Air Quality Working Group described in § 1.5.7 of this Part entitled, “State Implementation Plan for Air Quality Conformity Determinations”;
  - f. identify performance measures, determine needs, evaluate and select appropriate strategies, and evaluate the effectiveness of implementation strategies to assist decision-makers in selecting cost effective strategies to improve the efficiency and safety of the Transportation Management System;
  - g. assist in maintaining and periodically assessing the public participation process described in § 1.5 of this Part entitled Metropolitan Planning Organization: Transportation Planning, to



ensure a full and open transportation planning process (reference: 23 C.F.R. § 450.316).

- h. In furtherance of its duties, the TAC may conduct workshops; hold formal and informal meetings; distribute and collect information; meet with governmental agencies, organizations, or individuals; and engage in other actions necessary to advise the Council. Public hearings are usually conducted by the Council but may be conducted by the TAC upon a specific request by the Council.

### **1.1.8 Amendments**

- A. A draft of any proposed amendment(s) to these rules shall be submitted to the Secretary of the Council no later than fifteen (15) days before a regular meeting of the State Planning Council in order to be considered for review at that meeting. The Secretary shall include the draft amendment(s) on the agenda of the next regular or special meeting. The Secretary shall mail a copy or a summary of the draft to each member of the Council no later than ten (10) days before the Council meeting at which the draft is to be reviewed. The Secretary will notify the applicant (if other than the Program staff) and participating agencies and interested parties of the date of the Council meeting on which the draft will be presented. The draft shall be presented to the Council at the scheduled meeting by the applicant or the Secretary. The Council may vote to receive the draft for the purpose of further review or of holding a public hearing thereon. One or more public hearings shall be held on each proposed rule or amendment.
- B. A revised draft of the rules of procedure that incorporates such modifications as are derived from the public hearing and other reviews of the draft shall be mailed to the Council members. At the following Council meeting, the Council shall move to adopt, modify and adopt, reject, or defer action on the proposed rules of procedure.

### **1.1.9 Rules of Order**

- A. Robert's Rules of Order shall be followed in those situations that are not otherwise addressed in these Rules. All rules shall be interpreted and applied in a manner that promotes participation in the planning process, encourages public discussion of statements of goals and policies and elements of the state guide plan, and ensures that the public has adequate opportunity to advise the Council of its views on any statement or plan element under consideration.
- B. The Council, by a two-thirds vote of those voting members or their designees present at a regular or special meeting, may waive or modify any provision of these Rules when, in its judgment, such action would be in the best interests of the Council and the people of the state.

### **1.1.10 Public Hearings**

- A. Notice – All public hearings conducted by the Council shall be in accordance with the provisions of R.I. Gen. Laws Chapter 42-35 entitled, “Administrative Procedures”.
1. Unless otherwise provided for in these Rules, the Council shall provide at least a twenty (20) day notice of a public hearing.
  2. Notice of a public hearing will contain a statement of either the terms or substance of the action or description of the issues, the time of hearing, and the place of the hearing. The notice shall also state the particular manner in which interested persons may present their views.
  3. This notice shall either:
    - a. be placed in a newspaper or papers of general circulation; or
    - b. posted on the Division of Planning website and the Secretary of State website.
  4. Notice shall be provided to interested parties that have requested that their names and addresses be placed on a mailing list which shall be maintained by the Division of Planning.
  5. The material on which the hearing is to be held shall be available for public review during normal business hours in the office of the Division of Planning from the date notice of the hearing is given to the date of the hearing.
  6. Any notice of a public hearing may be withdrawn in the same manner in which it was posted and by mailing written notice to all those requesting that their names be entered on the mailing list to receive notice of public hearings.
- B. Times and Locations – Public hearings may be scheduled as part of regular or special Council meetings or at other times as directed by the Council. When appropriate, a public hearing shall be held in the general area particularly affected by the action or document under consideration.
- C. Governing Rules – Hearings required by law or executive order shall be conducted in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, and these rules and regulations. Where no hearing is required by law or executive order, the Chair may nevertheless in his/her discretion conduct informal hearings or investigations in such manner and according to such procedures as he/she may deem appropriate.

- D. The Council may designate any person to serve as the presiding official for a public hearing. All statements, comments, and or questions, whether written or oral, must be directed to the Chair of the Council or presiding official of the public hearing.
- E. Rules of Evidence – Irrelevant, immaterial, or unduly repetitious evidence shall be excluded by the Chair. Documentary evidence may be accepted in copy form. Any challenge to the accuracy or reliability of the copy shall be brought to the attention of the Chair. Notice can be taken of judicially cognizable facts as well as facts of generally recognized technical or scientific facts within the agency's specialized knowledge but parties must be notified of such actions. All statements, comments, and questions whether written or oral, must be directed to the Chair.

#### **1.1.11 Annual Work Program**

The Unified Planning Work Program as provided by § 1.5.3 of this Part entitled, "Unified Planning Work Program" shall constitute the Annual Work Program. As provided by R.I. Gen. Laws § 42-11-10(f)(3), the Council shall review and provide comments on the proposed work program and its financing to the Director of Administration.

### **1.2 Adoption and Maintenance of the State Guide Plan**

#### **1.2.1 Purpose and Authority**

R.I. Gen. Laws § 42-11-10 entitled, "Statewide Planning Program", allows the State Planning Council to designate strategic plans or components thereof as elements of a state guide plan. The purpose of this rule is to establish standards and procedures for the designation of plans as elements of the State Guide Plan. The Act specifies that "The state guide plan shall be comprised of functional elements or plans dealing with land use; physical development and environmental concerns; economic development; housing production; energy supply, including the development of renewable energy resources in Rhode Island, and energy access, use, and conservation; human services; and other factors necessary to accomplish the objective of this section."

#### **1.2.2 Scope of Guide Plans**

Only plans or components thereof that are broad policy plans with a statewide focus shall be considered by the Council for adoption as an element of the State Guide Plan. Plans that are primarily an implementation plan for a single agency shall not be considered for inclusion in the State Guide Plan.

#### **1.2.3 Coordination and Outreach**

- A. Plans Developed by the Division of Planning – Any plan or plan revision may be developed by the Division of Planning for the purpose of adoption as, or amendment to, an element of the State Guide Plan.
- B. Plans Developed by an Outside Agency – Any agency proposing to develop a plan or plan revision for the purpose of adoption as, or amendment to, an element of the State Guide Plan, shall coordinate the project with the Statewide Planning Program. The agency shall contact the Secretary for the purpose of developing a memorandum of understanding (“MOU”) that shall specify the objectives, scope, general content, schedules, planning processes, procedures, and other requirements for the preparation of the plan or plan amendment. All MOU’s shall note that the State Planning Council shall have final say over the final content and format of a State Guide Plan element.
- C. Advisory Committees – In order to promote a broad perspective of views and to improve coordination between various stakeholders, any agency proposing to draft a new, or significantly revise an existing, plan may identify or create an advisory group to assist in the process. The membership of an advisory committee shall be proposed by the lead agency developing the plan or plan revision. Membership must include representation of local government. Additional membership may include other state agencies, non-profit organizations, academics, and private citizens having interest or expertise in the field. Any existing committee of the Council may be used as an advisory committee with the Council’s approval.
- D. General Public – Involvement of the general public through the use of surveys, focus groups, workshops, regional meetings, or other means is strongly encouraged.

#### **1.2.4 Adoption of a State Guide Plan Element**

- A. Review – Upon the completion of a preliminary draft, a plan developed by an outside agency shall be submitted to the Division of Planning staff for review. The submission shall consist of an acceptable electronic format and one or more paper copies of the draft.
  - 1. Staff review – Division of Planning staff shall have ninety (90) days to complete its review. The review shall consider whether the plan is:
    - a. consistent with other elements of the State Guide Plan; and
    - b. of appropriate scope and comprehensiveness.
    - c. Statewide Planning staff shall work with the originating agency to correct any deficiencies for the preparation of a final draft.

- d. Plans developed by the Division of Planning are not subject to this provision but shall proceed under § 1.2.4(A)(2) of this Part entitled Technical Committee review.
- 2. Technical Committee review – Upon the completion of a final draft by Division of Planning staff or upon certification by Division of Planning staff that a plan developed by an outside agency meets the standards set forth by this Rule, the plan shall be submitted to the Technical Committee for review.
  - a. The Committee shall review the draft and may request Division of Planning staff and/or the originating agency to present an explanation of the plan to the committee.
  - b. The Committee shall make recommendations regarding the final draft and upon its determination that the draft is satisfactory, the committee shall forward the plan to the Secretary of the State Planning Council in order to be placed on the Council's agenda for its consideration.
- 3. Solicitation of comments – As part of the review process, the Division of Planning staff and/or the Technical Committee may solicit comments from municipal, state, regional, and federal agencies, and from interest groups.

**B. State Planning Council Action**

- 1. Public hearing – Upon receipt and review of the final draft of a plan, the Council shall vote to either remand the draft to the Technical Committee for further consideration or schedule a public hearing. The Secretary shall schedule and conduct the hearing(s), in accordance with § 1.1.10 of this Part, at which public comments on the draft will be accepted. The Secretary shall prepare a report of public comments received and any changes recommended by the Division of Planning staff.
- 2. Adoption – Upon review of the Secretary's report on public comments received and recommendations of Division of Planning staff, the Council may adopt the final plan as presented or instruct the Division of Planning staff to revise the plan as determined by the Council. Upon a vote of approval to adopt a plan, the plan shall become an element of the State Guide Plan.

**1.2.5 Term of a State Guide Plan Element**

- A. Although plans may have a long-term planning timeframe, they must be reviewed and updated on a timely basis in order to maintain their accuracy and relevance to changing conditions. In some instances, a plan may be required to be updated in order to maintain eligibility for Federal funding or other assistance.

- B. Establishment of a Term – State Guide Plan elements may be adopted for a defined term to be established at the time that the plan is adopted by the Council.
- C. Notification of Pending Plan Expiration – At least one year prior to the expiration of the term of an element of the State Guide Plan, the Council shall notify any outside agency(s) as appropriate.
  - 1. If an outside agency is to take the lead in the preparation of an amendment or update to a plan, the Council shall also notify the agency that a Memorandum of Understanding is required.
- D. Expiration or Extension – An element of the State Guide Plan shall expire on the date set forth at the time of its adoption unless extended by the Council. The Council may extend the term of a plan's validity if the Council determines that the expiration of the plan would be detrimental to the interests of the state.

#### **1.2.6 AMENDING A STATE GUIDE PLAN ELEMENT**

- A. Amendments – Any State agency, municipal government, or member of the Council may propose an amendment to any element of the State Guide Plan by requesting that the Secretary place the request for an amendment on the agenda of the next Council meeting. Amendments shall be adopted according to the procedures as set forth under § 1.2.4 of this Part.
- B. Technical Corrections – The Secretary of the Council is authorized to approve technical corrections, as defined in § 1.1.2(A)(11) of this Part, to adopted elements of the State Guide Plan in accordance with the following procedures:
  - 1. All requests for a technical correction(s) shall be submitted in writing to the Secretary. Any proposed technical correction requesting cartographic revisions to an adopted element of the State Guide Plan shall be accompanied by a statement that the proposed correction is consistent with the applicable local comprehensive plan(s) of the municipality(ies) affected as certified in writing by the appropriate municipal planning official(s).
  - 2. Within thirty (30) days of the receipt of a written request for a technical correction, the Secretary shall determine whether the request conforms to the following criteria:
    - a. The request is complete.
    - b. The request meets the definition of a technical correction as defined in § 1.1.2(A)(11) of this Part.
    - c. The request, if approved, will be consistent with the goals, policies, strategies, recommendations, performance measures, and

implementation actions of the affected element of the State Guide Plan and other applicable elements of the State Guide Plan.

3. If the Secretary determines that the request for a technical correction does not conform to the criteria for a technical correction in § 1.2.6(B)(2)(b) of this Part above, the Secretary shall notify the applicant in writing of this determination and advise the proponent of the opportunity to propose an amendment to the State Guide Plan element to be considered in accordance with the provisions of § 1.2.6(A) of this Part.
4. If the Secretary determines that the request for a technical correction conforms to the criteria for a technical correction in § 1.2.6(B)(2) of this Part above, the Secretary shall post a notice on the Division of Planning website describing the request for the technical correction, identifying the affected element of the State Guide Plan, the findings of fact used by the Secretary in arriving at the decision, and inviting written comments, and/or the opportunity to request a public hearing thereon within a thirty (30) day period following publication of the notice. The Secretary shall notify directly all members of the State Planning Council, the director(s) of affected State agencies, and the chief elected official(s) of municipalities affected by the proposed technical correction.
5. If no written request for conduct of a public hearing on the proposed technical correction is received within the thirty (30) day comment period, the Secretary may adopt the technical correction as requested, or with modifications he or she determines to be appropriate.
6. If written objection is received within the thirty (30) day comment period or if a request that a public hearing be held on the proposed technical correction, the request shall be considered in accordance with the provisions of § 1.2.6(A) of this Part.

### **1.2.7 Notification of New or Amended State Guide Plan Elements**

The Division of Planning shall, within twenty-one (21) days of Council approval, notify all municipal planning departments or planning boards or commissions of any newly adopted or amended element of the State Guide Plan. The notice shall include a summary of any new goals or policies established by the new/amended element. The notice shall also notify the planning department or planning board or commission that, in accordance with R.I. Gen. Laws § 45-22.2-9(f), all municipalities are required to, within one year, amend their comprehensive plan to conform with the amended State Guide Plan and that failure to do so may result in the rescission, in whole or in part, of State approval. In addition to municipal notification, the Division shall notify all parties contained on the public notice mailing list established by § 1.1.10(A)(4) of this Part.

### **1.2.8 Repeal of a State Guide Plan Element**

The State Planning Council may repeal any element of the State Guide Plan or portion thereof, if in its determination said element is no longer relevant, no longer accurate, or has been superseded by another element.

### **1.3 Review of Project Proposals to Determine State Guide Plan Consistency**

#### **1.3.1 Purpose and Authority**

The purpose of this rule is to establish procedures for making the determination of consistency with the State Guide Plan for projects proposed by agencies of the State, as defined in § 1.3.2 of this Part, entitled “Applicability” and R.I. Gen. Laws § 42-64-14(a) entitled, “Rhode Island Commerce Corporation”. R.I. Gen. Laws § 42-11-10(c)(6) authorizes the Council to: “Monitor the planning of specific projects and designing of specific programs of short duration by the operating departments, other agencies of the executive branch, and political subdivisions of the state to insure that these are consistent with and carry out the intent of applicable strategic plans”. R.I. Gen. Laws § 42-11-10(f)(2) empowers the Council: “To coordinate the planning and development activities of all state agencies, in accordance with strategic plans prepared and adopted as provided for by this section”.

#### **1.3.2 Applicability**

Agencies are subject to this section by means of legislation, executive order, judicial order, or voluntary agreement. The Council shall approve and the Division of Planning shall maintain, and post to its website, a list of agencies and programs subject to this Rule. Staff shall notify the Council of any recommended changes to this list and the reason for such change.

#### **1.3.3 Submission for Review**

Requests for a determination of conformity of proposed projects with the State Guide Plan shall be submitted to the Secretary of the Council. All requests shall be submitted in a manner determined by the Division of Planning and approved by the Council.

#### **1.3.4 Notification**

The Secretary shall determine within three (3) business days of receipt as to whether the application is sufficient or whether additional information is needed. If the application is insufficient, applicants will be so notified with a statement of the information needed to commence a review. If an applicant fails to provide the required information within thirty (30) days of the notification, the Secretary shall notify the applicant that a determination of consistency could not be made based on the materials submitted. Upon determination that an application is complete, the Secretary will notify the applicant of the deadline for completion of the review



process, which shall be forty-five (45) days from the date of acceptance. The Secretary shall also notify all members of the Council of the acceptance of the application. Copies of the complete application shall be furnished to any Council member upon request.

### **1.3.5 Review**

- A. The Secretary shall prepare, within twenty-one (21) days following the acceptance of the application, an advisory report. The advisory report shall briefly summarize the proposed project, the results of the review, and the findings of the Secretary as to whether the proposal does or does not conform to the State Guide Plan. The Secretary may solicit the input of other State agencies in making this determination. In determining consistency with the State Guide Plan, the Secretary shall consider:
  - 1. the project's primary and direct effects;
  - 2. the project's secondary and indirect effects;
  - 3. the project's long and short-term effects; and,
  - 4. the cumulative effects of projects similar in either geographic location or functional purpose.
- B. The Secretary shall contact each city and town affected by the proposal and request an opinion as to whether the proposed project is consistent with the local comprehensive plan.

### **1.3.6 Completion of the Review – Finding of Conformance**

- A. Upon completion of the review, the Secretary shall prepare a report with preliminary findings which shall be made available to each member of the Council. If the Secretary finds that a proposed project conforms to all applicable provisions of the State Guide Plan, the report shall so state and all members of the Council shall have ten (10) days in which to enter any objections to the finding. All objections must be submitted to the Secretary in writing.
- B. If no objections are received, the finding shall be considered final and the Chair of the Council shall notify the applicant. This notification shall state that the proposed project does conform to the State Guide Plan.
- C. If any objection is made, the proposed project shall be considered for a Final Determination under § 1.3.8 of this Part at a regular or special meeting of the Council, which shall be held not later than forty-five (45) days following the date of acceptance of the proposal by the Secretary.

### **1.3.7 Completion of the Review – Finding of Non-Conformance**

If the Secretary finds that a proposed project does not conform to all applicable provisions of the State Guide Plan, the report shall so state and describe those respects in which the project does not conform. The proposed project and the report shall be considered for a Final Determination at a regular or special meeting of the Council, which shall be held not later than forty-five (45) days following the date of acceptance the proposal by the Secretary.

### **1.3.8 Final Determination**

The Council shall determine, by majority vote of attendees, whether the project is in conformance with the State Guide Plan or not in conformance with the State Guide Plan. Each determination of the Council shall be accompanied by a concise and explicit statement of the principal reasons for and against the determination reached by the Council, incorporating therein the reasons for overruling the considerations urged for a contrary determination. The Secretary shall notify the applicant of the Council's determination, in writing, not later than forty-five (45) days following the date of acceptance of the proposal by the Secretary. Each determination of the Council and each supporting statement shall be mailed to the governing body of each city and town affected by the proposal and shall be made available to the public upon request.

## **1.4 Comprehensive Plan Review Process**

### **1.4.1 Purpose and Authority**

The purpose of this rule is to establish standards and procedures for the municipal adoption of local comprehensive plans, for State review and approval thereof, and for the achievement of the goals and intent of R.I. Gen. Laws Chapter 45-22.2 entitled, "Rhode Island Comprehensive Planning and Land Use Regulation Act" ("Act"). R.I. Gen. Laws § 45-22.2-10 mandates the State Planning Council adopt all rules and regulations necessary to implement the standards established by the Act.

### **1.4.2 Guidance Manual / Establishment of Standards**

- A. In accordance with R.I. Gen. Laws §§ 45-22.2-9(b) and 45-22.2-10(b), the Chief shall prepare for publication a guidance manual that provides guidelines and standards for the preparation of comprehensive plan content, incorporation of State goals and policies into comprehensive plans, and offers general technical assistance in the development of a comprehensive plan. This publication shall also inform municipalities of the standards used in the review of a comprehensive plan under § 1.4.7 of this Part.
  - 1. A draft of the guidance manual, or substantive amendments to it, must be approved by the Council prior to publication or distribution. Technical updates or minor administrative revisions shall not require Council action.

### **1.4.3 Preliminary Notification**

- A. Comprehensive Plans – Not less than one year prior to the expiration of the State approval of a comprehensive plan, the Chief shall notify the subject municipality of the pending expiration and shall notify the municipality of any technical and/or financial assistance that may be available to assist in the preparation of a new or updated plan.
- B. Informational Reports – Not less than three (3) months prior to the due date for an informational report on the status of the comprehensive plan implementation program, the Chief shall notify the subject municipality of the pending deadline and shall notify the municipality of such technical assistance as may be available.

### **1.4.4 Review of Draft Material**

- A. Submission Types – Municipalities may submit to the Chief draft comprehensive plan materials for review, comment, and technical assistance. Submissions will be categorized as described below:
  - 1. Type 1: Review by Division of Planning staff only
    - a. one or more draft chapters of a comprehensive plan (Type 1a)
    - b. draft amendments to a comprehensive plan (Type 1b)
  - 2. Type 2: Review by Division of Planning staff and staff of other State agencies
    - a. one or more draft chapters of a comprehensive plan (Type 2a)
    - b. a full draft of the comprehensive plan (Type 2b)
    - c. draft amendments to a comprehensive plan (Type 2c)
    - d. When submitting draft material, the municipality is to indicate which type of review it is seeking.
- B. Review Periods – All responses to requests for review, comment, and technical assistance shall be as expeditious as resources allow. Unless otherwise agreed to by the submitting municipality, comments on draft materials will be furnished according to the following schedule:
  - 1. For Type 1a submissions, comments on a single chapter shall be provided within twenty (20) days. Staff shall be allowed an additional ten (10) days for each additional chapter submitted.
  - 2. For Type 1b submissions, comments shall be provided within thirty (30) days.

3. For Type 2a submissions, comments on a single chapter shall be provided within thirty (30) days. Staff shall be allowed an additional fifteen (15) days for each additional chapter submitted.
4. For Type 2b submissions, comments shall be provided within one-hundred twenty (120) days.
5. For Type 2c submissions, comments shall be provided within forty-five (45) days.

#### **1.4.5 Submission for State Approval / Municipal Notification**

**A. Submission Requirements – A municipality must submit to the Chief:**

1. One electronic copy in a format compatible with the Division of Planning and sufficient paper copies, as determined by the Chief, of the comprehensive plan or plan amendment as approved by the city or town council.
2. In accordance with R.I. Gen. Laws § 45-22.2-8, evidence that:
  - a. the comprehensive plan was prepared by the planning board, commission, or local planning committee;
  - b. the planning board, commission, or local planning committee, solicited public comments and that a minimum of one individual or joint public hearing was held; and,
  - c. that the planning board, commission, or local planning committee submitted the comprehensive plan or amendment to the city or town council with recommendations.
3. In accordance with R.I. Gen. Laws § 45-22.2-8, evidence that:
  - a. the city or town council conducted a minimum of one individual or joint public hearing and
  - b. the comprehensive plan or plan amendment was adopted by the city or town council and was incorporated by reference into the municipal code of ordinances.
4. Other information as may be required by the Chief in order to ensure that the intent and goals of the Act are achieved.

**B. Municipal Notification**

1. The Chief shall, within seven (7) days of receipt, notify the submitting municipal authority in writing as to:

- a. the date that the submission was received;
  - b. any missing material that must be submitted in accordance with § 1.4.5(A) of this Part; or if complete,
  - c. the date by which the Chief must respond to the municipality in accordance with R.I. Gen. Laws § 45-22.2-9(c).
- C. Incomplete Submissions – The Chief shall allow a municipality fifteen (15) days to provide any missing material identified in § 1.4.5(B)(1)(b) of this Part. If the required material has not been provided by the end of fifteen (15) days, the Chief may issue a denial of State approval or grant additional time for the municipality to supply the required material.
- D. Special Exception: Amendments to Comprehensive Plans that do not have Current State Approval – The Act requires that “[comprehensive plan] amendments shall be submitted to the chief within thirty (30) days of adoption by the municipal legislative body”; notwithstanding, granting State approval of an amendment to a comprehensive plan that does not have State approval, would run contrary to the goals and intent of the Act. Any municipality that adopts an amendment to a comprehensive plan that is not currently State approved must still submit one electronic copy in a format compatible with the Division of Planning and one paper copy of the plan amendment as approved by the city or town council; however, in lieu of a standard review, the Chief shall, within seven (7) days, notify the municipality that State approval of the amendment is denied but shall offer the municipality the option of having the amendment reviewed under the provisions of § 1.4.4 of this Part, Review of Draft Material.

#### **1.4.6 Solicitation of Comments**

- A. Public Notice – The Chief shall post a notice on the Division of Planning website of comprehensive plans or comprehensive plan amendments submitted under § 1.4.5 of this Part. In accordance with R.I. Gen. Laws § 45-22.2-9(c)(2), this notice shall be posted within fifteen (15) days of receipt of all required materials and shall offer interested parties a minimum of thirty (30) days to provide comment. Additional time to provide comment may be granted by the Chief upon request. Comments not received within the comment period may not be considered by the Chief.
- B. Agency and Contiguous Municipality Notice – In addition to the public notice required under § 1.4.6(A) of this Part, the Chief shall, within fifteen (15) days of receipt of all required materials, solicit comments from:
  - 1. any state or regional agency that the Chief may identify as having a specific interest in the comprehensive plan or comprehensive plan amendment and

2. all municipalities contiguous to the municipality submitting the plan. Such entities shall be offered a minimum of thirty (30) days to provide comment. Additional time to provide comment may be granted by the Chief upon request. Comments not received within the comment period may not be considered by the Chief. Any agency, municipality, or other entity notified by the Chief that does not respond shall be considered to have no objection to the approval of the plan or plan amendment.

C. Authorized Commenters

1. Authorized agency commenters – The Chief shall maintain a list of individuals authorized by their Agency director to provide comments on behalf of said Agency.
2. Authorized municipal commenters – Unless otherwise notified by a mayor, town manager, or president of a town council, the Chief shall request municipal comments from the municipal planner or planning board chair.

**1.4.7 Review**

The Chief shall review comprehensive plans in accordance with the schedule established by R.I. Gen. Laws § 45-22.2-9(c) and criteria established by R.I. Gen. Laws § 45-22.2-9(d). Only those plans that have been reviewed in full under the provisions of § 1.4.4 of this Part shall qualify for the abbreviated review period specified in R.I. Gen. Laws § 45-22.2-9(c)(3)(ii). The Chief shall consider all timely comments received under § 1.4.6 of this Part. If the Chief finds any deficiency in a comprehensive plan, it shall be reported to the municipality along with guidance as to how the deficiency could be remediated.

**1.4.8 Revisions to Comprehensive Plans or Amendments under Review**

- A. Timeliness – A municipality may, in response to comments submitted as part of the initial review or for any other reason, revise its comprehensive plan prior to the final decision by the Chief. All revisions must be submitted prior to a final decision by the Chief. Any revision submitted after a decision by the Chief must be submitted as a comprehensive plan amendment.
- B. Re-Adoption by the City or Town Council – Any revision to a comprehensive plan or comprehensive plan amendment made in response to comments provided by the Chief should be evaluated by the city or town solicitor to determine if the change is significant enough to warrant re-adoption by the city or town council. Revisions that affect the overall guidance and direction of the comprehensive plan in terms of goals or policies, future land uses, or implementation of the plan would normally warrant re-adoption. However, if the determination is that re-adoption is not required, the municipality must provide a letter to the Chief from the solicitor stating so. Failure to do so may result in a disapproval of the revised plan. If the determination is that re-adoption is warranted, additional public

hearings shall be required as a condition for State approval in accordance with R.I. Gen. Laws § 45-22.2-8(b)(1).

- C. Review of a Re-Adopted Plan – Upon the submittal of a re-adopted comprehensive plan or comprehensive plan amendment, the Chief shall determine whether a new public notice and comment period is warranted. If so, the Chief shall attempt to negotiate an extension of time to complete the review with the municipality. If the Chief and municipality cannot agree on a mutually acceptable extension, the Chief shall issue a letter disapproving the comprehensive plan or comprehensive plan amendment.

#### **1.4.9 Issuance of State Approval or Disapproval**

- A. The Chief shall review all material submitted by the municipality and render a final decision on the plan or amendment within thirty (30) days of the end of the period for correction. The Chief shall issue a letter of approval or disapproval to the submitting municipal authority. The letter shall contain findings supporting the final decision. In accordance with R.I. Gen. Laws § 45-22.2-9(c)(5), letters of disapproval shall be sent by registered mail.
- B. In the case of disapproval, municipalities have thirty (30) days to appeal the Chief's decision to a hearing officer in accordance with R.I. Gen. Laws § 45-22.2-9.1. In cases of disapproval, the Chief shall annually notify the city or town council that they are encouraged to revise and resubmit the plan. In addition, the Chief shall offer technical and financial assistance as may be available.

#### **1.4.10 Five-Year Implementation Assessment**

- A. Pursuant to R.I. Gen. Laws § 45-22.2-12(d), each municipality is required to prepare an informational report on the status of their comprehensive plan implementation program not more than five (5) years from the date of municipal approval. This report shall be submitted to the Chief and must include:
  - 1. a list of all implementation actions, schedules, and responsible parties;
  - 2. identification of progress made;
  - 3. identification of obstacles to progress; and
  - 4. an assessment as to whether modification of the implementation program is needed in order to achieve the goals and objectives of the comprehensive plan.

#### **1.4.11 Rescission of State Approval**

- A. Pursuant to R.I. Gen. Laws §§ 45-22.2-9(f) and 45-22.2-13(g)(1), the Chief may rescind the approval of a comprehensive plan, in whole or in part, for the following reasons:
1. Failure to amend a comprehensive plan in response to an amendment to R.I. Gen. Laws Chapter 45-22.2 entitled, "Rhode Island Comprehensive Planning and Land Use Act" or an amendment to the State Guide Plan;
  2. Failure to:
    - a. amend a municipal zoning ordinance and map to conform to the comprehensive plan within one-hundred twenty (120) days of the schedule as identified in the approved comprehensive plan implementation program or, if applicable, the expiration of a moratorium imposed under the provisions of R.I. Gen. Laws § 45-22.2-13(e); or
    - b. amend the comprehensive plan implementation schedule to allow the municipality additional time to amend a municipal zoning ordinance and map to conform to the comprehensive plan; or
    - c. amend the comprehensive plan's future land use map to remove any identified inconsistency with existing zoning.
  3. The identification of a deficiency in the comprehensive plan that would preclude its approval under the criteria established by R.I. Gen. Laws § 45-22.2-9(d). In such an event, that the Chief shall first offer the municipality one-hundred twenty (120) days to correct the identified deficiency before rescinding approval of the plan.
- B. In the case of a rescission, the Chief shall notify the municipality in accordance with the provisions of § 1.4.9 of this Part.

#### **1.4.12 Procedures to Act in Non-Conformance to a State Approved Comprehensive Plan**

- A. Pursuant to R.I. Gen. Laws § 45-22.2-10(g), programs and projects of State agencies are required to conform to State approved comprehensive plans unless the agency demonstrates to the Council that:
1. The program, project, or facility conforms to the stated goals, findings, and intent of the Comprehensive Planning and Land Use Act;
  2. The program, project, or facility is needed to promote or protect the health, safety, and welfare of the people of Rhode Island;



3. The program, project, or facility is in conformance with the relevant sections of the State Guide Plan; and
  4. The program implementation, project, or size, scope, and design of the facility will vary as little as possible from the comprehensive plan of the municipality.
- B. State Agency Request for State Planning Council Review – State agencies may request Council review of a program, project, or facility by submitting the following to the Secretary:
1. A description of the program, project, or facility that the State agency seeks to pursue;
  2. A statement as to how the program, project, or facility conforms to the stated goals, findings, and intent of the Act;
  3. An explanation of why the program, project, or facility is needed to promote or protect the health, safety, and welfare of the people of Rhode Island;
  4. A description of how the program, project, or facility is in conformance with the relevant sections of the State Guide Plan;
  5. The provisions of the municipal comprehensive plan that the program, project, or facility would conflict with; and
  6. An explanation of the measures undertaken by the agency to ensure that the program, project, or facility varies as little as possible from the municipal comprehensive plan.
- C. Municipal Request for State Planning Council Review – A municipality shall have the right to present its case to seek compliance with its comprehensive plan or recommend revisions to the program, project, or facility that would minimize the conflict with its comprehensive plan. Municipalities may request Council review of a State sponsored program, project, or facility by the chief executive officer of the municipality submitting the following to the Secretary:
1. Identification of the sponsoring State agency and a description of the program, project, or facility that the municipality objects to;
  2. The provisions of the municipal comprehensive plan that the program, project, or facility would conflict with; and
  3. Recommendations as to how the sponsoring State agency could modify the program, project, or facility to minimize or eliminate the conflict with the municipal comprehensive plan.

- D. Staff Review – Staff of the Division of Planning shall review the submitted materials and prepare an advisory report within sixty (60) days following the receipt of the request by the Secretary. The advisory report shall consider whether:
1. The program, project, or facility conforms to the stated goals, findings, and intent of the Comprehensive Planning and Land Use Act;
  2. The program, project, or facility is needed to promote or protect the health, safety, and welfare of the people of Rhode Island;
  3. The program, project, or facility is in conformance with the relevant sections of the State Guide Plan; and whether
  4. The program implementation, project, or size, scope, and design of the facility varies as little as possible from the comprehensive plan of the municipality.
  5. Staff may request additional information as needed.
- E. Public Hearing – The Council shall schedule and conduct a public hearing on the proposal, in accordance with § 1.1.10 of this Part, at which the State agency must demonstrate that it has met the standards set forth in R.I. Gen. Laws § 45-22.2-10(g). The Secretary shall prepare a report of public comments received.
- F. Determination – The Council shall make a determination, whether the program, project, or facility meets the requirements established by R.I. Gen. Laws § 45-22.2-10(g). If the Council determines that the program, project, or facility does not meet the requirements, it may offer recommendations to the sponsoring State agency as to how the program, project, or facility could be modified to achieve approval.

#### **1.4.13 Provision of Copies of a State Approved Plan**

Upon the approval of a comprehensive plan the municipality shall provide, if requested by the Chief, one electronic copy in a format compatible with the Division of Planning and up to two (2) paper copies of the comprehensive plan as approved. Municipalities shall have thirty (30) days to comply with such a request.

### **1.5 Metropolitan Planning Organization: Transportation Planning**

#### **1.5.1 Purpose and Authority**

- A. The State Planning Council is designated as the Metropolitan Planning Organization (“MPO”) for the State of Rhode Island by R.I. Gen. Laws § 42-11-10 entitled, “Statewide Planning Program”. The role and responsibilities of the MPO

are set forth in Public Law 114-94, Fixing America's Surface Transportation (FAST) Act, and the following regulations as found in the Code of Federal Regulations ("C.F.R."):

1. Federal Highway Administration regulation 23 C.F.R. § 450 entitled, "Highways – Planning Assistance and Standards", including Subpart B – "Statewide Transportation Planning and Programming" and Subpart C – "Metropolitan Planning and Programming"; and
2. Federal Transit Administration regulation 49 C.F.R. § 613 entitled, "Transportation – Planning Assistance and Standards", including Subpart A – "Metropolitan Planning and Programming" and Subpart B – "Statewide Transportation Planning and Programming".
3. Furthermore, § 176(c) of the Federal Clean Air Act (42 U.S.C. § 7506) requires a determination of conformity of transportation plans, programs, and projects to the State Implementation Plan for air quality.

B. This rule is intended to set forth procedures:

1. by which the public will be involved in transportation planning in Rhode Island, through a proactive process that is based on the following principles:
  - a. opportunity for early and continuing public involvement;
  - b. identification of, and contact with, as many persons and organizations as possible who are thought to be interested;
  - c. outreach to persons traditionally underserved by transportation systems, such as low-income and minority households in order to identify and consider their needs;
  - d. inclusion of the general public by appropriate means, such as web postings; timely notice of meetings; and
  - e. provision of complete information by the Division of Planning, and adequate staff support, given available resources.
2. by which the State Planning Council will participate in an interagency consultation process with the Rhode Island Department of Environmental Management and the Rhode Island Department of Transportation, to make determinations of conformity of transportation plans, programs, and projects to the State Implementation Plan in order to assure, to the greatest extent possible, that such plans, programs, and projects eliminate or reduce the severity and number of violations of the national ambient air quality standards and facilitate achieving and maintaining such standards.

3. to supplement procedures set forth in 23 C.F.R. § 450 and 49 C.F.R. § 613, as applicable.

### **1.5.2 Applicability**

- A. This section applies to the following transportation activities and documents, to the extent that these are the responsibility of the State Planning Council or the Division of Planning:
  1. The Unified Planning Work Program, which presents the transportation and transportation-related air quality planning priorities, tasks, schedules, and products anticipated to be undertaken by various agencies in the short-term.
  2. The Long-Range Transportation Plan, which is the long-term vision of Rhode Island's transportation system. For purposes of Federal coordination, this plan shall serve as a combined statewide transportation plan and metropolitan transportation plan.
  3. The Transportation Improvement Program, which is a multi-year implementation program. For purposes of Federal coordination, this program shall serve as a combined statewide transportation improvement program and metropolitan transportation improvement program.
  4. Any transportation plan, program, or project developed pursuant to C.F.R. Titles 23 and 49.

### **1.5.3 Unified Planning Work Program**

- A. The State Planning Council shall adopt annually a Unified Planning Work Program ("UPWP"). The UPWP shall include an examination of transportation issues and needs and a coordinated summary of transportation planning tasks, schedules, and products that respond to these needs.
- B. Preparation of the Unified Planning Work Program – The UPWP shall be formulated through a public process that shall be completed by July 1 of each year. This process shall include one or more public meetings at which public participation shall be encouraged. Information will be presented on topics required by, but not limited to, 23 C.F.R. § 450 *et seq.*, which includes:
  1. a review of planning assumptions and the plan development process;
  2. transportation issues and processes;
  3. public access to technical and policy information used in transportation planning;

4. methods for identifying and responding to the needs of those underserved by existing transportation systems; and
  5. review of public involvement processes and results.
- C. Inclusion of the Transportation Improvement Program – The UPWP shall include preparation, review, and approval of the Transportation Improvement Program (“TIP”) as required by § 1.5.5 of this Part. This shall include:
1. identifying the specific actions needed to accomplish the requirements listed in this Rule;
  2. identification of the responsible parties for each action; and
  3. a schedule of the dates by which the identified actions must be accomplished.
  4. The schedule must allow sufficient time for preparation, public review, State adoption, and Federal review and approval before the start of the Federal fiscal year on October 1. The Council shall send the schedule to all agencies involved.

#### **1.5.4 Transportation Plan**

- A. The State Planning Council shall adopt and maintain a Long-Range Transportation Plan that may be adopted as, or serve as the basis for, an element or elements of the State Guide Plan. Contents of the plan shall include:
1. consideration of preservation of existing transportation facilities;
  2. consistency with energy conservation programs;
  3. the need to relieve and prevent congestion;
  4. projected travel demand;
  5. adopted congestion management strategies;
  6. identification of pedestrian and bicycle facilities; and
  7. all other items set forth in 23 C.F.R. §§ 450.214 and 450.322(f) and other governing Federal regulations.
- B. Coordination and Outreach – In addition to the provisions set forth in § 1.2 of this Part entitled, “Adoption and Maintenance of the State Guide Plan”, transportation plans and amendments shall be formulated through a public process by the Division of Planning and the Transportation Advisory Committee, as established by § 1.1.7(D) of this Part. In addition to the Rhode Island Department of

Environmental Management ("RIDEM"), the Rhode Island Department of Transportation ("RIDOT"), the Rhode Island Public Transit Agency ("RIPTA"), and the Rhode Island Commerce Corporation, who are represented on the TAC, outreach shall include:

1. other interested State agencies;
  2. public and private transportation service or facility operators, including the Rhode Island Airport Corporation, the Rhode Island Turnpike and Bridge Authority, bus companies, paratransit providers, freight rail companies, waterborne transit operators, and others;
  3. interested federal agencies, agencies and organizations in other states, and multi-state groups involved in transportation;
  4. local officials, such as chief executives, planning directors, planning board members, public works directors, and public safety officials;
  5. Joint Municipal Planning Commissions established under R.I. Gen. Laws Chapter 45-22.1, and Regional Councils of Local Governments established under R.I. Gen. Laws Chapter 45-43;
  6. organizations interested in transportation, the environment, and the economy;
  7. persons with disabilities limiting transportation access or use;
  8. representatives of transportation and other affected agency employees;  
and
  9. the general public, including anyone who requests to be involved.
- C. Air Quality Conformity – Prior to the adoption of, or amendment to, any transportation plan, there shall first be a determination of conformity in accordance with the procedures described in § 1.5.7 of this Part.
- D. Adoption – In addition to the provisions set forth in § 1.2 of this Part entitled, "Adoption and Maintenance of the State Guide Plan", adoption, amendment, and repeal of transportation plans shall comply with the requirements of 23 C.F.R. §§ 450.316(a) and 322(c), (e), (g), (i) and (j) which require a thirty (30) day public comment period, demonstration of response to public input, adoption by the MPO, and publication and distribution of the plan.

#### **1.5.5 Transportation Improvement Program**

- A. The State Planning Council shall adopt and maintain a program to evaluate and schedule the implementation of transportation projects, which the State intends

to complete using Federal funds. This program shall be known as the Transportation Improvement Program ("TIP").

1. Coordination and Outreach – The TIP shall be formulated through a public process by the Division of Planning and the Transportation Advisory Committee, established by § 1.1.7(D) of this Part. The TIP shall be coordinated with RIDOT and RIPTA.
2. Solicitation of Project Proposals – Project proposals may be drawn from the transportation plan, the management systems plans of RIDOT and RIPTA, and other plans or studies as appropriate. In addition, the Division shall give a minimum thirty (30) day public notice on the website maintained by the Division of Planning, of the opportunity to submit project proposals for inclusion in the TIP. Project suggestions may be submitted by the general public.
  - a. Municipal Governments, Regional Councils, and Planning Agencies – The Division shall notify each city and town chief executive, with copies to local planning and public works directors, requesting project proposals. The notification shall include:
    - (1) information on the state transportation plan;
    - (2) information on the TIP;
    - (3) the status of past proposals and current projects;
    - (4) federal-aid program eligibility; and
    - (5) the process for including any new project in the TIP.
  - b. In addition to the chief executive, proposals may also originate from:
    - (1) planning boards and commissions,
    - (2) Joint Municipal Planning Commissions established under R.I. Gen. Laws Chapter 45-22.1,
    - (3) Regional Councils of Local Governments established under R.I. Gen. Laws Chapter 45-43, and
    - (4) municipal and regional committees.
- (AA) Public Participation – Municipal governments are urged to involve the public in the preparation of their recommendations through advisory committees,

public meetings, and other methods. After public notice in accordance with local procedures, city and town governments must hold a minimum of one (1) public hearing on projects that they intend to submit for the TIP.

(BB) Non-municipal organizations are urged to involve the public in their recommendations through direct interaction with member municipalities, advisory committees, and public meetings. Non-municipal submissions must include evidence that the chief elected official of the city or town in which the project is located was notified and that the proposal conforms to the local comprehensive plan.

(CC) Public and Private Transportation Service or Facility Operators – The Division shall contact RIDOT, RIPTA, the Rhode Island Airport Corporation, the Rhode Island Commerce Corporation, the Quonset Development Corporation, railroad companies, and private transit providers, and any other entity as deemed appropriate to request project proposals.

3. Submission Requirements – Project proposals shall be submitted to the Division of Planning on a form or forms designed by the Division. All proposals must be consistent with Federal transportation goals.

a. For each proposal, the proponent shall at a minimum:

- (1) designate the priority within the city or town;
- (2) describe the type of work needed;
- (3) describe the environmental, social, and economic impacts expected, including whether the location is in or provides essential access to a state-designated enterprise zone;
- (4) describe any intermodal connections;
- (5) express the degree of local commitment, including any funding support or related projects; and
- (6) affirm the project conforms to the applicable comprehensive plan(s).

b. A submission by a member of the general public must include evidence that:



- (1) the chief elected official of the city or town in which it is located was notified, and
    - (2) that the proposal conforms to the local comprehensive plan.
  - c. Any application deemed to be deficient shall be returned to the applicant, together with a concise and explicit statement of the application's deficiencies.
4. TIP Standards and Documentation – The Division of Planning and the Transportation Advisory Committee shall produce a draft of the TIP for State Planning Council approval in accordance with the following standards.
  - a. Scope: A single, statewide, comprehensive TIP will be prepared that shall include:
    - (1) roads and bridges;
    - (2) public transit of all types;
    - (3) demonstrations;
    - (4) enhancements;
    - (5) bicycle and pedestrian facilities;
    - (6) marine transportation and ports;
    - (7) commuter and freight rail;
    - (8) programs for management systems;
    - (9) programs for air quality; and
    - (10) other projects and actions of statewide or broad sub-state concern, although not for utilizing federal funds.
  - b. Time Frame: The TIP shall, at a minimum, cover the time frame as established in the Code of Federal Regulations by the Federal Highway Administration and Federal Transit Administration (currently four years) and shall present a year-by-year program.
  - c. Description of Projects: Each project shall be briefly described and shall include:
    - (1) the intended nature or scope of work (unless environmental studies to determine this have not been completed);

(2) the location (route number or name, termini, city or town);  
and

(3) a description of intermodal features if applicable.

- d. Project Costs: The estimated cost for each project, by year, shall be shown. In accordance with Federal regulations, the total costs of the highway and transit programs for each year must be within the funding amounts expected to be available (authorized for that year or carried over).
- e. Consistency with the State Guide Plan: New construction, new service, and major improvement projects must appear in the Transportation Plan or in other relevant elements of the State Guide Plan. Smaller-scale projects must be consistent with the description of the appropriate category or type of activity in the plan. The TIP narrative shall show how projects or programs address the goals and policies of the Transportation Plan.
- f. Funding Categories: The TIP shall include a description of the categories from which each project will be funded.

5. Procedures for Development of the TIP

- a. Ranking – The Division and the Transportation Advisory Committee shall accept, review, and rank project proposals. The ranking shall consider the descriptions submitted by the applicant, giving weight to the factors specifically outlined in the selection criteria provided in the solicitation process. In addition, they shall request RIDOT to review highway, interstate, traffic safety, and bridge projects using objective engineering criteria, including safety considerations, level of service, and geometric and structural adequacy.
- b. Air Quality Conformity – Prior to the adoption of the TIP, there shall first be a determination of conformity in accordance with the procedures described in § 1.5.7 of this Part.
- c. Public Review – The Division and the Transportation Advisory Committee upon their completion of a draft project list and accompanying text, shall initiate a thirty (30) day public review and written comment period that includes at least one public hearing in accordance with § 1.1.10 of this Part, entitled Public Hearings. Additionally, at least thirty (30) days in advance of the close of the public comment period, the Division shall send notice of the opportunity to comment to:

- (1) the Departments of Environmental Management, Transportation, Health, the Rhode Island Commerce Corporation, and other interested State agencies;
  - (2) public and private transportation service or facility operators, including the Rhode Island Public Transit Agency, the Rhode Island Airport Corporation, the Rhode Island Turnpike and Bridge Authority, bus companies, paratransit providers, freight rail companies, waterborne transit operators, and others;
  - (3) interested federal agencies, agencies and organizations in other states such as the Southeastern Regional Planning and Economic Development District and the Central Massachusetts Regional Planning Commission, and multi-state groups involved in transportation;
  - (4) local officials, such as chief executives, planning directors, planning board chairs, public works directors, and public safety officials;
  - (5) Joint Municipal Planning Commissions established under R.I. Gen. Laws Chapter 45-22.1, and Regional Councils of Local Governments established under R.I. Gen. Laws Chapter 45-43;
  - (6) organizations interested in transportation, the environment, and the economy;
  - (7) media outlets; and
  - (8) any persons on a mailing list for public hearing notices maintained by the Division of Planning.
6. Final Draft – The Division and Transportation Advisory Committee shall prepare and present to the Council a revised draft TIP along with a summary, analysis, report on the proposed disposition of comments received, and a recommendation of how to proceed.
7. Approval of the TIP
  - a. State Planning Council – The Council shall adopt the TIP in accordance with 23 C.F.R. § 450.218, which requires certain legal certifications as part of the submittal to Federal agencies.

- b. Approval by the Governor – Following approval by the Council, the TIP or amendment thereto, shall be forwarded to the Governor for submission to Federal agencies, as appropriate.
- 8. Amendments to the TIP
  - a. Proposals to add, delete, or modify strategies, actions, or projects that would involve a substantial functional, locational, and/or capacity change must be made through amendment of a TIP. The Council shall execute and maintain a Memorandum of Understanding (MOU) with the Rhode Island Department of Transportation and the Rhode Island Public Transit Authority classifying the scope of proposed TIP amendments and procedures to be followed.
    - (1) Scope – The Memorandum of Understanding shall include a classification of amendments as major, minor, or administrative adjustments. In addition, the MOU shall describe those types of changes that will require no action.
    - (2) Procedures – The TIP may be amended at any time through procedures that are consistent with this Rule and adapted to meet the need for full consideration and public involvement. The procedures shall be consistent with the type and character of the amendment as set forth in the MOU. In addition:
      - (AA) The party seeking an amendment shall be responsible for preparing a notice consistent with the notice publication requirements, which shall be described in the MOU. The notice shall be mailed to the Division's transportation mailing list.
      - (BB) Fiscal constraint must be maintained in the TIP.
    - (3) Air Quality Conformity – Prior to the adoption of an amendment to the TIP, there shall first be a determination of conformity in accordance with the procedures described in § 1.5.7 of this Part.

#### **1.5.6 Functional Classification of the Highway System**

Highway functional classification is used in developing long-range transportation plans and in determining federal-aid funding categories. This information is also used to determine highway jurisdiction and management responsibility for roads based on their functional classification. The Transportation Advisory Committee shall review and approve the functional classification of highways in the State of

Rhode Island that is consistent with the long-range transportation plan and other elements of the State Guide Plan. Notice of such changes shall be provided to the Council. The Division of Planning, in consultation with the Rhode Island Department of Transportation and local governments, may propose to revise the classification of highways or segments of highways as changing conditions warrant.

### **1.5.7 State Implementation Plan for Air Quality Conformity Determinations**

Prior to the adoption of, or amendment to, any transportation plan or the TIP, the Air Quality Working Group, as established by the Department of Environmental Management's Air Pollution Control Regulation Number 49 entitled, "Transportation Conformity", shall convene to conduct an interagency consultation in accordance with the provisions of that Regulation. The Air Quality Working Group is comprised of RIDEM, the MPO, RIDOT, RIPTA, the U.S. Environmental Protection Agency, the Federal Highway Administration, and the Federal Transit Administration. All other activities or actions not covered in these Rules that may require an air quality conformance determination shall follow the procedures set forth in the Rhode Island Department of Environmental Management's "Air Pollution Control Regulation Number 49 - 'Transportation Conformity'".

## **1.6 Solid Waste Disposal Facility Siting**

### **1.6.1 Purpose and Authority**

- A. The purpose of this rule is to establish procedures for the evaluation, assessment, and certification of solid waste disposal facility sites and to designate areas where solid waste landfills, incinerators, and resource recovery facilities are prohibited. This rule is promulgated under the authority of:
  - 1. R.I. Gen. Laws § 3-18.9-9(a) entitled, "Refuse Disposal". This section requires any proposed private solid waste disposal facility to obtain a certificate of approval from the State Planning Council. Furthermore, it authorizes the Council to promulgate rules for "the evaluation and/or assessment, and distribution of location of sites for waste facilities among the regions of this state".
  - 2. R.I. Gen. Laws § 23-18.9-9.1(d) which designates areas in which solid waste landfill facilities, incinerators, and resource recovery facilities are prohibited and authorizes the State Planning Council to designate other such areas.
  - 3. R.I. Gen. Laws § 23-19-10.2(a) entitled, "Rhode Island Resource Recovery Corporation". This subsection requires the Corporation to submit proposed solid waste disposal sites to the State Planning Council for certification that "each proposed site conforms with the state guide

plan”. Furthermore, it authorizes the Council to “promulgate regulations for the evaluation and/or assessment, and distribution of location of sites for waste facilities among the regions of the state”.

### **1.6.2 Applicability**

These Rules shall apply to any entity, including the Rhode Island Resource Recovery Corporation, which seeks to construct, expand, and/or operate a solid waste disposal facility as defined in § 1.1.2(A)(8) of this Part.

### **1.6.3 Prohibited Sites**

- A. In addition to sites prohibited under R.I. Gen. Laws § 23-18.9-9.1, unless statutorily mandated, the following shall also be prohibited.
1. Solid waste incinerators and resource recovery facilities shall be prohibited from:
    - a. areas that support rare, endangered, or threatened species;
    - b. areas that support ecologically fragile, critical, and/or uncommon habitats;
    - c. areas that are dedicated to agricultural use through the acquisition of fee or development rights by any agency of state or local government; and
    - d. conservation areas, management areas, wildlife refuges, and parks or recreation areas that are owned by any level or agency of government.
    - e. In addition to the above, all other forms of solid waste disposal shall also be prohibited from:
    - f. areas within 1,200 feet of the center line of the following fresh water streams: Abbott Run Brook, Branch River, Potowomut River, Saugatucket River, Scrabbletown Brook, Ten Mile River, Usquepaug River, and Woonasquatucket River; and
    - g. areas within 10,000 feet of any part of an active state airport runway used by jet or turbojet aircraft; areas within 5,000 feet of any part of an active state airport runway used only by piston type aircraft.

### **1.6.4 Submission for Review**

- A. Requests for certification that a proposed disposal site conforms to State law, the State Guide Plan and these Rules shall be submitted to the Secretary of the Council. Each request shall include a description of the proposed project, which shall include, but not be limited to, the following information:
1. The identity of the applicant;
  2. The geographic location of the proposal;
  3. A description of the proposal by type and general size or scale;
  4. A description of the alternatives considered, including alternative sites, an assessment of their comparative environmental impacts, and descriptive material necessary for their evaluation; and
  5. Any such additional information the Secretary deems necessary to a finding of consistency or conformance with the State Guide Plan and these Rules.

#### **1.6.5 Notification**

- A. The Secretary shall notify the applicant within five (5) business days as to whether the application is sufficient or whether additional information is needed. Insufficient requests shall be returned together with a statement of the information needed to commence a review.
- B. Within three (3) business days of acceptance of the application, the Secretary shall post a notice on the Division of Planning website of projects undergoing a review. The notice shall contain a description of the proposed project. The notice shall offer interested parties a minimum of thirty (30) days to provide comment. Additionally, the Secretary shall send notice to the host and abutting municipalities and request an opinion as to whether the proposed project is consistent with the local comprehensive plan.
- C. No later than ten (10) days before the Council meeting at which the proposal is to be reviewed, the Secretary shall mail a copy or summary of the proposal and staff report to each member of the Council and shall notify the applicant of the date of the Council review.

#### **1.6.6 Review**

- A. The Secretary shall review the proposed project and prepare an advisory report to the Council. The advisory report shall briefly summarize the proposed project, the results of the review, and the findings of the Secretary as to whether the proposal does or does not conform to State law, the State Guide Plan, and these Rules. The Secretary may solicit the advice and recommendations of other State agencies.

- B. In preparing the report, the Secretary shall consider:
1. Whether the site is in an excluded or prohibited area as specified by R.I. Gen. Laws § 23-18.9-9.1 or as designated in these Rules;
  2. Evaluation of alternative sites and assessment of their comparative environmental impact;
  3. The requirement that “distribution of location of sites for waste facilities among the regions of this state” be achieved; and
  4. Conformity to the State Guide Plan.
- C. The Secretary shall report the opinions received from each city and town hosting or abutting the project site as to whether the proposed project is consistent with the local comprehensive plan.

#### **1.6.7 Certification of Proposed Sites**

- A. The State Planning Council may certify a site only upon demonstration of all of the following:
1. Conformance with the State Guide Plan;
  2. Compliance with criteria for solid waste facility siting; and
  3. The preferred site is at least comparable to alternative sites, taking into consideration comparative environmental impact and regional distribution of sites.



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**TITLE 670 - STATE PLANNING COUNCIL**

**CHAPTER 00 - N/A**

**SUBCHAPTER 00 - N/A**

**PART 1 - RULES AND STANDARDS OF THE STATE PLANNING COUNCIL (670-RICR-00-00-1)**

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