

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



**Department of Environmental Management
Division of Planning and Development**

EFFECTIVE: December 2010

AUTHORITY: These regulations are adopted pursuant to Chapters 42-17.1, 42-17.9, and 42-35 of the Rhode Island General Laws of 1956 as amended.

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RULE 1.00 – AUTHORITY

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

RULE 2.00 – PURPOSE

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

RULE 3.00 – APPLICABILITY

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

RULE 4.00 – LIMITATION

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

RULE 5.00 - DEFINITIONS

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

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

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

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

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

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

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

Committee: The State of Rhode Island State Properties Committee.

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

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

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

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

Open Space (or Natural Resource) Values: The state's interest in open space values shall mean interests established by law or by investment of public resources and shall include

the natural resource, recreational, scenic, habitat and ecological, water supply, agricultural, soil conservation, and forestry values of lands, wetlands, and waters, acquired, preserved, conserved, and/or protected under the provisions of law.

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

Property: State-owned real estate.

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

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

RULE 6.00 – DETERMINATION OF OPEN SPACE VALUES

6.01. Application and Notice.

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

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

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

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

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

6.02. Comments - Comments filed with the Department under the provisions of these *Rules* will be considered and reviewed if they are in writing, are legible, contain a discernable name and address of the commenter or objector, are signed, and are received

during the fifteen (15) day notice period. The commenter or objector must identify the application number noted in the public notice or must otherwise identify or reference the application about which they are commenting thereon or objecting thereto. The Department will not forward to the Committee those comments or objections to applications which do not contain sufficient information to properly relate the comment or objection to a specific application.

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

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

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

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

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

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

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

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

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

i. To protect and support the public's interests in open space values as a means of preserving the use and the enjoyment of the natural resources of the state, of enhancing environmental quality and functionality, of defining and enhancing the sense of place, of providing recreational opportunities, and of contributing to the quality of life.

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

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

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

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

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

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

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

b. That the property proposed for replacement contains reasonably equivalent open space values and acreage as that being converted. The replacement property need not provide identical open space values or be located at the same site, provided it confers reasonably equivalent open space values and acreage.

RULE 7.00 – PERIODIC REVIEW

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

EFFECTIVE DATE

The foregoing “Rules and Regulations Governing the Preservation and Protection of State Open Space,” after due notice and an opportunity for hearing, are hereby adopted and filed with the Rhode Island Secretary of State this _____ day of November, 2010 and become effective twenty (20) days after filing, in accordance with the provisions of the General Laws of 1956, as amended, specifically Chapters 42-17.1, 42-17.9, and 42-35.

W. Michael Sullivan, Ph.D., Director
Rhode Island Department of Environmental Management

Notice given on: September 17, 2010.

Hearing held on: October 22, 2010.

Effective: Twenty (20) days after the above-mentioned date of filing with the Rhode Island Secretary of State.