STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
STATE PROPERTIES COMMITTEE
One Capitol Hill
Providence, RI 02908-5850
Office (401) 222-1280 FAX (401) 222-2599
TDD (401) 222-1228

MEMORANDUM

TO: ALL INTERESTED PARTIES

FROM: KEVIN M. FLYNN, CHAIR
STATE PROPERTIES COMMITTEE

DATE: SEPTEMBER 22, 2010

RE: 2010 PROPOSED AMENDED RULES AND REGULATIONS
OF THE STATE PROPERTIES COMMITTEE

Please be advised the State Properties Committee is considering revising its existing Rules and Regulations and will hold a public hearing on Friday, October 22, 2010, at 2:00 p.m., at the Foundry Building located at 235 Promenade Street, Providence, Rhode Island. Attached please find a copy of the Secretary of State's Rules and Regulations Filing Form, the Notice of Public Hearing, the Concise Summary of Proposed Non-technical Amendments, and proposed Amended Rules and Regulations.

The proposed amendments would establish procedures for the consideration of integrated standards and guidelines for preserving and protecting the State's interest in open space values in the conveyance of State-owned land.

Written comments may be submitted to Holly Rhodes, Division of Planning, One Capitol Hill, 3rd Floor, Providence, RI 02908, provided that the submission is received no later than 4:00 p.m. on Monday, October 27, 2010.

Kevin M. Flynn
Chair, State Properties Committee

State of Rhode Island and Providence Plantations
A. Ralph Mollis
Secretary of State

Rules and Regulations Filing Form

1. Agency Name and Address
Administration, Department of, State Properties Committee
One Capitol Hill, Providence, RI 02908

2. Title of Rule
Rules and Regulations of the State Properties Committee

3. Statutory Source of Authority
RIGL Sections 37–6–2 and 42–17.9–1

4. Concise Explanatory Statement – §42–35–2.3
These rules and regulations amend the Rules and Regulations of the State Properties Committee by adding a new Article, which would establish procedures for the consideration of integrated standards and guidelines for preserving and protecting the State's interest in open space values. In addition, Rule107 has been amended to include minor changes to Definitions.

5. Type of Filing

Emergency Rules

A1. Emergency 120–day initial – §42–35–3(b)
☐ Adoption
☐ Amendment of ERLID:
☐ Repeal of ERLID:

A2. Emergency 90–day renewal – §42–35–3(b)
☐ Adoption
☐ Amendment
Indicate ERLID of 120–day initial:

Brief Statement of Reason for Finding Imminent Peril §42–35–3(b)(2):

Final Rules

☑ B1. Amendment ☐ B2. Adoption ☐ B3. Repeal ☐ C. Technical Revision

Supersedes ERLID: Repeals ERLID: Expires ERLID:

If B1 or C, please indicate new, amended, deleted, or revised sections:
Rule 107 has been amended. New rules 801, 802, 803, 804, 805, 806, 807, and 808 have been added.

6. Notice and Hearing Information
Date of Public Notice – §42–35–3(a)(1):09/22/2010
Date of Public Hearing – §42–35–3(a)(2):10/22/2010
End of Comment Period:10/25/2010

7. Agency Additional Information – Web Page
http:// .

8. Certification

I hereby certify that the attached rules and regulations were adopted in accordance with the Administrative Procedures Act (42–35) and that they are true copies of this Department, attest,

Name

Title

Notary Public

Subscribed and sworn before me
this_____ day of_____, _____

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
STATE PROPERTIES COMMITTEE

Rules and Regulations of the State Properties Committee

Notice of Public Hearing

The State Properties Committee (the "Committee") is considering amending the "*Rules and Regulations of the State Properties Committee*" by adding a new Article VIII. This Article would establish procedures for the consideration of integrated standards and guidelines for preserving and protecting the State's interest in open space values. The Rules and Regulations had been refiled on January 5, 2007 and may be accessed at ERLID 1383 or at www.statepropertiescommittee.ri.gov/spc_rulesandregs.

The proposed amendments are promulgated in accordance with the Preservation of Open Space Act, contained in §§ 42-17.9-1, *et seq.*, of the General Laws of Rhode Island. This chapter was enacted by Chapter 649 of the Public Laws of 2006. The proposed amendments are also promulgated in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws of Rhode Island, as amended.

Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that a public hearing on the proposed amended rules and regulations shall be held on Friday, October 22, 2010 at 2:00 PM in Room 300 of the Foundry Building, located at 235 Promenade Street, Providence, RI, at which time and place all persons interested will be heard.

In the development of the proposed amended rules and regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the Rhode Island General Laws, as amended, which may result from these regulations. No alternative approach or duplication or overlap was identified based upon available information.

Copies of the proposed amended rules and regulations, together with a concise explanatory statement, are available for public review at the office of the Division of Planning, Department of Administration, One Capitol Hill, Providence, RI 02908 or may be viewed on the Committee website at www.statepropertiescommittee.ri.gov. Copies may also be obtained by calling Holly Rhodes at (401) 222-1280 or email at hrhodes@gw.doa.state.ri.us.

Written comments may be submitted to Holly Rhodes, Division of Planning, One Capitol Hill, Providence, RI 02908 prior to the hearing, at the time of the hearing, or subsequent to the hearing, provided that the submission is received no later than 4:00 PM on Monday, October 27, 2010. Oral statements made at the public hearing will be considered but should be limited to five minutes each.

The hearing room is handicapped accessible. A taped record of the hearing will be made and the Committee will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for these services can be made in writing or by calling (401) 222-1280 or TDD (401) 831-5508.

Signed this 21st day of September, 2010

Kevin M. Flynn
Chair, State Properties Committee

State of Rhode Island and Providence Plantations
State Properties Committee

Rules and Regulations of the State Properties Committee

Concise Summary of Proposed Non-technical Amendments
September 2010

In accordance with section 42-35-3(a)(1) of the General Laws of Rhode Island, the following is a concise summary of proposed non-technical amendments:

Rule 107 revises the definition of "Agency" and added definitions for the terms: Action, Application, Days, Open Space, and Open Space Values.

Rule 801 and Rule 802 elaborate on the authority, purpose, and limitations as established by R.I.G.L. 42-17.9-1, *et seq.*, Preservation of State Open Space.

Rule 803 requires that applicant agencies receive conceptual approval by the Committee prior to the issuance of a Request for Proposal or any other form of solicitation or negotiation for a proposed action subject to the provisions of Chapters 37-6 or 37-7 of the General Laws of Rhode Island.

Rule 804 requires applicant agencies to submit an Open Space and Natural Resources Values Report to the Committee.

Rule 805 establishes the process by which the Committee will request review and comment from the Department of Environmental Management and the Department of Administration, Division of Planning on a proposed agency action.

Rule 806 sets forth the criteria by which the Committee will conduct an evaluation of a proposed action with respect to open space values and planning consistency.

Rule 807 whenever an adverse affect on Open Space Values for State-owned would occur, requires that the applicant agency demonstrate an acceptable plan for the acquisition, for conservation purposes, of new and not yet conserved land.

Rule 808 requires an applicant agency to receive a final approval from the Committee, once a contract for the proposed action has been prepared.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
STATE PROPERTIES COMMITTEE

Rules and Regulations of the State Properties Committee

Notice of Public Hearing

The State Properties Committee (the "Committee") is considering amending the "*Rules and Regulations of the State Properties Committee*" by adding a new Article VIII. This Article would establish procedures for the consideration of integrated standards and guidelines for preserving and protecting the State's interest in open space values. The Rules and Regulations had been refiled on January 5, 2007 and may be accessed at ERLID 1383 or at www.statepropertiescommittee.ri.gov/spc_rulesandregs.

The proposed amendments are promulgated in accordance with the Preservation of Open Space Act, contained in §§ 42-17.9-1, *et seq.*, of the General Laws of Rhode Island. This chapter was enacted by Chapter 649 of the Public Laws of 2006. The proposed amendments are also promulgated in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws of Rhode Island, as amended.

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In the development of the proposed amended rules and regulations, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35 of the Rhode Island General Laws, as amended, which may result from these regulations. No alternative approach or duplication or overlap was identified based upon available information.

Copies of the proposed amended rules and regulations, together with a concise explanatory statement, are available for public review at the office of the Division of Planning, Department of Administration, One Capitol Hill, Providence, RI 02908 or may be viewed on the Committee website at www.statepropertiescommittee.ri.gov. Copies may also be obtained by calling Holly Rhodes at (401) 222-1280 or email at hrhodes@gw.doa.state.ri.us.

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The hearing room is handicapped accessible. A taped record of the hearing will be made and the Committee will provide interpreter services for the hearing impaired, provided such services are requested at least 48 hours prior to the hearing date. A request for these services can be made in writing or by calling (401) 222-1280 or TDD (401) 831-5508.

Signed this 21st day of September, 2010

Kevin M. Flynn
Chair, State Properties Committee

State of Rhode Island and Providence Plantations
State Properties Committee

Concise Summary of Proposed Non-technical Amendments
Rules and Regulations of the State Properties Committee
September 2010

In accordance with section 42-35-3(a)(1) of the General Laws of Rhode Island, the following is a concise summary of proposed non-technical amendments:

Rule 107 (Definitions) revised the definition of "Agency" and added definitions for the terms: Action, Application, Days, Open Space, and Open Space Values.

Rule 801 (Authority and Purpose) and Rule 802 (Limitation) elaborates on the authority, purpose, and limitations as established by R.I.G.L. 42-17.9-1, *et seq.*, Preservation of State Open Space.

Rule 803 (Conceptual Approval) requires that applicant agencies receive conceptual approval by the Committee prior to the issuance of a Request for Proposal or any other form of solicitation or negotiation for a proposed action subject to the provisions of chapters 37-6 or 37-7 of the General Laws of Rhode Island.

Rule 804 (Assessment of Open Space and Natural Resources Values) requires applicant agencies to submit an Open Space and Natural Resources Values Report to the Committee.

Rule 805 (Solicitation of Comments) establishes the process by which the Committee will request review and comment from the Department of Environmental Management and the Department of Administration, Division of Planning on a proposed agency action.

Rule 806 (Review) sets the criteria by which the Committee will conduct an evaluation of a proposed action with respect to open space values and planning consistency.

Rule 807 (Land acquired and/or dedicated to, and managed for, open space purposes) requires, whenever an adverse affect on Open Space Values for State-owned property acquired and/or dedicated to, and managed for, open space purposes would occur, that the applicant agency demonstrate an acceptable plan for the acquisition, for conservation purposes, of new and not yet conserved land.

Rule 808 (Final Approval) requires an applicant agency to receive a final approval from the Committee once a contract for the proposed action has been prepared.

In addition, a technical change was made to Rule 203(a) (Submitting Items and Supporting Materials). The timeframe for submitting agenda items to the Committee was changed from at least three working days in advance of the meeting to at least seven working days in advance of the meeting.

Amended Rules and Regulations of the State Properties Committee
Approved by the Committee September 14, 2010

~~Preamble~~Introduction

~~These rules are promulgated pursuant to the authority conferred upon the~~ The State Properties Committee is authorized to adopt rules and regulations by ~~the General Assembly in Public Law 1953, ch. 3105 § 22, codified at R.I. Gen. Assembly in Public L.~~ R.I.G.L. § 37-6-2. Under this authority, ~~The objective of these rules and regulations is to obtain land, buildings, and other interests in real property for the State of Rhode Island consistent with "the interest and convenience of the public, as well as (with) the best interest of state government." R.I. Gen. L. § 37-6-7. Drafted in the spirit of the State Purchasing Act, R.I. Gen. L. § 37-2-1,~~ the State Properties Committee adopted ~~these~~ rules and regulations that were last refiled in July 2007. ~~are designed to "[I]nsure the fair and equitable treatment of all persons who deal with the procurement system of the state" Id. § 37-2-2 (e), while providing "safeguards for the maintenance of a procurement system of quality, integrity and highest ethical standards …" Id. § 37-2-2 (g).~~ The State Properties Committee now intends to amend these rules to comply with R.I.G.L. § 42-17.9 entitled, "Preservation of State Open Space". This amendment is included as "Article VIII. Preservation of State Open Space" and is adopted pursuant to § 42-17.9 and in consultation with the R.I. Department of Environmental Management. In addition to the State Properties Committee, these rules and regulations have also been approved by the Director of the R.I. Department of Administration.

Article I. General Provisions

Rule 101. Short Title. These rules and regulations shall be referred to as "The State Properties Committee Rules."

Rule 102. Scope. (a) These rules shall apply to all matters over which the State Properties Committee [hereinafter referred to as SPC or the Committee] has jurisdiction by statute or practice.

(b) Each agency engaged in the purchase or lease of real property shall:

i. adhere to applicable provisions of these rules and regulation;

ii. communicate to all bidders, prospective bidders, or respondents to requests for proposals that no agreement is final until accepted by the State Properties Committee;

Rule 103. Effective Date. These rules become effective ~~as of the date of their approval~~twenty (20) days after their filing with the office of the Secretary of State., in accordance with the Administrative Procedures Act, R.I. Gen. L. (1993 Reenactment) § 42-35-4. With regard to any proposals for which the Committee has granted conceptual approval, but for which the Agency has not yet presented its recommendation as to selection, these Rules shall govern unless the Committee determines that their application would work a substantial hardship upon the Agency, provided; however, that Rule 204 (Required Certificates) shall apply to all

contract governed by these rules presented to the Committee for execution on or after the date of approval hereof.

Rule 104. Fairness and Integrity of Committee Decisions. It is the intention and policy of the Committee to maintain the highest degree of fairness and integrity in the review of matters that come before it. To assure both the propriety of the process, and also to assure the public's confidence in its propriety, all Agencies must adhere to the following:

(a) Agency Recordkeeping. In addition to the specific documents required to be maintained by these rules, the Committee expects that all Agencies will maintain accurate, detailed, contemporaneous records with regard to the process of establishing selection criteria, evaluating proposals, and communicating with offers, proposes, and others;

(b) Report of suspected collusion. If, for any reason, the Committee, any agency, or any other state official, employee, or agent suspects collusion among any bidders, proposers, offerors, or other participants in the procurement process, a written notice of the facts giving rise to such suspicion shall be transmitted to the Attorney General, and, in the case of suspected violations of the Code of Ethics, to the Ethics Commission. Copies of any and all documents involved in any procurement that is the subject of such a notice shall be transmitted to the Attorney General, or in the case of an Ethics Code violation to the Ethics Commission, for use by the Attorney General or the Ethics Commission until such time as the Attorney General or the Ethics Commission determines that said documents may be released. Se. G.L. 37-2-36.

(c) Protection for Persons Making Reports. Persons making reports of suspected collusion pursuant to this rule are protected by the terms of the Rhode Island Whistleblowers' Protection Act. R.I. Gen. L. (1990 Reenactment) § 36-15-1 et seq., as amended.

Rule 105. Amendments; Matters Reserved. The Committee may amend these rules in conformity with state law. Additional articles of these rules shall be promulgated as the Committee deems necessary to deal with specific topic areas.

Rule 106. Construction; Severability. (a) These rules shall be broadly and liberally construed and applied to promote their underlying purpose.

(b) If any provision of these rules or the application thereof to any person is deemed invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of these rules.

Rule 107. Definitions. Unless otherwise provided herein, words used in these Rules shall have the meaning set forth herein, unless their context is such that a clearly different meaning is required.

"Action" shall mean the sale, lease, transfer, conveyance, or amendment of interest in State-owned property.

"Agency" shall mean any ~~State board, commission, department, division, unit, bureau, or other entity that performs governmental duties as a part of the State of Rhode Island~~ 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" shall mean an Agency's request to sell, lease, transfer, convey, and/or amend an interest in state-owned property.

"Committee" shall mean the State Properties Committee.

"Contracting Party" shall refer to any person, firm, corporation, partnership, or other person or entity that has proposed, entered into, or is about to enter into any contract that is subject to the Committee's approval.

"Contract" shall mean the lease, license, or other agreement either proposed, executed or contemplated for execution, wherein the state is contemplated as tenant or lessee and with regard to which it is contemplated that public funds shall be expended;

"Days" shall mean calendar days, unless otherwise specified.

"Director of Administration" shall refer to the Director of the Department of Administration, or any person duly designated by the Director of Administration to act in his or her behalf.

"Offeror" and "Proposer" shall refer to any individual or entity who has responded to a Request for Proposal (RFP).

"Open Space" shall mean 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, agricultural land, critical habitat, recreational areas, management 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 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.

"Principal of the Agency" shall refer to the Department of Director or agency head~~;~~.

"Principal of the Contracting Party" shall refer to any individual or entity having an interest in the contracting party that is either a twenty percent interest or greater ownership or

investment interest as a partner, guarantor, shareholder, or joint tenant, tenant in common, or in any other form.

Article II. Committee Meetings and Required Documents

Rule 201. Committee Meetings. The Committee shall meet at lease once a month on the first Tuesday of each month, and/or at such other times and dates as the Committee shall determine. A quorum for committee meetings shall be three members. Unless otherwise provided by law, approval of any action shall be by simple majority of those members p~~r~~esent and voting. Committee meetings shall be conducted in conformity with the letter and spirit of the Open Meetings Act.

Rule 202. Committee Minutes and Agenda. The Executive Secretary of the Committee shall prepare the minutes of each meeting, as well as the agenda. Items may be placed on the agenda at the request of any Committee member, any Department director, Agency head, or other appropriate State official. Votes of the Committee on agenda items and motions shall be recorded in the minutes.

Rule 203. Submitting Items and Supporting Materials. Recognizing that Committee members need adequate time to prepare and consider the many agenda items presented, all individual coming before the Committee must comply with the following:

(a) All agenda items must be submitted to the Executive Secretary not later than ~~three~~ seven working days before the Committee meeting. (Please note that the Committee adheres to the letter and spirit of the Open Meetings Act, which requires adequate advance notice of the Committee's agendas. Absent a bona fide emergency, the Committee may reject any request to submit agenda items later than ~~three~~ seven working days before a meeting.)

(b) All relevant documents in support of an agenda item must be submitted to the Attorney General (or designee) as well as Director of the Department of Administration (or designee) at the time that the item is submitted to the Executive Secretary. Failure to comply with this deadline may result in deferral of the item to a later meeting;

(c) If documents that must be executed by the Committee (i.e. deed, lease, etc.) have not been supplied sufficiently In advance, the Committee may defer the item until due consideration can be given to the documents.

Rule 204. Required Certificates. The following certificates shall be required at the time of execution of any and all lease contracts in which the state is lessee:

(a) Certificate of Disclosure, on a form available from the Department of Administration, disclosing persons having ownership interests of all contracting parties;

(b) No Conflict of Interest Certificate, on a form available from the Department of Administration. See Rule 205;

(c) Evidence of Insurance, Identifying authorized insurer, with coverage in amount and type as required by the Committee. The coverage must name the State as an additional insured. The insurer must be duly licensed to write insurance in Rhode Island.

(d) Certificate of Authority, if one of the parties to the transaction is a corporation, partnership or other entity, showing that the person signing is duly authorized to bind the entity.

(e) Certificate of Tax Compliance, in conformity with Rule 206, demonstrating that all property taxes of the contracting party are current as of the date of execution.

(f) Certificate of Federal Fund Notification, as required by Rule 511.

(g) Certificate of Responsibility, signed by Principals of the Contracting Party, demonstrating that the provisions of Rule 414 have been complied with.

(h) Certificate of Compliance with Handicapped Accessibility Law, in conformity with §378-15.1 et. seq., or a waiver of specific sections of said law by the Governor's Commission on the Handicapped, and the State Building Commissioner's Certification of conformance with the remaining sections of the accessibility standard.

(i) Certificate of Consideration by Division of Planning, in conformity with R.I.G.L. § 37-6-2 (b) (4). See Rule 509.

(j) Certificate of Good Standing by State Tax Administrator, indicating that all Rhode Island state taxes have been paid.

NOTE: Incomplete or inadequate documents will result in the delay of consideration by the Committee.

Rule 205. "No conflict" Certificate. Before seeking final Committee approval, each Agency shall deliver to the Committee, in a form acceptable to the Committee, a Certificate or Certificates of No Conflict containing the following:

(a) A full disclosure of each and every blood relationship and business relationship between the principal of the agency, his or her spouse, and the contracting party, to be signed by the principal of the agency and by the contracting party.

(b) A statement by each and every state employee acting in the selection of the site that he or she is not, at that time of making the certificate, and was not at the time of making the selection of such site, directly or indirectly, interested in the property selected, and that he or she has not received and will not receive, either directly or indirectly, any inducement, commission, brokerage, fee, consideration, gifts, or reward for as a result of the selection, as required by R.I. Gen. L. (1990 Reenactment) § 37-6-7.

(c) The form statement shall contain language disclosing that any material misrepresentation or false statement contained therein shall be grounds to void rescind any lease or purchase at any time. Notwithstanding anything contained herein or any approval granted by the state Properties Committee, no contract with the State or any of its Departments will be valid or enforceable unless completed truthful

disclosure statements were presented to the Committee prior to its final action on the agreement. If, at the time of the execution of the statement is party to any oral or written contract or agreement to convey said signatory's interest in said contracting party to any other person or entity, said agreement must be appended to the statement or, if said agreement is oral, the terms of said agreement must be set forth in writing and appended to said certificate.

Rule 206. Certifications of Tax Compliance. As provided in Rule 204, all contracting parties shall provide the Committee with a certificate of good standing issued by the State Tax Administrator and shall certify that, with regard to the property that is the subject matter of the contract, they are current in all property taxes owed to the City or Town in Rhode Island in which said property is located or that they shall be current at the time of execution of the contract. Any contracting party who is unable to so certify shall be disqualified, provided, however, that the Committee may waive this requirement under the following circumstances:

(a) At the time of execution, the contracting party submits to the Committee a sworn statement setting forth a truthful listing of all taxes alleged to be owed on said property, together with proposed schedules of payment of said taxes that have been approved, in writing, by the appropriate authority of the city or town. Said payment schedule shall become an exhibit to the agreement, and, in the event that the contracting party shall fail to comply with the schedule the contracting party shall notify the Director of Administration. The state may then, in its sole discretion, rescind the agreement with no penalty to the state, or make payments to the city or town on behalf of the contracting party in accordance with the proposed schedule, said payments to be in lieu of any payments that would otherwise be due the contracting party, or both.

(b) At the time of execution, the contracting party submits to the Committee a sworn statement that any taxes owed are the subject matter of a timely tax appeal, specifying the amount of tax, the nature of the dispute, and the status of the tax appeal. Said statement shall further acknowledge that in the event the contracting party does not prevail in the appeal, the contracting party agrees to timely pay to the city or town all taxes adjudged to be due and owing. Failure to do so shall result in the remedy set forth in Rule 705. Said waiver by the Committee shall be made only at a meeting of the Committee upon motion approved by the majority of the Committee members present and voting.

Article III. Acquiring Space by Lease—Assessment of Needs.

Rule 301. State as Lessee. No Agency shall become the lessee of any property until said lease is approved by the Committee in conformity with these rules and all applicable statutes, provided, however, that upon written finding by the Director of Administration that the utilization of a Request for Proposal (RFP) is impractical, the Committee may waive the requirement of an RFP. Such waiver shall occur only at a public meeting of the Committee, and the finding of the Director of Administration, together with the Committee's decision upon the application, shall consider in granting a waiver shall be a consideration of the amount of space intended to be acquired in relation to the cost of preparing an RFP, whether the interest and

convenience of the public and the best interest of state government would be served by granting said waiver, and whether, in the absence of an RFP, the public's confidence in the integrity of the acquisition process is likely to be eroded.

Rule 302. Agency Responsibility. The primary and ultimate responsibility for assessing the agency's needs and evaluating alternative proposals rests with the Director of the agency, or the Director's designee.

Rule 303. Assessment of Need. Before leasing space the agency, with the approval of the Director of Administration, must undertake an assessment of its need. In making its determination, the agency must prepare a needs statement, setting forth in writing all factors relevant to its assessment, including, but not limited to:

(a) The amount of land or building space necessary;

(b) The level of finish desired for any interior space;

(c) Location requirements;

(d) Environmental issues relevant to the sitting;

(e) Utility needs or requirements.

(f) Any special needs or requirements.

At such time as any Agency seeks conceptual approval for any acquisition, the Director shall provide the Committee with a description of the procedures that the Agency used in needs assessment.

Rule 304. Survey of Available and Suitable State Property. Any agency that desires to procure space as lessee must reviewing the agency's own inventory of property, by contracting other agencies to review the inventory of said other agencies, and/or by contacting the Director of Administration to determine whether there is suitable available property either owned by the State or already under lease.

Rule 305. Conceptual Approval. (a) Before issuing an RFP, conceptual approval must be granted by the Committee. In seeking conceptual approval, the agency must demonstrate:

(1) that the Agency has a need for the space requested;

(2) that the Agency has undertaken adequate needs assessment;

(3) that the Agency has completed a survey of available state property

(4) that the Agency's request is in the interest and convenience of the public and state government.

(b) Upon the grant of conceptual approval by the committee, the Director of Administration, in conjunction with the agency, shall issue an RFP in conformity with these rules.

Article IV. Seeking and Evaluating Lease Proposals

Rule 401. Committee Review of Request for Proposal. The RFP must be presented to the Committee either

(i) at the time of conceptual approval,

(ii) prior to advertisement, or

(iii) at any other time prior to final execution of the pertinent agreement.

NOTE because a defect in the RFP can result in disapproval of the agreement, the agency would be well advised to present the RFP before the time of final approval.

Rule 402. Request for Proposal (RFP). Except as provided in Rule 301, the Committee shall not approve any lease in which the State becomes a lessees unless the Department of Administration, in conjunction with the Agency, has prepared a request for proposal (RFP). Said RFP must conform to the following:

(a) It shall be drawn in a neutral manner in order to secure as many reasonable proposals as possible;

(b) It must provide adequate time and information for interested proposers to participate in the process;

(c) It must describe the evaluation criteria that the Agency will use in evaluating the proposals in terms sufficiently specific to enable lessors to submit responsive proposals;

(d) It must identify the type and amount of real property needed (for example, 20,000 square feet of land), the purpose for which the property is to be used (for example, a public works yard);

(e) It must identify any special requirements (for example, that the property not be adjacent to wetlands or over an aquifer);

(f) It must identify who is eligible to submit proposals (for example, owners or agents of owners);

(g) Drawings or other documents (for example, a study of your requirements for a public works yard), may be appended to the specifications or incorporated by reference;

(h) It must specify the method of acquisition (for example, lease, lease-purchase, or purchase);

(i) It must specify the target date of occupancy;

(j) It must specify the proposed term and any renewal or extension options;

(k) It must communicate clearly whether or not any of the terms of the RFP are negotiable and, if so, which terms;

(l) It must state clearly that whether or not taxes, utilities, or other charges are to be included in the square footage cost.

(m) It must make reference to the criteria set forth in § 37-6-2 (b), including but not limited to preference for enterprise zones or downtown areas, access to public transportation, and consistency with the community's local comprehensive plan.

Rule 403. Evaluation Criteria. The RFP must indicate how the agency will select a proposal from among the competing proposals and shall establish both minimum criteria to evaluate responsibility and responsiveness, and comparative criteria. The RFP must specify any terms and conditions that the agency will require in the contract. It shall state that all proposals, offers, negotiations and contracts are subject to these Rules and Regulations and all Federal, State and local laws and ordinances. Before issuing the RFP, the agency together with the Department of Administration shall devise a rating system to be utilized in scoring proposals. Said system shall be explained in the RFP or made otherwise available to potential offerors.

Rule 404. Price. The RFP shall state how the agency will treat price proposals to determine which proposer offers the best price. (For example, in a multi-year lease, will it accept only proposals for level monthly rent payments over the term, or will vendors be allowed to propose different monthly rents for each year of the lease?)

Rule 405. Terms of Proposal. When soliciting proposals, the agency shall inform proposers of the rules for proposal submission, specifying when (date and time) and where sealed proposals must be delivered, how proposals packages should be marked, and how proposers may correct, modify, or withdraw proposals.

Rule 406. Advertisement. Together with the Department of Administration, the agency must advertise to invite proposals. The advertisement must:

(a) be placed in a newspaper with a circulation sufficient to inform potential proposers in the affected locality;

(b) be published at least once a week for two consecutive weeks preceding the day established for the opening of proposals. See § 37-2-18 (state purchasing rules);

(c) specify the geographical area in which the agency wishes to acquire property;

(d) set forth the terms and conditions of the proposed transaction;

(e) identify the time and place for submission of proposals. This should include notification that late proposals will not be accepted; and

(f) inform potential offerors where and when they may obtain a copy of the RFP.

Rule 407. Waiver of Advertisement. The Agency may shorten the advertising period, or waive it completely if it determines and the Director of Administration (or designee) agrees in writing that an emergency exists and the time needed to comply with the requirements would endanger the health or safety of people or their property. This is a narrow, limited exception that may only be applied in very limited situations. To shorten or waive advertising the Director of the Agency (or designee) must submit to the Department of Administration a written explanation for its actions. Even these "emergency" agreements must be approved by the State Properties Committee.

Rule 408. Availability of RFP. The RFP must be available on an equal basis to all who request a copy. The Department of Administration must maintain a record of who received a copy of the RFP. If it becomes necessary to issue an addendum to the RFP, the addendum must be sent to all those who have already received the RFP.

Rule 409. Notification of Potential Offerors. In addition to advertising, the agency and the Department of Administration may notify all potential offerors, including brokers, of the availability of the RFP, or simply supply them with a copy of the RFP. A written record of all potential offerors to whom such notice was sent to be maintained. The agency must take care to assure that the RFP is Circulated as widely as possible. The agency must not alert only selected parties of an upcoming acquisition in advance of the public notice.

Rule 410. Late Proposals Prohibited. The agency may not accept a late proposal. The agency may not accept a late correction or modification.

Rule 411. Cancellation of RFP. The Director of Administration may cancel any RFP if the Director determines that such action is in the best interest of the State. Such a determination must be set forth in writing, must provide a clear explanation of the Director's reasoning, and must be transmitted to the Committee at a meeting. See R.I.G.L. § 37-2-23

Rule 412. Responsible Proposers. (a) Criminal Matters. Proposers must reveal, at the time the Agency's recommendation is presented to the Committee for conceptual approval, whether the proposer or any principal thereof is the subject matter of any criminal conviction or pending criminal charges with regard to any offenses involving collusion, fraud, abuse of the public contract process, or any offense regarding the operation or management of real property. Said information shall be transmitted by letter from the proposer to the chairperson of the Committee, on a form provided by the Department of Administration. With regard to such charges or offenses, the Committee shall utilize said information as it deems appropriate in evaluating the proposal, provided, however, that the Committee shall not disqualify any proposer pursuant to this rule without first giving the proposer notice of possible disqualification and an opportunity for a hearing.

(b) Litigation with State. All offerors shall disclose, at the time of submitting a proposal, any and all litigation, claims, debts, disputes, or other controversies with the state and any of its subdivisions.

(c) Other State Leases. All offerors shall disclose, at the time of submitting a proposal, any and all other leases that they have with the State or any agency.

Article V. Selection of Lease Proposal

Rule 501. Initial Response to RFP—Pre-bid Conference. Initial responses to the RFP shall be transmitted to the Director of Administration. Upon opening the initial responses, the Director shall invite all respondents to an open, and public pre-bid conference at which deadlines for submission of formal proposals, and other information and guidelines shall be communicated to all initial respondents.

Rule 502. Formal Responses. After the pre-bid conference, formal sealed proposals shall be submitted to the Director of Administration in accordance with the deadline and other submission guidelines established at the pre-bid conference. Formal proposals shall be opened at the same time, in public.

Rule 503. Correction or Withdrawal of Bids. Prior to the time set for public opening of formal proposals, any response may be corrected by the proposer. Otherwise, correction and withdrawal of formal proposals shall be subject to Rule 5.7 and Rule 5.8 of the Procurement Regulations for State Purchases, issued by the Department of Administration.

Rule 504. Narrowing Selection. In conjunction with the Department of Administration, the Agency must evaluate proposals using only the criteria and evaluation system identified in the RFP. The evaluator(s) must prepare written evaluations for each responsive proposal.

Rule 505. Assigning Ratings. The Agency shall assign ratings to each formal proposal, utilizing the rating system required in Rule 403. The record of the proposal evaluation must show the rating assigned for each evaluation criterion, the reasons for each rating, the composite rating assigned to the proposal, and the reasons for the composite rating.

Rule 506. Comparing Proposals. The award should be made to the proposer whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set forth in the RFP. Due consideration must be given to the factors set forth in R.I.G.L. § 37-6-2 (access to public transportation, impact upon community, consistency with local comprehensive plan).

During the process of comparing proposals, the agency, in conjunction with the Department of Administration, may engage in written or oral discussions with responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. The Agency must take care that such discussions not disclose any information any information derived from proposals submitted by competing offerors.

Rule 507. Consideration by Division of Planning. As required by R.I.G.L. § 37-6-2(b)(4), the Agency must take certain that the Department of Administration, Division of Planning, has been consulted in the Agency's evaluation.

Rule 508. Submission to Committee. The Agency must submit its recommended proposal, its evaluation, an explanation of the rating system used, any written communications between the Agency or the Department of Administration and the proposers, and documentation as to scoring, together with all required certificates to the Committee for review and approval.

Rule 509. Federal Fund Notification. If the proposed lease or contract shall be paid in part of full with federal funds, the Agency shall, at the time the proposal is submitted to the Committee for approval, forward to the appropriate federal grant officer or official, a copy of the RFP, together with the proposal that the Agency recommends. This notification should be by certified mail, return receipt requested, or similar means.

Article VI. Approval and Execution of Leases

Rule 601. Committee Consideration. The Committee shall consider the Agency's recommendation at a regular meeting. If the Committee approves the recommendation, the Committee shall authorize the Agency to negotiate a contract with the offeror whose proposal was accepted.

Rule 602. Contract Terms. The terms of any contract shall confirm to the requirements and selection criteria set forth in the RFP. In addition, any agreement must contain any terms required by State law, by these rules, and/or by the Committee.

Rule 603. Final Approval. After the Agency has negotiated an agreeable contract with the selected offeror, the Committee shall consider the agreement for final approval and signing.

Rule 604. Executing the Agreement. Once finally approved by the Committee, the Agency shall execute the contract.

Rule 605. Handicapped Accessibility—Scheduling Review of Leases with Renovation Plans. If, at the time of execution, the lease is the subject matter of a handicapped accessibility renovation plan as provided in R.I. Gen. L. § 37-8-15.1, upon execution the Committee shall schedule a date, not later than six months after the date of execution, for the Agency to report back regarding completion of said renovation plan. The report required herein shall be in writing, the Agency shall provide a copy of said report to the Governor's Commission on the Handicapped, and the report shall be transmitted to the Committee at a meeting. In the event that renovation have not been completed within six months after execution of the lease, the Committee shall notify the Director of Administration.

Rule 606. Maintaining Records. The agency must maintain for a period of six years from the date of final payment under the contract the following:

The request for proposals, and any amendments.

The public advertisement.

All proposals received.

Evaluation materials.

The contract

Any and all documents or certificates that were presented to the Committee at the time of execution.

Records and logs required or recommended pursuant to Rule 104.

Article VII. Standard Forms; Required Terms

Rule 701. Standard Forms. Not later than six months following the effective date of these, with the assistance of the Attorney General and the Director of Administration, the

Committee shall prepare one or more "Standard Form State Lease Clauses." The purpose of the preparation of such forms shall be to provide all agencies with readily usable forms whose terms have received general advance approval by the Committee. The forms shall be as comprehensive as possible, recognizing the need to adapt the forms to meet a variety of applications.

In drafting the forms, the Committee, the Attorney General, and the Director of Administration shall seek assistance from the various agencies of state government, members of the public, and any and all other sources that the Committee deems appropriate.

Rule 702. Adoption of Standard Form. At the time of the Committee's completion of any standard form contract, said form shall be promulgated as a part of this Article in accordance with the proper procedures for amendment of these rules.

Rule 703. Required Term—Escalation Clauses. (a) General prohibition on escalation clauses. No lease in which an Agency is the lessee shall contain any clause that permits an escalation in the rent term in connection with increased expenses of operation, provided, however, that said leases may contain provisions for escalation directly related to increased municipal property taxes or assessments, or utility charges, after the first twelve (12) months of occupancy.

(b) Utility escalation clause. Whenever any escalation clause is related to increases in utility charges, where practical the agency shall be permitted to make payments of any escalated amount directly to the utility involved.

(c) Tax escalation clause. In any lease containing a tax escalation clause, the base year for purposes of computing the escalation shall not be any year prior to completion of any and all renovation undertaken. In any event, the taxes for any base year for computation purposes shall not be less than the average taxes assessed upon the subject property by the taxing authority for the first three years after execution of the contract, without regard to abatement or moratorium, etc.

Rule 704. Required Term—Appropriation Clauses. Every lease shall contain a provision setting forth that the terms of the lease are subject to annual appropriation and that if, at any time, the agency shall fail to be provided sufficient funds from appropriation, the agency may, at its discretion, terminate the lease.

Rule 705. Required Term-Tax Compliance Clause. Every lease shall contain language:

(a) requiring the lessor to pay, for the premises, all local taxes and assessments to local taxing authorities in a prompt manner;

(b) Providing that the failure to pay said local taxes or assessments promptly may result in the unilateral termination of the lease, in the sole discretion of the state, and without penalty to the state;

(c) requiring the lessor to notify the State if said taxes have not been paid in a prompt manner; and

(d) permitting the state, at its discretion, to make payments to the local taxing authority in lieu of rent until such time as the lessor's taxes have been brought current.

Rule 706. Required Term—Handicapped Accessibility. Every lease shall contain language to the effect that the lease is governed by R.I.G.L. § 31-8-15.1 regarding handicapped accessibility, and providing that failure of the lessor to comply with said provisions may result in the unilateral termination of the lease in the sole discretion of the state, without penalty to the state.

Article VIII. Preservation of State Open Space

Rule 801. Authority and Purpose. Article VIII shall implement the policies and requirements established by R.I.G.L. 42-17.9-1, *et seq.*, Preservation of State Open Space. This Article sets forth the rules and regulations for evaluating actions that would sell, lease for a period greater than one year, transfer, convey, or amend state interests in State-owned and managed property (hereinafter collectively referred to as an "Action") in order to preserve and protect the State's interest in open space values and to prevent a net loss of open space.

Rule 802. Limitation. This Article 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 803. Conceptual Approval. Any Agency considering a proposed Action subject to the provisions of chapters 37-6 or 37-7 of the General Laws, must be granted conceptual approval by the Committee prior to the issuance of a Request for Proposal (RFP) or any other form of solicitation or negotiation. In seeking conceptual approval, in addition to any other requirements established by these rules or statutes, the Agency must submit (1) a form, approved by the Committee, requesting conceptual approval and (2) an open space and natural resources values report as provided in Rule 804. Forms required in sections (1) and (2) shall be collectively referred to as the "Forms."

Rule 804. Assessment of Open Space and Natural Resources Values. Any Agency considering a proposed Action must submit an Open Space and Natural Resources Values Report on a form approved by the Committee and the Department of Environmental Management (DEM).

Rule 805. Solicitation of Comments. Within three (3) business days after receipt of the completed Forms, the Committee shall request that the DEM and the Department of Administration, Division of Planning (the "Division") review the Forms and submit written findings and recommendations to the Committee regarding the open space values of the subject property. The DEM and the Division shall be provided not less than thirty (30) days to submit said review. In addition, the Division shall be requested to determine if the proposed Action is consistent with the State Guide Plan and the comprehensive plan(s), which have received State approval, of the municipality(ies) in which the subject property lies.

Rule 806. Review. Subsequent to the close of the comment period, the Committee shall conduct an evaluation of a proposed Action and issue a decision that considers the following:

a. Does the subject property possess Open Space Values;

b. Does the proposed Action have a significant impact upon the State's interest in open space values;

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 the proposed Action;

d. Whether, to the extent reasonably possible, there is no net loss of open space values as a result of the Action;

e. Whether the proposed Action is consistent with the State Guide Plan; and

f. Whether the proposed conveyance is consistent with a State-approved local municipal Comprehensive Plan.

g. Other Considerations – The Committee shall consider the following purposes as found in § 42-17.9-1, *et seq*. 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 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.

   iv. 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.

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

Rule 807. Land acquired and/or dedicated to, and managed for, open space purposes. If the Committee, in consultation with the DEM and the Division, determines that the proposed Action would have an adverse affect on Open Space Values for State-owned property acquired and/or dedicated to, and managed for, open space purposes, the Agency shall be required to demonstrate an acceptable plan for the acquisition, for conservation purposes, of a new and not yet conserved parcel at least equal in open space values and acreage. Upon the Committee's request, analysis of such requirements shall be conducted by the DEM. This requirement shall

not apply in instances of declared disasters or emergencies or in instances of imminent threat to public health or public safety.

Rule 808. Final Approval. After the Agency has negotiated an agreeable contract for the proposed Action and met all conditions required, the Committee shall consider the agreement for final approval and signing. If it has been determined that the proposed Action has an adverse impact on Open Space Values, a final approval shall not be issued unless the Agency has demonstrated an acceptable plan for the acquisition, for conservation purposes, of a new and not yet conserved parcel at least equal in open space values and acreage.

State of Rhode Island and Providence Plantations
Department of Administration
State Properties Committee

September 14, 2010

TO: Peter Dennehy, RI Department of Administration
Sherri Lynn Carrera, RI Economic Development Corporation
Daniel Majcher, Office of the Governor

FROM: Holly Rhodes, Executive Secretary, State Properties Committee
Department of Administration

SUBJECT: **Economic Impact and Regulatory Flexibility**

Relevant Regulations Affected:
Rules and Regulations of the State Properties Committee

Authority:
These regulations are adopted in accordance with Rhode Island General Laws § 42-17.9-1 et seq., as well as Chapters 42-17.1 and 42-17.6, consistent with the requirements of Chapter 42-35, Administrative Procedures Act of the General Laws of 1956, as amended.

Summary of Proposed Regulation Changes:
The Open Space regulations are required pursuant to a statutory mandate contained within R.I. Gen. Laws § 42-17.9-1, et seq. The statute directs the State Properties Committee, in cooperation with the Rhode Island Department of Environmental Management, to establish integrated standards and guidelines for preserving and protecting the state's interest in open space values. As such, the Committee is required to amend its rules and regulations accordingly.

Where to find the specific language changes:
The language changes can be found at www.statepropertiescommittee.ri.gov and will be listed as the amended Rules and Regulations of the State Properties Committee.

Economic Impact:
Per RIGL § 42-35.1-3

1. Each of the proposed regulations governs the management of state-owned open space lands. As such, the Committee believes that none of its proposed rule making has a potential for causing a direct financial impact upon either small businesses or any municipality.

2. There are no anticipated reporting, recordkeeping, or other administrative costs required for compliance with the proposed rules.

3. The Committee has not identified a less intrusive or less costly alternative method to achieve the requirements mandated.

Regulatory Flexibility:
Per RIGL §42-35.1-4

The Department considered, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses and determined that there is no alternative approach that would be as effective and less burdensome, given the requirements of upon the Committee to administer the open space resources of this State:

1) The establishment of less stringent compliance or reporting requirements for small businesses;
2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
3) The consolidation or simplification of compliance or reporting requirements for small businesses;
4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation. .

The proposed rules and regulations have absolutely no impact on small businesses.

If you have any questions or comments on the proposed Rules, please do not hesitate to contact one of the following:

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222-2093

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State of Rhode Island and Providence Plantations
Department of Administration
State Properties Committee

SMALL BUINSESS REGULATORY IMPACT AND REGULATORY FLEXIBILITY ANALYSIS NOTIFICATION FORM

September 14, 2010

Title of Regulation: RULES AND REGULATIONS OF THE STATE PROPERTIES COMMITTEE

Statutory Authority: R.I. Gen. Laws § 42-17.9-1 et seq. PRESERVATION OF STATE OPEN SPACE

The Regulation:

The purposed rules would enact regulations governing the administration of state-owned open space lands.

Expected Small Business Impact:

There will be no effect whatsoever upon small businesses. The proposed regulations are aimed to protect the interests of Rhode Island citizens and non-profit groups who may have financed, as taxpayers or otherwise, the acquisition of open space lands.

Regulatory Flexibility Analysis:

The Committee as well as the Department's Division of Planning have determined that no small businesses shall be impacted by the proposed regulations.

Holly Rhodes, Executive Secretary