

## 301 CMR: EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

### 301 CMR 5.00: LAND AND PARC PROGRAMS

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#### 5.01: Purpose

301 CMR 5.00 is promulgated to implement the LAND and PARC grant programs by establishing uniform grant application procedures, project selection standards, and program administration requirements. Both the LAND and PARC grant programs have two separate programs: an annual program in accordance with the grant cycle of 301 CMR 5.05(4); and a rolling program subject to periodic notice of availability as described in 301 CMR 5.05(5).

#### 5.02: Definitions

Active Outdoor Recreation. Outdoor recreation that occurs in parks and requires significant alteration of the natural landscape to provide playground or active sports facilities such as tennis, basketball or other sport courts, ball fields, swimming pools or spray pads, paved bike or walking trails, golf courses, marinas, enclosed dog parks, boat rentals, concession stands, community gardens, outdoor skating rinks, bathroom buildings, bleachers or stands or other developed facilities needed for active outdoor recreation.

Conservation Land. Land owned by a municipality for conservation and passive public outdoor recreation purposes and managed for those purposes under the Conservation Commission consistent with M.G.L. Chapter 40 section 8C. In order to receive funds from the LAND Program Conservation Land must be dedicated in the deed to conservation and passive public recreation purposes.

Director of Environmental Justice. A person so named and designated by the Secretary to review PARC and LAND grant applications and advise the Secretary on the importance of each application in addressing environmental justice concerns.

Division. The Division of Conservation Services in the Executive Office of Energy and Environmental Affairs.

LAND Program. A grant program that provides reimbursements to municipalities of up to 90% of the allowable project costs towards the purchase of land for conservation and passive outdoor recreation purposes and/or planning, design, access, or stewardship projects on LAND funded conservation land.

Management Plan. A plan reviewed and approved by the Division that guides future use and stewardship of the Park or Conservation Land for appropriate active or passive outdoor recreation.

Open Space and Recreation Plan. A plan reviewed and approved by the Division, having a duration of up to ten years, containing those elements required by the Division such as: a summary; statement of purpose including planning process and public participation; community setting; environmental inventory and analysis; inventory of lands of conservation and recreation interest; community goals; analysis of needs; goals and objectives; an action plan; and maps and letters of comment from the chief municipal officer, planning board, and regional planning agency. Guidelines and a workbook for developing plans are available from the Division.

PARC Program. A grant program that provides reimbursements to municipalities of up to 90% of allowable costs towards the acquisition of land, and the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

Park. Land owned by a municipality and managed for active public outdoor recreation purposes under the Park, Playground or Recreation Commission. In order to receive PARC Program funding a park must be dedicated in the deed to active public outdoor recreation purposes.

Passive Outdoor Recreation. Any outdoor activity that occurs in a natural setting with minimum disturbance of the natural and cultural resources and that is consistent with quiet enjoyment of the land including but not limited to hiking, nature study, outdoor education, cross country skiing, snowshoeing, horseback riding, trail bicycling, hunting, fishing, picnicking, canoeing, ice-skating, community gardening in existing fields, swimming in a natural water body with minimal site development, or informal sports activities on an open natural field. For the purpose of eligibility and reimbursement under these regulations snowmobiling may be considered passive outdoor recreation if the municipality determines that it is compatible with other activities. Facilities necessary to support passive recreation with a minimum of disturbance to the natural and cultural resources such as natural surface trails and wood roads, and appropriately-scaled parking areas, bathrooms, and nature centers are considered consistent with passive outdoor recreation. Passive outdoor recreation areas may also be managed for sustainable forestry and farming including community farms and forests.

Project. Reimbursement for the acquisition of land for passive outdoor recreation and conservation purposes, and/or appropriate planning, design, access, or stewardship projects on LAND funded conservation land (including ancillary costs such as title, survey, management planning, design and installation of low impact trails or educational signs or other low impact and appropriate projects to support passive outdoor recreation). Project also means the acquisition, development, restoration, or renovation of parkland reimbursed by the PARC Program that meets all policies and specifications of EEA and the Division. Projects shall require that a project agreement be recorded at the appropriate Registry of Deeds with a reference to the conservation or park land that has been funded with the grant. The project agreement includes reference to all requirements and policies of the grant that apply in perpetuity to the land.

Project Quality Criteria. Rating criteria used in project selection such as park and conservation land accessibility, public participation in design, water and trail access, land and park stewardship, consistency with state and local plans, and environmental attributes such as habitat for rare, threatened, or endangered species and species of greatest conservation need, water resources, farm, forestry, landscape and biodiversity conservation resources, historic and archaeological resources, climate resiliency, stormwater reduction, tree planting, and support of EEA and agency policies.

Project Selection System. A project rating system based on a 100-point scale. The LAND Project Selection System shall award no less than 30 points based on demographic factors, focusing on financial need of the applicant community, and up to 70 points based on project quality criteria. The PARC Project Selection System shall award no less than 30 points based on demographic characteristics, focusing on financial need of the applicant community, and up to 70 points based on project quality criteria. Each program's selection system awards points for implementation of the community's open space and recreation plan and up to ten bonus points at the discretion of the Secretary. The Secretary shall develop and may review and modify, at his discretion, selection systems for the LAND, Rolling LAND, PARC, and Rolling PARC grant programs. The selection systems shall be set forth in Guidance Documents available from the Division.

Regional Project. A recreation facility that has parking for at least 100 cars and adequate comfort stations. Regional Projects generally provide multiple opportunities for picnicking, walking, canoeing, boating, fishing, children's recreation, and swimming. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for regional projects are available from the Division.

Rolling LAND Program. A rolling grant program that conforms with the minimum requirements of the LAND Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Rolling PARC Program. A rolling grant program that conforms with the minimum requirements of the PARC Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Secretary. The Secretary of Energy and Environmental Affairs or the Secretary's designee.

Small Town Project. A Project which qualifies only for a maximum of \$100,000 where a community does not meet the population criteria of a city or town of over 35,000 and is not undertaking a Regional or Statewide Project.

Statewide Project. A recreation facility located within a one hour driving time from more than one Metropolitan Statistical Area, accommodates at least 200 vehicles, provides adequate comfort stations, and will also provide for more dispersed or uncommon recreation opportunities such as equestrian trail use, overnight camping, nature center programs, golf, group picnicking, large beach use, boating, skiing, and live animal viewing such as zoos. Any Project located on Nantucket Island, Martha's Vineyard, or Cape Cod is considered statewide regardless of the project scope. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for statewide projects are available from the Division.

### 5.03: Eligibility

- (1) Planning Requirement. No application will be considered by the Secretary until the Applicant has filed an approved Open Space and Recreation Plan or submits a draft plan with the preliminary application.
- (2) LAND Program.
  - (a) Only municipalities with Conservation Commissions duly established pursuant to M.G.L. c. 40, § 8C are eligible to participate in the LAND Program.
  - (b) LAND Program grants are available to fund the acquisition of land for passive outdoor recreation and conservation purposes, and/or appropriate planning, design, access, or stewardship projects on conservation land.
- (3) PARC Program.
  - (a) Only municipalities with a Park, Playground, or Recreation Commission, or any combination thereof, duly established pursuant to M.G.L. c. 45, § 2, and a Conservation Commission duly established pursuant to M.G.L. c. 40, § 8C, are eligible to participate in the PARC Program.
  - (b) PARC Program grants are available to fund the acquisition of land for park and active outdoor recreation purposes, and for the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.
  - (c) The following municipalities are eligible to apply for PARC grants:
    1. Any city, or a town of over 35,000 year round inhabitants; or
    2. Municipalities with a population of less than 35,000 year-round inhabitants that:
      - a. propose a Statewide or Regional Project and demonstrate regional or statewide usage to the satisfaction of the Secretary; or
      - b. propose a Small Town Project.
  - (d) The Director of Environmental Justice may publicize in urban areas the existence of the PARC Program, and publicize, make available and assist municipalities with interpreting the PARC Program guidelines.
- (4) Affirmative Action and Accessibility. To be eligible for assistance, municipalities must be in compliance with a Civil Rights Review Comment from the Massachusetts Commission Against Discrimination, and Executive Order No. 215, concerning Disbursement of State Development Assistance for Affordable Housing. Municipalities must also show that all parks and recreation facilities are in compliance with the Americans with Disabilities Act (P.L. 101-336), formerly required under Section 504 of the Rehabilitation Act of 1973, P.L. 93-112 (Federal Handicapped Accessibility Guidelines), as amended; and Department of Interior Regulations 43 CFR 17, Subpart B, or show how and when such facilities will be brought into compliance with the above regulations.
- (5) Upon request, the municipality or its authorized representative shall provide all records, books, papers, documents, or other data relating to the Program grant to the Secretary for examination.

(6) Each program participant shall cause work on the Project to proceed within a reasonable period of time after receiving a signed state standard contract from the Division and will pursue the Project to completion with reasonable diligence.

#### 5.04: Project Application and Selection

(1) Application Step Procedures. Applications shall be submitted to the Secretary in accordance with the Application Guidelines of the Division, which are available on the Division's web site.

(2) Appraisal Reports. Applications for acquisition assistance shall be accompanied by an appraisal report prepared according to the Appraisal Report Guidelines of the Division, which are available on the Division's web site.

(3) Project Selection System. In order to distribute limited LAND and PARC funds among many deserving applicants, the Secretary has developed a review process called the Project Selection System. The Project Selection System considers a number of demographic and project quality factors in order to identify those projects which best protect natural resources or provide recreation amenities where appropriate in communities that have the greatest need for financial assistance and that have made efforts to implement their open space and recreation plans in coordination with local planning for future growth. The Project Selection System Guidelines for each grant program are available on the Division's web site.

(4) LAND Program and PARC Program Grant Cycle.

The annual filing deadline for applications shall be no later than August 15th of each year. The Secretary may alter or extend this deadline provided that public notice of the change is given at least 90 days in advance of the new deadline. Grants shall be made only once in the annual fiscal cycle; however, grants may be adjusted after the award for cause. Grant applicants shall receive notice no later than November 15<sup>th</sup> of each year from the Division as to whether an award will be issued.

(5) Rolling Program Specific Requirements.

(a) Rolling LAND Program grants must meet all requirements applicable to the LAND grant program, excluding the grant cycle requirement as described in 301 CMR 5.05(4).

(b) Rolling PARC Program grants must meet the all requirements applicable to the PARC grant program, excluding the grant cycle requirement as described in 301CMR 5.05(4).

(c) The Secretary may establish additional guidelines for the Project Selection System of the Rolling LAND Program.

(d) The Secretary may establish additional guidelines for the Project Selection System of the Rolling PARC Program.

(e) The Secretary shall provide notice of availability of funding and the associated filing deadline for any grant funding offered under either the Rolling PARC or the Rolling LAND Programs. Such notice shall be effective when published either in the Massachusetts Register or the *Environmental Monitor*.

(f) The Secretary may announce rolling grant rounds and accept applications from time to time and subject to available funding.

#### 5.05: Project Conditions

(1) Off-street parking and land use and management plans may be required at the discretion of the Secretary depending upon the size of the project area, its intended use(s), the nature of the resource(s), and the availability of public transportation and on-site parking.

(2) Additional project conditions may be required by the Secretary to enhance public benefit or protection of natural resources.

(3) Program participants shall provide for fair and equitable treatment of persons and businesses to be displaced as a result of the project, and shall comply with M.G.L. c. 79A, as amended, Titles II and III of the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) where concurrent federal financial assistance is sought or intended for subsequent project phases.

(4) Property acquired or improved with LAND Program assistance shall be under the care,

custody, and control of the Conservation Commission. Property acquired or improved with PARC Program assistance shall be under the care, custody, and control of the Recreation, Park, or Playground Commission. For acquisition projects, the grantee on the deed shall state that the care, custody and control is with either the Conservation Commission for LAND grants or Recreation, Park, or Playground Commission for PARC grants.

(5) A failure to comply with the conditions of any grant contract may result in the reduction, suspension, or withdrawal of awarded grant funds.

#### 5.06: Project Costs

(1) Each grant program provides reimbursement of up to 90% of eligible project costs towards the acquisition of land for active outdoor recreation or conservation and passive outdoor recreation purposes, planning design, access, or stewardship projects on conservation land, or the construction, restoration or rehabilitation of facilities for park and active outdoor recreation purposes. The maximum reimbursement percentage allowed for an approved project will be based on the municipality's equalized valuation per capita decile rank among all Massachusetts municipalities as determined by the Secretary of Administration and Finance. A municipality's rank, and therefore its percentage of reimbursement potential, may change annually based on its increase or decrease in property valuation and population growth. The Secretary may reduce the maximum reimbursement percentage to allow for a more equitable distribution of limited funds among all municipalities. The annual reimbursement schedules are available from the Division.

(2) Subject to the approval of the Secretary, all reasonable costs associated with acquisition projects shall be eligible for reimbursement, as long as they are incurred within the contract period. Costs for title searches, recording fees, boundary surveys, baseline documentation reports, management plans, planning, design, and stewardship projects and other approved project costs from the project proposal, as well as the actual approved purchase price, are deemed to be eligible acquisition, planning, design, access, and stewardship project costs. In addition, for PARC Projects, the actual approved purchase price, recording fees, boundary surveys, engineering, design, construction, and construction supervision are deemed eligible project costs; however, the Secretary shall retain the right to set a fixed limit on the reimbursement of Project costs. Additional information on reimbursement procedures is available from the Division upon request.

(3) As required by M.G.L. c. 132A, § 11, reimbursement under the LAND Program will occur only after the participant has expended an amount equal to the total cost of the project and not until the project has been completed to the satisfaction of the Secretary. Billing procedures and forms are available from the Division.

(4) Federal funding sources such as Community Development Block Grants or Revenue Sharing that are defined by the federal government to be local money may be used to match program funds. Community Preservation Act (CPA) funds are also considered local money and may be used to match program funds. Program reimbursements for PARC projects may be paid periodically upon request for payments made by a municipality. Billing procedures and forms are available from the Division.

(5) The Division encourages charitable contributions for conservation purposes either in cash or real property. While real property contributions are not reimbursable, cash contributions may be utilized as the municipality's share of the project providing said cash contribution is deposited into a separate municipal account such as authorized under M.G.L. c. 40, § 5, Cl. 51 and is expended therefrom as part of the municipal appropriation for the acquisition or development.

(6) Project reimbursements are to be based on the receipt of invoices and canceled municipal checks and compliance with current reimbursement requirements of the Division. Municipal staff time and non-cash donations are not eligible for reimbursement.

#### 5.07: Post-completion Requirement

(1) Operation, Maintenance, and Reasonable Use Limitations. Property acquired or developed with LAND or PARC Program assistance shall be operated and maintained in accordance with management plans reviewed and approved by the Division and project contract and project agreement specifications.

(2) Nondiscrimination. Property acquired or developed with Program assistance will be open to entry and use by all persons regardless of race, color, national origin, sex, sexual preference, age or disability.

(3) Nondiscrimination on the Basis of Residence.

(a) Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems, or user fees is prohibited on the Project site.

(b) The Secretary will approve or deny all proposed fee or access limiting systems. Waivers will not be granted which are inconsistent with the Federal Land and Water Conservation Fund Act, P.L. 88-578, Section 6(f)(8), 16 U.S.C. § 4601-4. *et seq.*

#### 5.08: Conversion and Reversion

(1) Conversion. Property acquired or developed with assistance from the LAND or PARC Program shall be retained and used at all times for conservation and passive outdoor recreation purposes for LAND projects or park and active outdoor recreation purposes for PARC projects in accordance with M.G.L. c. 132A, § 11, St. 1977, c. 933, and M.G.L. c.45 § 1 and 3 as amended. Any property so acquired or developed shall not be wholly or partly converted to other than public active or passive outdoor recreation, park or conservation purposes without the approval of the Secretary. Converted property shall comply with Article 97 of the Massachusetts Constitution and shall be replaced with land of at least equal fair market value, natural resources or park values, acreage and of equivalent usefulness for active or passive outdoor recreation. The Secretary may disapprove conversion requests or reject proposed property substitutions. Grant contracts, at the discretion of the Secretary, may be subject to specific performance.

(2) Reversion. Property acquired or improved with LAND or PARC Program funds shall be retained and used at all times for open space purposes in accordance with M.G.L. c.132A, § 11, as amended, St. 1977, c. 933, as amended; or M.G.L. c.45 § 1 and 3 as amended. In the event that the property ceases to be used, either in whole or in part, for such purposes, all interest in the property shall revert to the Commonwealth, unless the Secretary demands specific performance of the grant contract.

(a) Owners of property so acquired or improved shall notify the Secretary in writing of any change in use or potential change in use of the property that is inconsistent with said conservation, park, or active or passive outdoor recreation purposes. The owner shall have 90 days from the date written notice was received by the Secretary to present evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert. Upon receipt of written notice, the Secretary may review the circumstances of the property and determine that reversion of the property is not appropriate or essential to the protection of public conservation or park land, and find that the provisions of 301 CMR 5.09(1) shall apply.

(b) If the Secretary finds that a property acquired or improved with Program funds has ceased to be used for such conservation, park, or active or passive outdoor recreation purposes, the Secretary shall notify the owner of the property in writing of this basis. The owner shall have 90 days from the date written notice was mailed to the owner to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert.

#### 5.09: Guidance Documents

The Guidelines or Guidance Documents referenced herein are available free of charge to municipalities upon request from the Division.

#### 5.10: Severability

The provisions of 301 CMR 5.00 are severable, and if any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of the remainder of 301 CMR 5.00.

#### REGULATORY AUTHORITY

301 CMR 5.00: M.G.L. c. 21A, § 2; c. 132A, § 11; St. 1977, c. 933; St. 1987, c. 564, §§ 8 and 9; St. 1996, c. 15, § 2; St. 2002, c. 236, § 2; St. 2007, c. 27, § 2; St. 2008, c. 312, § 2; St. 2014, c. 286.