

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 9. EXECUTIVE DEPARTMENT  
SUBTITLE I. OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION  
CHAPTER IV. ENVIRONMENTAL ASSISTANCE PROGRAMS  
SUBCHAPTER C. ENVIRONMENTAL PROTECTION ACT  
PART 439. GENERAL PROGRAM PROVISIONS

\* Section 439.1.\* Authority and purpose.

These regulations implement the Environmental Protection Act, title 9 of article 54 of the Environmental Conservation Law. In enacting the Environmental Protection Act, the New York State Legislature found that preservation, enhancement, restoration, improvement and stewardship of the State's environment are among the government's most fundamental obligations and that appropriate actions to make the State's invaluable natural and historic resources available for public use, enjoyment or benefit are key components of the environmental and social policy of the State. And, it further found the State has the capacity to protect the environment and public health, safety and welfare by providing assistance to State agencies, public benefit corporations, public authorities, municipalities and not-for-profit corporations for park, recreation, historic preservation or heritage area projects.

\* Section 439.2.\* Definition of terms.

Whenever used in this Subchapter, the following terms shall mean and include:

- (a) Commissioner shall mean the Commissioner of Parks, Recreation and Historic Preservation.
- (b) Cost shall mean engineering and architectural services, plans and specifications, archaeological services, consultant and legal services, or other direct expenses incident to such project.
- (c) Facility shall mean any structure, site or site improvement including paths, trails, roads, bridges, ramps and buildings.
- (d) Federal assistance shall mean funds available, other than by loan, from the Federal government, either directly or through allocation by the State for construction or program purposes pursuant to any Federal law or program.
- (e) Governing body shall mean:
  - (1) in the case of a county outside of the city of New York, the county board of supervisors or other elective governing body;
  - (2) in the case of a city or village, the local legislative body thereof, as the term is defined in the Municipal Home Rule Law;
  - (3) in the case of a town, the town board;
  - (4) in the case of a public benefit corporation, the board of directors, members or trustees thereof;
  - (5) in the case of a public authority, the governing board of directors, members or trustees thereof;
  - (6) in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation; and
  - (7) in the case of an Indian tribe, any governing body recognized by the United States or the State of New York.
- (f) Heritage area project shall mean a project undertaken by or through a municipality or a not-for-profit corporation for planning relating to or the structural assessment, acquisition or development of sites and facilities identified in a management plan approved by the commissioner in accordance with section 35.05 of the Parks, Recreation and Historic Preservation Law.
- (g) Historic preservation project shall mean a project undertaken by a municipality or a not-for-profit corporation to acquire, improve, restore or rehabilitate property listed on the State or National Register of Historic Places to protect the historic, cultural or architectural significance thereof or a project for planning relating to or the structural assessment of that property. Historic preservation project shall also mean a project undertaken by the office to improve, restore or rehabilitate State Historic properties or a project for planning relating to or structural assessment of those properties.
- (h) Match (matching share) shall mean the portion of the total cost of a project which the project sponsor must provide. The match shall be no less than the amount of State assistance provided.
- (i) Municipality shall mean a county, city, town, village, school district, supervisory district, or an Indian tribe or nation residing within New York State, a local or State public authority or local or State public benefit corporation, a State agency, or any combination thereof.
- (j) National Register of Historic Places shall mean the list of districts, sites, buildings, structures or objects significant in American history, architecture, archaeology, engineering or culture established in the National Historic Preservation Act of 1966 as amended (16 USC §§ 470 et seq.).
- (k) Not-for-profit corporation shall mean a corporation formed pursuant to or subject to the Not-for-Profit Corporation Law and qualified for tax-exempt status under the Federal Internal Revenue Code.
- (l) Office shall mean the Office of Parks, Recreation and Historic Preservation.

(m) Park project shall mean a project undertaken by a municipality or a not-for-profit corporation for planning relating to or the structural assessment, acquisition, development or improvement of park sites or recreational facilities including construction of structures, roads and parking facilities.

(n) Project applicant shall mean a municipality or not-for-profit corporation which applies for State assistance pursuant to this Subchapter.

(o) Project sponsor shall mean a municipality or not-for-profit corporation which has been awarded State assistance and, pursuant to contract, will undertake and assume responsibility for a project authorized by this Subchapter.

(p) Public benefit corporation shall generally mean a corporation organized or created by a unit of government to construct or operate a public improvement, the profits from which inure to the benefit of the State or the people thereof, or to perform some other function on behalf of the establishing body.

(q) Secretary of the Interior's Standards shall mean the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as set out in the Federal Register, volume 48, number 190, pages 44716 through 44742 (September 29, 1983). The office previously incorporated the standards by reference in rules implementing the Environmental Quality Bond Act of 1986. (See section 435.2[n] of this Title.) The standards were filed with the Secretary of State on April 13, 1987. They are available for inspection and copying at the Counsel's Office, Office of Parks, Recreation and Historic Preservation, Agency Building No. 1, Governor Nelson A. Rockefeller Empire State Plaza, Albany, NY 12238; the 11 regional offices of the Office of Parks, Recreation and Historic Preservation; or at the Albany office of the New York State Department of State. Secretary of the Interior's Standards also shall mean the Standards for the Treatment of Historic Properties as set out in the Code of Federal Regulations, title 36, volume 1, part 68, pages 389-392 (July 1, 2008), and notice of amendments and annotations at [http://www.nps.gov/history/local-law/Arch\\_Standards.htm](http://www.nps.gov/history/local-law/Arch_Standards.htm) (July 24, 2009). As applied to projects undertaken under this Subchapter, the commissioner's interpretation of the Secretary of the Interior's Standards shall be controlling.

(r) State assistance payment shall mean the payment of monies by the State for projects authorized by the Environmental Protection Act.

(s) State Register of Historic Places shall mean the list of districts, sites, buildings, structures or objects significant in the architecture, archeology, engineering or culture of New York State, its communities or the nation established by section 14.07 of the Parks, Recreation and Historic Preservation Law.

\* Section 439.3. \* Allocation of funds.

The distribution of funds for park, historic preservation and heritage area projects shall be requested annually by the office for inclusion in the executive budget and action by the New York State Legislature.

(a) The commissioner shall determine the types of projects to be funded from the allocation for each fiscal year based on factors which shall include, but need not be limited to:

(1) demand as evidenced by number and type of applications previously received for this and other grant programs administered by the office;

(2) the Open Space Conservation Plan, the Statewide Comprehensive Outdoor Recreation Plan and other applicable planning documents;

(3) public comments and requests received by the office or other appropriate evidence of need;

(4) the availability of other programs and funding resources;

(5) allocations for various types of projects in previous funding cycles;

(6) State and Federal mandates;

(7) emergencies or disasters; and

(8) the recommendations of the Environmental Assistance Advisory Task Force established by section 439.4(b) of this Part.

(b) Consistent with the number of applications and the funds appropriated, the commissioner may limit the maximum amount of State assistance available for any one project.

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CHAPTER IV. ENVIRONMENTAL ASSISTANCE PROGRAMS  
SUBCHAPTER C. ENVIRONMENTAL PROTECTION ACT  
PART 440. PROVISIONS RELATING TO ALL PROJECTS  
Current through October 15, 2009.

\* Section 440.1.\* General project requirements.

In order to be eligible for State assistance under this Part, the entire project must be:

- (a) recommended to the commissioner by the governing body of the project sponsor or where the project sponsor is a State agency, its chief executive; and
- (b) located within the physical boundaries of the State of New York.

\* Section 440.2.\* Not-for-profit corporation requirements.

(a) A not-for-profit corporation must demonstrate to the satisfaction of the office that it is capable of operating and maintaining the completed project for the benefit of the public. The following documents will be required in the grant application to verify a corporation's not-for-profit, tax-exempt status and provide evidence of such capability:

- (1) a copy of the corporation's certificate of incorporation issued by the New York State Department of State or the New York State Board of Regents; and
- (2) a copy of a determination letter from the United States Internal Revenue Service verifying the corporation's tax-exempt status.

(b) Prior to entering into a project agreement verification will be required to demonstrate that the not-for-profit corporation is up-to-date with all pertinent filing under section 501 of the United States Internal Revenue Code, and either article 7-A of the New York Executive Law, or section 8- 1.4 of the New York Estates, Powers and Trusts Law, or section 1508 of the New York Not-for-Profit Corporation Law, or section 215 of the New York Education Law.

Section 440.3.\* Project sponsor's interest in real property for development projects.

If the project sponsor is not the sole owner of the unencumbered fee of land on which a development project will be undertaken, the following documents will be required to qualify the project sponsor's interest in the property for State assistance:

- (a) except with respect to property owned by the State, the agreement of the owner to execute the project agreement and public benefit agreement as guarantor; and
- (b) a copy of a lease, easement, contract or memorandum of understanding which establishes to the satisfaction of the commissioner that the project sponsor's interest in the property is of sufficient duration and stability to assure that the project sponsor will be able to comply with this Subchapter.

\* Section 440.4.\* Funding provisions.

(a) Except for projects undertaken by the office at State historic properties, State assistance towards the cost of a project shall not exceed 50 percent of the approved project cost, provided however, in the case of a project located in an area which according to the most recent census data available has a poverty rate of at least 10 percent for the year to which the data relates, State assistance payments toward the cost of any such project shall in no event exceed 75 percent of the approved project cost.

(b) For determining the amount of State assistance available for the project, the cost of a project shall be the amount approved by the commissioner. The State shall not be responsible for any increases in the cost of the project.

(c) State assistance will be available on a reimbursement basis. Project sponsors shall submit periodic invoices and requests for payment as work is performed and costs incurred. The amount of each State assistance payment will be in the same proportion as the State assistance bears to total project cost.

(d) A project sponsor may request an advance payment in an amount not to exceed 25 percent of the total amount of State assistance for the project or the amount of match the project sponsor can document at the time of the request, whichever is smaller.

\* Section 440.5.\* Project sponsor's match.

The project sponsor's match may consist of the following:

- (a) the fair market value in the project location of material which is procured by purchase or donation during the project term or within three years prior to the application deadline date;
- (b) the fair market value in the project location of equipment which is procured by purchase or donation during the project term;
- (c) rental expenses incurred at customary rental rates for the use of equipment in development and construction during the project term. The donated value at customary rental rate of equipment will qualify if used during the project term;
- (d) the cost of labor employed in project development and construction during the project term;
- (e) the cost of services, including professional services, or the value of donated services provided during the project term or within three years prior to the application deadline date; and
- (f) the fair market value of real property or an interest in real property acquired by purchase or donation during the project term or within one year prior to the application deadline date. The value of previously owned lands converted from unrelated use to project purposes may qualify as match only if such conversion occurred during the project term or within one year prior to the application deadline date. The value of real property shall be established by an appraisal in accordance with section 440.6 of this Part.

Section 440.6.\* Appraisals.

Appraisals shall be prepared according to the following requirements:

- (a) Appraisals shall be prepared by a qualified appraiser in accordance with the guidelines of the office.
- (b) Appraisers must either be licensed or certified by the State of New York or appear on the New York State Department of Transportation's list of qualified appraisers.
- (c) Appraisals must be conducted no more than 12 months prior to the acquisition of the property by the project sponsor.
- (d) If the property is valued at \$300,000 or more, two appraisals must be obtained.
- (e) If the property is valued at less than \$300,000, one appraisal is required.
- (f) If the property is valued at less than \$25,000, a short-form appraisal may be used at the discretion of the office.
- (g) The office may change appraisal requirements to conform to any guidelines which may be issued by the State Comptroller.

Section 440.7.\* Application information and procedures.

(a) Outreach and technical services. The office will provide outreach and technical services to assist project applicants in preparing applications that are complete and which address the commissioner's annual funding priorities. Applicants may contact the appropriate representative of the office to schedule a pre-application conference.

(b) Performance timelines.

(1) The office and the project sponsor will develop specific performance timelines for inclusion in the project agreement that are feasible for the project sponsor and acceptable to the office. Timelines will address the steps necessary to initiate, progress or complete a project, including raising the project sponsor's match; submitting appraisals, plans and specifications; obtaining permits or other approvals; submitting documents necessary to verify compliance with article 15-A of Executive Law; or submitting interim and final project reports.

(2) Timelines must provide that a development project will be initiated no later than six months after a project agreement is executed and approved by the State Comptroller, and completed no later than two years subsequent to such approval. Acquisitions are required to be completed within one year of the State Comptroller's approval of the project agreement. The office may vary these timelines when it is deemed appropriate for a particular project.

(3) The office, in its discretion, may cancel projects which do not adhere to mutually established timelines. Sponsors of projects which are so cancelled may reapply in the next appropriate funding cycle.

(c) Forms. Applications shall be made on forms provided by the office. Forms may be obtained from the office's web site at [www.nysparks.state.ny.us/grants](http://www.nysparks.state.ny.us/grants) or from the main office at New York State Office of Parks, Recreation and Historic Preservation, Grants Management, Empire State Plaza, Agency Building 1, Albany, NY 12238 or from the regional grants representative at the headquarters of any of the office's 11 park regions listed below:

Allegany Region - Allegany, Cattaraugus and Chautauqua  
Regional Grants Representative  
Allegany State Park, RD 1, Salamanca, NY 14779

(716) 354-9101, FAX (716) 354-2255  
Niagara Region - Erie and Niagara  
Regional Grants Representative  
Niagara Reservation State Park, P.O. Box 1132, Niagara Falls, NY 14303  
(716) 278-1761, FAX (716) 278-1744  
Genesee Region - Orleans, Monroe, Genesee, Wyoming and Livingston  
Regional Grants Representative  
Letchworth State Park, Castile, NY 14427  
(585) 493-3613, FAX (585) 493-5272  
Finger Lakes Region - Cayuga, Chemung, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins,  
Wayne, Yates  
Regional Grants Representatvie  
Taughannock Falls State Park, 2221 Taughannock Road, Trumansburg, NY 14886  
(607) 387-7041, FAX (607) 387-3390  
Central Region - Oswego, Oneida, Onondaga, Cortland, Chenango, Otsego, Madison, Broome,  
Herkimer, Delaware  
Regional Grants Representative  
Clark Reservation, Jamesville, NY 13078  
(315) 492-1756, FAX (315) 492-3277  
Thousand Islands Region - Clinton, Franklin, Hamilton, Jefferson, Lewis and St. Lawrence  
Regional Grants Representative  
Keewaydin State Park, Alexandria Bay, NY 13607  
(315) 482-2593, FAX (315) 482-9413  
Saratoga/Capital District Region - Albany, Essex, Fulton, Greene, Montgomery, Rensselaer,  
Saratoga, Schenectady, Schoharie, Warren, Washington  
Regional Grants Representative  
Saratoga Spa State Park, 19 Roosevelt Drive, Saratoga Springs, NY 12866-6214  
(518) 584-2000, FAX (518) 584-8804  
Palisades Interstate Park Commission - Orange, Rockland, Sullivan, Ulster  
Taconic Region - Columbia, Dutchess, Putnam, Westchester  
Regional Grants Representative  
OPRHP - Taconic Regional Office, Old Post Road, P.O. Box 308, Staatsburg, NY 12580  
(845) 889-4100, FAX (845) 889-8321  
New York City Region - Bronx, Kings, New York, Queens, Richmond  
  
Regional Grants Representative  
NYS Office of Parks, Recreation and Historic Preservation, Grants Office, 163 W. 125th Street, 17th  
Floor, New York, New York 10027  
(212) 866-2599, FAX (212) 866-3186  
Long Island Region - Nassau, Suffolk  
Regional Grants Representative  
Belmont Lake State Park, P.O. Box 247, Babylon, NY 11702  
(631) 321-3543, FAX (631) 321-3721

) Application documentation. The application shall include the following minimum documentation:

- (1) general applicant information;
- (2) a narrative description of the proposed project, its expected public benefit, the applicant's commitment to maintaining or operating the project and how the project conforms to the commissioner's funding priority for the cycle in which the application is submitted;
- (3) a budget detailing the total cost of the project, and sources of the applicant's match;
- (4) the agreement of any co-owner of the land and of the holder of any mortgage or other lien on the project site to subordinate that interest to assure compliance with the public benefit agreement required by section 440.10(b)(9) of this Part;
- (5) anticipated performance timelines for initiating and completing the project;
- (6) for projects other than acquisitions, either the deed to the property or documentation of the project sponsor's interest in the project site as set forth in section 440.3 of this Part;
- (7) for projects where the project sponsor is a municipality, environmental information including a description of existing natural and cultural resources, an evaluation of the project's environmental impact and documentation showing compliance with the State Environmental Quality Review Act (SEQRA); for projects where the project sponsor is a not-for-profit corporation, environmental information including a description of existing natural and cultural resources, an evaluation of the project's environmental impact and such other information as the commissioner shall require to make a final SEQRA determination;

(8) a copy of a resolution or other document of the governing body of the project sponsor recommending the application to the commissioner and authorizing an official of the project sponsor to execute documents necessary to the project;

(9) program specific information required by sections 441.2, 442.3 and 443.2 of this Title respectively; and

(10) such other information as may be required by the commissioner in order to accommodate requirements arising from annual program priorities.

(e) The complete application shall be submitted to the regional grants representative at the appropriate regional office listed in subdivision (c) of this section. For projects within the Catskill or Adirondack Parks, the application should be submitted to the New York State Office of Parks, Recreation and Historic Preservation, Grants Management, Empire State Plaza, Agency Building 1, Albany, NY 12238. Applications should be submitted as early as possible but no later than the deadline specified in the announcement and application for any given funding cycle. Applications received after the specified deadline will not be accepted.

#### Section 440.8.\* Rating criteria.

(a) All applications will be rated in accordance with the rating system established by the commissioner. Criteria used to rate projects will generally include the following:

(1) the extent to which the project site has suffered from physical deterioration, decay, vandalism, neglect or disinvestment or may be threatened with closure, demolition or inappropriate development;

(2) the relationship of the project to a local, regional and/or statewide planning document or other assessment of need;

(3) the extent to which the project protects, enhances or interprets natural, cultural or historic resources;

(4) the ability of the project sponsor to initiate and complete the project on a timely basis and operate or maintain the completed project; and

(5) program-specific factors established for park, historic preservation and heritage areas and found in sections 441.3, 442.4 and 443.3 of this Title respectively.

(b) In addition, ratings shall take into account annual programmatic and funding priorities as established by the commissioner pursuant to section 439.3 of this Title. Specific rating factors for each grant cycle and their relative weights will be published in the State Register and made available with project applications.

#### \* Section 440.9.\* Review procedures.

(a) Within each program category, applications will be rated against applications for similar projects.

(b) All applications will receive staff review, including review at the regional level. The final decision on all applications will be made by the commissioner.

(c) In addition to the rating criteria listed in section 440.8 of this Part, the commissioner may consider the following factors in determining which projects to fund:

(1) the geographic distribution of other fundable projects in any given application cycle;

(2) the extent to which the project will maximize the use and accessibility of a facility;

(3) special engineering, environmental and historic preservation concerns or benefits; and

(4) the past performance, if any, of the project sponsor on previous projects, including its compliance with equal employment opportunity and minority- and women-owned business enterprise programs.

(d) The office will use its best efforts to review applications and announce the commissioner's funding decision within 120 days of the announced application deadline.

#### \* Section 440.10.\* Project agreements.

(a) All projects must be undertaken pursuant to a project agreement with the office.

(b) All project agreements will require:

(1) a project term which shall commence on the date of the letter advising a project sponsor that its application has been selected for State assistance;

(2) performance standards, reporting requirements and timelines for initiating and completing project elements;

(3) that contracts and procurement policies and procedures of a municipality comply with sections 103 and 104-b of the General Municipal Law;

(4) that a not-for-profit corporation has policies for procuring quality goods and services in a way that assures prudent and economical use of public money in the best interests of the taxpayers.

(5) that the project sponsor comply with the provisions of article 15-A of the Executive Law regarding equal employment opportunities for women and minorities and contracting opportunities for minority- and women business enterprises, as well as the Omnibus Procurement Act regarding participation of New York State businesses;

(6) that the project be accessible in accordance with the New York State Uniform Fire Prevention and Building Code and the Americans with Disabilities Act Guidelines (ADAAG-appendix A to 28 CFR part 36). The project sponsor is responsible for determining which of these standards, guidelines or codes apply to the project when there is a discrepancy with regard to a particular accessibility requirement;

(7) that changes will not be made to the project without the approval of the commissioner. The office may re-rate a project if the sponsor proposes any changes and may disapprove changes which would cause the revised project rating to fall below the level at which it would have received funding;

(8) that a project sign or other suitable acknowledgment in a form to be determined by the office be installed on the property;

(9) provisions which assure that the expenditure of public funds on the project will result in a public benefit. Such provisions may include:

(i) a requirement that the public have reasonable access to or use of the project as specified by the commissioner;

(ii) a requirement that the project sponsor not alter, demolish, sell, lease or otherwise convey the project, in whole or in part, without the prior written approval of the commissioner;

(iii) a requirement that all plans for restoration, rehabilitation, improvement, demolition or other physical change to the completed project be approved in writing by the commissioner before work commences; or

(iv) program or project specific requirements which the commissioner deems necessary.

\* Section 440.11.\* Maintenance of effort.

Each recipient of funds made available under this Subchapter may be required to demonstrate to the satisfaction of the commissioner that the project will result in a net gain in public park, conservation, recreation, historic preservation or heritage area facilities.

\* Section 440.12.\* Alternate grant awards.

In a given funding cycle, applications which rate highly but for which insufficient funds are available will be selected as alternate grant awards. These applications may be retained by the office and will be used to select alternate projects to fund in the event that a project is cancelled by the office, abandoned by its sponsor or funds become otherwise available.

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SUBCHAPTER C. ENVIRONMENTAL PROTECTION ACT  
PART 441. PARK PROJECTS

Current through October 15, 2009.

\* Section 441.1.\* Eligibility criteria.

(a) Eligible projects shall include planning relating to or the structural assessment, acquisition, improvement, development, preservation, restoration or rehabilitation of lands, waters or structures for the use by all segments of the population for park, recreation or conservation purposes.

(b) Eligible acquisition projects shall include, but are not limited to, acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to lands which:

(1) are appropriate for use as parklands, metropolitan or shoreline parks, bikeways, trailways, greenways, and/or waterway access;

(2) comprise buffer zones or viewsheds if, in the opinion of the office, the acquisition is necessary to enhance or protect the value of existing recreational or environmental resources; or

(3) contain natural, scenic or open space resources that are unique, rare, or of statewide or regional significance.

(c) Eligible development projects include but are not limited to:

(1) playing fields, playgrounds; tracks, courts, rinks, or gymnasiums;

(2) trails, greenways, community gardens or small agricultural demonstration projects;

(3) facilities for swimming, boating, picnicking, camping, fishing, hunting or other recreational activities;

(4) bandshells, amphitheaters, outdoor stages and related facilities;

(5) site-related interpretive or educational facilities such as arboretums, botanical gardens, flora and fauna protection projects, zoos, aquariums, nature and environmental exhibits, wildlife management facilities, or nature interpretive centers;

(6) landscaping, screening, fencing, sprinkler systems, or dredging;

(7) improvements necessary to facilitate access for disabled patrons;

(8) infrastructure and ancillary facilities, provided that such facilities support the operation and maintenance of the recreation resource on which they are located.

Section 441.2.\* Supplemental application requirements.

In addition to the general application requirements listed in section 440.7 of this Title, applications under this Part shall contain the following additional information:

(a) a project site plan and a map which clearly shows the location of the proposed project within the municipality;

(b) photographs or images which show the current conditions of the project site as directed by the office;

(c) the approval/endorsement of the governing body of the municipality in which the project will be located if the municipality is not the project sponsor; and

(d) legislative authorization for alienation if all or part of the park facility is being sold, leased, exchanged, donated, disposed of or used for other than public park purposes.

\* Section 441.3.\* Supplemental rating criteria.

In addition to the criteria listed in section 440.8 of this Title, the following criteria will be considered in rating park projects:

(a) the degree to which local recreation, conservation or open space deficiencies will be addressed by the project; and

(b) the degree to which the project will primarily serve either a densely populated area where recreational opportunities have sustained physical deterioration, decay, neglect or disinvestment or an area where a substantial proportion of the population is of low income or otherwise disadvantaged and underserved with respect to existing recreational opportunities.

\* Section 441.4.\* Public benefit provision.

(a) To assure that a sufficient public benefit shall accrue from the expenditure of public funds where the park project involves a public-private partnership, the commissioner shall consider the following eligibility and rating criteria in addition to the criteria listed in Part 440.8 of this Title and section 441.3 of this Part. The extent to which the project:

- (1) replaces or improves an inadequate facility or creates a new facility;
- (2) provides 51 percent or greater public use of and access to the facility for extended periods of time on a continuous or regular basis during the year;
- (3) maximizes public use of and access to the facility during periods of peak recreational demand;
- (4) diverts all or part of the facility to exclusive non-public use; and
- (5) involves private funding for the project sponsor match that is high (in value, expenses, or costs of labor or services) in proportion to the approved total project cost.

(b) To assure that a sufficient public benefit shall accrue from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate for projects undertaken by municipalities:

(1) a provision that no rule or regulation of a municipality shall restrict the use of or access to a project by non-residents of the municipality or impose a fee for such use without the prior written approval of the commissioner; and

(2) a requirement that facilities acquired or developed by a municipality pursuant to this Part shall not be sold, leased, exchanged, donated, disposed of or used for other than public park purposes without the prior written approval of the commissioner and the express authority of an act of the Legislature as provided in section 441.5 of this Part.

(c) To assure that a sufficient public benefit shall accrue from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate for acquisition projects undertaken by not-for-profit corporations:

(1) a requirement that the project sponsor make and keep the project accessible to the public unless the commissioner determines that public accessibility would be detrimental to the land or any natural or historic resources contained therein;

(2) a requirement that lands acquired by a not-for-profit corporation pursuant to this Part shall not be sold, leased, exchanged, donated, disposed of or used for other than public park purposes without the express authority of an act of the Legislature as provided in section 441.5 of this Part;

(3) a requirement that the project sponsor of an acquisition project shall not sell, lease, exchange or donate the project to any entity other than a local government municipality or not-for-profit corporation which will operate and maintain the project for recreation or conservation purposes; and

(4) a requirement that the project sponsor execute and convey to the State, at no charge, a conservation easement pursuant to title 3 of article 49 of the Environmental Conservation Law over the land or facility being acquired by the sponsor.

\* Section 441.5. \* Alienation of park projects.

(a) Project boundary map.

(1) Upon completion of a park project, the project sponsor shall submit a dated and signed project boundary map showing the location of the project and all related support facilities acquired or developed pursuant to this Part. The map shall also indicate all structures, facilities and encroachments on the property which are used for non-park purposes, such as power lines, easements, school buildings or clubhouses.

(2) In cases where the project is a discrete portion of the park, the project boundary map shall include as much of the park as would be required for the project to be operated by itself, including all support facilities such as roadways, parking lots, comfort stations and landscaping, except that utilities for the facility may be provided from elsewhere in the park.

(3) The office shall review the proposed project boundary map to determine its compliance with this section and any guidelines of the office and shall notify the project sponsor of its determination. The project boundary map shall define the public park facilities for which State assistance was provided pursuant to this Subchapter.

(b) Alienation mitigation. The act of the Legislature authorizing the alienation of facilities acquired or developed by a municipality pursuant to this Part shall require the substitution of other lands and any other requirements which the commissioner deems appropriate.

(c) Substitute property. Substitute property must meet the following criteria to the satisfaction of the commissioner:

(1) the fair market value of the substitute property must be no less than the fair market value of the property being alienated;

(2) the substitute property must be of equal environmental value to the lands being alienated;

(3) the substitute property must provide recreational resources and activities which are reasonably equivalent to those on the property being alienated or meet demonstrated public recreation or open space conservation needs;

(4) the location of the substitute property must be reasonably equivalent to the property being alienated, i.e., it must be accessible to the same people or a comparable segment of the population; and

(5) in cases where the project was for the acquisition of land, the substitute property may not be property which is already owned by the project sponsor.

(d) Leasing of State-funded facilities. The lease of facilities acquired or developed pursuant to this Subchapter is an alienation and requires the express authority of an act of the Legislature. However, substitution of other lands is not necessary if the lease provides for the following:

(1) the leased premises must be operated as a public park and/or recreational facility; that is, all programs and activities must be offered to all members of the public on the same terms and conditions which shall be subject to the approval of the commissioner;

(2) the leased premises must be identified in signage, public records and publicity as a public park and/or recreational facility;

(3) at any time the facility ceases to be operated as a public park and/or recreational facility, the lease will terminate and the facility shall immediately revert to the project sponsor; and

(4) all revenues received by the project sponsor from the lease of the facility shall be used for the acquisition of other park facilities or capital improvements to municipal park and recreational facilities and shall not supplement monies otherwise appropriated. The project sponsor shall submit to the office certified copies of budget documents showing its anticipated expenditures for capital park purposes from all revenue sources with the use of the lease proceeds as a segregated item.

(e) Granting of an easement over project lands. If an act of the Legislature which grants an easement over parkland requires that the lands continue to be used for public park and recreation purposes, substitute property will not be required.

(f) Review of alienation proposals by the office.

(1) The project sponsor shall submit to the office a proposal pertaining to the alienation of parklands receiving State assistance under this Part as early in the planning process as possible.

(2) The material submitted shall include:

(i) complete parkland alienation information required by the office;

(ii) a map showing the location of the parkland being alienated and the proposed substitute property; complete parkland alienation information required by the office;

(ii) a map showing the location of the parkland being alienated and the proposed substitute property;

(iii) appraisals of both the property being alienated and the substitute property. The appraiser and the format of the appraisals shall be in accordance with section 440.6 of this Title;

(iv) documentation establishing the project sponsor's compliance with the State Environmental Quality Review Act;

(v) a complete summary of public input supporting or opposing both the decision to alienate and the adequacy of the substitute property; and

(vi) additional material such as the proposed deed for the substitute property, plans and drawings of developed or proposed facilities or an archeological survey.

(3) The office will review the proposal and provide its comments and recommendation to the project sponsor along with such additional information as it deems relevant in sufficient time for the proposal to be considered by the Legislature at its next regular session.

(g) Legislative approval. It shall be the responsibility of the project sponsor to contact its legislative representatives with regard to the introduction of legislation authorizing the alienation of parklands. The project sponsor shall give such legislative representatives the comments and recommendations of the office.

(h) Revised project boundary map. If the project sponsor receives legislative approval for the alienation, it shall file a revised project boundary map with the office showing the corrected boundaries of the project and including any substitute property. Upon approval of the alienation all restrictions and requirements pertaining to the project shall apply to the substitute property.

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 9. EXECUTIVE DEPARTMENT  
SUBTITLE I. OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION  
CHAPTER IV. ENVIRONMENTAL ASSISTANCE PROGRAMS  
SUBCHAPTER C. ENVIRONMENTAL PROTECTION ACT  
PART 442. HISTORIC PRESERVATION PROJECTS  
Current through October 15, 2009.

\* Section 442.1.\* Eligibility criteria.

- (a) A property shall be eligible for grant assistance if, prior to the award of the grant, it is:
- (1) individually listed on the State or National Register of Historic Places; or
  - (2) located within a historic district which is listed on the State or National Register of Historic Places and which is identified in the district nomination form as contributing to the significance of the district. If the nomination does not clearly identify the property as contributing, the commissioner shall make this determination.
- (b) Eligible projects include:
- (1) Acquisition. The acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to all or part of a property listed on the State or National Register or of buffer zones, viewsheds or other ancillary property if, in the opinion of the office, the acquisition is necessary to protect the significance of the listed property.
  - (2) Development. Improvement, restoration, preservation, rehabilitation, protection, reconstruction, or archaeological interpretation of historic properties. All work must conform to the Secretary of the Interior's Standards.
  - (3) Planning. Costs incurred to plan an acquisition or development project. Examples of such costs include:
    - (i) predevelopment plans, specifications, cost estimates and other contract documents;
    - (ii) planning or feasibility studies;
    - (iii) structural assessments, historic structure reports, cultural landscape reports, archaeological, architectural or historic research reports; and
  - (4) Implementation. Project completion or archaeological investigation reports, audit reports, project signs and costs to implement, administer or monitor an acquisition or development project.

\* Section 442.2.\* Archaeological development activities.

- (a) All identification, evaluation, curation, interpretation and protection activities shall be conducted under the supervision of a professional archeologist meeting the requirements of the office. Disturbance of archaeological sites will be kept to a minimum and funded only if one of the following criteria is met:
- (1) data recovery is necessary to determine the presence of significant archaeological deposits that might be disturbed by a project; or
  - (2) data recovery and/or other mitigative measures are necessary because a development project will unavoidably disturb an area that has archaeological value; or
  - (3) testing is necessary to design and perform an approved development activity which is dependent upon information that can be obtained only through archaeological investigation; or
  - (4) public interpretation of a property is dependent upon the information that can only be obtained by archaeological testing.
- (b) Whenever archaeological activities are funded under this Subchapter, appropriate research notes, maps, sketches, photographs, profiles, and field notes recording information about the archaeological resources and the methods and techniques employed must be submitted to the office together with a written report of the investigation. All information and reports must meet the professional requirements of the office for archaeological documentation.
- (c) Archaeological collections and accompanying data and records must be curated in a repository meeting the requirements of the office.

\* Section 442.3.\* Supplemental application requirements.

In addition to the general application requirements found in section 440.7 of this Title, applications under this Part shall include the following additional information:

- (a) the location of the property shown on a map as directed by the office;

(b) photographs or images showing the existing condition of the property as directed by the office;  
and

(c) a narrative description of the property's historic significance.

\* Section 442.4. \* Supplemental rating criteria.

In addition to the criteria listed in section 440.8 of this Title, the following criteria will be considered in rating historic preservation projects:

(a) the historic significance of the property in the national, State or local context; and

(b) degree to which the project will increase public stewardship or awareness of historic resources.

\* Section 442.5. \* Public benefit provision.

In order to assure the preservation and maintenance of projects funded under this Part and to assure that a public benefit accrues from the expenditure of public funds, the commissioner will require the project sponsor to convey a preservation or maintenance restriction, easement or other protective agreement to the office or such other entity as the commissioner deems appropriate.

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 9. EXECUTIVE DEPARTMENT  
SUBTITLE I. OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION  
CHAPTER IV. ENVIRONMENTAL ASSISTANCE PROGRAMS  
SUBCHAPTER C. ENVIRONMENTAL PROTECTION ACT  
PART 443. HERITAGE AREA PROJECTS

Current through October 15, 2009.

\* Section 443.1.\* Eligibility criteria.

(a) Projects, sites or facilities must be identified in a heritage area management plan which has been approved by the commissioner in accordance with section 35.05 of the Parks, Recreation and Historic Preservation Law.

(b) Consistent with the four heritage area goals of preservation, education, economic development and recreation, projects may be for the acquisition or development of historically or culturally significant sites, districts, buildings, structures, objects or natural features, or for the development of interpretive, recreational or informational exhibits, materials and facilities which orient the visitor to the resources of the local heritage area or to the State heritage area program.

(c) Eligible acquisition projects include the acquisition during the project term or within one year prior to the application deadline date of a permanent easement in or fee title to all or part of an historically or culturally significant site, district, building, structure, facility, object or natural feature identified in a heritage area or management plan.

(d) Eligible development projects include, but are not limited to:

(1) improvement, restoration, preservation, rehabilitation, reconstruction, archaeological interpretation, or protection of sites, districts, buildings, structures, facilities, objects or natural resources in accordance with the Secretary of the Interior's standards;

(2) new construction which complies with the Secretary of the Interior's standards;

(3) infrastructure and ancillary facilities, provided that such facilities support the operation and maintenance of the project;

(4) development and installation of interpretive, recreational or theme-related facilities, areas, greenways, trail systems, exhibits and signage and associated programs; and

(5) development of buildings, facilities, sites and associated programs which address the need for multi-lingual or multi-cultural accommodation in the implementation of a project.

(e) Eligible planning and implementation projects include but are not limited to costs incurred to plan, implement, administer or monitor a development or acquisition project. Examples of such costs include:

(1) preparation of predevelopment plans, specifications, cost estimates and other contract documents;

(2) feasibility studies, including planning and economic development studies;

(3) structural assessments, historic structure reports, cultural landscape reports, archaeological, architectural or historic research reports; and

(4) project completion or archaeological investigation reports, audit reports and project signs.

\* Section 443.2.\* Supplemental application requirements.

In addition to the general application requirements listed in section 440.7 of this Title, applications under this Part shall include the following additional information:

(a) a narrative description of the project's significance in the context of existing heritage area resources and the four heritage area program goals, and its role in implementing the heritage area or urban cultural park's management plan;

(b) the approval/endorsement of the project by the local heritage area management entity if it is not the project sponsor; and

(c) the commitment of the local heritage area management entity either to operate or to cause to be operated any public facilities which are developed as part of a project.

\* Section 443.3.\* Supplemental rating criteria.

In addition to the criteria found in section 440.8 of this Title, the following criteria will be used to rate heritage area projects:

(a) the degree to which the project addresses one or more of the four heritage area goals of preservation, education, economic development and recreation;

(b) the degree to which the project contributes to the preservation, restoration or enhancement of natural, historic or cultural resources related to the local heritage area's interpretive theme(s) as established in its approved management plan;

(c) the degree to which the project enhances the function and visual quality of the local heritage area;

(d) the degree to which the project directly serves or benefits heritage area visitors and users; and

(e) the impact of the facility on the local economy or its contribution to established economic development plans.

\* Section 443.4.\* Public benefit provisions.

In order to assure the preservation and maintenance of projects funded under this Part, and to assure that a public benefit accrues from the expenditure of public funds for the project, the following provisions shall be included in the project agreement as appropriate:

(a) the project sponsor shall not prohibit the use of or access to the project to residents of the heritage area community or impose a fee for any use of and access to the project without the prior written approval of the office;

(b) the project sponsor will be required to convey a preservation or maintenance restriction, easement or other protective agreement to the office or other such entity as the office deems appropriate; and

(c) where real property is acquired for park, conservation, open space or recreation purposes, the project agreement shall include the provisions of section 441.4(b) of this Title when the project sponsor is a municipality and the provisions of section 441.4(c) of this Title, when the project sponsor is a not-for-profit corporation.