



BUREAU OF RECREATION AND CONSERVATION

Title: BRC Environmental Rights and Donated and Dedicated Property Act (DDPA) Implementation		
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Approved By: Tom Ford, Bureau Director	Program Area: All	

AUTHORITY

Act 18 of 1995, Section 306, Community Recreation and Heritage Conservation. The Department shall have the power to administer Federal and State programs for grants and loans to local governments, municipal authorities and nonprofit organizations for community and regional projects involving the planning, acquisition, rehabilitation and development of public park, recreation and conservation areas, facilities and programs.

SCOPE

Provides directive for administration of the Community Conservation Partnerships Grant Program

PURPOSE

The Department of Conservation and Natural Resources (DCNR) BRC is charged with executing our duties consistent with the PA Environmental Rights Amendment and the Commonwealth’s Donated and Dedicated Property Act.

The **PA Environmental Rights Amendment**, Article I, Section 27 of our state constitution ratified on May 18, 1971 provides:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The Pennsylvania Supreme Court, in *Pa. Environmental Defense Foundation v. Commonwealth*, No. 10 MAP 2015 (Pa. June 20, 2017) (*PEDF*), found that the second and third sentences impose obligations on the Commonwealth, as trustee, to protect the Commonwealth’s public natural resources on behalf of the people. These trustee obligations, the Court stated, apply to municipalities as well.

The **Donated and Dedicated Property Act (DDPA)**, as reinforced in the Kardon Park Case in 2017 *Petition of the Borough of Downingtown, 161 A.3d 844 (pa. 2017)*

This law ensures that political subdivisions use their donated and dedicated lands for the purposes for which they were originally dedicated. Lands dedicated for public use are held by the political subdivision – as trustee – for the benefit of the people. Note, however, that DDPA does not extend to lands acquired by purchase or condemnation unless these lands are subsequently dedicated to public use. This dedication, however, does not need to be formal – can be preponderance of the evidence such as maintenance by the entity, improvements, public use, etc. The DDPA is the codification of a bedrock tenet of common law public trust doctrine, which strictly prohibits a governmental body from conveying public lands to an entity or person for private use. The

only way to remove this restriction is for the political subdivision to petition the orphans court for relief from this restriction when, in the opinion of the political subdivision, as trustee, the continuation of the original use of the property held in trust as a public facility is no longer practicable or possible and has ceased to serve the public interest. If the political sub-division, demonstrates that continuation of the original use of the property is no longer practicable or possible and has ceased to serve the public interest then the court may permit the trustee to—

- (1) Substitute other lands or property of at least equal size and value held or to be acquired by the political subdivision in exchange for the trust property in order to carry out the trust purposes.
- (2) If other property is not available, sell the property and apply the proceeds to carry out the trust purposes.
- (3) In the event the original trust purpose is no longer practicable or possible or in the public interest, apply the property or the proceeds therefrom in the case of a sale to a different public purpose.
- (4) Relinquish, waive or otherwise quitclaim all right and title of the public in and to such land and buildings as have been apparently dedicated but for which no formal acceptance appears of record: Provided, only, That the court is satisfied upon hearing the evidence that there is no acceptance by implication arising out of public user or otherwise, the court shall also determine the consideration, if any, to be paid to the political subdivision.

The Kardon Park case reinforced that municipalities are **strictly prohibited from conveying public lands to an entity or person for private use without going through Orphans Court.**

The Kardon Park Case says the following regarding easements:

- “there can be no alienation of such lands in any form to a private developer unless the orphans court determines pursuant to the DDPA that it is not practical to continue their use as a public park”
- “we interpret the use of the phrase ‘all lands’ as prohibiting a municipality from approving use of **any** the land held in public trust for a purpose other than the public purpose for which it was dedicated, absent judicial approval...the requirements apply...even if the municipality seeks to divert but a small portion of the property...**applies to portions of the property which will be used for stormwater, utility, and maintenance easements.**”

In regard to the issue of easements (stormwater, utility, maintenance, etc.), if the easements are serving the public land/park and the intended use, then they should be deemed consistent with the DDPA. If they are serving a private interest in anyway then the policy below applies.

POLICY

- A. The Bureau of Recreation and Conservation will uphold its responsibility under both the Environmental Rights Amendment and the Donated and Dedicated Property Act. The Bureau will do this in the execution of grant making responsibilities, project management responsibilities and stewardship efforts.
- B. In regard to the Donated and Dedicated Property Act, the Bureau of Recreation and Conservation will advise municipalities that orphans court approval is required when any public land is proposed for conversion to a private use. Further, when it comes to staffs’ attention that public land is being used for private purposes, or public purpose inconsistent with the original purposes for which the land was secured, staff have the responsibility to inform the municipality that they should consult with their counsel/attorney to determine their legal requirement under the DDPA. If state or state administered federal grant funding was used to acquire and/or develop the public land, the municipality must also comply with the Bureau of Recreation and Conservation Policy on “Conversion of Property Interests Acquired or Developed with State Funding through the Department of Conservation and Natural Resources and/or the “Conversion of Property Interests Acquired or Developed with Federal Land and Water Conservation Funds.”

- C. DCNR will continue to support planning efforts for park improvements, including green infrastructure and stormwater management only to the extent 1) that the improvements relate to managing stormwater from the site – on-site and 2) that the improvements are necessary to maintain the recreation/recreation investments on the site.

DISCLAIMER

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DCNR to give the rules in these policies that weight or deference. This document establishes the framework within which DCNR will exercise its administrative discretion in the future.

PAGE LENGTH

3 pages

EFFECTIVE DATE

Immediately. This policy is to be reviewed and updated every year.

EXPIRATION

This policy remains in effect until revised or rescinded.

Tom Ford, Bureau Director

10/24/22

Name/Title of Bureau or Office Director

Date