

Parks in Perpetuity

The Protections Provided to Parks and Other Public Open Spaces Under Pennsylvania Law



Parks and other public open spaces deliver tremendous benefits to the public and provide a crucial foundation for building, maintaining, and renewing communities. People rely on the permanence of these civic assets in making decisions on where to live and work. Thus, it is no wonder that Pennsylvania law affords great protections to parks from sale or conversion to non-public uses by the municipal governments responsible for their care. This guide describes these protections in brief.

Parks Are a Public Trust.....	1
Donated or Dedicated Property Act.....	1
Pennsylvania Constitution.....	2
Open Space Act	3
Restrictive Covenants Associated with State Grants.....	3

Parks Are a Public Trust

For more than 200 years, Pennsylvanians have relied on parks, squares, and other community open spaces held and stewarded by government for the benefit of the public.¹ Every day in the Commonwealth, people make decisions on where to live and work based on proximity to these public lands, which they see as stable, reliable places of comfort, rest, and assurance in their everyday lives. People expect that their parks will endure.

This expectation is not unfounded; rather, it is grounded in centuries of common law²—most specifically in the public trust doctrine, which views parks as being held in trust by government for the public benefit. Government is not free to manage and dispose of these lands as if it were a person free of obligations to others; rather, the public owns the land and the government’s role is to serve

as the land’s caretaker to ensure that the public can forever enjoy its benefits.

Donated or Dedicated Property Act

In Pennsylvania, this common law view was both codified and modified in the 1959 law commonly referred to as the *Donated or Dedicated Property Act* or DDPA.³ The DDPA applies to all real estate interests donated to political subdivisions⁴ for use as public facilities⁵ or dedicated for public use, whether or not there is a formal record of the political subdivision’s acceptance of the dedication.⁶

The DDPA provides that the donated or dedicated property must stay in trust—its original use must continue—unless the use “is no longer practicable or possible and has ceased to serve the public interest.” If a local government wishes to argue that this is the case, it may apply to the county court of common pleas (in some counties the orphans’ court) for relief.⁷ If it does so, the DDPA provides that residents have the right to defend the public trust before the court.

In the event the court agrees that park use “is no longer practicable or possible and has ceased to serve the public

¹ This guide will use the word park as a catch-all term for all the variety of open spaces held by government that provide conservation, recreation, and aesthetic benefits to the public.

² The common law is a body of law derived from centuries of court decisions. It stands in contrast to statutory law, which is law created by legislative bodies.

³ The act of December 15, 1959 P.L. 1772, 53 P.S. §§3381- 3386

⁴ A political subdivision commonly refers to a county, city, township, or other municipality having legislative powers.

⁵ §1(3) of the DDPA states that: “‘Public facility’ shall mean without limitation any park, theatre, open air theatre, square, museum, library, concert hall, recreation facility or other public use.”

⁶ *In re Erie Golf Course*, 605 Pa. 484, 992 A.2d 75 (2010).

⁷ §4 of the DDPA.

interest,” the municipality will still be required to replace the lands leaving the public trust with property of equal size and value for the same purpose or to use any proceeds of sale for the same purpose. In other words, the municipality cannot sell off a park to raise cash for just any purpose; proceeds would have to be directed back into acquiring new parkland.

If the use of a public facility no longer makes sense anywhere, the DDPA provides for addressing other public purposes. However, this is likely only relevant regarding non-park public facilities provided for in the DDPA, e.g., museums, libraries, concert halls. In any case, the Pennsylvania Constitution also prohibits public natural resources from being diminished. (See the Pennsylvania Constitution section below.)

Is It Actually a Park?

To be clear, the DDPA does not require formal acceptance by a municipality of a donation or offer of dedication of land for park purposes for its protections to apply. An informal acceptance is adequate. But what constitutes an informal dedication? The statute provides no hard and fast rules. Each court will weigh the facts and make its own judgment. Factors suggesting that an informal acceptance has occurred include the posting of park signs, the referencing of the land as a “park” in municipal publications, the installation of park facilities, or the offering of park programs on the land. Any one of these or other factors could be enough—or not. Again, each court will have its own view.

Creating Clarity

Until recently, Pennsylvania municipalities lacked a standard instrument for formally dedicating park land. This resulted in wide variations in practice from municipality to municipality, most notably that formal dedications often appear absent or lost to time. This creates gray area in determining: (1) whether in fact land has been informally dedicated for park or other open space purposes and (2) if

informally or formally dedicated, whether a particular government action affecting the land is allowable.

To reduce risks of confusion, misunderstanding, and ill will regarding acceptable and non-acceptable uses of land held by a municipality or county, the local government may want to make a practice of formally dedicating lands it intends to hold in trust for the public and, at that time, explicitly stating any reservations, exceptions, or limitations applicable to the dedication.

WeConservePA publishes three variations of a [Model Declaration of Public Trust](#) (2018) to help local governments in accomplishing this. The model includes options to exclude portions of the land from the dedication and detail the activities, uses, facilities, and improvements that are considered consistent with the public purposes.

Pennsylvania Constitution

Article 1 of the Pennsylvania Constitution—the *Declaration of Rights*—is the state’s bill of rights for the people. It sets forth rights to free speech, trial by jury, bearing arms, and religious freedom. It also sets forth environmental rights. Section 27, entitled *Natural resources and the public estate*, reads as follows:

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 Constitution places a fiduciary duty on the Commonwealth to conserve and maintain Pennsylvania’s public natural resources for the people.⁸ This obligation applies both to state government and local governments. Public lands are owned by the people—not government; government’s role is to conserve and maintain the lands. Subject to whatever contractual and other obligations that might exist, government may freely choose to sell off a

⁸ See the Pennsylvania Supreme Court’s ruling, [Pennsylvania Environmental Defense Foundation v. Commonwealth](#), 161 A.2d 911 (Pa.

2017), No. 10 MAP 2015, for an explanation of the public trust obligations placed on government in regard to public natural resources.

municipal building, sewer plant, or maintenance truck to fund other activities or for other purposes. It does not have this discretion with parks and other public lands:

- First, the Donated or Dedicated Property Act requires that a government prove to the court that the park use “is no longer practicable or possible and has ceased to serve the public interest.” This in and of itself is a challenging hurdle.
- Second, the Constitution blocks government from diminishing public natural resources and places fiduciary duties upon government regarding these resources. In other words, in the unlikely event that a government could liquidate a park in accordance with DDPA rules, it would have an obligation to invest all of the proceeds into replacing the lost public natural resources per Constitutional (and DDPA) requirements.

Open Space Act

Lands acquired by municipal government *using open space tax revenues* established by public referendum enjoy another layer of protection. Pennsylvania’s open space act⁹ provides that before local government officials can dispose of such open space property interests, they must first receive approval by a majority of voters in an election regarding the specific interests to be disposed.

Restrictive Covenants Associated with State Grants

Many county and local municipal park properties are subject to restrictive covenants limiting use of the land to recreation and conservation purposes, the covenants having been imposed as a condition of the local government receiving state grant funds for acquisition and development of the land. The statutes authorizing these grants and requiring these restrictive covenants also establish

⁹ Act of January 19, 1968, P.L. 992, No. 442, 32 P.S. § 5001 *et seq.*, as amended. Its full title is “An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses.”

mechanisms for the state to release the restrictions. The question had existed as to whether the state’s release of restrictions eliminated the need to follow the requirements and approval process set forth in the Donated or Dedicated Property Act for removing land from the public trust. This question was answered in 2017, at least in regard to properties that benefited from grants under the Project 70 Land Acquisition and Borrowing Act. The Pennsylvania Supreme Court found that the Pennsylvania General Assembly’s approval of the release of restrictions did not obviate the application of the DDPA.¹⁰



The latest version of this guide and related resources are posted at WeConservePA.org.

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¹⁰ See the Pennsylvania Supreme Court’s opinion, decided June 20, 2017, in *Downingtown Borough (Friends of Kardon Park, Apts)*, 161 A.3d (Pa. 2017), 12-23 MAP 2016.