

THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION HAS BEEN PUBLISHED IN THE JANUARY 3, 2006 NEW JERSEY REGISTER AT 38 N.J.R. 223. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the requirements of this section is void and of no legal effect.

7:36-25.6 Change in purpose or use of funded or unfunded parkland

(a) A local government unit or nonprofit may change the recreation and conservation purpose or use for which funded or unfunded parkland is being used to another recreation or conservation purpose or use, including, but not limited to, development of the lands for public outdoor recreation, or construction by a local government unit of a building or other structure on unfunded parkland for public indoor recreation, in accordance with the following procedures:

1. The local government unit or nonprofit shall hold at least one public hearing on the proposed change in purpose or use at least 90 days prior to final approval of the change in purpose or use or proposed construction by the local government unit or nonprofit. The public hearing shall be held on a weekday in the evening in the municipality in which the parkland that is the subject of the proposed change in purpose or use is located. If the parkland is located in more than one municipality or the nonprofit is a regional nonprofit, the public hearing shall be held at a central location approved in advance by the Department within the county or region served by the local government unit or nonprofit. The local government unit or nonprofit shall produce a transcript of the public hearing for submission to the Department. The local government unit or nonprofit shall provide public notice of the hearing as follows:

i. At least 30 days prior to the hearing, the local government unit or nonprofit shall:

(1) At its option, publish a legal notice of the hearing in the official newspaper(s) of the municipality(ies) in which the parkland is located and, if the local government unit is a county or the nonprofit is a regional nonprofit, also in a local newspaper of general interest and circulation;

(2) Post notice of the hearing on its official web site (if any) in the same manner as other public hearing notices are posted;

(3) Provide written notice of hearing to Green Acres, the governing body, planning board(s), environmental commission(s) and open space advisory committee(s) of the municipality(ies) in which the parkland is located, if any, and, if the

local government unit is a county, also to the county governing body, county planning board, county environmental commission and county open space advisory committee, if any; and

(4) Post and maintain in a legible condition until the public comment period is concluded under (a)1iii(4) below, a sign on the parkland that is the subject of the proposed change in purpose or use or in other prominent location(s) approved by the Department. Such sign shall advise the public of the proposed change in purpose or use, the public hearing on the proposed change in purpose or use and the opportunity for public comment on the proposed change in purpose or use. Such sign shall be of sufficient size and visibility and contain sufficient detail as to inform the general public of the proposed change in purpose or use and the method by which the public may obtain information about such proposed change, and shall be subject to the Department's approval;

ii. At least 15 days prior to the hearing, the local government unit or nonprofit shall publish a display ad in the official newspaper(s) of the municipality(ies) in which the parkland that is the subject of the proposed change in purpose or use is located and, if the local government unit is a county or the nonprofit is a regional nonprofit, also in a local newspaper of general interest and circulation; and

iii. The notices and advertisements required under (a)1i and ii above shall include the following information:

(1) The name of the local government unit or nonprofit and the date, time and location of the public hearing;

(2) A general description of the proposed change of purpose or use;

(3) The street address (if available), municipality, county, tax map block and lot and size of the land(s) for which the change in purpose or use or construction is proposed; and

(4) A statement inviting participation in the public hearing and notifying the public that, in the alternative, written comments on the proposed change or purpose or use may be submitted to the local government unit or nonprofit during a public comment period that will end on the date that is two weeks after the hearing date. The statement shall provide an address for submittal of written comments

THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION HAS BEEN PUBLISHED IN THE JANUARY 3, 2006 NEW JERSEY REGISTER AT 38 N.J.R. 223. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

to the local government unit or nonprofit and shall require that copies of any written comments also be sent to:

New Jersey Department of Environmental Protection
Green Acres Program
Bureau of Legal Services and Stewardship
PO Box 412
Trenton, New Jersey 08625-0412

2. Within 60 days of the close of the public comment period for any public hearing to be held under (a)1 above, the local government unit or nonprofit shall provide the Department with proof of publication of the notices of public hearing if any, required under (a)1i(1) above; proof of publication of the display ad required under (a)1ii above; a dated copy of the posting required under (a)1i(2) above (if applicable); copies of and proof of mailing of the notices required under (a)1i(3) above; and proof of the posting and maintenance of a sign as required under (a)1i(4) above;

3. Within 90 days after approving the proposed change in purpose or use or proposed construction, the local government unit or nonprofit shall provide the Department with written proof that one or more public hearings were held under (a)1 above, including a copy of the transcript required by (a)1 above; and

4. Within 90 days after changing the purpose or use of the funded or unfunded parkland or commencing construction of a structure or building for public indoor recreation on unfunded parkland, the local government unit or nonprofit shall provide the Department with written notice of the change in purpose or use or of the commencement of construction.

(b) In addition to meeting the public notice and hearing requirements listed in (a) above, a local government unit or nonprofit must obtain the written approval of the Department before it may impose any perpetual restriction, such as, but not limited to, a deed restriction, covenant or easement, on funded parkland to prohibit the development or use of the parkland for one or more recreation purposes.

(c) For the purposes of this section, a change in recreation and conservation purpose or use of parkland shall include:

1. The construction of recreation and conservation facilities, such as athletic fields or playgrounds, on undeveloped parkland or an undeveloped portion of parkland;

2. On funded parkland, the conversion of buildings originally acquired or constructed in support of recreation and conservation purposes to indoor recreation uses or purposes; and

3. The imposition of restrictions, through regulation, ordinance or other legal mechanism, intended to prohibit the development or use of funded or unfunded parkland for one or more recreation purposes. The imposition of perpetual restrictions on funded parkland also requires written Department approval under (b) above.

(d) For the purposes of this section, a change in recreation and conservation purpose or use of parkland shall not include:

1. The replacement of existing recreation and conservation development or facilities with development or facilities for another recreation and conservation purpose or use, or the renovation or repair of existing facilities, as long as such replacement, renovation or repair involves less than one-quarter acre of additional permanent disturbance of parkland;

2. The use of an existing structure on funded or unfunded parkland for another recreation or conservation purpose, as long as no expansion of the structure is proposed;

3. The construction of additional support structures, such as bleachers, concession stands, picnic shelters or lighting towers, within the boundary of an existing developed recreation area, in order to enhance the existing purpose or use of that area;

4. Use of undeveloped parkland for short-term events such as festivals, carnivals or parades;

5. Implementation of natural resource management techniques and activities on funded or unfunded parkland, such as deer management, fishing controls or invasive species controls; or

6. The construction of recreation and conservation facilities identified by the local government unit or nonprofit in an approved application for Green Acres funding for acquisition or development of parkland.

(e) The notices and public hearing required pursuant to this section may be combined by the local government unit with public notices and hearings conducted for approval of a municipal or county master plan, parkland site master plan, municipal or county park master plan, application for municipal or county open space funding or approval of a

THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION HAS BEEN PUBLISHED IN THE JANUARY 3, 2006 NEW JERSEY REGISTER AT 38 N.J.R. 223. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

municipal or county budget, as long as such notices and hearing comply with the requirements of this section.

(f) In addition to satisfying the requirements of this section, the local government unit or nonprofit shall obtain all other applicable Federal, State, county or local approvals for the proposed change in recreation and conservation purpose or use of parkland.

7:36-25.7 Construction of buildings on funded parkland; use of existing buildings on funded parkland

(a) A local government unit or nonprofit shall not construct a building on funded parkland unless the building directly supports the use of the funded parkland for recreation and conservation purposes, the local government unit or nonprofit complies with the change in use procedures at N.J.A.C. 7:36-25.6 (as applicable), and the local government unit or nonprofit obtains prior approval from the Department in accordance with (b) and (c) below or as part of a Green Acres-funded development project under N.J.A.C. 7:36-13.3 or 23.3. Buildings that are considered to directly support the use of parkland for recreation and conservation purposes and that may be constructed under this section include, for example; park equipment storage sheds, restrooms, concession stands, locker rooms, interpretive centers, park administration offices, and maintenance facilities for the parkland.

(b) A local government unit or nonprofit seeking the Department's approval of the proposed construction of a building on funded parkland shall, at least 90 days before approval of the proposed construction by its governing body, submit to Green Acres a written request for approval of the proposed construction. The request shall include a statement of the purpose of the construction, a narrative description of the proposed construction, a site map, and a conceptual drawing of the building (with interior dimensions and uses labeled).

(c) The Department shall notify the local government unit or nonprofit in writing of its approval or disapproval of the proposed construction within 60 days of Green Acres' receipt of the request or shall request more information from the local government unit or nonprofit. Any approval issued by the Department under this subsection may include conditions as appropriate to protect the natural resource values and recreation functionality of the funded parkland, to preserve public access to the funded parkland and to minimize adverse impacts to adjacent properties.

(d) The local government unit or nonprofit may use a

portion of any building constructed on funded parkland under this section for public indoor recreation activities, such as arts and crafts and games (including court games), or as a public meeting or multipurpose space, provided the primary use of the building directly supports the use of the funded parkland for recreation and conservation purposes. The use of the building for public indoor recreation activities or public meeting or multipurpose space shall take up no more than 25 percent of the square footage of the building.

(e) A local government unit or nonprofit may construct a structure to enclose an outdoor swimming pool or ice skating rink that existed as of January 3, 2006, subject to the following:

1. The local government unit or nonprofit shall comply with the change in use procedures at N.J.A.C. 7:36-25.6;
2. The local government unit or nonprofit shall obtain the prior approval of the Department under (b) above;
3. Construction of additional facilities as part of the structure, such as space for other recreation and conservation activities, space for activities in support of the swimming pool or ice skating rink or space for activities in support of the parkland parcel on which the swimming pool or ice skating rink is located, shall be subject to the Department's review and approval under (a) through (d) above; and
4. Structures approved by the Department under this subsection are not eligible for Green Acres funding.

(f) A local government unit or nonprofit may use a building that existed on funded parkland at the time of receipt of Green Acres funding as a new community center, recreation center or museum, provided the local government unit or nonprofit complies with the change in use procedures at N.J.A.C. 7:36-25.6 and obtains the prior written approval of the Department under (f)1 and 2 below.

1. A local government unit or nonprofit seeking the Department's approval of the use of a building that existed on funded parkland at the time of receipt of Green Acres funding as a new community center, recreation center or museum shall, at least 90 days before the anticipated change in use, submit to the Department a written request for approval of the use, a narrative description of the intended use, a site map, and a conceptual drawing of the building (with interior dimensions and uses labeled).
2. The Department shall notify the local government unit or nonprofit in writing of its approval or disapproval

THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION HAS BEEN PUBLISHED IN THE JANUARY 3, 2006 NEW JERSEY REGISTER AT 38 N.J.R. 223. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

of the proposed use within 60 days of its receipt of the request or shall request more information from the local government unit or nonprofit. In determining whether to issue such approval, the Department shall give particular consideration to whether alternative uses of the building that support recreation and conservation purposes may be reasonably implemented by the local government unit or nonprofit and whether the use of the building as proposed will have a significant adverse impact on the use of the surrounding parkland by the public. Any approval issued by the Department under this subparagraph may include conditions as appropriate to protect the natural resource values and recreational functionality of the funded parkland, to preserve public access to the funded parkland, and to minimize adverse impacts on adjacent properties.

(g) A local government unit or nonprofit may use a building that existed on funded parkland as of the time of receipt of Green Acres funding as a caretaker or park employee residence under a lease or other agreement approved in advance by the Department under N.J.A.C. 7:36-25.13.

7:36-25.8 Construction of buildings on unfunded parkland; use of buildings on unfunded parkland

(a) A local government unit shall not construct a building on unfunded parkland unless the building directly supports the use of the parkland for recreation and conservation purposes or is to be used for public indoor recreation as defined at N.J.A.C. 7:36-2.1, and the local government unit complies with the change in use procedures at N.J.A.C. 7:36-25.6 (as applicable).

(b) A local government unit may use a building that existed on unfunded parkland as of the time of receipt of Green Acres funding as a new community center, recreation center or museum, provided the local government unit or nonprofit complies with the change in use procedures at N.J.A.C. 7:36-25.6.

(c) A local government unit may use a building that existed on unfunded parkland as of the time of receipt of Green Acres funding as a caretaker or park employee residence under a lease or other agreement approved in advance by the Department under N.J.A.C. 7:36-25.13.

7:36-25.9 Fees for use of funded parkland and recreation and conservation facilities on funded parkland

(a) A local government unit or nonprofit may establish a fee schedule for the use of funded parkland or for the use of recreation and conservation facilities on funded

parkland, provided that the fees conform with (b) and (c) below.

(b) The fees shall not be so excessive as to discourage reasonable public access.

(c) The fees may be established in the following categories:

1. Yearly, seasonal, monthly, weekly, daily, single use or hourly. However, if the local government unit or nonprofit establishes yearly, seasonal, monthly and/or weekly fees, it shall also establish daily or single use fees;
2. Individual, group, team or family;
3. Local government unit resident or non-resident. However, the fee charged to a non-resident who lives in the State shall not be greater than two times the fee charged to a local government unit resident;
4. Handicapped, senior citizen, youth or student; and
5. Nonprofit, for profit or corporate.

(d) A local government unit or nonprofit shall use any fees it collects for the use of funded parkland or a recreation and conservation facility on funded parkland for operating, maintenance, or capital expenses related to its funded parkland or to its recreation program as a whole. A local government unit shall establish a separate account to serve as a repository for the fees, if permitted to do so by law.

(e) The Department reserves the right to request that an audit be conducted and an audit report submitted in conformance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156 (31 U.S.C. § § 7501 et seq.), Federal Office of Management and Budget (OMB) Circular A-133: "Audits of States Local Governments, and Non-Profit Organizations," incorporated herein by reference, and State OMB Circular 04-04: "Single Audit Policy for Recipients of Federal Grants, State Grants, and State Aid," incorporated herein by reference, showing the use of collected fees.

(f) The Department shall review and approve or disapprove fee schedules established under this section and the management and use of the fees collected as part of its inspection of funded parkland under N.J.A.C. 7:36-25.1(c). The Department may also investigate the establishment, management and use of fees for funded parkland in response to complaints from the public about noncompliance with this section. The Department reserves the right to request additional information and justification