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CHAPTER 5B
OPEN LANDS MANAGEMENT

Authority

N.J.S.A. 13:1B-3; 13:1B-15.100 through 13:1B-15.107; 13:1B-15.133 through 13:1B-15.145; and 13:16-1 et seq.

Source and Effective Date

R.1993 d.359, effective June 24, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

Executive Order No. 66(1978) Expiration Date

Chapter 5B, Open Lands Management, expires on June 24, 1998.

Chapter Historical Note

Chapter 5B, Open Lands Management, was recodified from N.J.A.C. 7:2-12 by R.1991 d.487, effective October 7, 1991. See: 22 N.J.R. 2652(a), 23 N.J.R. 3005(a). Pursuant to Executive Order No. 66(1978), Chapter 5B was readopted as R.1993 d.359. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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SUBCHAPTER 1. OPEN LANDS MANAGEMENT**7:5B-1.1 Purpose and scope**

This subchapter implements P.L. 1983, Chapter 560 (N.J.S.A. 13:1B-15.133 et seq.) which directs the Department of Environmental Protection to establish the Open Lands Management Program and provide financial assistance to private landowners for the development and maintenance of their lands for public recreational purposes.

7:5B-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Access covenant” means an agreement which guarantees public access for a specified period of time, for specified recreational purposes to a specified parcel or parcels of land in return for appropriate and reasonable financial assistance or in kind services, or both, as determined by the Commissioner.

“Act” means the Open Lands Management Act, N.J.S.A. 13:1B-15.133 et seq., as amended.

“Agent” means an individual or organization designated by one or multiple property owners involved in a single project to represent them in all transactions with the Department.

“Application” means a request form for financial assistance.

“Commissioner” means the Commissioner of the Department or his or her designated representative.

“Department” means the Department of Environmental Protection and Energy.

“Fee simple” means direct ownership of real property without condition or limitation.

“Program” means the Open Lands Management Program.

“Program income” means income earned by the landowner from the collection of fees for the use of the project area during the period of time in which the access covenant is in effect.

“Project” means those activities described in the application submitted in accordance with the provisions of this subchapter and approved by the Department for the development and maintenance of specific lands for recreational purposes.

“Real Property” means land and that which is affixed to it.

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

7:5B-1.3 General provisions

Any person, including but not necessarily limited to individuals, corporations, clubs, associations and non profit organizations, who owns real property in fee simple, may apply for financial assistance to develop and maintain the real property for certain public recreational purposes as hereinafter provided.

7:5B-1.4 Eligible real property

(a) To be eligible for financial assistance, real property shall:

1. Include an open space which is not dominated by buildings, structures or other man-made facilities;

2. Be free of any public health hazards which would affect, or tend to affect, the health, safety and welfare of those using the property; and

3. Have no lien or other cloud against the title which would interfere or tend to interfere with the use and enjoyment of the property for the purpose intended by the program.

7:5B-1.5 Projects eligible for financial assistance

(a) Financial assistance is available for any of the following:

1. Installation, repair or replacement of protective structures, such as fencing, water bars, berms or stiles.

2. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking areas, access roads, trails, signs, picnic areas, rest areas, portable sanitary facilities and boat or canoe launch areas;

3. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas;

4. Repair or restoration of any vandalized crops or improvements located on, or adjacent to agricultural land which is subject to an access covenant provided that the damage occurred as a result of the public use;

5. Installation, repair, replacement and maintenance of litter and trash control facilities;

6. Installation, repair or replacement of facilities which provide or improve recreational access for the handicapped;

7. Purchase of additional liability insurance made necessary because of the use of the property by the public; however, the amount of funding for liability insurance shall only be allowed as an eligible expense if it does not constitute more than 50 percent of the total project costs or \$3,000, whichever is less;

8. Filing fees for access covenants and associated legal fees;

9. Professional fees for design, survey and construction of a project in accordance with the approved application; and

10. Installation of permanent utilities which are necessary to enable passive recreational activities to be conducted as part of a project; however, the amount of funding for installation of permanent utilities shall not exceed 50 percent of all project costs, or \$3,000, whichever is less.

(b) Financial assistance is available for other activities, provided that they are directly related to recreational activities listed under N.J.A.C. 7:5B-1.6(b).

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

7:5B-1.6 Recreational activities

(a) Applications for financial assistance shall include a full description of the recreational activities and uses to which the real property will be put.

(b) The following types of activities are encouraged to be included in projects for which financial assistance will be provided:

1. Trail uses for hiking, jogging, nature observation, ski-touring, bicycling, horseback riding, and off-road motorized vehicles;

2. Water-related activities including boating, canoeing, swimming, fishing, and ice-skating;

3. Area-wide outdoor recreational uses including primitive camping, hunting, orienteering, and picnicking;

4. Outdoor recreational activities promoting knowledge and appreciation of the State's earth, water and biotic resources.

(c) The following types of activities shall not be eligible for financial assistance:

1. Court and field games including but not necessarily limited to baseball, basketball, football, soccer and softball;

2. Firearm or archery ranges;

3. Motor vehicle events including but not limited to automobile or motorcycle racing; and

4. Any activity requiring major construction or clearing of land, paving with impervious surface material or enclosed structures.

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

7:5B-1.7 Application and review procedures

(a) The landowner, or the landowner's agent designated by a properly executed Power of Attorney, shall submit an application for financial assistance on a form provided by the Department. In the case of multiple landowners, one agent designated by all such landowners shall submit an application.

1. Any person may, prior to the submission of a formal application pursuant to this subchapter, obtain an advisory opinion from the Department regarding the likely acceptability of a proposed project. Such an advisory opinion shall not constitute a determination of eligibility which will be made only upon review of a complete application submitted pursuant to these rules.

2. If an applicant does not submit a complete application, the Department shall send notice to the applicant within five working days of receipt of the application. The notice shall describe the information missing from the application and shall contain a deadline for the applicant to submit the missing information to the Department for consideration. If the applicant does not supplement its application by the deadline established by the Department, the Department may deny the application.

(b) The Department shall notify State and local agencies with jurisdiction over the real property that it has received an application for financial assistance under this chapter. The notice shall include a brief description of the proposal, the location of the real property by lot and block number, and a deadline for the State or local agency to submit comments on the proposal to the Department for consideration.

(c) The Department may at any time during its review or at the request of the applicant meet with the applicant to discuss the proposed project, inspect the property and recommend and changes it deems necessary.

(d) Within 30 days of receipt of the complete application, the Department will either deny the application, citing the reasons for denial, or conditionally approve the application.

(e) Final approval of the application shall be specifically contingent upon compliance by the applicant with the following terms and conditions:

1. Receipt by the landowner of all permits which are necessary in order to implement the proposed project as described in the conditionally approved application;
2. Execution by the Department and the landowner of an agreement in accordance with the provisions of N.J.A.C. 7:5B-1.9, which sets forth the substantive terms and conditions by which all financial assistance will be disbursed;
3. Execution by the landowner and the Department of an access covenant in accordance with the provisions of N.J.A.C. 7:5B-1.10, which assures public access for a specified time period; and
4. Submittal by the applicant, of any additional information which the Department may require.

(f) An applicant may submit only one application for funding per year for the same property.

(g) The Department may establish a maximum funding amount and a deadline for accepting applications for financial assistance under this chapter through publication of notice in the New Jersey Register.

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

7:5B-1.8 Factors supporting grant approval

(a) The factors which the Department will consider in its determination of eligibility of a proposed project include, but are not limited to, the following:

1. Project allows for more than one encouraged recreational use;
2. Project provides ease of operation and maintenance;
3. Project involves the protection and appreciation of natural resources, including the use of conservation easements for preserving open space;
4. Project provides for long term use and public access;
5. Site is currently used by the public for an encouraged recreational use;
6. There is a lack of similar facilities within the immediate area;
7. Project minimizes new land clearing to an amount appropriate for the proposed use;
8. Project use does not distract from or have a negative impact on surrounding areas;
9. Site is an integral part of a larger public recreational activity.

(b) Preference in granting approval for funding shall be given to applicants who have not received funding in the previous fiscal year.

(c) Landowners who have received Open Lands Management funding in the previous fiscal year for any single property may reapply for further funding in the next fiscal year. However, funding shall be conditioned upon the following:

1. The Department may grant up to 30 percent of the original funding, but not more than \$2,500, for the repair or replacement of facilities previously funded under the Act that have been damaged as a result of direct usage under the program, operational problems, vandalism or natural causes; and
2. The Department will give preference to projects seeking funding for new recreational activities at previously funded properties over projects seeking funding for existing recreational uses.

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

7:5B-1.9 Terms of financial assistance

(a) All financial assistance granted pursuant to this chapter shall be disbursed in accordance with the terms and conditions of an agreement executed by the Department and the landowner for this purpose on a form provided by

the Department. The agreement shall contain the following:

1. Amount of grant;
 2. The conditionally approved application incorporated by reference, which sets forth the proposed activities for which financial assistance is being provided;
 3. A schedule setting forth the time requirements for the completion of each specific proposed activity and setting forth the maximum amount of the grant to be paid to the applicant upon such completion; and
 4. Any other requirements which the Department deems necessary.
- (b) Project approval and the award of all grant monies shall be conditioned upon compliance, by the landowner and applicant, if other than the landowner, with the terms of the agreement and the access covenant and with all applicable local, county, regional and State laws, rules and regulations.
- (c) All sums shall be made payable to the landowner or landowners or the designated agent.
- (d) Financial assistance shall be awarded in a sum to be determined by the Department. The amount to be awarded shall be determined by the actual cost of supplies and labor, based on cost documentation provided to the Department by the applicant.
- (e) The grantee shall maintain, in a manner that is consistent with good business practice, records of all expenditures of grant money for a period of three years after the last expenditure is made and shall make such records available for audit by the Department or its authorized representatives at all reasonable times.
- (f) Funding for additional or alternate work on an approved project shall only be provided after prior approval of the work by the Department.

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).

7:5B-1.10 Access covenant

- (a) The access covenant shall be a covenant executed by and between the Department and the landowner for a specified period of time as required by the Department, by which the landowner shall, in exchange for financial assistance or in-kind services from the Department in accordance with this subchapter, grant public access to specified parcels of real property for specified recreation activities.
- (b) The access covenant shall be recorded with the clerk of the county in which the real property is located along with the deed to the real property in the same manner as the deed was originally recorded. If there is more than one deed to the real property, then an original access covenant shall be recorded with each deed.

(c) The landowner shall maintain liability and property damage insurance for the period coinciding with the effective period of the access covenant with an insurance company registered to do business in the State of New Jersey in an amount not less than \$500,000 liability and property damage coverage. The Department may, in some cases, require a higher amount of insurance coverage if it determines that it is necessary.

(d) Facilities shall not be used for the sole purpose of the landowner or invited guests.

(e) The landowner may restrict the number, duration and frequency of visits so as not to exceed the capacity of the facility. Such restrictions shall be incorporated as part of the access covenant and shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

(f) Real property covered under the terms of the covenant shall not be diverted to other uses during the term of the access covenant without the prior approval of the Commissioner. Such change in status may cause termination of the covenant and reimbursement to be due to the Department of all or part of the grant monies awarded.

(g) Fees charged for admittance or use of facilities shall be reasonable, non-discriminatory and consistent with costs for maintenance and repair of the property.

(h) The landowner shall post and maintain signs supplied by the Department stating ownership of the area, allowed use, and appropriate rules of conduct.

(i) The Department may include additional conditions in the access covenant which would be specific to the particular use and location of the project.

(j) The covenant between the landowners and the Department shall run for a period of one or more years.

(k) If a landowner obtains additional funding for real property that is already subject to an access covenant under the Act and this chapter, the applicant shall execute a second access covenant for the property. The term of the access covenant shall be calculated in accordance with (j) above, and shall take effect upon the expiration of the existing covenant.

(l) The access covenant shall take effect upon the date the access covenant is recorded by the county clerk of the county in which the real property is located.

(m) The Department shall give the landowner at least one month's notice of the expiration of an access covenant executed under this section. At the landowner's option, the landowner may enter into an additional access covenant, conservation easement, or deed restriction to allow continued use of the funded property for public recreation purposes.

(n) A landowner may execute a conservation easement or deed restriction providing for permanent open space and passive recreational use of the real property in lieu of the access covenant required by this section.

Amended by R.1993 d.359, effective July 19, 1993.
See: 25 N.J.R. 1354(a), 25 N.J.R. 3153(a).