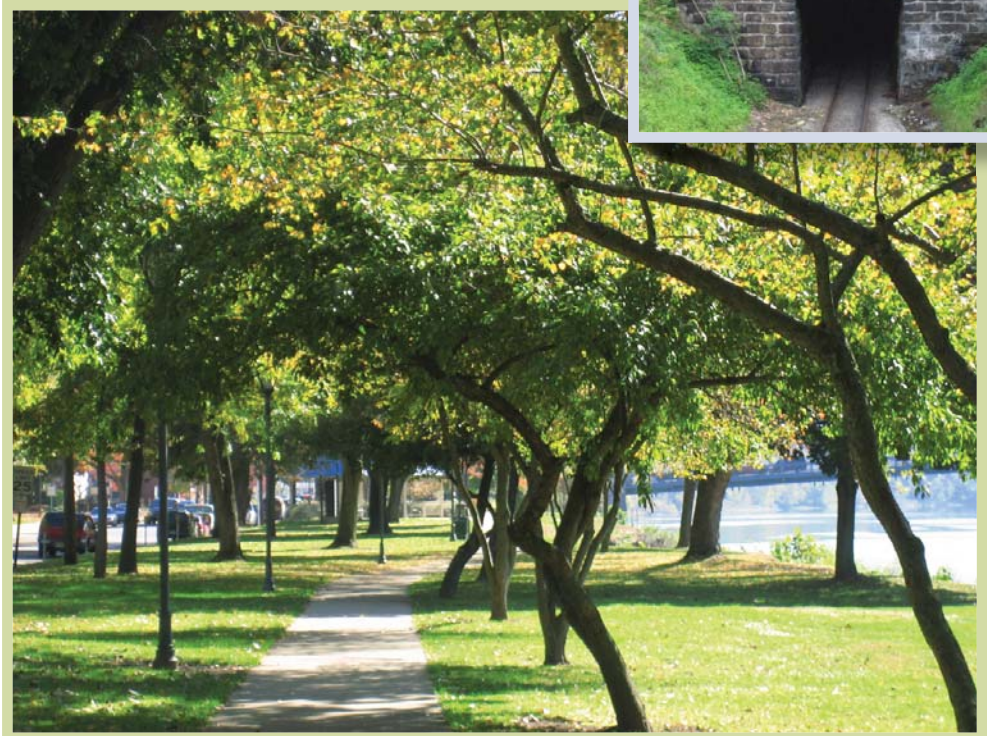


Armstrong County

APPENDICES

June 2009 BRC-TAG-12-222



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Appendix A: Park Inventory Matrix

REGION	MUNICIPALITY	FACILITY	Picnic Pavilion	Concession Stand	Baseball Field	Softball Field	Press Box	Bating Cage	Tennis Court	Basketball Court	Boce Court	Horse Shoe Court	Playground	Racquetball Court	Skate Park	Trail	Pond/Lake	Nature Center	Community Center	Volleyball Court	Volleyball Court-Sand	Football Field	Track	Gazebo	Maintenance Building	Camping grounds	Boat Launch	Ice Arena	Pool	Amphitheater	Bandstand	Soccer Field	Neighborhood Park Acreage	Community Park Acreage	Other acreage				
WEST	West Franklin Township	West Franklin Township Little League Fields	0	1	3	0	2	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4.5				
	Worthington Borough	Worthington Park	1	0	0	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3				
	Worthington Borough	Worthington/West Franklin Joint Municipal Complex	0	0	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4			
	East Franklin Township	West Hills Intermediate School	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	East Franklin Township	West Hills Primary School	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	West Kittanning Borough	Belmont Complex	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	West Kittanning Borough	Firehall Park	0	0	1	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4.884			
	Applewold Borough		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	North Buffalo Township	Ford City Community Ball Fields	0	2	3	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	12		
	Cadogan Township		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
	South Buffalo Township	Ball field area	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
	South Buffalo Township	South Buffalo Elementary School	0	0	2	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Freeport Borough	Freeport Kindergarten Center	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Freeport Borough	Freeport Junior High School	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Freeport Borough	Freeport Community Park	1	2	4	1	1	1	2	3	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	150	
	Freeport Borough	Second Street Playground	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	*	
	Freeport Borough	Laneville Section of the Butler-Freeport Trail	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Freeport Borough	James E. Swartz Memorial Field	0	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	*4.32	
	Freeport Borough	Riverside Park	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1.8	
			TOTAL	2	8	15	4	5	5	4	6	0	0	6	0	0	1	0	0	0	0	3	2	0	1	1	0	1	1	2	0	0	12	0	180.2	0			

REGION	MUNICIPALITY	FACILITY	Picnic Pavilion	Concession Stand	Baseball Field	Softball Field	Press Box	Batting Cage	Tennis Court	Basketball Court	Bocce Court	Horse Shoe Court	Playground	Racquetball Court	Skate Park	Trail	Pond/Lake	Nature Center	Community Center	Volleyball Court	Volleyball Court-Sand	Football Field	Track	Gazebo	Maintenance Building	Camping grounds	Boat Launch	Ice Arena	Pool	Amphitheater	Bandstand	Soccer Field	Neighborhood Park Acreage	Community Park Acreage	Other acreage	
CENTRAL	Rayburn Township	Canfield-Holmes Sanctuary	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	288	
	Kittanning Borough	Wilbur (Bib) Bowers Community Park	2	0	2	0	0	2	1	0	3	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	130	
	Kittanning Borough	Riverfront Park	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0	13		
	Kittanning Borough	John Whelan Park	1	0	0	0	0	3	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1.65	
	Kittanning Borough	Kittanning Senior High School	0	1	1	0	1	0	3	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Kittanning Borough	Kittanning Junior High School	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Manor Township	Crooked Creek Horse Park	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	97.5	
	Manorville Borough		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Ford City Borough	John B. Ford Memorial Park	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1.5
	Ford City Borough	Ford City Little League Fields	0	1	3	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
	Ford City Borough	Lenape Elementary School	0	0	0	0	0	0	0	2	0	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0
	Ford City Borough	Lenape Area Vo-Tech School	0	0	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	Ford Cliff Borough	Ford City High School Ball Fields	0	1	1	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0
			TOTAL	6	3	7	0	3	7	8	5	0	3	4	0	0	2	0	0	0	1	0	2	1	0	1	0	1	1	0	1	1	1	1.65	246	288

REGION	MUNICIPALITY	FACILITY	Picnic Pavilion	Concession Stand	Baseball Field	Softball Field	Press Box	Bating Cage	Tennis Court	Basketball Court	Boce Court	Horse Shoe Court	Playground	Racquetball Court	Skate Park	Trail	Pond/Lake	Nature Center	Community Center	Volleyball Court	Volleyball Court-Sand	Football Field	Track	Gazebo	Maintenance Building	Camping grounds	Boat Launch	Ice Arena	Pool	Amphitheater	Bandstand	Soccer Field	Neighborhood Park Acreage	Community Park Acreage	Other acreage	
SOUTH	Gilpin Township	Gilpin-Leechburg Park	6	0	3	1	2	0	2	1	0	1	2	0	0	1	0	0	0	0	0	0	0	0	1	0	0	0	1	0	0	0	0	23.99		
	Leechburg Borough	Leechburg-Veterans Memorial Field	0	1	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	4.5		
	Leechburg Borough	Leechburg Schools	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	Bethel Township		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	Parks Township	Laurel Point Elementary School	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
	Parks Township	Kepple Hill Park	1	0	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1		
	Parks Township	North Vandergrift Park	1	0	0	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1		
	Burrell Township	Township Building	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0			
	Kiskiminetas Township	Apollo Pool	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1		
	Kiskiminetas Township	Apollo Ridge High School	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0			
	Kiskiminetas Township	Apollo Ridge Elementary School	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
	Apollo Borough	Apollo Ridge School District	0	0	1	1	1	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0			
	Apollo Borough	Apollo - Owens Grove Park	3	0	0	0	0	1	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	4		
	Apollo Borough	Little League Baseball Field (Lions Field)	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2		
	Apollo Borough	Apollo-Ridge Football Stadium	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	8.61		
	Apollo Borough	Roaring Run	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	653		
	North Apollo Borough	Ronald Kerr Park	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.863			
	North Apollo Borough	Helen Clark Playground	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.063		
	Regional	Crooked Creek Lake	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	1	1	2	0	0	0	0	0	0	2664		
		TOTAL		15	3	6	3	4	0	6	5	0	1	8	0	0	3	1	1	0	0	0	2	2	2	2	1	3	0	2	0	0	2,916	44.1	3317	

Appendix B: *Armstrong County Park Inventories*

Appendix B - Armstrong County Park Inventories.xls

Armstrong County - Project Facilities Inventory and Analysis						
Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Northwest Planning Region						
Brady's Bend Township						
Brady' Bend						
Jim Kelly Youth Baseball Fields 5 acres Community Park Brady's Bend Township						
Jim Kelly Baseball Field Southeast Orientation	1	Black-capped "safety fence", dugouts, backstop, electronic score board, bleachers, equipment box	Fair	RF-200' LF-200' Base path-60'	No	Slopes to left field; grass in infield
Sean Baily Memorial Softball Field Northwest Orientation	1	Backstop, bleachers, dugouts	Poor	RF-105' LF-200' Base path-60'	No	Jim Kelly and Sean Baily fields share centerfield fences
Tennis Court	2	2 play courts, fenced, with asphalt surface	Poor	80'x90'	No	No nets; rusted fence; serious weed growth consuming the entire court, part of which is impassable
Playground	1	12 metal units	No safety audit conducted	1+ acre area, approx.	No	Enclosed by rusted fence
Pavilion	1	Wood structure; 3 picnic tables, concrete floor	Fair	10'x10'	No	
Brady's Bend Memorial Park 0.5 acres (estimate) Neighborhood Park Brady's Bend Township						
Pavilion	1	2 picnic tables, 3 benches, 1 grill, 1 flag pole, 1 monument	Good		No	A small memorial park dedicated in memory of those who died in the August 14, 1980 flood
Parker City						
Philips Municipal Park 12.71 acres Community Park City of Parker						
Baseball Field	1	Bleachers, benches, dugouts, full fencing	Good	RF-200' LF' 200' Base path-60-65'		Park is well maintained
Softball/Baseball Field	1	Bleachers, benches, dugouts, full fencing	Good	RF-300' LF-300' Base path-70'		
Baseball Field Concession Stand	1		Good	25' x 40'		
Playground	1	New modular units; safety mulch	See safety audit	40' x 50'		
Picnic Shelter	2	Timber frame; plastic coated tables	Good	25' x 40"		Grills
Basketball Court	1	Fencing, standards	Good	50' x 100'		
Tennis Court	1	Fencing, net	Good	50' x 125'		
Skateboard Park	1	Fencing	Good	80' x 100'		
Restrooms	2	Flush facilities, electricity	Good	15' x 25'		
Sugarcreek Township						
Sugarcreek Community Park 96.7 acres Community Park Sugarcreek Township						
Pond	1	Benches	Poor	40' dia.	No	Clogged with cattails
Pavilion (Nature Center)	1	Lights, 6 picnic tables, concrete floor	Good	15'x24'	No	Gravel approach levels to pad
Nature Center (Paul & Flora Mellish)	1	Porch; 8 windows	Good	30'x24'	No	No programming offered
Community Center	1	An enclosed building with windows	Good	40'x60'	Yes	
Nature Trail	1	Cut grass path leading into the woods	Fair		No	Unmarked

Appendix B - Armstrong County Park Inventories.xls

Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Sugarcreek Community Park						
96.7 acres	Community Park	Sugarcreek Township				
Playground	1	Picnic tables, covered benches, wooden car & truck units, swings, slides, tire swing, see-saw	No safety audit conducted		No	Wooden PCC-made units; each unit-area has a 4" PVC pipe perimeter/border around it
Bocce Court	1	Benches around; enclosed by a 6"x8" wooden border	Poor	9'x75'	No	Needs maintenance to reclaim the cut-out court area
Pavilion	1	Wooden structure; concrete pad, 15 picnic tables, lights	Good	25'x40'	No	
Gazebo	1	Concrete pad	Good	15' square	No	
Pavilion (Jolly Rodgers)	1		Fair	25'x40'	No	Presently used for storage of old picnic tables; renovation planned
Sitting Areas	5	Mulched areas under trees with benches	Good		No	Areas for resting and relaxing
Volleyball	1	Sand court, net, viewing benches; border with RxR ties	Fair	30'x60'	No	Sand grown-in with weeds
Pavilion (Harmon W. Shultz Memorial)	1	2 grills, 15 picnic tables	Good	25'x40'	No	Very well kept
Horseshoe Courts	4	4 cement pads with walkways; rain shelters over each post; spectator benches	Good	Regulation	No	
Pavilion (Lloyd & Dorothy Numaker)	1	Lights, 25 picnic tables, cement pad, 2 grills on pads w/ benches and a food-prep station	Good	30'x60'	Yes	Designed well
Football Field South to North Orientation	1	Fenced; PA booth, bleachers, speakers; crowned well	Good	Regulation	No	Used by midget football from East Brady, Karns City, and Sugarcreek; in very nice condition
Pavilion (Baseball Field)	2	6 picnic tables each; concrete pad	Good	15'x20'	No	
Concession	1		Good	24'x24'		Used for sports
Baseball Field #1 Northeast Orientation	1	Backstop; fencing all around; dugouts, benches, manual score board	Fair	RF-200' LF-200' Base path-60"	No	Infield full of weeds but, otherwise, in good shape
Baseball Field #2 Northeast Orientation	1	Backstop; fencing all around; dugouts, benches, manual score board	Poor	RF-307' LF-305' Base path-65"	No	Has safety issues, especially in the outfield with exposed bedrock
Basketball Standard	1	Gravel surface	Poor		No	Overgrown with weeds; soil dumping
Washington Township						
Washington Township Memorial Park						
30 acres (estimate)	Community Park	Washington Township				
Pavilion	1	10 picnic tables; concrete pad; wooden structure	Fair	30'x40'	No	Appears not often used
Pavilion (near playground)	1	15 picnic tables; concrete pad; wooden structure	Good	30'x70'	No	
Playground	2	Swing sets, climbing bars	See safety audit		No	Slide bent and laying on its side
Softball Field Southeast Orientation	1	Fencing, backstop, benches	Poor	RF-210' LF-200' Base path-60'	No	Old rusty fencing, unprotected player benches, infield engulfed with weeds and grass
Maintenance Building/Bathroom Combination	1		Fair	15'x30'	No	Newer condition

Appendix B - Armstrong County Park Inventories.xls

Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Northeast Planning Region						
Dayton Borough						
Dayton Fairgrounds	107 acres	Special Use	Dayton Borough			
Fairground		Grandstand, restrooms, picnic areas, free stage, bingo building, possie barn, horse show arena, race track, race horse barns, first aid station, dairy, carnival open-space area, camping area, parking area			No	see: daytonfair.com
Dayton Grove Park	0.5 acre	Neighborhood Park	Dayton Borough			
Playground	1	Various metal units spread-out, 4 see-saws, 3 spring riders, 2 swing units, mushroom climber, 3 benches, mulch base, sand box	See safety audit		No	Located behind Methodist Church, in "grove" of Oak trees
Pavilion	1	Cement pad, 5 picnic tables, 2 grills	Fair	12'x35'	No	Cracked cement pad
Memorial	1	Marble stone			NA	
Dayton Firehall Park	1.4 acres	Community Park	Dayton Borough			
Basketball Court	1	2 standards, full fencing, asphalt surface	Good	100'x100'	No	No lines, basketball to one side, open asphalt to the other side for "no-net" tennis
Playground	1	1 modular unit, 2 slides, 4-hole basketball, 2 swing sets, 1 preschool unit, 1 multi-domed unit w/ a swing between each beam	See safety audit		No	Has 2 ADA parking spaces
Pavilion	1	Cement pad, 1 grill, 2 picnic tables	Good	12'x12'	No	
Dayton Ball Field	7 acres	Community Park	Dayton Borough			
Baseball Field Northeast Orientation	1	Backstop, new dugouts on cement pad, bleachers, sand infield, portable outfield fence	Fair	RF-220' LF-220' Base path-60'	No	Located behind old high school; no baseline fencing; infield holds water; was a baseball field, converted for Little League use
Madison Township						
Madison Township Park	26 acres	Community Park	Madison Township			
Softball Field East Orientation	1	Backstop, bleachers, benches	Fair	RF- LF- Base path-60'	No	
Kitchen Building	1	Serving area to shelter, electric, propane gas	Good	10'x16'	No	
Picnic Shelter #1	1	Electric, 9 picnic tables	Good	24'x28'	No	
Picnic Shelter #2	1	Gravel floor, 1 picnic table	Good	12'x16'	No	
Basketball Court	1	1 backboard	Good	48'x48'	No	
Playground	1	1 small modular unit, free standing units	See safety audit		No	
Walking Trail	1	Dirt surface	Good	1/2 mile	No	
Parking	60+		Fair		No	

Appendix B - Armstrong County Park Inventories.xls

Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Mahoning Township						
Greenwall Community Park	8.5 acres	Community Park	Mahoning Township			
Softball Field Southeast Orientation	1	Backstop, field for casual play	Poor	LF-100' RF_200'	No	No bases or structured field dimensions
Playground	1	Various older homemade units, wood and metal swings, 1 preschool swing, 10 elementary swings, metal slide, 1 metal climber, 2 wood climbers; soil and grass base	See safety audit		No	Homemade units within a large area; metal slide in sun; "S" hooks open
Pavilion #1	1	2 grills, cement pad, 6 picnic tables, bar-rail for food serving, outlets, lights	Good	20'x30'	Yes	No ADA signs
Volleyball Court	1	Poles, lights; sand and grass base mixed	Poor	30'x45'	No	No net
Pavilion #2	1	Cement pad, 3 grills, electricity, outlets, 8 picnic tables, 4 serving tables	Good	23'x50'	Yes	No ADA signs
Pine Township						
Templeton Community Park	4 acres (estimate)	Community Park	Pine Township			
Baseball Field Northwest Orientation	1	Backstop, dugouts, press-box, mound, bleachers, electric scoreboard, security lighting	Fair	RF-190' LF-190' Base path-60'	No	Little League field; infield holds water and is full of weeds
Concession Stand	1	3 bays; newer building; cement walkway around serving area	Good	28'x40'	No	No ADA ramp to area
Pavilion	1	Cement pad; wood structure; 4 picnic tables	Good	12'x50'	No	
Playground		1 elementary swing unit with 3 swings side-by-side, 1 preschool unit, 2 see-saws, 2 metal slides, 1 merry-go-round; soil base	See safety audit		No	Slide exposed to sun; older metal units
Basketball Court	1	2 standards; asphalt surface	Poor	40'x80'	No	No rims; cracks with grass all over surface
Tennis Court	1	Full fencing; 2 sets of posts	Poor	80'x80'	No	Used to store construction materials and equipment; no nets; cracks and grass in surface
Bandstand	1	Building with garage-type door to open stage area	Good	15'x25'	No	Sitting area would be the basketball court
Redbank Township						
Herman C. Raybuck Oak Ridge Park	3 acres	Community Park	Redbank Township			
Playground	1	Home made units; 3 tire swings, 3 spring riders, 3 grills, 3 elementary swings, see-saw unit with out boards	See safety Audit		No	Poor condition; next to a house
Softball Field West Orientation	1	Backstop, fenced dugouts, benches, bleachers, pitching mat, outfield fence, storage shed	Poor	RF-295' LF-300' Basepath-60'	No	Slopes uphill; outfield is at playground; dugout roofs have holes; tire marks throughout outfield

Appendix B - Armstrong County Park Inventories.xls

Local Recreation Facilities	Number	Condition	Size	ADA	Comments
West Planning Region					
Freeport Borough					
James E. Swartz Memorial Field 4.32 acres - combined with 2nd St. playground Community Park Freeport Borough					
Football Field Southeast to Northwest Orientation	1	Lights, fencing, press box, bleachers	Good	Regulation	Yes Leased by Freeport School District
Baseball Field East Orientation	1	Benches behind backstop fence; lights, bleachers, backstop	Good	RF-340' LF-390' CF-321' Base path-90'	Yes Shares outfield with football field, nicely crowned, well maintained
Concession Stand	1		Good		No
Playground	1	1 modular unit, swings	No safety audit conducted		No
Freeport Borough Second Street Playground 4.32 acres (combined with Swartz Field) Neighborhood Park Freeport Borough					
Playground	1	1 large modular unit, swings, slides; fenced; grassy area	See safety audit	120'x150'	Yes
Playground Pavilion	1	2 picnic tables; crushed stone base	Fair	20'x20'	Yes
Freeport Borough Riverside Park 1.8 acres Community Park Freeport Borough					
Boat Access Ramp	1		Fair		Yes
Gazebo	1		Fair		Yes
Veteran's Memorial	1	Multiple memorials	Good		Yes
Dock Spaces	56		Fair		No Borough rents these to the public
Freeport Community Park 150 acres (estimate) Community Park Freeport Charitable Trust					
Baseball Field - A West Orientation	1	All new features; new benches, dugouts, fencing	Good	RF- 200' LF-200' Base path-60'	Yes Well maintained; maintained by the Little League Association
Baseball Field - B Southeast Orientation	1	All new features; new benches, dugouts, fencing	Good	RF- 200' LF-200' Base path-60'	Yes Well maintained; maintained by the Little League Association
Softball Field - C Northeast Orientation	1	All new features; new benches, dugouts, fencing	Good	RF- 180' LF-180' Base path-60'	Yes Well maintained; crowned well; used for girls softball
T-Ball Field - D Southeast Orientation	1	New backstop; all-grass infield; player benches	Fair		No A practice type field, used for T-Ball; no sideline or outfield fencing
Soccer Field Northeast-Southwest Orientation	1	Open field with 3 goals	Fair	175' x 142' (approx.)	No Grass is high, full of clover
Tennis Courts Northeast-Southwest Orientation	2	2 fence-enclosed courts	Poor	36' x 79' each	No Grass growing in multiple cracks; graffiti painted on fencing
Basketball Courts North-South Orientation	3	6 backboards, rims, nets	Poor	98' x 50' each	No Courts side-by-side on same surface; grass growing in multiple cracks; weeds growing all around
Concession Stand	1	Electric; brick building	Poor		No Old structure
Large Stone Pavilion	1	4-15' picnic tables, 1 grill	Fair	22' x 66'	No High weeds all around; quality built structure; very unique
Playground Area [Kiwans built]	1	17 individual units of mixed metal and modular plastic	No safety audit conducted		No Pea gravel base in some areas with mulch in others; old and new units intermixed and spread out over a large area
Military Type Tank	1		Poor		No WW II military type tank with graffiti

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Freeport Community Park	150 acres (estimate)	Community Park	Freeport Charitable Trust			
Little League Concession Stand	1		Good		Yes	New building
Batting Cage	1	Cement surface	Fair		No	
Soccer Complex North-South Orientation	6	5 regulation-size fields side-by-side; 1 junior-size field	Good	Regulation	No	Flat and graded field spread out over a large area facing different directions; sign with www.freeportsoccer.com
Baseball Field - Francis H. Laube Field South Orientation	1	Massive electronic score board; lights, pitching/warm-up/bull pen area, open dugouts, bleachers	Good	RF-300' CF-387' LF-346' Base path-90'	Yes	Quality field; home field of the Vikings and Buccaneers
Pool [Reid Pool]	1	L-shaped plastic modular slide unit, 2 diving boards	Poor	11'	No	The pool is no longer open
North Buffalo Township						
Ford City Community Ball Fields	12 acres (estimate)	Community Park	North Buffalo Township			
Softball Field #1 Northeast Orientation	1	Backstop, dugouts, bleachers, benches, full fencing	Poor	RF-279' LF-277' Base path-60'	No	Infield has been let go; weeds along all fencing; dugouts have no protective covering; foul line and outfield fencing is in good condition
Concession	1	3 serving bays; block building	Poor	20'x30'	No	Abandoned condition; trash inside
Softball Field #2 Northeast Orientation	1	Backstop, dugouts, bleachers, benches	Poor	RF-250' LF-250' Base path-60'	No	Dugouts old; fencing old and falling down; outfield used for soccer; infield full of weeds
Softball Field #3 Northeast Orientation	1	Backstop, dugouts, bleachers, benches, full fencing	Fair	RF-281' LF-283' Base path-60'	No	Outfield used for soccer
Concession	1	3 serving bays; block building	Fair	20'x30'	No	
Baseball Field #4 Northeast Orientation	1	Backstop, 1 dugout, bleachers, full fencing	Fair	RF-270' LF-265' Base path-90'	No	One dugout not yet built; weed and tree growth all along fencing; no benches
Soccer Fields	4	Goals	Fair/Poor	Varies	No	Located in the outfields of the four ballfields
Volleyball Courts	2	Poles; sand overgrown with grass	Poor	45'x90'	No	Abandoned condition
West Franklin Township						
West Franklin Township Little League Fields	4.5 acres	Community Park	West Franklin Township			
Little League Ball Field #1 Northwest Orientation	1	Backstop, built-in bleachers, dugouts, lights, yellow-capped safety fence, electronic scoreboard, grass infield, cut base paths, warning track, mound	Good	RF-200' LF-200' Base path-60'	Yes	Well groomed, no weeds
Little League Ball Field #2 Southwest Orientation	1	Backstop, 12' high fence, dugouts, electronic scoreboard, grass infield, cut base path, mound	Good	RF-188' LF-188' Base path-60'	Yes	Well groomed, no weeds
T-Ball Field Northwest Orientation	1	Backstop, bleachers/player bench, cut base paths, grass infield, short outfield fences, no baseline fencing	Good	RF-70' LF-70' Base path-45'	Yes	Not bad for a dedicated T-Ball Field
Batting Cages	3	L fence pitcher protector	Fair	12'x65' ea	No	Top netting is torn and hanging down; weed growth in batting area
Pressbox/Concession	1	2-story; bathrooms below	Good	20'x40'	Yes	For Field #1
Press box	1	2-story	Good	15'x15'	Yes	For Field #2

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
West Kittanning Borough						
West Kittanning Firehall Park		4.884 acres	Community Park	West Kittanning Fire Department		
Football Field North to South Orientation	1	Grass field, bleachers, announcement booth	Good	Regulation	No	
Baseball Field Northeast Orientation	1	Backstop, full fencing	Poor	RF-165' LF-165' Base path-60'	No	
Playground	1	Free standing units	No safety audit conducted		No	Property owned by Fire Dept., borough leases it
Basketball Court North to South Orientation	1	2 backboards, asphalt surface	Good	45'x95'	No	No fence, new surface
Worthington Borough						
Worthington Park		3 acres	Community Park	Worthington Borough		
Playground	1	2 modular units, swing set, slide, spring-animal, merry-go-round, bark mulch, hard rubber perimeter retainer	See safety audit	1 acre	No	Has 2 ADA parking spots; perimeter retainer needs metal pins hammered back in place; playground and pavilion on same lot
Pavilion	1	Grill, 6 picnic tables, cement pad	Fair	15'x25'	No	
Ball Field - Girl's Softball, T-Ball North Orientation	1	Backstop, dugouts, bleachers, baseline fencing	Fair	RF-180' LF-133' Base path-60'	No	Newer baseline fence; no outfield fence; left and center fields blend into parking lot at 133'; right field rises considerably; grass infield with dirt base locations
Worthington/West Franklin Municipal Complex		4 acres	Community Park	Joint Borough - Township		
Tennis Court	1	Asphalt surface, full fencing, net	Fair	48'x52'	No	Weeds growing along fencing and hanging over courtside; fence curled up at bottoms
Basketball Court	1	Asphalt surface, standards, backboards, nets, full fencing	Fair	48'x41'	No	Short full-court - 48' long; nets need replaced
Baseball Field - Legion East Orientation	1	Backstop, dugouts, bleachers, full fencing, yellow-capped outfield fence, mound, electronic scoreboard	Fair	RF-322' LF-295' Base path-90'	No	Weeds in infield, outfield is wavy, rusty fencing, wind cover over outfield fence from LC to RC fields, warning track grown over with grass
Bating Cage	1	Milling surface, dedicated batting boxes of clay and sawdust mix, L fence pitcher protector	Good	14'x70'	No	
East Franklin Township						
Municipal Park			Community Park	East Franklin Township		
Pavilion, playground, trails, and restroom	1 each		Fair	NA	No	

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Central Planning Region						
Ford City Borough						
Ford City Little League Fields	4 acres	Community Park	Ford City			
Baseball Field #1 South Orientation	1	Dugouts, benches, bleachers, press-box, lights, yellow-capped safety fencing, electronic score board	Good	RF-175' LF-175' Base path-60'	Yes	Nice flower plantings around press box
Baseball Field #2 South Orientation	1	Dugouts, benches, bleachers, press-box, lights, yellow-capped safety fencing	Fair	RF-180' LF-167' Base path-60'	No	Holds water; weeds in the infield
Baseball Field #3 - T-Ball South Orientation	1	Dugouts, benches, bleachers, backstop	Fair	RF-95' LF-95' Base path-50'	No	Grass infield, with dirt-cut base paths
Concession/Bathrooms Combination	1	2 service bays	Good		Yes	Newer block building with overhead and picnic tables
Batting Cages	2	New fencing	Fair	14'x70'	No	Gravel base; side by side w/ divider
Ford City Park (John B. Ford Memorial Park)	1.5 acres	Community Park	Ford City			
Open Space	1	Trees, benches, walkways	Good		Yes	Encompasses one city block
Gazebo	1		Fair		No	
Armed Forces Memorial Monument	1		Fair		No	
Manor Township						
Crooked Creek Horse Park, Manor Township	97.5 acres	Special use	Fort Armstrong Horseman's Association			
Horse Park	1	Full hook-up and primitive camping spaces; restrooms with showers; full service kitchen; three barns with 198 stalls; approximately 35-40 miles of permanently marked trails, with two long loops of approximately 18 and			No	Operated by Fort Armstrong Horseman's Association by agreement; all other information was accessed at their website at www.crookedcreekhorsepark-faha.com
Kittanning Borough						
Kittanning Community Park Wilbur (Bib) Bowers	130 acres	Community Park	Kittanning Borough			
Baseball Field #1 Southwest Orientation	1	Dugouts, bleachers, fencing, backstop	Good	RF-335' LF-335' Base path-90'	No	Aluminum bleacher units
Baseball Field #2 Southwest Orientation	1	Dugouts, bleachers, fencing, backstop	Fair	RF-220' LF-218' Base path-60'	No	Weeds in infield, no roof on dugouts, fences rusty
Tennis Courts	2	2 courts side-by-side; fenced; nets; green surface	Fair	110'x121'	No	Cracks filled in with cement
Volleyball Court	1	Hardtop surface; posts; fenced	Fair		No	No net
Playground	1	4 swing sets, spring animals, 2 slides, double-arched climber	See safety audit		No	Older rusty units, old construction truck tires for climbing
Basketball Court North to South Orientation	1	2 standards	Poor	45'x80'	No	Grass in many cracks on play surface
Lions Pavilion	1	6 picnic tables; B-B-Q unit	Fair	18'x30'	No	
Lions Horseshoe Court	1		Poor		No	
Playground Pavilion	1	6 picnic tables	Poor	15'x20'	No	Rough structure with multiple holes in metal roof
Horseshoe Courts	2		Fair		No	Raised court for drainage

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Riverfront Park		13 acres	Special Use	Kittanning Borough		
Pavilions	2		Good		Yes	Special tree and flower plantings throughout the park area
Benches			Good		Yes	
Amphitheatre w/ terrace seating	1		Good		Yes	
Docks & boat launches	1		Good		Yes	
John Whelan Park		1.6 acres	Neighborhood Park	Kittanning Borough		
Basketball Court North to South Orientation	1	Full fencing; red asphalt; 2 standards	Good	60'x80'	No	New boards
Tennis Court North to South Orientation	3	Full fencing; red asphalt; nets side-by-side	Fair	150'x180'	No	Fence needs painted, many small cracks in court surface
Playground	1	1 modular unit, 4 slides, 1 "S" slide, 1 merry-go-round, 2 spring riders, 2 preschool swing sets, 1 elementary swing set; mulch base	See safety audit		No	
Playground Pavilion	1	Metal beam structure; asphalt surface; 1 picnic table	Fair	30'x30'	No	Beams starting to rust
Band Shell Area	1	Fenced; 3-tier cement stage; grassy area	Fair	95'x120'	No	Also used as a T-Ball size field

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
East Planning Region						
Cowanshannock Township						
NuMine Park	2.5 acres (estimate)	Community Park		NuMine Borough		
Softball Field	1	Bleachers, fencing, backstop	Fair	RF-300' LF-300' Base path-65'	No	Used for softball and Little League
Trail Head	1	Gravel base	Fair		No	Begins the Shamokin Path
Yatesborough Shannock Valley Little League Park	3.5 acres (estimate)	Community Park		Yatesborough		
Little League Baseball Field Southwest Orientation	1	Electronic scoreboard, dugouts, backstop, bleachers, press box, concession, mound	Fair	RF-300' LF-312' CF-320' Base path-60'	No	Mat behind plate for softball
Batting Cage	1	Nylon fencing; stone base	Fair	10'x50'	No	
Pavilion	1	Stone base	Fair	20'x33'	No	
Elderton Borough						
Elderton/Plumcreek Community Park	27.4 acres	Community Park		Borough		It is apparent that the PCC Crew has a positive impact on the quality upkeep of this park; many new projects have been accomplished
Softball Field North Orientation	1	Backstop, dugouts, built in bleachers, lights, electronic scoreboard, mound, 6' high outfield fence, 20' high 1st base fence	Good	RF-200' LF-200' Base path-60'	Yes	Bleachers are built into the 3rd base hillside; posted - "Not For Adult Baseball"
Concession Stand	1	2-story with press-box	Good	15'x15'	Yes	
Basketball/Street Hockey Court North to South Orientation	1	Asphalt surface, 3-sided fence, one side block wall; 2 standards, backboards, rims, nets, 4' high plywood crash board	Fair	45'x110'	Yes	Surface needs sealed; crash board needs replaced; east wall is the back wall of the racquetball court; some fencing needs replaced
Racquetball Court	5	Side-by-side units, 5 bays, concrete divider walls; fenced	Fair	43'x110'	Yes	Many cracks in surface, some 3" wide x 1-1/2" deep
Tennis Courts North to South Orientation	3	Asphalt surface painted green and red; full fencing, 3 courts side-by-side, nets	Good	45'x110'	Yes	A few minor surface cracks, needs sealed
Playground	1	1 modular unit, swing set, mulch base	No safety audit conducted		No	
Playground Pavilion	1	3 tables, cement pad, metal roof	Good	24'x27'	Yes	
Baseball Overlook Pavilion	1	Brick flooring, metal roof	Fair	12'x21'	Yes	Brick surface is uneven and not completely level
Lower Pavilion	1	12 tables, cement pad, grill, water, electric, wood posts, shingle roof	Good	21'x48'	Yes	
Octagon Pavilion	1	Cement pad, 9 rubber-coated tables, lights, electric outlets	Good	24'x24'	Yes	
Horseshoe Court	2	Clay pits; fence enclosed	Good	9'x51'	No	Needs grass planted in court area
Trail	1	2 bridges, wooded	Good	3/4 acre	No	On 11 acres of deeded land, to be logged

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Rural Valley Borough						
Shannock Valley Community Park - Rural Valley	15 acres (estimate)	Community Park	Rural Valley Borough			
Baseball Field Southwest Orientation	1	Dugouts, fencing, bleachers, backstop	Fair	RF-316' LF-300' CF-322' Base path-65'	No	Rusty fence; fence bent from balls being practice-hit into them; also used for softball
Playground	1	1 modular unit, swing set; rubber border, mulch base;	No safety audit conducted		No	Well kept
Pavilion	1	10 picnic tables, cement pad	Good	30'x60'	No	
Pavilion	1	10 picnic tables plus an enclosed concession/kitchen	Good	30'x90'	Yes	
Walking Trail	1	Concrete surface throughout			Yes	
Bandstand	1		Good		No	
Volleyball Court	1	Sand, lights	Poor		No	Grass has filled in the court sand surface; needs restoration
Gazebo	1		Good		No	
Horseshoe Court	1		Good		No	
Basketball Court North to South Orientation	1	Fenced; lights, 2 standards	Good	50'x100'	No	
Baseball Field Southwest Orientation	1	Dome backstop, benches, full fencing, dugouts, foul fencing along 1st & 3rd base sides	Fair	RF-180' LF-180' Base path-60'	No	Weeds in the infield
Kittanning Township						
Kittanning Township Community Park	2 acres	Community Park	Kittanning Township			
Baseball Field Northwest Orientation	1	Backstop, bleachers, yellow-capped 6' high fence, dugouts, electronic scoreboard	Good	RF-200' LF-200' CF-200' Base path-60'	Yes	Well crowned, very good condition, no lights
Baseball Field Southeast Orientation	1	Backstop, bleachers, yellow-capped 6' high fence, dugouts, electronic scoreboard	Good	RF-293' LF-294' CF-294' Base path-90'	Yes	Well crowned, very good condition
Batting Cage	1		Fair	14'x70'	No	Millings for surface
Basketball/Tennis Court	1	Shared surface; fenced; 1 tennis net, 2 backboards	Good	55'x60'	Yes	Tennis and basketball court utilize same fenced area; can't play both at same time
Playground	1	1 modular unit; mulch base; 4-seat swing set	No safety audit conducted		No	
Walking Trail	1	Around perimeter of the park		5' wide	Yes	
Horseshoe Courts	2		Good		No	
Pavilion/Concession/Press Box	1	2-story concession w/ attached pavilion w/ 7 picnic tables; electric cooler	Good	20'x40'	Yes	
Supporting Amenities		Benches and practice pitching mound	Good	-	Yes	

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
South Planning Region						
Apollo Borough						
Apollo-Owens Grove Park	4 acres	Community Park	Apollo Borough			
Pavilion #1	1	6 picnic tables	Fair	10'x20'	No	Very quaint park with lots of old maple and oak trees
Pavilion #2	1	6 picnic tables	Fair	15'x30'	No	
Pavilion #3	1	6 picnic tables	Fair	15'x30'	No	
Gazebo Joshua Henry Memorial Gazebo	1	New, white, extended-octagonal wooden structure with white wooden spindles	Good	20'x30'	No	Gate access is kept locked; financed in part by the Commonwealth of PA Dept. of Community & Economic Development
Playground	1	A mix of modular units and 18 metal units with "dino-crawl" and a "pirate ship"	See safety audit		No	Spread out over a couple of acres
Tennis Court	1	1 net	Poor		No	Cracks in surface, torn metal fencing
Basketball Court	1	2 newer rims	Poor		No	
Apollo Little League Baseball Field [Lions Field] Complex	2 acres (estimate)	Community Park	Apollo Borough			
Baseball Field South Orientation	1	Bleachers, lights, press-box, yellow-capped fencing, dugouts, ads on fencing	Good	RF-180' LF-185' Base path-60'	Yes	Very nice condition
Apollo-Ridge Football Stadium	8.61 acres	Community Park	Apollo Borough			
Football Stadium Southeast to Northwest Orientation	1	Bleachers, lights, press-box, concession	Fair	Regulation	Yes	
Softball Field North Orientation	1	Backstop	Poor	No fencing	No	Old practice field, rusty back stop
Kiskiminetas Township						
Apollo Pool	1 acre	Special Use	Kiskiminetas Township			
Pool	1	"Z"-shaped; 11' modular slide, plastic slide, concession, locker rooms	Fair		No	
Leechburg Borough						
Gilpin-Leechburg Park	23.99 acres	Community Park	Armstrong County			
Church Softball Field	1	Backstop, equipment box, player benches, bleachers, scoreboard	Good		No	This field is owned by Christ The King Parish
Pool	1	2 plastic slides, sand volleyball court, spring toys, 1 high-dive, 1 picnic pavilion, wading pool	Good		No	Pool is operated by a member-owned, non-profit group [LAPINC]
Tennis Courts	2	2 courts side-by-side, nets, lights	Fair	110'x119'	No	Holds water; nets in good shape; connected to basketball court; some lights broken
Basketball Court	1	4 standards; fenced	Poor	90'x110'	No	Only foul lines are painted on court surface; rims bent, nets torn, rusty fences
Playground (Rotary Project)	1	2 modular units, 6 swings, 5 individual standing units, climbing bars, merry-go-round	See safety audit		No	
Pavilion #1 (Rotary Pavilion)	1	6 picnic tables	Fair	18'x33'	No	Needs stained
Pavilion #2 [PCC]	1	10 picnic tables; electric	Good	25'x65'	Yes	ADA parking in front
Pavilion #3	1	6 picnic tables	Good	25'x65'	Yes	

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Gilpin-Leechburg Park 23.99 acres Community Park Armstrong County						
Pavilion #4	1	10 picnic tables; lights, electric plug-ins	Fair	20'x30'	Yes	Needs stained
Pavilion #5 [PCC]	1	13 picnic tables	Fair	25'x37'	Yes	Needs stained
Trail	1	Self-interpretive with signs			No	
Horseshoe Court	1	RXR tie backstops	Fair		No	
Bathroom	1		Fair	18'x33'	No	Needs stained
Little League Baseball Field North Orientation	1	Yellow-capped safety fence, press-box, electronic score board, bleachers, dugouts, ads on fence	Fair	RF-185' LF-185' CF-205' Base path-60'	No	This field is owned by Christ The King Parish and leased by the Leechburg Little League; grass diamond with dirt base path and mound; concrete dugouts; slopes to left field
Pavilion/Concession [PCC]	1	4 picnic tables	Fair		No	
Playground	1	Wood structures	See safety audit		No	
Storage Shed	1		Fair		No	
Baseball Field #1 Northwest Orientation	1	Player benches, backstop	Fair	RF-167' LF- No fence Base path-60'	No	Was the high school field years ago; remnants of old score board and outfield fence; now holds ball fields #1 and #2; outfields share the same fence; newer backstop; weeds in infield
Baseball Field #2 South Orientation	1	Player benches protected by extended backstop fencing; press-box, storage, bleachers	Fair	RF-200' LF-200' Base path-60'	No	
Leechburg-Veterans Memorial Field 4.5 acres Community Park Leechburg Borough						
Football Stadium Northwest to Southeast Orientation	1	Lights, concession, electronic scoreboard, bleachers	Good	Regulation	Yes	Football and a baseball field share the same field; baseball field is a work in progress; home of Leechburg Blue Devils
Baseball Field West Orientation	1	Backstop, dugouts (under construction)			No	Under construction
Basketball Court Northwest to Southeast Orientation	1	New construction; new backboards and goals	Good	60'x115'	Yes	
North Apollo Borough						
North Apollo Borough, Helen Clark Playground 0.853 acre Neighborhood Park Borough						
Playground	1	1 modular unit, climbing bars, 4 elementary swings, 1 metal slide, 3 spring riders, merry-go-round; pea gravel base	See safety audit		No	Donated by Apollo Trust Company
Pavilion	1	1 grill, 3 picnic tables; soil base	Fair	10'x15'	No	
Bench Swing	1	Large bench swing	Fair		No	Huge water puddle underneath
North Apollo Borough, Ronald Kerr Park 0.063 acre Neighborhood Park North Apollo Borough						
Playground	1	1 modular unit, climbing bars, 4-swing set, 3 spring riders; merry-go-round, 1 sand digger; mulch base	See safety audit		No	Weeds in mulch; more mulch needed

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Local Recreation Facilities	Number		Condition	Size	ADA	Comments
Parks Township						
Kepple Hill Park	1 acre	Neighborhood Park	Parks Township			
Picnic Shelter	1	3 picnic tables	Good		No	2 picnic tables need replaced
Tennis Court	1	Net, posts, asphalt surface	Poor	60'x120'	No	Many surface cracks with vegetation growing throughout
Basketball Court	1	2 standards, asphalt surface	Poor	46'x96'	No	
Parking lot	30-50 spaces		Fair		No	
North Vandergrift Park	1 acre	Neighborhood Park	Parks Township			
Picnic Shelter	1	2 picnic tables, 1 charcoal grill	Fair	15'x24'	No	
Kiski River Boat Access	1		Fair		No	
Basketball Court	1	1 standard, asphalt surface	Good	30'x34'	No	
Playground	1	1 modular unit, free standing units	See safety audit		No	

Appendix C: School District Recreation Facilities Inventory

School District Recreation Facilities

School	Facility	Enhancements and Utilities	Condition	Size	ADA	Comments
Apollo-Ridge School District						
Apollo-Ridge High School/Middle School Complex	Baseball Field South Orientation	Backstop, benches, bleachers, full fencing	Good	RF-345' LF-380' Base path-90'	Yes	
	Softball Field South Orientation	Backstop, benches, bleachers, full fencing	Good	RF-175' LF-185' Base path-60-65'	Yes	
	Track Northeast to Southwest Orientation	Black-topped with lanes	Fair	Regulation	Yes	Very plain
	Tennis Courts	2 side-by-side courts, nets, posts, fencing	Good	Regulation	Yes	
Apollo Ridge Elementary School	Playground	Modular Unit	No playground safety audit conducted		Yes	
Armstrong School District						
Dayton Elementary School	Softball Field	Fencing, benches	Fair	RF-180' LF-185' Base path-60-65'	Yes	
	Basketball Court	Asphalt surface, 2-standards, no markings	Good	70'x120'	Yes	
	Playground	1 swing set, 1 primary size play unit	No playground safety audit conducted		Yes	
Elderton Junior/Senior High School	Soccer Field North to South Orientation	Large manicured field, crowned well; goals, player benches	Good	Over regulation, large multi-use field	Yes	School uses the Borough's baseball field for girl's softball, tennis courts for school team, and concession stand; soccer is at north side, baseball is at south side of this large field
	Baseball Field	Benches, bleachers, sideline fencing	Fair	RF-300' CF-390' LF-350' Base path-90'	Yes	Used by boy's school team
Elderton Elementary School	Playgrounds	2 modular units, swings, slides, and climbing units	No playground safety audit conducted	-	No	
Ford City Junior/Senior High	Football Stadium North to South Orientation	Bleachers, lights, electronic scoreboard, fencing, press-box	Good	Regulation	Yes	
	Track	Fair	Good		Yes	
	Baseball Field Southeast Orientation	Press-box, bleachers, dugouts, scoreboard, mound	Good	RF-320' CF-360' LF-410' Base path-90'	Yes	Crowned well, fence in good shape
	Batting Cages (2)	Nylon mesh fencing	Fair	12'x70'	Yes	
	Concession	3 service bays	Good	25'x35'	Yes	
Kittanning Senior High	Football Stadium	Lights, bleachers, fenced, crowned field, concession	Good	Regulation	Yes	Right in town along the street
	Tennis Courts (3)	Painted green surface, fenced, 3 side-by-side courts	Good	120'x180'	Yes	Fence is rusty; needs wind breaker on west side
	Baseball Field	Old bases, fencing along first and third base lines	Poor	Outfield has been eliminated due to tennis courts being built	No	Poor shape, not maintained
Kittanning Junior High	Basketball Court	2 standards side-by-side	Fair	30'x30'	No	Small pad
	Playground	1 modular unit	No playground safety audit conducted		No	

School	Facility	Enhancements and Utilities	Condition	Size	ADA	Comments
Kittanning Township Elementary	Small Soccer Field	Open space area	Fair		No	
	Softball Field	Fencing	Fair	RF-200' LF-200' Base path-60'	No	
	Basketball Court	2 standards	Good	70'x120'	Yes	
	Playground	1 unit, swing set	No playground safety audit conducted		No	
	Pavilion		Fair		Yes	
Lenape Elementary	Track	1/8th-mile asphalt surface, soccer/recess type of play area within the track ring	Fair		Yes	\$20 million expansion project underway
	Playground	1 small modular unit with two slides and climbing levels	No playground safety audit conducted		No	
	Basketball Courts (2)	4 standards, rims, backboards, nets, asphalt surface	Poor	80'x125'	Yes	
	2 proposed playgrounds	2 large modular units				* Proposed
	Proposed multi-basketball court area	4-6 standards				* Proposed
Shannock Valley Elementary	Baseball Field	Old backstop, benches, old fencing	Fair	Open field	No	
	Softball Field	Old backstop, benches, old fencing	Fair	Open field	No	
	Tennis Courts (2)	Needs new nets	Fair		Yes	
	Basketball Court	1 standard on blacktop	Fair		Yes	
	Basketball Court	2 standards, needs new backboards	Poor	70'x120'	Yes	Located by old high school
	Playground	Various units	No playground safety audit conducted		No	
West Hills Intermediate	Asphalt area for recess		Good		Yes	A new school facility, still developing
	Grass area for recess		Good		Yes	
	Soccer Field		Good	150'x330'	Yes	
West Hills Primary	Asphalt play area		Fair		Yes	
	Open grass area		Fair		No	
West Shamokin Junior Senior High School	Baseball Field	Backstop, full fencing, benches, bleachers, batting cage area	Good	RF-350' LF-378' Base path-90'	Yes	All new facilities
	Concession		Good		Yes	
	Softball Field	Backstop, full fencing, benches, bleachers	Good	RF-180' LF-180' CF-205' Base path-60'	Yes	
	Soccer Field	Benches, bleachers, goals, fencing	Good	Regulation	Yes	
	Football Stadium	Bleachers, lights, electronic scoreboard, fencing, press-box	Good	Regulation	Yes	
	Tennis Courts (2)	2 courts with nets	Good	135'x120'	Yes	
	Practice Football Field	Grass area, fencing	Fair		Yes	

School	Facility	Enhancements and Utilities	Condition	Size	ADA	Comments
Freeport Area School District						
South Buffalo Elementary	Baseball Field	Baseline fencing only	Fair	RF-280' LF-250' Base path-60'	Yes	
	T-Ball Field	Baseline fencing only	Fair	RF-180' LF-185' Base path-60'	Yes	No dug outs, benches, bleachers, or back stops
	Basketball Court	Standards, rims, backboards, nets, asphalt surface	Good	70'x120'	Yes	
	Tennis Court	Asphalt surface, 1 net	Good	70'x120'	Yes	
	Playground	12 multi-modular units, 6 swings	No playground safety audit conducted		No	
Freeport Kindergarten Center	Open Play Area				No	No facilities
Freeport Junior High School						No facilities; use Freeport Borough field
Karns City Area School District						
Sugarcreek Elementary	Playgrounds (3)	1 modular unit per area with tunnel, climbing levels, 3 sets of swing sets	No playground safety audit conducted		Yes	There are 3 playground areas within the entire elementary area property
	Soccer Field	Goals	Fair	Regulation	Yes	Used by Karns City High School
Kiski Area School District						
Laurel Point Elementary	Parking Lot	Asphalt recess area	Fair		Yes	No recreational structures
Multi-School District Partnership						
Lenape Area Vo-Tech School	Soccer Field	Goals, player benches	Good	150'x310'	Yes	Supported by Leechburg, Freeport, and Armstrong School Districts
	Tennis Courts (4)	2 court areas, nets, fencing, large cracks	Poor	120'120'	Yes	
Redbank Valley School District						
Mahoning Elementary	Basketball Court	Standards, rims, backboards, nets, asphalt surface	Good	70'x120'	Yes	
	Playground	Modular unit	No playground safety audit conducted		Yes	
	Open grass area for recess	1 parcel area	Good		No	
Leechburg Area School District						
Leechburg Area Junior/Senior High School						No facilities; the district uses municipal fields for practices and games
David Leech Elementary	Playground	1 modular play unit	No playground safety audit conducted		No	

Appendix D: Regional Comparison Charts

Armstrong County Northwest Planning Region Population 4,821 Estimated 2010 Population 5,241

Park Land Acreage Comparison to NRPA Standards						
Park Type	Acres/1000	Existing Acres	2007 needed acres	2007 Surplus (Deficit)	2020 needed acreage	2020 surplus (Deficit)
Community Park	8	144	38.568	105.432	41.928	102.072
Neighborhood Parks	2	0.5	9.642	-9.142	10.482	-9.982

Facility Comparisons to NRPA Standards

Northwest Region 2000 Population 4,821 Estimated 2010 Population 5,241

	1 facility per X people	Existing	2007 need	2007 surplus (deficit)	2020 need	2020 surplus (deficit)	Comments: Existing School District Facilities
Basketball Courts	5,000	2	1	1	1	1	0
Tennis Courts*	5,000	3	1	2	1	2	0
Volleyball Courts	5,000	1	1	0	1	(0)	0
Baseball Fields	2,500	4	2	2	2	2	0
Softball Fields*	2,500	3	2	1	2	1	0
Soccer Fields*	2,500	1	2	(1)	2	(1)	1
Swimming Pools	20,000	0	0	(0)	0	-	0
Picnic Shelters	2,000	12	2	10	3	9	0
Football	5,000	1	1	0	1	(0)	0

*adjusted to reflect current trends

Source: Armstrong County Comprehensive Plan, 2005, (c/o Population figures)

Armstrong County Northeast Planning Region Population 7,323 Estimated 2010 Population 8,045

Park Land Acreage Comparison to NRPA Standards						
Park Type	Acres/1000	Existing Acres	2007 needed acres	2007 Surplus (Deficit)	2020 needed acreage	2020 surplus (Deficit)
Community Park	8	49.9	58.584	-8.684	64.36	-14.46
Neighborhood Parks	2	0.5	14.646	-14.146	16.09	-15.59

Facility Comparisons to NRPA Standards

Northeast Region 2000 Population 7,323 Estimated 2010 Population 8,045

	1 facility per X people	Existing	2007 need	2007 surplus (deficit)	2020 need	2020 surplus (deficit)	Comments: Existing School District Facilities
Basketball Courts	5,000	6	1	5	2	4	1
Tennis Courts*	5,000	1	1	(0)	2	(1)	0
Volleyball Courts	5,000	2	1	1	2	0	0
Baseball Fields	2,500	2	3	(1)	3	(1)	0
Softball Fields*	2,500	4	3	1	3	1	1
Soccer Fields*	2,500	0	3	(3)	3	(3)	0
Swimming Pools	20,000	0	0	(0)	0	-	0
Picnic Shelters	2,000	15	4	11	4	11	0
Football	5,000	0	1	(1)	2	(2)	0

*adjusted to reflect current trends

Source: Armstrong County Comprehensive Plan, 2005, (c/o Population figures)

Armstrong County West Planning Region Population 16,247 Estimated 2010 Population 16,948

Park Land Acreage Comparison to NRPA Standards						
Park Type	Acres/1000	Existing Acres	2007 needed acres	2007 Surplus (Deficit)	2020 needed acreage	2020 surplus (Deficit)
Community Park	8	180.2	129.976	50.224	135.584	44.616
Neighborhood Parks	2	0	32.494	-32.494	33.896	-33.896

Facility Comparisons to NRPA Standards

West Region 2000 Population 16,247 Estimated 2010 Population 16,948

	1 facility per X people	Existing	2007 need	2007 surplus (deficit)	2020 need	2020 surplus (deficit)	Comments: Existing School District Facilities
Basketball Courts	5,000	6	3	3	3	3	1
Tennis Courts*	5,000	4	3	1	3	1	1
Volleyball Courts	5,000	3	3	(0)	3	(0)	0
Baseball Fields	2,500	15	6	9	7	8	2
Softball Fields*	2,500	4	6	(2)	7	(3)	0
Soccer Fields*	2,500	12	6	6	7	5	1
Swimming Pools	20,000	1	1	0	0	-	0
Picnic Shelters	2,000	2	8	(6)	8	(6)	0
Football	5,000	2	3	(1)	3	(1)	0

*adjusted to reflect current trends

Source: Armstrong County Comprehensive Plan, 2005, (c/o Population figures)

Armstrong County Central Planning Region Population 15,093 Estimated 2010 Population 15,608

Park Land Acreage Comparison to NRPA Standards						
Park Type	Acres/1000	Existing Acres	2007 needed acres	2007 Surplus (Deficit)	2020 needed acreage	2020 surplus (Deficit)
Community Park	8	149	120.744	28.256	124.864	24.136
Neighborhood Parks	2	1.65	30.186	-28.536	31.216	-29.566

Facility Comparisons to NRPA Standards

Central Region 2000 Population 15,093 Estimated 2010 Population 15,608

	1 facility per X people	Existing	2007 need	2007 surplus (deficit)	2020 need	2020 surplus (deficit)	Comments: Existing School District Facilities
Basketball Courts	5,000	5	3	2	3	2	3
Tennis Courts*	5,000	8	3	5	3	5	3
Volleyball Courts	5,000	1	3	(2)	3	(2)	0
Baseball Fields	2,500	7	6	1	6	1	2
Softball Fields*	2,500	0	6	(6)	6	(6)	0
Soccer Fields*	2,500	1	6	(5)	6	(5)	1
Swimming Pools	20,000	1	1	0	0	-	0
Picnic Shelters	2,000	6	8	(2)	8	(2)	0
Football	5,000	2	2	-	3	(1)	2

*adjusted to reflect current trends

Source: Armstrong County Comprehensive Plan, 2005, (c/o Population figures)

Armstrong County East Planning Region Population		11,001	Estimated 2010 Population		11,649	
Park Land Acreage Comparison to NRPA Standards						
Park Type	Acres/1000	Existing Acres	2007 needed acres	2007 Surplus (Deficit)	2020 needed acreage	2020 surplus (Deficit)
Community Park	8	50.4	88.008	-37.608	93.192	-42.792
Neighborhood Parks	2	0	22.002	-22.002	23.298	-23.298

Facility Comparisons to NRPA Standards

East Region 2000 Population		11,001	Estimated 2010 Population		11,649		
	1 facility per X people	Existing	2007 need	2007 surplus (deficit)	2020 need	2020 surplus (deficit)	Comments: Existing School District Facilities
Basketball Courts	5,000	6	2	4	2	4	3
Tennis Courts*	5,000	8	2	6	2	6	4
Volleyball Courts	5,000	1	2	(1)	2	(1)	0
Baseball Fields	2,500	8	4	4	4	3	2
Softball Fields*	2,500	5	4	1	5	0	3
Soccer Fields*	2,500	3	4	(1)	5	(2)	3
Swimming Pools	20,000	0	0	0	0	0	0
Picnic Shelters	2,000	9	6	3	6	3	1
Football	5,000	2	2	(0)	2	(0)	2

*adjusted to reflect current trends

Source: Armstrong County Comprehensive Plan, 2005, (c/o Population figures)

Armstrong County South Planning Region Population 17,907 Estimated 2010 Population 18,118

Park Land Acreage Comparison to NRPA Standards						
Park Type	Acres/1000	Existing Acres	2007 needed acres	2007 Surplus (Deficit)	2020 needed acreage	2020 surplus (Deficit)
Community Park	8	44.1	143.256	-99.156	144.944	-100.844
Neighborhood Parks	2	2.916	35.814	-32.898	36.236	-33.32

Facility Comparisons to NRPA Standards

South Region 2000 Population 17,907 Estimated 2010 Population 18,118

	1 facility per X people	Existing	2007 need	2007 surplus (deficit)	2020 need	2020 surplus (deficit)	Comments: Existing School District Facilities
Basketball Courts	5,000	5	4	1	4	1	0
Tennis Courts*	5,000	4	4	0	4	0	0
Volleyball Courts	5,000	0	4	(4)	4	(4)	0
Baseball Fields	2,500	6	7	(1)	7	(1)	1
Softball Fields*	2,500	3	7	(4)	7	(4)	1
Soccer Fields*	2,500	0	7	(7)	7	(7)	0
Swimming Pools	20,000	2	1	1	0	-	0
Picnic Shelters	2,000	14	9	5	9	5	0
Football	5,000	2	4	(2)	4	(2)	1

*adjusted to reflect current trends

Source: Armstrong County Comprehensive Plan, 2005, (c/o Population figures)

Appendix E: Armstrong County Municipal Recreation Matrix

ARMSTRONG COUNTY MUNICIPAL RECREATION QUESTIONNAIRE

Municipality	Who provides recreation programming or services?	What programs are provided?	Title of person responsible for handling day to day rec. issues?	Do you have a park and rec. board, committee, or commission? Advisory or policy making?	What are the park and rec. board, committee, or Commission's functions?	Does your municipality have a seasonal, full-time, or part-time paid park and/or recreation director?	Do you have any other seasonal or part time rec. positions?	Other information (* = see below)	Approval to conduct a playground safety audit?
Borough of Manorville	No one	None	No response made	No	No response made	None	None	None	No playground
Worthington Borough	Municipality	Playground	Secretary	Yes	Joint with W. Franklin Twp.	None	None	None	Yes
Redbank Township	Non-profit recreation organization	Men's softball	Secretary	No	No response made	None	None	*3	Yes
Kittanning Borough	Municipality	None	Street Supervisor	Yes	Reservations	None	None	*4	Yes
South Bethlehem Borough	No one	None	Borough Secretary	No	No response made	None	None	*5	No playground
Leechburg Borough	Municipality	3-playgrounds, basketball court, Veterans Field, Riverside Park	Council Member	Yes	No response made	None	None	None	Yes
Pine Township	Municipality & Youth Sports Organizations	Baseball program	Secretary/Treasurer	No	No response made	None	None	*7	Yes
City of Parker	Youth Sports Organizations	Baseball and softball	Director of Parks & Recreation	Yes	Fundraising for park	None	None	None	Yes
South Bend Township	Municipality	None	No one	No	None	None	None	*9	No playground
Mahoning Township	Non-profit Recreation Organization	Family gatherings, church functions, high school class reunions, weddings & receptions	President	No	No response made	None	None	*10	Yes
Borough of Apollo	Municipality	Fall Festival	Borough Secretary	No	No response	None	None	None	Yes

West Franklin Township	and Non-profit Recreation Organizations	Youth Sports Organizations	T-Ball, Little League	No response	No	No response made	None	None	None	None	None	No playground	
Atwood Borough	No one	No one	None	No response	No	No response made	None	None	None	*13	No playground		
Washington Township	Local parks and recreation Board		None	No response	Yes	No response made	Seasonal	Policy making	None	*14	Yes		
Freeport Borough	Municipality, and Youth Sports Organizations		Use of James E. Swartz Field for free. Little League, etc.	Council President	No	No response made	None	None	No response made	*15	Yes		
Dayton Borough	Municipality		Grove Park, Firehall Park, old high school ball field	Borough Secretary	No	No response made	None	None	No response made	*16	Yes		
South Buffalo Township	No one		None	No response	No	No response made	None	None	No response made	*17	No playground		
Bethel Township	No one		None	No response	No	No response made	None	None	No response made	None	No playground		
Boggs Township	No one		None	No response	No	No response made	None	None	No response made	None	No playground		
Burrell Township	No one		None	No response	No	No response made	None	None	No response made	None	No playground		
Hovey Township	No one		None	No response	No	No response made	None	None	No response made	None	No playground		
Kiskiminetas Township	No one		None	No response	No	No response made	None	None	No response made	None	No playground		
Manor Township	Fort Armstrong Horseman's Association (by agreement)		None	President	No	No response made	None	None	No response made	None	No playground		
North Buffalo Township	No one		None	No response	No	No response made	None	None	No response made	*24	No playground		
Wayne Township	No one		None	No response	No	No response made	None	None	No response made	None	No playground		

Kittanning Township	Local parks and recreation Board	Home field for KESS Little League and several traveling teams	Township Supervisor	Yes Policy making	Meet monthly for business and to seek funding. Board also operates concession stand and maintains park grounds.	None	No response made	None	No
North Apollo Borough	Municipality	None	Borough Secretary	No	No response made	None	No response made	*27	Yes
Madison Township	Municipality	Pavilion rentals	Park Board Member	Yes Advisory	Suggests to the Twp. Supervisors what is needed at the park.	None	Seasonal grass cutters	No	Yes
Parks Township	Municipality	Pavilion rentals							Yes
West Kittanning	Municipality								No

ADDITIONAL INFORMATION:

- *3. There was one additional park that was not listed on the original analysis: The Herman C. Rayburch Oak Ridge, Redbank Township Park, Oak Ridge Rd., Oak Ridge, PA
- *4. There is one additional park at the corner of W. High and N. Jefferson: Whelan Park, owned by Kittanning Borough and in [Good Condition] –(as per Street Supervisor James Mechling)
- *5. We have no community park or recreation facility
- *7. Our small community is in great need of a new playground facility at Templeton Community Park, at the corner of Clay Ave. Templeton, PA 16259; and would appreciate any help in obtaining funding to achieve that goal. Thank you for your consideration. Pine Twp. Board of Supervisors, P.O. Box 311, Templeton, PA 16259
- *9. There are no parks in South Bend Township, 455 Lindsay Run Rd., Spring Church, PA 15686, Kim A. Anderson – Sec. Treas.
- *10. We have Greenwall Community Park in Putneyville, PA, Keith Schreckengost, 2127 Spruce St., New Bethlehem, PA 16242
- *13. We have no Parks in Atwood Borough, Armstrong County
- *14. Park Groundskeeper for Washington Twp. – Kenneth Johns
- *15. Freeport Park in not owned by Freeport Borough, it is a private park that is owned and operated by a group called the “Freeport Charitable Trust”. There is also a park known as the “Freeport Borough Riverside Park”, with Boat Ramp Veterans Memorials, and benches to view the River. They also have Second Street Playground, the Freeport Borough Laneville Section of the Butler to Freeport Trail, the Freeport Buffalo Creek Parking and Access Area – a joint effort with the PA Fish & oat Commission.
- *16 The Grove is used as a playground area with basketball Tennis Court, with playground area behind it beside the Firehall
- *17 South Buffalo has one ball field and it is maintained by the Bird’ sfoot Golf Course
- *24 North Buffalo Twp. has ball fields but they are maintained by Ford City Borough
- *27 The borough has maintained the current park facilities for about 15 years and has regularly expanded and updated them using County Recreation Board (Belmont) funding. We have two parks/playgrounds that are open to the public. No specific recreation programs are provided, but playground equipment is provided, and this equipment id frequently updated.

Appendix F: Study Committee Issues and Concerns

STUDY COMMITTEE IDENTIFIED ISSUES AND CONCERNS

At the first meeting of the Study Committee on March 14, 2007, the Committee identified and prioritized their thoughts on issues related to recreation, parks, and open space.

The following is a prioritized listing of all issues identified.

Rank	Issue	Total Points
1	There is no county park system in Armstrong County	40
2	Need additional recreation facilities other than those provided at local schools or a stronger cooperative effort to enhance the use of school facilities	16
3	Need improved care and management of existing facilities	15
	The County should provide assistance for local municipalities on how to develop parks	15
4	Concentrate on completing the trail system.	12
	Maintenance of facilities is tremendously important	12
5	There are a lot of special interest groups but no overall county-wide direction	10
	There is a need for destination points for both residents and those outside the County; those that already exist need better promoted	10
6	Need legalized trails for ATV use	9
7	The lack of organized activities at parks deters residents from visiting them	8
	Educate landowners about preservation and conservation, while acknowledging their ownership rights	8
8	Control of property rights to manage pollutants to private property	7
	Boroughs and Townships need to be discussing provision of local recreation	7
	There is currently a lack of river access, but some access points are being developed; amenities at these points should be developed as well	7
	Acquire, for preservation, natural areas identified through the inventory portion of this plan	7
9	The transit authority should be better utilized for access to recreation	6
	Recreation facilities, particularly swimming pools, need to be strategically located throughout the County	6
10	There is concern about the environmental impact of opening natural areas for public use	5
	Create a clearinghouse of information for all recreation programs	5
	Develop a sense of community ownership for recreation facilities	5
11	Need more hunting grounds	4
	Strengthen multi-use of existing trails	4
	Offer workshops through the County to provide information on availability of funding and development opportunities, as well as potential partners.	4
12	Learn from Sugarcreek and Rural Valley areas about how they developed their parks	2
	Making partners with current adversaries could strengthen opportunities for parks	2
	Designate specific areas of the Kiski River as wild areas	2
13	Focus on the kids	1
	Organize local conservation groups to coordinate efforts	1
	Coordinate to flourish, not just to co-exist	1

14	There are no locations for kids to just go out and play	
	The lock and dam system on the Allegheny River is getting poorer	
	Educate residents about the benefits of recreation to gain support for it	
	Need equipment rental available at facilities	
	Need better inter-county communication and cooperation for use and development of facilities	
	Some areas of the County are extremely economically challenged; recreation facilities need to be very close to these areas	
	Regionalization, crossing municipal boundaries is important in parks and recreation	
	Better utilize the Belmont Complex in the off-season	
	The County needs a skate park	
	Recognize and address conflicting uses of parks and facilities	
	Make transportation connections between key communities, facilities, open space, and recreation	
	Provide safe bicycle opportunities/lanes on or near roadways	
	Provide recreation facilities for handicapped residents	
	Install a par course-type exercise trail	
	Need additional restrooms along trails	
	Manage the use and over-use of recreation facilities	
	Many residents must commute outside the County for recreation facilities and programs	
	Work with non-profit organizations for biodiversity consulting services	
	Dams along the Kiski River could create new boating opportunities	
	Consider possible recreational uses of abandoned mine lands	
Organizations should recruit other organizations for use of their recreation facilities		
Continue development of the Pittsburgh to Harrisburg Trail		
Freeport Park		

Appendix G: Public Meetings Details

PUBLIC MEETINGS DETAIL

Pashek Associates held six public meetings, one in each of the Armstrong County Planning Districts throughout the months of November and December, 2007.

At each meeting a Pashek Associates Consultant introduced the agenda and explained to the attendants the purpose and the process of the meeting. The Consultant explained the planning process Pashek Associates utilizes to obtain information and to create a vision for the County and to formulate recommendations, goals, and strategies to achieve that vision.

For each of the meetings, Pashek Associates used the Nominal Group Technique to gather comments. The technique works as follows:

1. Every person in attendance has the opportunity to share his or her concerns. Moving around the room, each person is asked to share one of his or her issues at a time, and the Consultant then records the issue on a board in the front of the room. After each person has the chance to share one issue, the Consultant asks around the room again and again until every person has the opportunity to express all of his or her issues and have them recorded.
2. Similar issues are combined under a single item.
3. Each person is given five stickers numbered 1 through 5. They are asked to prioritize the issues listed by placing the sticker with the number 5 on their highest priority, 4 on the next highest, etc.
4. After the prioritizing is completed, the points for each issue are tabulated. The ranking of the issues, with their respective point values, is included for each individual meeting.

Location: Public Meeting #1 – Distant Firehall

Date: November 7, 2007

Persons in Attendance: 16

Facilitators: Bob Good and Ted Morus

Rank	Issue	Total Points
1	Maximum efforts should be prioritized to connect towns and other counties and regions with trails	32
2	Partner with land owners to open properties to ATV riders, and work with local municipalities to interconnect those properties	21
3	Develop and promote the Allegheny River, Redbank Creek, Kiski River, etc., as a blue-way, river trail, destination site	21
4	Look at acquiring abandoned strip mines for ATV usage	20
5	Provide trails for ATV users	20
6	Encourage private investors in land assets and financial entrepreneurs	15
7	Develop sustainable recreation areas to include greenways, open space, and facilities for residents but also to serve as an economic stimulus	8
8	Get area school districts to better open their recreational facilities for public use	8
9	Armstrong County should develop a better public relations program, or get out of the business; they should recreate the recreation authority	7
10	Geographical limitations keep residents from using certain facilities; this needs to be addressed so residents have equal opportunity or to direct them elsewhere for recreational uses	7
11	Trail and ATV development efforts should be focused on a regional as well as multi-county basis	6
12	There is a lack of adequate regional type parks, such as county and state parks; these should be developed	5
13	Develop additional river access points on the Allegheny River and other major streams	5

14	Street hockey, soccer, basketball, etc. and indoor recreational sport uses should be provided in the summer inside of the Belmont Complex	4
15	Provide a means to make the Belmont Complex activities (hockey, skating) better and more affordable	4
16	Improved advertising and marketing of existing facilities is needed	3
17	Acquire abandoned rail road lines for public use	3
18	Promote ATV trails as tourist attraction.	2
19	Better promotion within the County is needed to attract County residents to utilize the Belmont Complex	2
20	Develop summer camp programs at the Belmont Complex	1
21	Provide campgrounds throughout the County to attract tourists	1
22	More coordinated efforts are needed with trail groups to prioritize properties	0
23	Opportunities for use of public land is shrinking due to development and posting; need to find a way to reverse or deal with this	0
24	The County should provide proper and needed finances for their owned facilities, but should also look into grants and other sources for development money	0
25	The Belmont Complex does not serve many areas of the County due to distance; therefore, not all emphasis and money should go just to the Complex but in developing facilities in other areas in the County for equal use	0
26	Improve and expand environmental centers	0
27	Trail hikers should be charged a user fee or made to purchase a user license just like the ATV trail users	0
28	Educate residents to be tourist friendly, so they realize that tourists enable the County residents to be able to have more recreational facilities and properties through the money they bring into the County	0
29	More areas need to be opened and accessible for public hunting	0
30	Talk with Army Corps of Engineers to turn dams into bottom release to enable year-round fishing at their facilities	0
31	Involve state and federal representatives and senators with the Comprehensive Rec. Plan for funding support of the vision	0
32	Find a way to provide access to game lands, trails, and similar facilities year-round to attract visitors to the County	0
33	County should provide access to funding and funding sources for municipalities, non-profits, etc	0
34	Areas for youth for unstructured indoor and outdoor recreational usage	0

Location: Public Meeting #2 – Manor Firehall

Date: November 19, 2007

Persons in Attendance: 14

Facilitators: Bob Good and Ted Morus

Rank	Issue	Total Points
1	Retain the Belmont Complex; utilize it to attract new residents and non-residents	29
2	Redevelop a County recreation authority, and develop a County and agency-funded position to pull all this together	23
3	Look into the possibilities of developing a new YMCA of high-quality; a “classy place”	13
4	Complete the Armstrong Trail	12
5	Develop an expanded & dedicated County grant program for municipalities & non-profits	10

6	Develop a multi-use outdoor sports complex located in a central location for all County resident accessibility; for soccer & baseball use	9
7	Market and promote facilities that the County already has	9
8	Develop connections to get from trail to trail	9
9	Improved signage at and to trail heads	7
10	Get the County to make a commitment to preserve green space and redevelopment of brown field sites	7
11	More nature and environmental programming throughout the County	7
12	Use this Plan to generate tourism and to capture revenue	7
13	Develop multi-purpose trail heads for land, water, motorized, etc.	4
14	Enable plans in other counties to meld with Armstrong County plans	4
15	Develop river access and use in Ford City	4
16	Develop river-based events	4
17	Create organized and publicized activities to celebrate new or existing facilities	3
18	Recover former mining and industrial sites for use as rec. facilities adjacent to the Armstrong Trail	3
19	Develop better access to trails through bike lanes on roads, public transportation, and better coordination with the Bus Board	3
20	Strategically located access to local waterways	3
21	Work with other counties, as well as regionally, for ATV, walking, biking, and equestrian trail development	3
22	Create more camping and picnic areas throughout the County	2
23	Convince residents that there are many recreational opportunities already within the County; promote a good reason not to leave the County to recreate	2
24	More organized places for X-county skiing	1
25	Develop a skate park	1
26	Develop public archery and rifle ranges	1
27	Find out which parks outside of the County are good examples for Armstrong County to pattern from; also realize which parks are not good patterns	1
28	Promote and support the new Ford City hockey team, it has been a great benefit to the students & community	0
29	Develop a hockey equipment rental program at the Belmont Complex	0
30	Provide an understanding of how organizations and municipalities go through the process to get County grant writing and funding support	0
31	Utilize universities to provide technical assistance	0
32	Plan for sustainability prior to construction	0
33	Develop and indoor/outdoor swimming pool	0

Location: Public Meeting #3 – Sugarcreek Firehall

Date: November 30, 2007

Persons in Attendance: 10

Facilitators: Bob Good and Ted Morus

Rank	Issue	Total Points
1	Develop all trails, ATV, hiking, water, etc., to bring people, revenues, and economic development into the County	29
2	Acquire more land for any project – riverfront, County Park, etc.	16
3	Prioritize planning efforts with projects that are multi-purpose to combine efforts to maximize the outcome	16
4	Increase development of access to riverfront properties and other public use areas for boating, fishing, canoeing, ATV, etc.	11
5	Work to develop rail beds for public access for hiking, biking, and ATV use	11
6	Create a County-oriented position to advocate and to coordinate and promote parks, recreation, open space and trails; and to work-with & develop groups and organizations in these areas	8
7	Stimulate County residents to become interested and involved in outdoor activities, advocacy, and development	8
8	Help commissioners to understand that recreation needs to be a priority to stimulate County economic development, revenue producing, projects, and vacationing-visitation	6
9	Build different recreational hubs/outlets around the County, especially around river fronts	5
10	Get the most out of a project/program, be it the Belmont, organized sports league, etc. Find out what the best use of funding and development will be	5
11	Work with adjacent counties on various projects; plan as a region	4
12	Develop more youth programs and facilities	4
13	Need to get the word out that there is a need to inform and utilize special-interest groups in the maintenance and upkeep, labor and equipment, and support of various projects that this Plan will stimulate	4
14	Develop a boat-launch at Parker	3
15	Public land acquisition that can serve dual-purposes	2
16	Create soccer fields and multi-purpose fields around the County	2
17	Develop funding and grants, not only to fund start-up, but for maintenance & self-sufficiency	1
18	Belmont Complex is localized and does not meet the needs of all County residents in all regions; so, develop recreation opportunities around the County	0
19	Develop more legal access for motorized recreation and for handicapped	0

Location: Public Meeting #4 – Rural Valley Firehall

Date: December 4, 2007

Persons in Attendance: 14

Facilitator: Ted Morus

Rank	Issue	Total Points
1	Improve the recreational opportunities that are already established	24
2	Develop better cooperation between Clarion & Armstrong Counties to contribute to the development and sustainability of area recreational purposes	19

3	Do not use tax-payer dollars to develop ATV trails, especially rail trails	18
4	Develop a self-sustaining County-wide recreational authority for parks & recreation, and focus on coordinating all outdoor groups so they can all get together & work together	17
5	Open-up State Game Lands for other uses than they have traditionally been used for	17
6	When developing new land for recreational purposes, the land owners concerns need to come first, especially in Redbank and Mahoning	16
7	Develop more County access for waterway uses, such as canoeing, kayaking, and fishing	14
8	Planning and development of all types of trails for all kinds of users; then link these trails	13
9	Improve private enterprise opportunities in the County, such as bed & breakfast, bait & tackle, and canoe rentals to provide for outdoor user groups & persons	9
10	Establish laws with teeth to keep ATV users in their intended locations	9
11	Diversify the Belmont Complex opportunities to be more multi-purpose, hold <i>community nights</i> to draw different areas of the County, and make it more accessible to County residents through transportation opportunities	9
12	Open Mahoning Creek for swimming, canoeing, and more diverse uses	7
13	Any future development should only be on already owned and utilized recreational lands; no new land development	6
14	Determine if there should be enhanced recreational development along the Allegheny River at dense population areas	5
15	Restore brown field types of land for public use, such as hunting and nature areas	5
16	More outdoor recreation opportunities need developed on the Shamokin Path	4
17	Better cooperation between Westmoreland, Butler, and Venango Counties for watershed uses	4
18	Better development of Crooked Creek area for nature activities and recreational purposes	4
19	Need more structured recreational opportunities throughout all 6 planning regions, not just the heavily populated ones	3
20	Develop more soccer fields, outdoor and indoor	3
21	Develop transportation opportunities throughout the County to get people to the recreational areas in the County	2
22	Help recreational and outdoor organizations to obtain funding for their organizations	2
23	Develop skeet & archery shoots to draw County residents together	1
24	Priority needs to be given to more multi-purpose-use projects	0
25	Develop a raceway or drag strip	0
26	Improve existing parks in the northeast part of the County	0
27	Set up ATV, equestrian, and walking areas on foreclosed back-taxed properties	0

Location: Public Meeting #5 – Parks Township Firehall

Date: December 5, 2007

Persons in Attendance: 15

Facilitator: Ted Morus

Rank	Issue	Total Points
1	Increased funding to improve and support existing parks and recreation facilities, making them sustainable; i.e., Belmont Complex	25
2	Land acquisition for trails	20

3	Develop local parks with soccer and baseball sports fields	20
4	Preserve open space and protect it from development	18
5	Link trails to towns, rivers, and counties	14
6	Develop a county recreation director position or authority to work with public and private entities, residents, etc., for recreational opportunities	13
7	Strategically place sports complexes around the County for baseball and other activities	13
8	Work with riverfront communities for revitalization	10
9	Continue the linking of the Kiski – Conemaugh Greenway to the riverfront communities	9
10	Focus on including historical sites and promoting their value when developing along the river	8
11	Mapping and clean-up of illegal dumpsites for increased tourism	6
12	Develop specific areas for ATV use, and keep them there	6
13	Develop an amphitheater locally	5
14	Develop wildlife conservation areas for bird watching	5
15	Increase community involvement and stir their interest in project development and attendance	4
16	Link trail-towns and have improved signage to promote economic development	4
17	Develop soccer fields, outdoors and indoors (if affordable)	4
18	Develop boat launches and increase river accessibility	4
19	ATV areas should be self-sustainable	3
20	Improve marketing of existing facilities within the County	2
21	Develop cultural arts areas	1
22	Develop BMX trails	0
23	Develop county parks	0
24	Build a multi-use indoor sports complex	0

Location: Public Meeting #6 – West Kittanning Firehall

Date: December 6, 2007

Persons in Attendance: 31

Facilitator: Ted Morus

Rank	Issue	Total Points
1	Develop a skate park for area youth	97
2	Develop rail trails and strip mines for ATV use	60
3	Develop outdoor multi-sports athletic facilities in central Armstrong County	24
4	Upgrade the Belmont Complex with newer amenities such as batting cages and other multi-use venues	23
5	Preservation and enhancement of existing trails and parks; and put a foot-bridge over the Kiski and adjust the trail to include Keystone Lake access	20
6	Develop, through partnerships, multi-purpose regional recreation complexes	17
7	Do not develop ATV-use areas on private or County land; and better police and control where they ride	17
8	Build a new YMCA	17
9	Better marketing and communication to the public of what Armstrong County already has	16
10	Develop more County-wide nature/environmental education programming opportunities for the public to access	15

11	Build a movie theater	14
12	Develop a park and recreation manager position or a recreation board to develop and sustain programming and to oversee and advise recreational and outdoor groups	14
13	Develop a program that would allow youth to become involved in the planning and building of recreational opportunities	13
14	Develop County-community partnerships for developing new recreational facilities	13
15	Develop a training facility for ATV safety training	12
16	Legalize some of the back roads in rural townships for ATV riding	11
17	Get school districts to open their facilities for more public use	11
18	Update the amphitheater in Kittanning to make it usable in all types of weather; i.e., tarp covering	9
19	Better environmental control on mines concerning acid mine drainage	8
20	Develop youth facilities so they can just meet, hang-out, and have a structured and safe place to be	7
21	Build an indoor live-theater	7
22	Build a trail from behind the Belmont to the Wal Mart area so people can walk there on their sports/play breaks	7
23	Maintain restrooms along the Cowanshannock Trail	7
24	Build a safe walking path from Ford City football field into town	5
25	Develop better recreational signage directing people to recreational locations	5
26	Create an Allegheny River access at Ford City	5
27	Develop dog-run parks in the County	4
28	Upgrade brown fields first for recreational purposes, instead of developing new recreational sites on undeveloped land	4
29	Make a spur-trail from Tubmill Run to Lenape Park in Ford City	4
30	Have the Sheriff's Dept. make security patrols a priority at recreational areas	3
31	Develop small rustic camping sites along the Armstrong Trail	2
32	Develop more bridges on the Baker Trail and Mahoning Creek as needed	1
33	Make more private lands accessible for recreation	1
34	Get the Commissioners to understand the importance of recreation to attract tourism for revenue as in other Counties	1
35	Update Cadogan Flats area of Ford City for softball fields	1
36	Make river access from Cadogan Road area at Ford City	1
37	Develop a rail trail section for the Armstrong Trail	1
38	Preserve land for nature	0
39	Develop new tennis courts and update existing courts	0
40	Develop an environmental education center along the Cowanshannock Trail	0
41	Use County owned land for developing soccer and baseball fields	0
42	Develop self-sustaining recreational programs	0
43	Create an exhaustive County-wide recreational opportunities brochure	0
44	Develop exercise stations along existing trails	0
45	Have the County use eminent-domain or condemn properties at the missing trail sections along the Armstrong Trail	0
46	Develop a Boys and Girls Club agency in the County	0
47	Work to have all high school sports be equally funded, such as ice hockey	0

Appendix H: Key Person Interview Details

KEY PERSON INTERVIEWS

The following is a list of interviewees and their affiliation:

1. James Budzilek – Leechburg School Superintendent
2. Scott Heasley – YMCA Executive Director
3. Gary Pinkerton – Director Butler County Parks/Armstrong County Resident
4. Michael O’Hare – Leader Times Editor
5. Allen Walzak – Strongland Chamber of Commerce
6. George Verner – Pennsylvania Conservation Corps Foreman - Sugarcreek
7. Roco Aly – PA Federation of Sportsman’s Assoc. County Representative
8. Larry Lizik – Apollo School District Athletic Director
9. Mark Cochenour – Kittanning Youth Baseball Representative
10. Karen Winter – Fort Armstrong Horseman’s Association President
11. Chuck Foster – Elderton Park Commission
12. Todd Grafton – Armstrong Amateur Hockey Association President
13. Gary Montebell – Belmont Complex Manager
14. Patty Kirkpatrick – Commissioner
15. Rich Fink – Commissioner
16. James Scahill – Commissioner
17. Patty Bruner – Project Coordinator – Baker Trail
18. Dennis Hawley – Crooked Creek Environmental Learning Center
19. Ron Thompson – Milton Loop Campground Manager
20. Ron Steffy – Allegheny Valley Land Trust
21. Mark Ford – Sports & Recreation Associates
22. Steve Atwood – Kittanning Borough
23. Larry Gray – Pennsylvania Conservation Corps Foreman – Elderton
24. Stacy Klukan – Ford City High School Health & Physical Education
25. Dianne Emminger – ACMH Vice President Information Services
26. John Pinkerton – Recreation Resources, Inc. & Armstrong County Resident

To gather public input on parks and recreation resources and needs, the Consultant conducted 26 interviews with indoor and outdoor sports and recreation-oriented program providers, area business people, retirees, and various community residents. Each person interviewed was asked the same questions, and their personal responses were recorded for each question asked. The questions that were asked appear as follows.

1. When you think of parks and recreation in Armstrong County, what comes to mind?
2. What are the strengths of parks and recreation in Armstrong County?
3. What are the weaknesses of parks and recreation in Armstrong County?
4. What are the greatest recreational needs in Armstrong County (for facilities and for recreation programs)?
5. What group of people is least served or should be targeted with recreational programs or facilities?
6. Should Armstrong County be cooperating with surrounding communities in providing parks and recreation? If yes, what municipalities and how. If no, why not?
7. Are there other issues of importance that need to be considered?
8. What role should the County play in providing parks and recreation in the County?
9. How does your group/organization impact parks and recreation in the County?
10. How does County parks and recreation impact your group/organization?

Interviewees’ responses to these questions are as follows:

(Duplicate answers are indicated by a number following the response)

- 1. When you think of parks and recreation in Armstrong County, what comes to mind?** (This question was asked to find out what people think of first when they associate parks and recreation with Armstrong County.)

- Crooked Creek Lake (9)
- River recreation (6)
- Rails-To-Trails (6)
- Belmont Complex (6)
- Parks that provide for families to picnic and relax and to have fun together (4)
- Township parks around the County (2)
- Hunting (2)
- Fishing (2)
- Children and their need to recreate (2)
- Horseback riding areas (2)
- Mahoning Creek Lake (2)
- Armstrong Trail (2)
- A lack of leadership in County-wide recreation planning (2)
- Keystone Lake
- Walking in the outdoor areas
- YMCA
- Baker Trail
- Kittanning Riverfront Park
- Little League games
- High school fields
- Tourism
- Community activities
- Economic development generated through parks and recreation
- No multi-use centralized recreational opportunities in the County
- Basketball pick-up games at John Whelan Playground

2. *What are the strengths of parks and recreation in Armstrong County?*

- Spread out locations of the various small township parks and larger park areas (7)
- Enjoyment of the rural nature of Armstrong County (6)
- Belmont Complex (4)
- The untapped recreational opportunities and space that can yet be developed (3)
- Crooked Creek Lake area (3)
- I do not see a lot of strengths in the County's support of parks and recreation (3)
- The local people and organizations that coordinate local recreational initiatives (3)
- Tourist bureau promotions (2)
- View from Riverfront Park (2)
- Low traffic jams
- Easy driveability to anywhere in the County
- Climate is not too extreme, being not too hot or cold
- Local parks do not charge for participant usage
- Hunting heritage for County families
- Fishing heritage for County families
- Fish and wildlife opportunities to attract visitors to the County
- Linear open space along the rivers
- Allegheny River recreation
- River recreation
- Redbank Creek
- Mahoning Creek
- Keystone Lake
- Mahoning Creek Lake
- The County's grants for parks and recreation projects
- If the County operation and Commissioner's involvement would support parks and recreation development
- Armstrong Trail
- Walking trails
- Biking trails

3. *What are the weaknesses of parks and recreation in Armstrong County?*

- No County funded Parks and Recreation authority to oversee parks and recreation (9)
- Not much publicity of recreational opportunities to inform and draw visitors (8)
- No local municipal parks and recreation directors (4)
- Proper maintenance and upkeep to keep parks and facilities neat and safe (4)
- More open properties for hunting and public use (2)
- Need a committee representative from each municipality to meet as a rec. board (2)
- No person to do research to see that all municipalities get their fair share of grants (2)
- Larger parks and recreation destinations evenly spread out through the County (2)
- No economic base or decision to support parks and recreation funding (2)
- County grants should only go to municipalities who have land, not to clubs
- Comfort stations in more parks
- More boat launches for river accesses
- Not enough basketball courts
- Not enough baseball fields
- County does not apply for Pennsylvania Conservation Corps projects for area parks
- Lack of off-highway vehicle trails and parks
- Unconnected walking and biking trails
- Lack of a recreational facility to attract all age groups
- Children do not have a lot of options as to where to recreate
- Recreational leagues that are not travel leagues
- Volunteers
- The Belmont is unique but not adequate to serve the whole County
- Bus transportation to the Belmont for residents throughout the County
- Public transportation to get people around the County to recreate
- The schools seem to be the only places most children can come together to recreate
- No facilities to bring people into the County and keep them here for days at a time
- Lack of a vision for County growth and development in recreational opportunities
- Kittanning Community Park is not real accessible to all residents
- Riverfront Park is long but not real wide; tight for people to have relaxing space
- No State Park
- No County park

4. *What are the greatest recreational needs in Armstrong County?*

For facilities:

- A true public recreation center, with multi-purpose amenities for recreational sports, and wellness – to be more centralized and usable by all residents (4)
- Upgrade what we already have in the different parks; add to them and supply better maintenance (4)
- More available multi-use playing sports fields in the summer months (4)
- Areas for young people to recreate and interact (4)
- Build recreational facilities, multi-use and multi-generational, placed evenly throughout the County (3)
- Anything new and multi-use for the public (2)
- More available restrooms in public-use areas (2)
- Pools for summer use (2)
- Skate park (2)
- Not enough indoor facilities for use in the winter months, such as for soccer (2)
- More walking and mixed-use trails
- ATV designated-use areas (2)
- More trail heads
- Connect walking/biking trails within the County and with out-of-County/State trails
- Off-highway vehicle trails/parks
- River access boat launches

- Boat rental facility on the Allegheny
- More boating
- Security patrols of the areas that we already have
- Better parking at the YMCA
- A new YMCA
- Communication between municipal park representatives in sharing the resources/knowledge of what they have to offer the County residents
- Access to additional properties for hunting
- Public shooting ranges
- Build an amphitheater like Post Gazette Pavilion at Star Lake
- Update the infrastructure of the County Campground at Milton Loop
- Keep the Belmont
- A large conference center with motels close to it
- Indoor basketball courts for public use
- Better drainage of existing baseball fields so they can be more often utilized

For recreation programs:

- Specifically, summer day camp, instructional, and recreational programs (5)
- All municipalities need more children's recreational programs (5)
- Advertise what the different municipal parks and recreational program providers already have (5)
- Increased funding and availability for more community recreational programs (4)
- More County-wide tennis and soccer programs (4)
- Intramural competitive programs where one municipality can compete recreationally against another (2)
- More (specifically rural) programs for kids (2)
- School pools for classroom instruction and for recreation
- More after-school latch key programs
- Programs that specifically promote wellness
- Organized community walking programs on area tracks
- Environmental education programming
- Gun safety and shooting programs at the grade school and high school levels
- Depends on the area and park in the County
- Skateboard programming
- Programs seem well-rounded enough as is

5. What group of people is least served or should be targeted with recreational programs or facilities?

- Children (10)
- Teenagers (10)
- Middle-aged need more facilities and programs (7)
- Senior programming (6)
- Young people need low cost or no cost programs (2)
- Seniors need more parks to provide for their specific physical limitations and needs (2)
- Off-road vehicle owners (2)
- Hunters are the largest group least served with recreational facilities
- Programming specifically for girls (boys already have more coordinated programs)
- Different areas have different needs depending on who lives there, what they like to do, or what they do not have compared to other communities which have
- Visitors to the County need programming and facilities

6. Should Armstrong County be cooperating with surrounding communities in providing parks and recreation? If yes, what municipalities and how? If no, why not?

- Yes (25)
- The County's involvement with individual municipalities is the only way change and positive development will occur (4)

- The County could better assist municipalities in personally helping them to develop their mini-grant application, and to match other grants to those (4)
- The County could help representatives from the major boroughs and a few townships could come together to meet and form a County-wide authority (3)
- In planning new facilities and/or improvements to existing facilities (2)
- All communities need the County's help, without it they cannot do well (2)
- Leechburg/Gilpin/Kiski area needs financial help to operate recreation (2)
- Freeport and Ford City area needs financial help to operate recreation (2)
- Target communities with schools to work with the schools to provide their facilities for public use
- The Kittanning area gets the most in programming and facilities; the County should invest into all of the other communities, too
- The County has too many restrictions in getting grants and help for individual municipalities; they should make the writing process easier
- The County offers grants, but they are too small to get anything worth constructing
- Build upon the existing strengths in each local municipality
- Crooked Creek needs expanded for better use venues
- Bring in many more events to the Kittanning Riverfront Park
- The County's involvement would help to develop sports through their supporting park development; materials, like wood, are very expensive
- Have a certain % of the County-wide tax base divided among the municipalities specifically for recreation development
- The County and local municipal governments should partner to support existing service organizations in providing community recreational services
- To the extent that funding is available and that funding can be shared
- Participating regionally with other area counties to develop trails which will draw people to the region to use the trail networks

If no, why not?

- No (0)

No Comment (1)

7. Are there other issues of importance that need to be considered?

- Take advantage of the Allegheny River and investigate recreational development opportunities to increase use and tourism, which stimulates the economy (5)
- The County should get someone involved, at least to some degree, with recreation development (3)
- The County should consider the tourism component when concerned with job development; i.e., why would people visit or move into a County without recreational opportunities for their family members? (3)
- Rails-to-Trails is great; but it needs to be finished and trails connected (2)
- Taxes are comparatively high, and we do not get much recreational opportunities in return (2)
- The County should be more involved in letting municipalities know they are available to assist in grant development
- Develop public transportation opportunities to shuttle residents throughout the County to recreation sites
- Armstrong is located perfectly in the southwest region of Pennsylvania to attract hunters and off- road vehicle riders to utilize our assets, not only our residents but from those out of our County; these recreational activities could positively impact Armstrong County if we would only capitalize on the assets we have
- As part of this Comprehensive Plan, the County should "Positively Post" trails to enforce penalties for misuse of their intended purpose
- There are no sidewalks in the municipalities, and walking access to facilities and parks can be dangerous and is an issue
- When dealing with recreational grants, have a County person examine park needs so money is put where it is best served
- The County should consider exchanging the \$40k in recreational mini-grants and fund a position with it, instead, to work with municipalities and organizations to find larger grants and assist in recreational program and facility development

- Continue adding to the Riverfront Park to make it better able to be utilized seasonally
- Crooked Creek could be expanded to make it more usable and to better service the recreational needs of the residents; much is there – add more to it, rather than starting from scratch
- The State should be asked why they have not developed a State Park in Armstrong County
- Preserve the open space we have, and protect established mixed-use trails and the available parks and recreation areas from loss
- Protect the lock and dam system

8. *What role should the County play in providing parks and recreation in the County?*

- The County should act as more of a consultant type, in that they bring together and facilitate discussion with all entities that provide parks and recreation in the County, for the common good, and assist them in preparing funding requests (10)
- The County should probably work cooperatively with a partner organization or group because they cannot afford to do what they would want to do on their own (9)
- The County can assist municipalities in preparing many different funding requests so the municipalities can upgrade their parks (8)
- Develop a park authority or recreation position to oversee all aspects of County-wide parks and recreation (6)
- They should financially assist parks and recreation development and better assist communities in finding and getting recreational grants (4)
- There needs to be a united look at the possibility of the County and school districts working together to better utilize school facilities and grounds when the schools are available; after all, the schools are only able to be open because they are funded with tax-payer dollars (3)
- The County should look into developing a “signature park” – an area with amenities unique to the region, playing upon the natural resources we already have, such as scheduled water-releases to make the Allegheny River between Mahoning and Templeton a Class 4 water way, or making ski slopes in the higher hills of Redbank Township
- Consider bringing back mobile parks and recreation, where a truck would come to a certain location, open its resources and offer recreation to that area for the day
- The County should provide workshops and bring in speakers to educate the municipalities on playground and facilities safety
- Parks could include multi-municipal agreements including County government and non-profit groups and/or private sector
- The County should be involved in programs assisting to open properties to hunters and recreation
- The Belmont should be used more in the off-season and the County should upgrade it for multi-use capabilities, such as soccer and lacrosse, etc.
- The Belmont is high-maintenance, which siphons funds smaller communities need for improving their parks and recreation; with some communities, just a few thousand more dollars can really have a significant impact; but a few thousand into the Belmont will not
- The County should look into the feasibility of cooperating with Crooked Creek to help develop its use
- The County should develop a multi-use County park like other counties have
- The County should work with the PA Fish and Boat Commission to develop boat launches on the Allegheny River
- The County should assist in the development of the Cadogan Fields to make it into a premiere sports-type complex

9. *How does your group/organization impact parks and recreation in the County?*

- We provide a destination which leads to economic development by visitors spending money in our County (2)
- We have a lot of employees with families, so we are interested in their health; we promote good health
- We provide wellness programs
- Our existence does not take money from the County
- We address the needs of the youth and families with recreational and health programs in the County that municipalities and the County government can not afford to provide
- Our organization provides linear parks in the venue of a trail; we provide a recreational resource and have not charged the County for its development or maintenance, all the maintenance is done by volunteers, and County residents utilize it a no charge

- Our organization is the Belmont's most profitable customer and is a major resource for their annual revenue, if we loose members, the Belmont loses revenue
- We have partnered to put in a wellness center which provides for employees and others in the County
- We provide volunteers to work on sports fields, which takes the pressure off of the municipal maintenance departments
- In the past our organization has invited Armstrong County municipalities to attend local Pennsylvania Recreation and Parks Society workshops
- They assist in DCED application
- They are valuable when developing a baseline for developing funding; they produce accurate potential costs
- Our organization, to some degree, fulfills the role of a State Park
- We teach environmental education to County children
- Our grounds are open to the public
- Our organization provides 8-15 year olds with County-wide youth field days, fishing day, and a youth pheasant hunt
- We provide the only facility of its type and size in the area, and it is the only place for people who have horses to go to; this provides revenue to the area
- We provide sports programs and facilities for in-school students
- We provide a 52-mile trail/greenway within the County for public use, and our trail provides public accessibility to hunting and fishing opportunities
- Armstrong County School District uses our tennis courts and Little League fields
- Other municipalities' residents come into our community to use our roller hockey court

10. How does County parks and recreation impact your group/organization?

- They really have no impact on us the way they are recreationally structured (10)
- The County awards small grants yearly, and we were able to receive one (2)
- They have given us no help; however, they have not been a hindrance either
- The County has properties that are available for hospital employees to recreate at
- In the past the County has assisted our organization by promoting our Pennsylvania Recreation and Parks Society workshop to applicable area persons and organizations
- In a round-about way, because there are no County parks, people come to Crooked Creek as a recreational outlet
- If the County does not upgrade the Belmont, people will be drawn out of the County to utilize newer ice facilities
- Trails developed on Rails to Trails allows for our school students to run on and be tested
- Being that the County does not provide parks and recreation, this creates the opportunity for our organization to exist and to help meet the needs of the County
- The County provides us with limited advice and direction

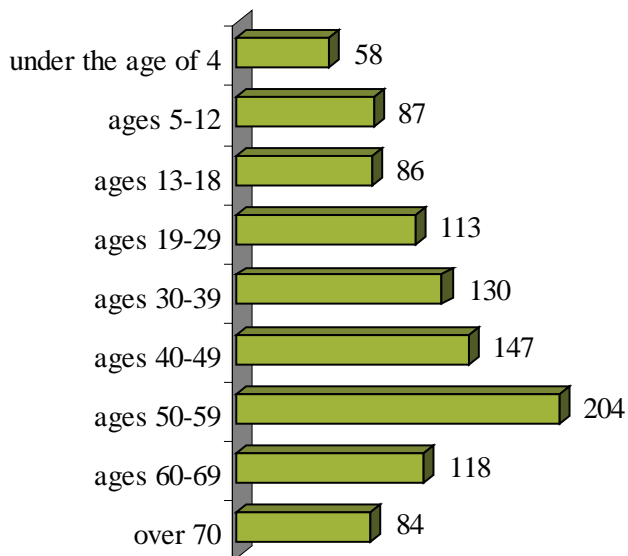
Appendix I: Questionnaire Results

QUESTIONNAIRE RESULTS

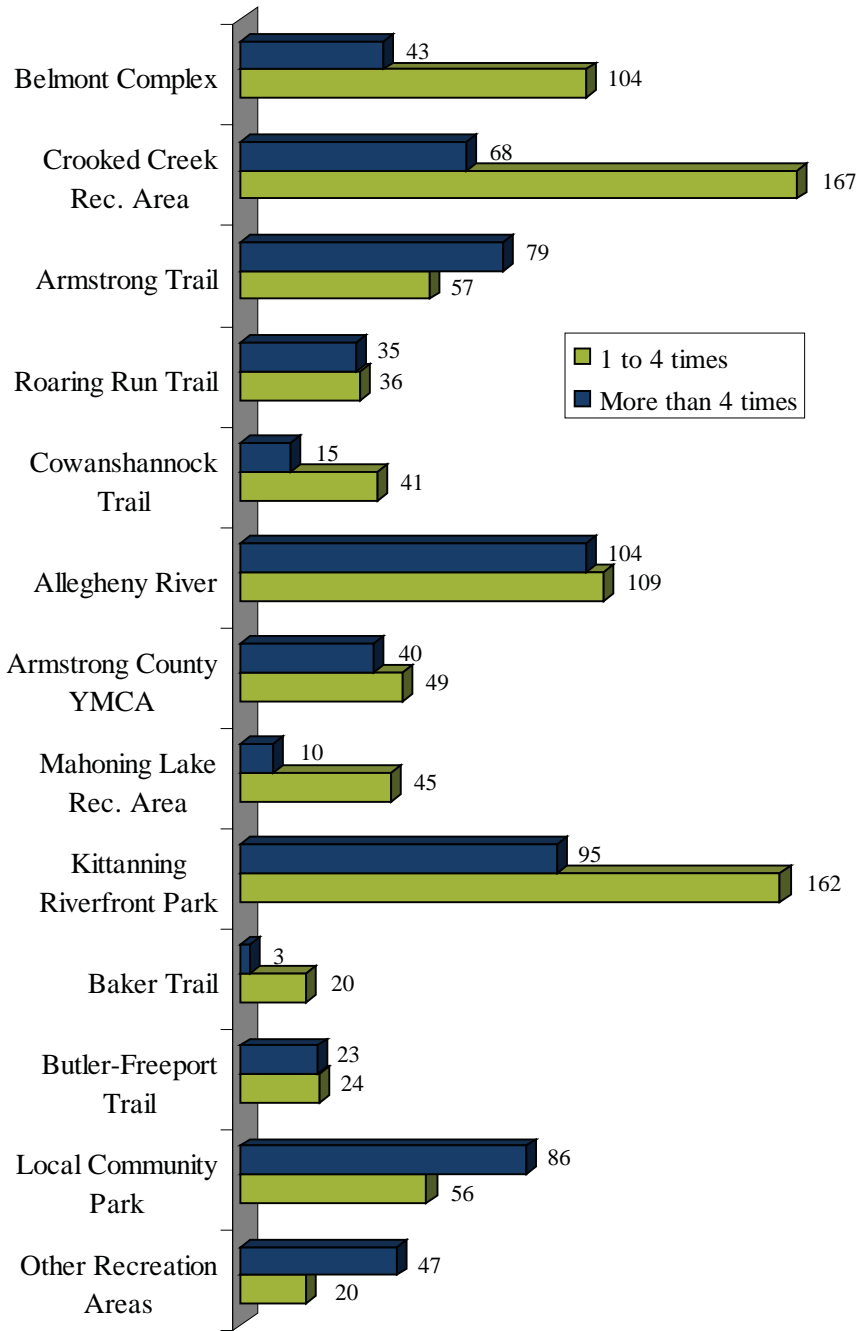
1. My primary residence is: (Please indicate the City, Borough, or Township where you live).

Municipality	# of responses	Municipality	# of responses
Kittanning	53	Valley Twp	4
Manor	26	Burrell Twp	4
Ford City	24	Perry Twp	3
N Buffalo Twp.....	23	Elderton.....	3
Kiski.....	22	South Bend Twp.....	3
Gilpin Twp	21	Ford Cliff	3
E Franklin Twp.....	22	Pine Twp	3
Leechburg.....	17	Bradys Bend Twp.....	2
S Buffalo Twp	14	Applewold.....	2
Freeport	14	Sugarcreek Twp.....	2
No response.....	13	West Kittanning.....	2
Parks Twp.....	15	Dayton	2
North Apollo	10	Madison Twp.....	3
Worthington	10	Mahoning Twp	2
Cowanshannock	8	Kittanning Twp	2
W Franklin Twp	8	Wayne Twp.....	1
Cadogan	8	Manorville.....	1
Plumcreek Twp	8	Cowansville.....	1
Apollo	7	Redbank Twp	1
Rayburn Twp.....	6		
Rural Valley.....	6		
Bethel Twp	6		
Boggs Twp	6		
Washington Twp.....	6		
South Bethlehem.....	5		
Parker City	4		

2. Please indicate the number of people living in your household according to the following age ranges:



3. How many times did the members of your family visit the following recreation areas during the past year?



4. Do you belong to a (Check all that apply):

- 23% of respondents belong to a Sportsman's club
- 3% of respondents belong to an ATV or snowmobile club
- 8% of respondents belong to a Conservation organization
- 4 % of respondents belong to a Trail Group

5. What recreation areas outside the County do you use and how frequently?

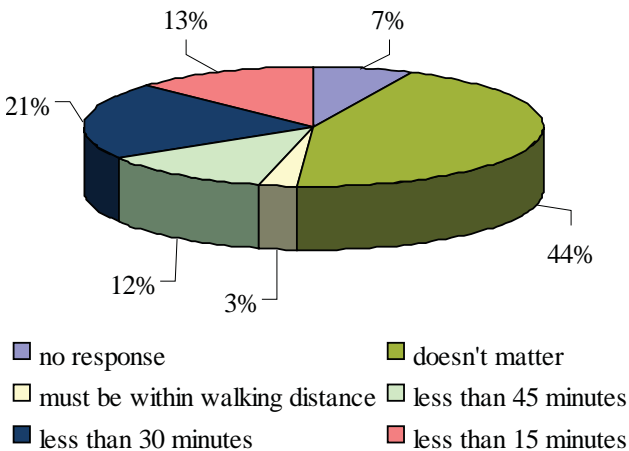
Please complete the chart below.

	<u>1-4 times per year</u>	<u>More than 4</u>
Northmoreland Park	23	17
Cook Forest	31	18
Moraine State Park	22	8
Clear Creek	8	5
Presque Isle/Lake Erie	14	7
Pymatuning State Park	7	3
Marienville	4	5
Keystone	5	4
Kinzua	4	-
Yellow Creek	5	1
State ATV Trails	1	2
Ghost Town Trail	5	-
Tionesta	6	-
Ohio Pyle	3	1
Alameda Park	2	4
McConnell's Mill	4	1
Blue Spruce	1	1
Prince Gallitzen	1	-
Bald Eagle	1	-
Elk State Park	1	-
Allegheny River Trail	1	2
Allegheny Nat'l Forest	5	7
Justus Trail	1	-
Legion of Arts	-	1
National Forests	2	-
Parker Dam	1	-
Sizerville State Park	1	-
Lenape Vo-Tech Field	1	-
Cowanshannock Dam	2	-
West Penn Trails	1	1
Cowanshannock River	2	-
Kunkle Park	2	-
State Parks	1	4
Loyalhanna	1	3
Rose Point Campground	1	-
Family Sports, Butler	-	1
Hoodlebug Trail	1	-
ANF Snowmobile Trail	-	1
Lake Ontario	-	1
Benezette	-	2
Rails to Trails	-	3
Indiana Roller Rink	1	-
Denton ATV Trail	1	-
Slippery Rock Dunes	1	-
Seven Springs	1	-
Mountains	-	1
Johnstown ATV Trails	-	1
Rush Creek ORV	-	1
Beaver Run ORV	-	1
Bradford	1	-

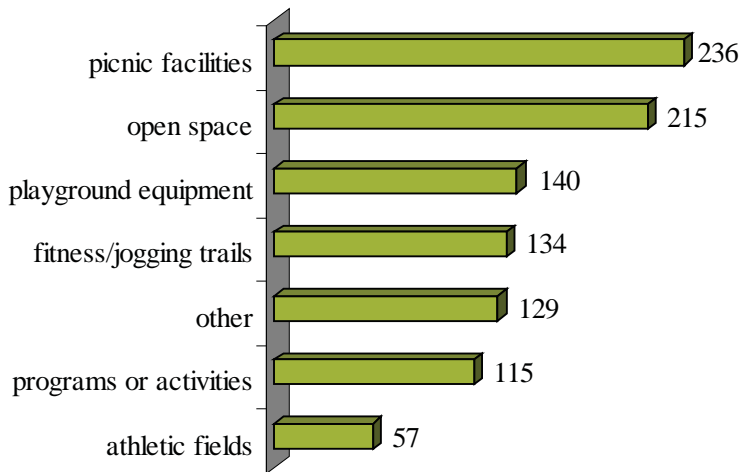
	<u>1-4 times per year</u>	<u>More than 4</u>
Gettysburg	1	-
Chautauqua Lake	1	-
Blacklick Park	1	-
Raccoon Creek State Park	-	1
Walnut Creek, Erie	-	1
Jacobs Field	1	-
Alcola Park, Red Bank	2	-
Sugar Creek	1	-
Falcon Park, New Ken.	1	-
Kennedy Park	-	1
Elli State Forest	-	1
Laura Doerr Park	-	1
Buffalo Elem, Sarver	-	1
Sandy Creek	-	1
Rocky Gap	-	2
Crooked Creek	1	-
Deer Lakes Park	1	3
Carmoran, Potter County	-	2
Getty Heights Park, Indiana, Pa	1	-
South Park	1	-
Dayton Fairground	-	1
Tri County ATV	-	1
Kiski River	1	2
Lick 'n Putt	1	-
Milton Loop	1	-
Washington Co. Campground	1	-
Shippensburg University	1	-
Punxy Polka Club	-	1
Ohio River/Mon. River	2	-
Laurel Mtn. State Park	1	-
Koosier State Park	1	-
MAC Park	-	1
Yough Trail	1	-
Montour Trail	1	-
Little Toby Trail	1	-
Harrison Hills	3	-
Westmoreland Park	2	-
Emlenton Bike Trail	-	1
Linesville	1	-
Confluence	1	-
Sharp's Campground	-	1
Adirondack Nat'l. Park	1	-
Monongahela Nat'l Forest	1	-
Laurel Highlands	1	-
Sylvan Park Pool	-	1
Oil City Trail	1	-
Butler Trails	-	-
Butler YMCA	1	2
Saltsburg Trail	1	-
Kettle Creek	-	1
Penn's Colony	1	-
Buncher Trail Park	-	2
Bear Run Campground	1	-

	<u>1-4 times per year</u>	<u>More than 4</u>
Lake Wilhelm	1	-
Connemaugh Dam	1	1
Clarion River	-	1
Elk County	1	-
Poconos	1	-
Creek Side	1	-
Hickory Run	1	-
Two Lick Lake Park	1	-
Twin Lakes Park	-	1
Numerous Parks in Ind. County	-	1
Parker Dam	-	1
Portage Lake	1	-
Hearts Content	1	-
Travel Trailer parks	1	-
South Fork Creek	1	-
Blue Knob ski area	-	1
Camp in Canada	1	-
Harrison Hills Park	-	1
McConnell's Mill	3	-
Butler-Freeport Trail	-	1
Conneaut Lake	1	-
Treasure Lake	1	1
Glade Run Lake	1	-
Burrell Lake	1	-
Todd Sanctuary	1	-
Point State Park	-	1
Freeport Park	1	-
Pittsburgh Zoo	1	-
Appalachian Trail	1	-
C&O Canal Trail	1	-
Deep Creek, MD	1	-
Kennywood	1	-
Hatfield McCoy Trail	1	-
Roaring Run Trail	-	1
Parks in Allegheny Co. & Pgh.	-	1

6. How far will you drive for members of your household to use a park six or more times per year?

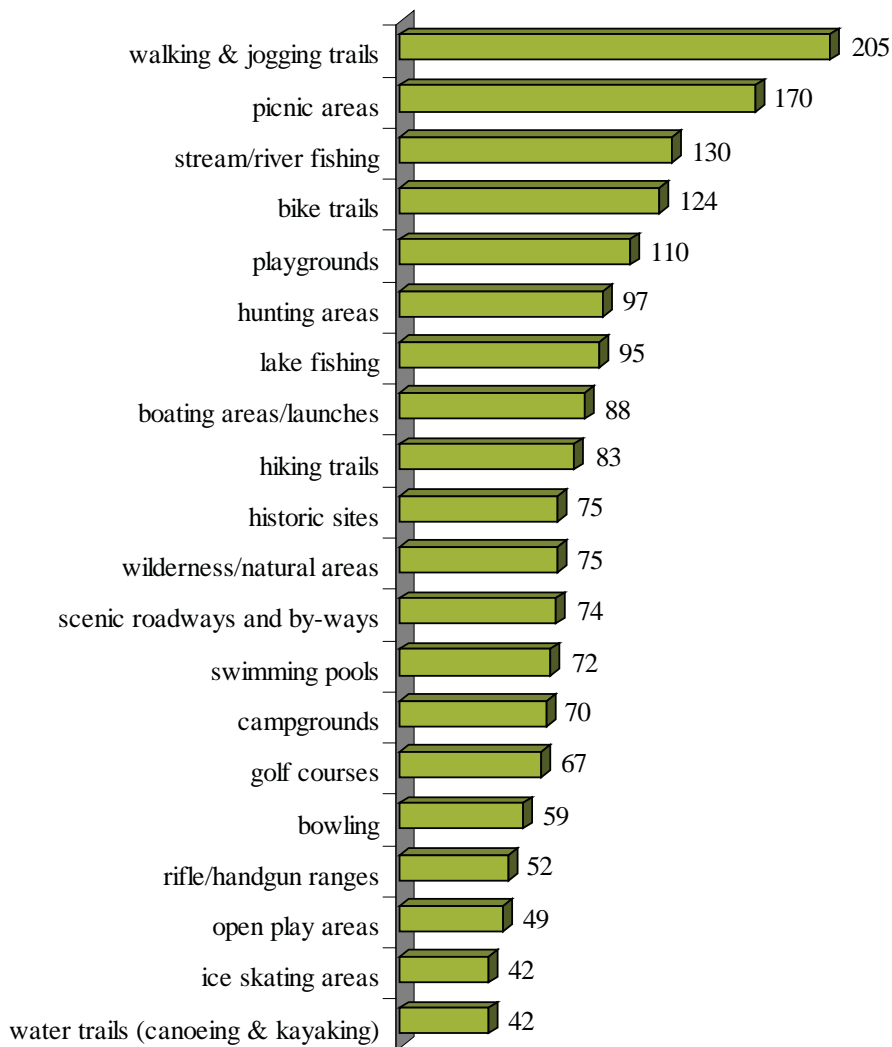


7. What attracts you to a park? (Check all that apply)

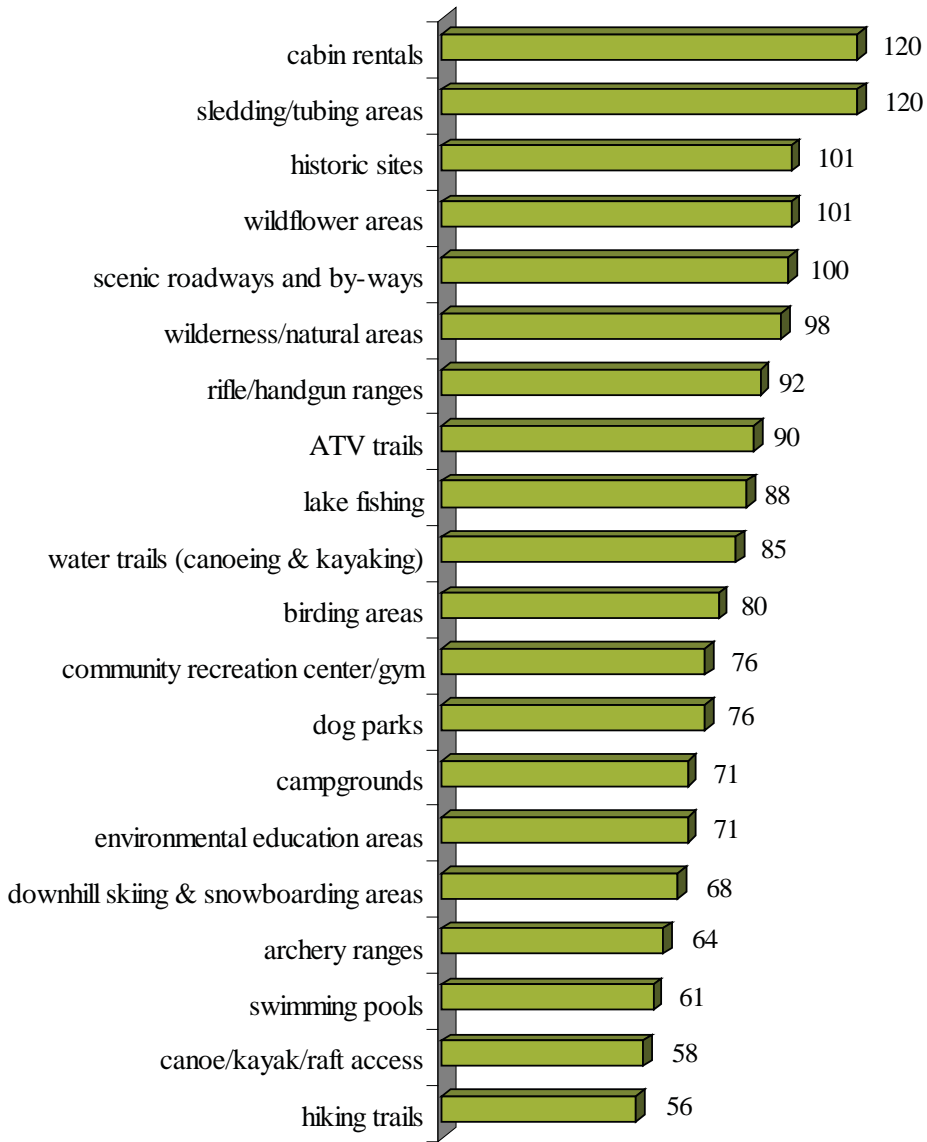


8. From the following list, please check the box representing your opinion on the types of recreation needed in the County. Skip if you have no opinion. (Check all that apply)

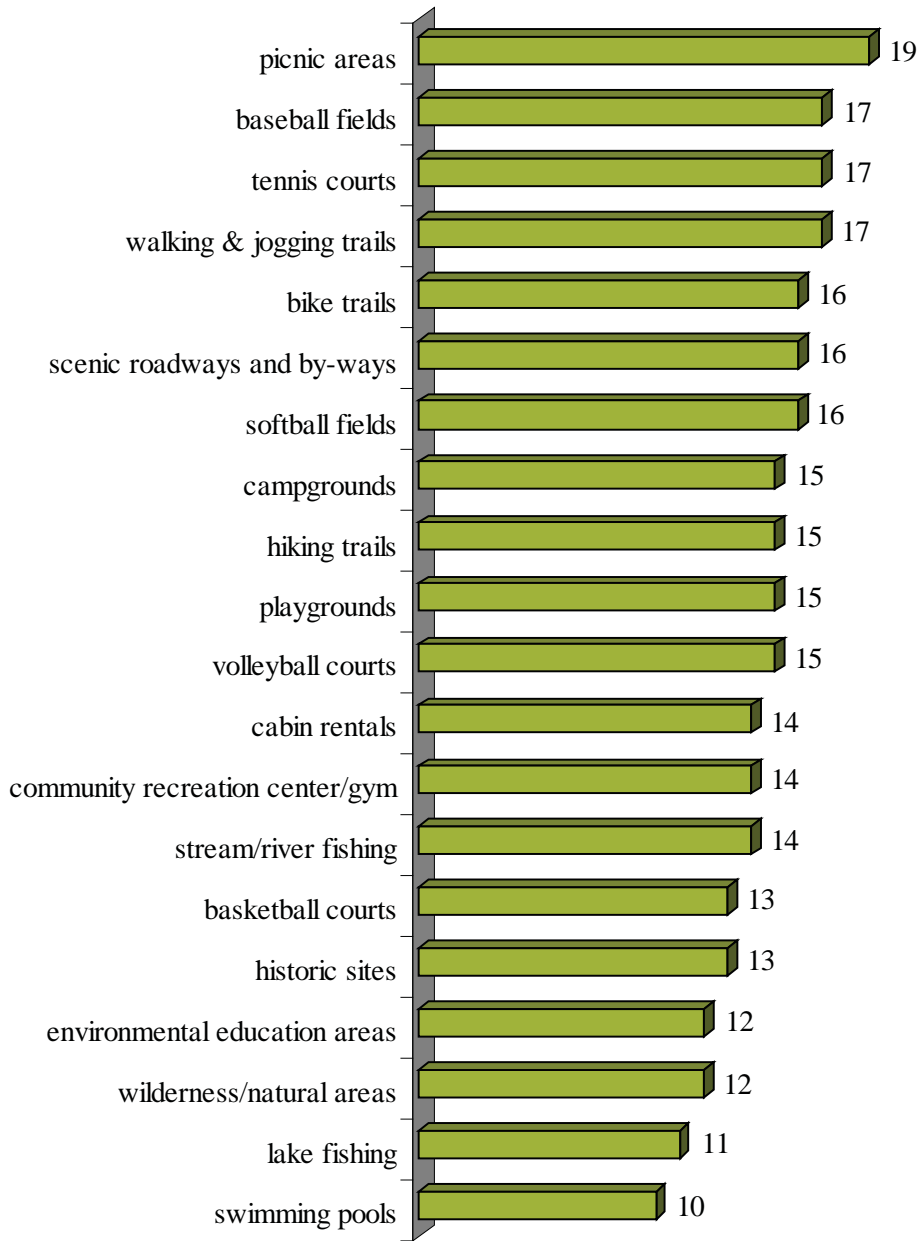
Currently Use (Top 20)



Would Use if Provided (Top 20)

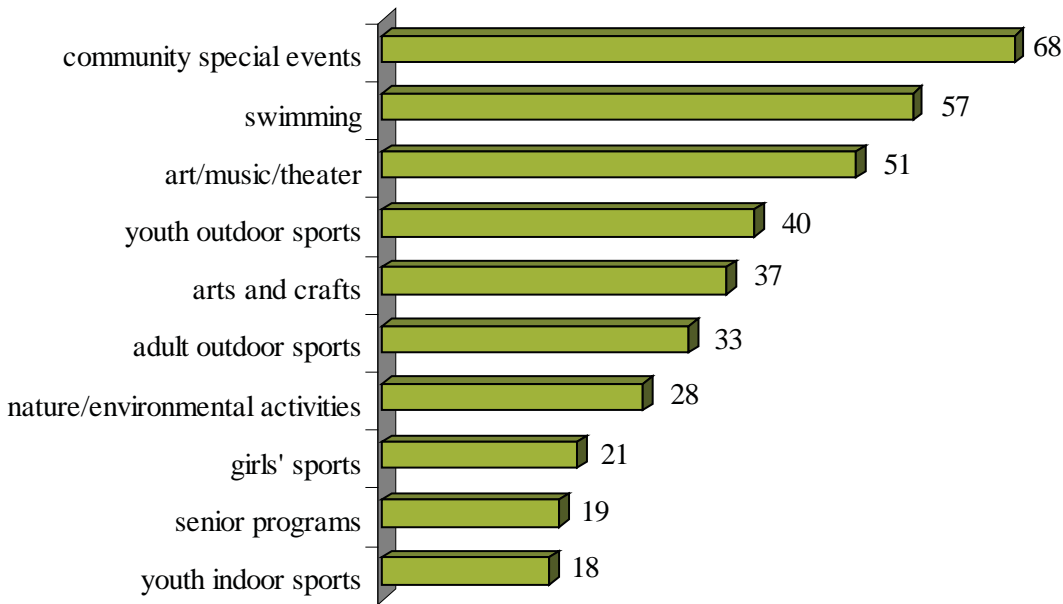


Would Use if Improved (Top 20)

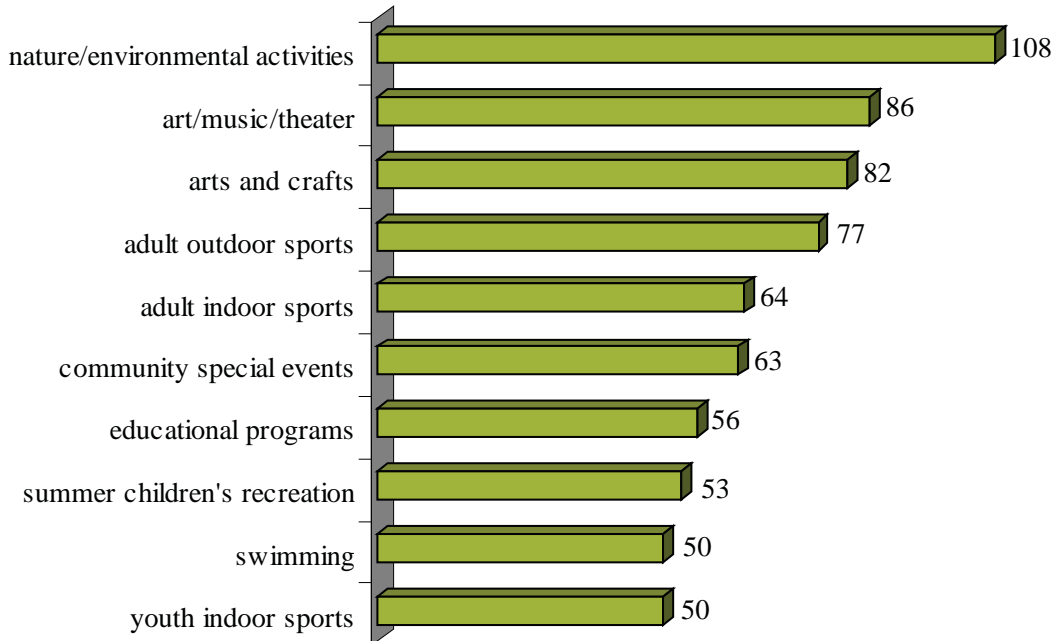


9. From the following list of programs and activities, please indicate how likely it is that a member of your family would participate if these were available in Armstrong County: (Skip item if you have no opinion)

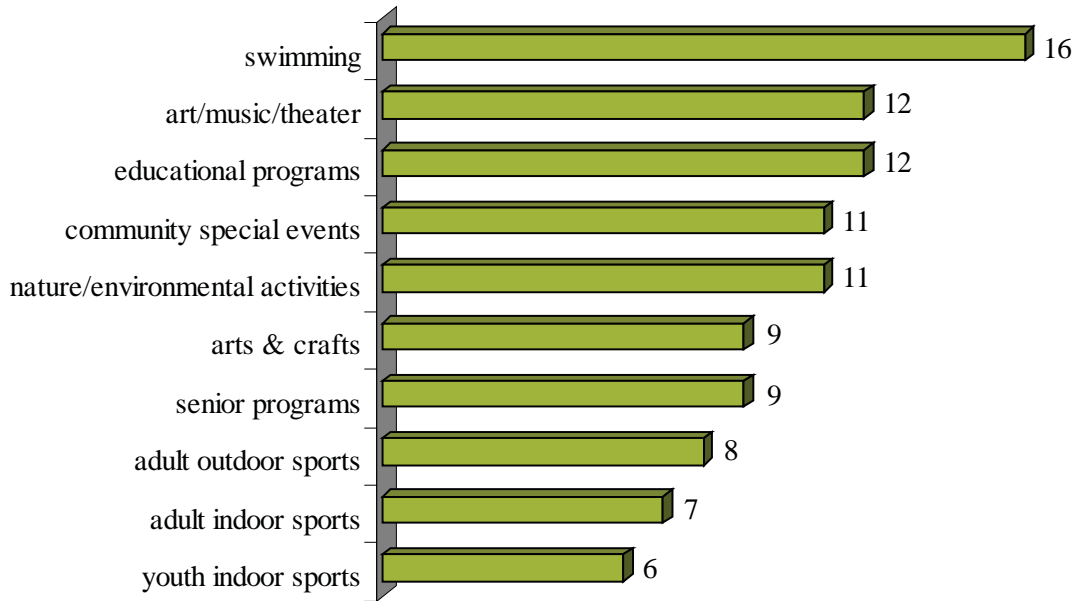
Currently Participate (Top 10)



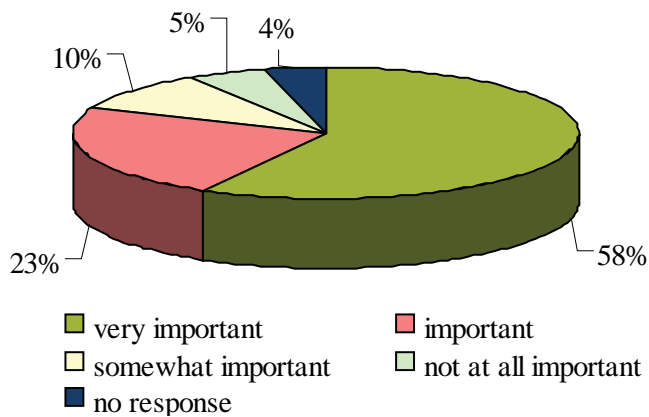
Would Participate if Provided (Top 10)



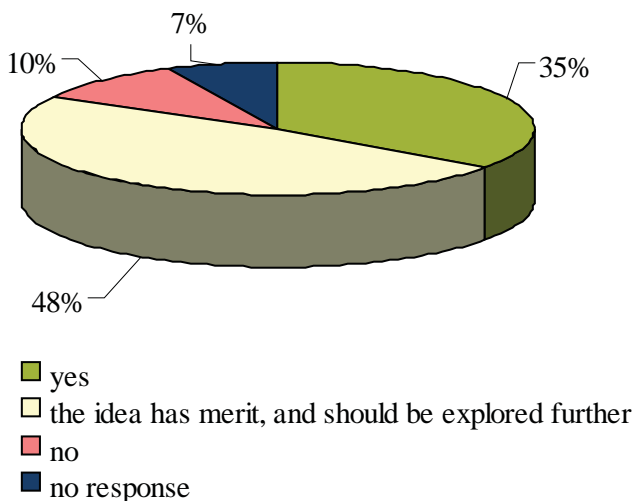
Would Participate if Improved (Top 10)



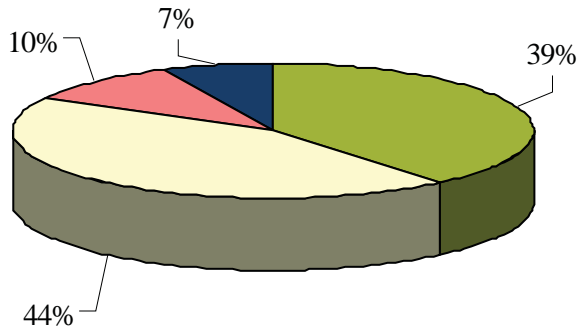
10. How important is the development of a county open space system that protects natural areas such as streams, fields, and woodlands?



11. Do you support the acquisition of open space from willing sellers throughout the County?



12. Do you think that the County should acquire linear greenway corridors from willing sellers to link natural open spaces and regional recreation facilities throughout the County?

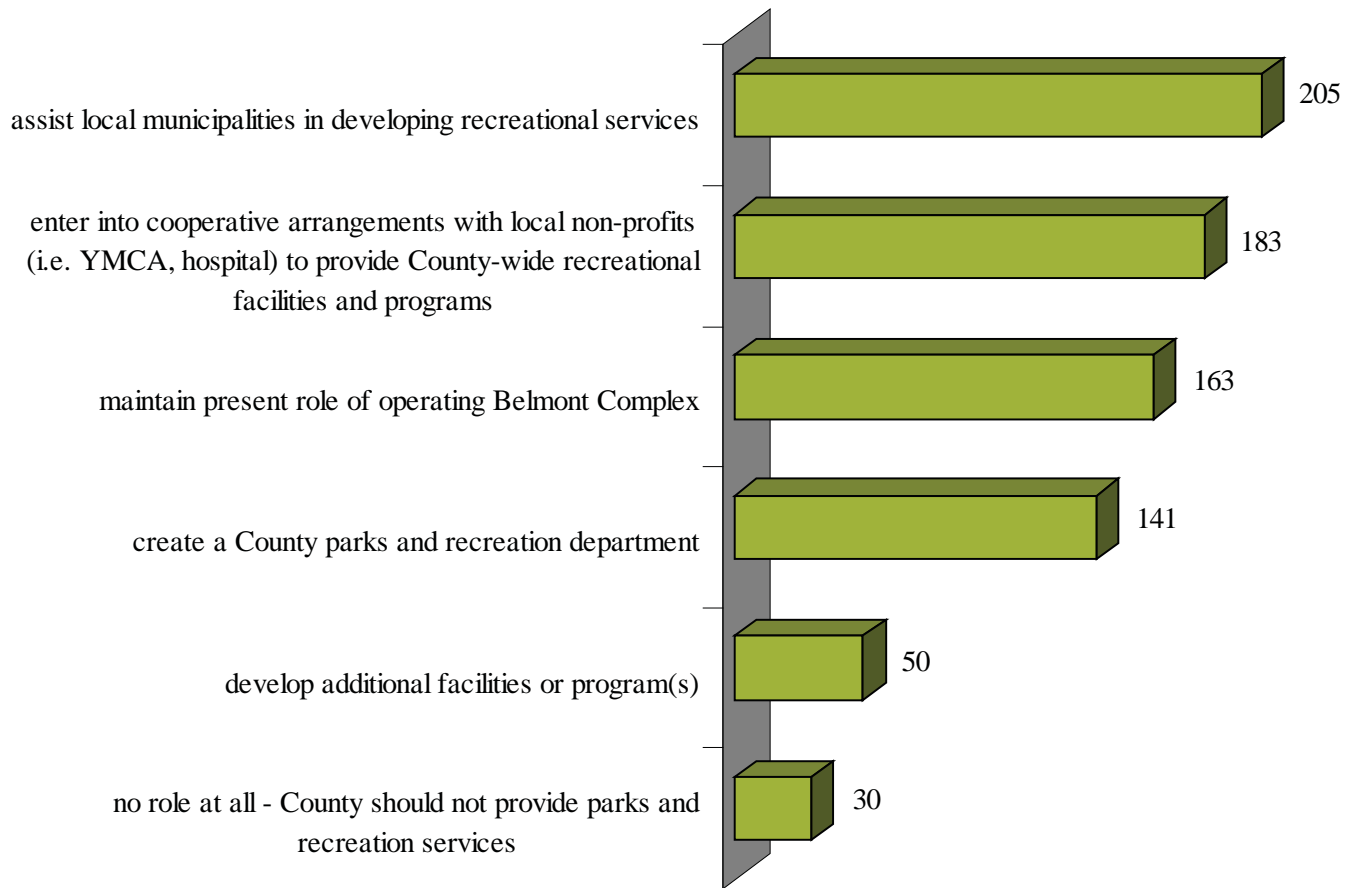


- yes
- the idea has merit, and should be explored further
- no
- no response

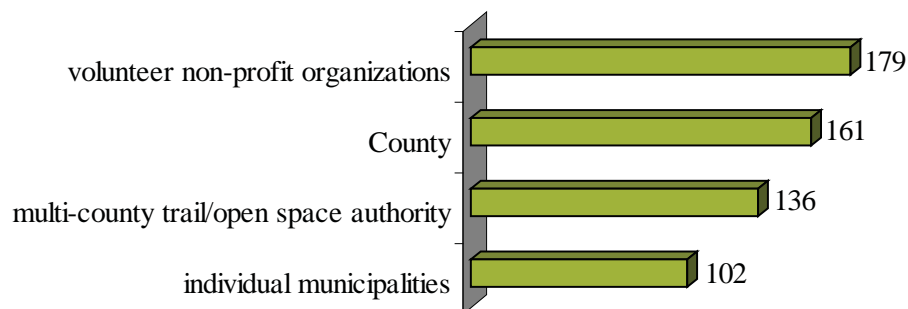
13. Do you feel that it is important to:

- Keep natural plant buffers along stream corridors?82% of respondents answered YES
- Keep stream corridors available for recreational purposes?85% of respondents answered YES
- Keep forestland available for timber production?54% of respondents answered YES
- Maintain forestland for ecological and recreational purposes?85% of respondents answered YES
- Keep fields available as open space?73% of respondents answered YES

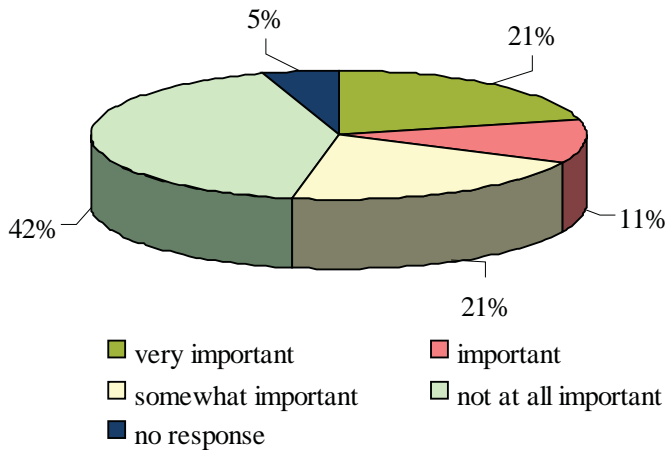
14. Armstrong County currently operates the Belmont Complex. The Belmont Complex includes an indoor ice rink, outdoor swimming pool, and a community room that is available for recreational programming and rentals. What role should the County have in future parks and recreation? (Check all that apply)



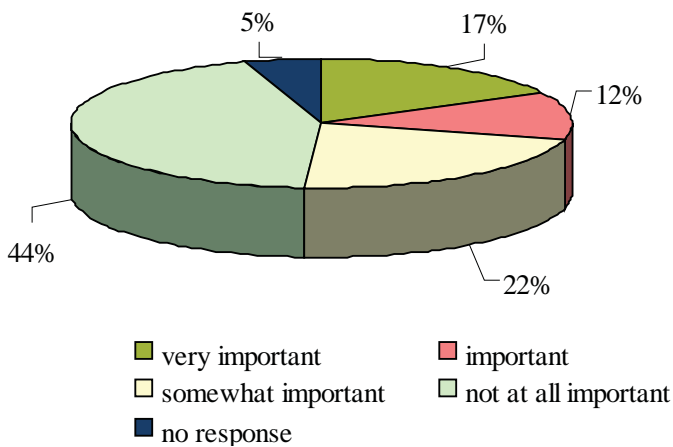
15. As trail projects for non-motorized use (hiking, biking, walking) move forward from planning to development, issues of site ownership and maintenance must be addressed. There will be the need for an organization or group to develop and maintain multi-use, county-wide, and regional trails and open space within Armstrong County. What organization should own and maintain these trails and open space facilities? (Check all that apply)



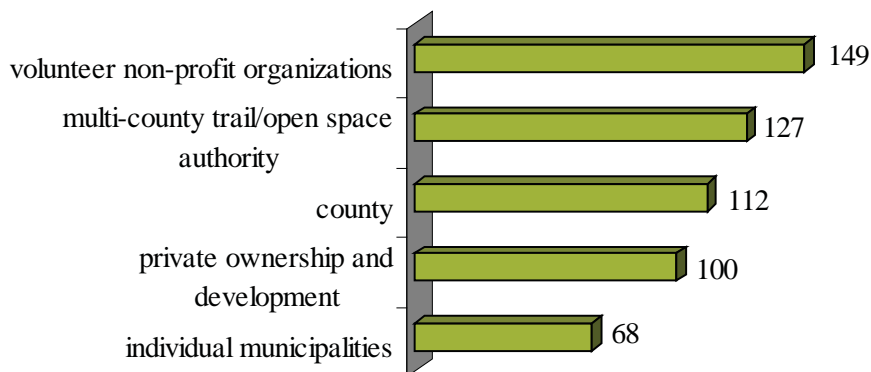
16. How important is it to you to have a motorized use (ATV, motorcycle, snowmobile) rail trail in Armstrong County?



17. How important is it to you to have a motorized use (ATV, motorcycle, snowmobile) park in Armstrong County?



18. If trail projects for motorized use (ATV, motorcycle, snowmobile) move forward from planning to development, issues of site ownership and maintenance must be addressed. There will be the need for an organization or group to own, develop, and maintain these trails. What organization should own and maintain these trails and open space facilities? (Check all that apply)



19. Please provide additional comments or suggestions related to recreation, parks, and open space:

- The West Kittanning bridge project should include state-of-the-art recreational pathways on the W. Kittanning Hill and the Pine Hill Rd. Indiana Pike should offer the same.
- Recreation and new bike trail will provide economic development for Parker>East Brady>Kittanning Area. New boat launches provide access- people spend money!
- County should provide leftover open dates for picnic reservations at the first of the new year. If people should find open dates they would probably use these, especially at Crooked Creek Park.
- The County should initiate and develop these projects and should delegate and rely heavily on volunteer organizations, individuals, and businesses in maintaining and management of them. For example, the “Adopt A Highway” program.
- Kittanning Community Park is in need of repairs and new playground equipment. We need more preschool/ toddler-oriented parks.
- Develop a linear trail and recreational facilities along the Kiski and Allegheny Rivers.
- There are not enough recreation or “hang-out” facilities for our youth. The drug problem in the county is out of control and we’ve lost far too many of our youth to this problem. We need more positive outlets for them to keep busy in a quality environment.
- Even though such things as ATV trails, etc. are not important to us, they are a plus as to selling the area whether it is young people or businesses.
- The YMCA is nice but not affordable. Membership does not include additional fees for weight room, aerobic classes, yoga, kickboxing, etc. – should be all inclusive.
- Keep nature the way it is; that’s why I moved out of Westmoreland Co. and Greensburg area- too much development.
- Keep motorized vehicles off greenways and open space. No more taxes.
- County should develop a strong outdoor parks and recreation department. A multi-county trail and open space authority should be explored.
- Don’t steal property like Rails to Trails did. Don’t raise my taxes. Let Snyder’s pay for it and run it, it will turn to gold. Take advice from working folks, not politicians. Don’t involve the game commission.
- Parks are nice, but we cannot continue to waste taxpayer money for these things.
- The greenspaces use is a tax break for the rich. The ATV trails should be run like the Marienville trails: year fee for use, so money can maintain trails. People from outside state should have to follow DNRC rules/regulations. Should run parks same way.
- As a hardworking, struggling family we can’t take our children to amusement parks a lot. They both want to get into sports, but they are so expensive. It would be so wonderful to be able to go somewhere and have a lot of fun and not worry about fees and having to buy food, toys, and games; just a wonderful, fun day for the family.
- Some expansion of outdoor/indoor recreation activities, but what is already available should be improved before expanding additional programs.
- Keep as much open space – parks, etc. as possible.
- Provide free transportation for the elderly so that they would be able to participate and enjoy.
- The county definitely needs space available to youth, as well as adults, to use in summer and winter. A fee submitted by these individuals would commit a respect, and that is something we need because so many don’t take care of the facilities.
- I find that families with children cannot afford registration fees. Locations and events and facilities are not made known to the public. Finally, transportation is a major problem for many.
- Our county should support parks and recreation areas but limit monies to stay within budget.
- Need something for the young kids to do, not run in the streets, like roller skating rink for the young kids.
- Love Crooked Creek. It is beautiful. Need to do something to bring in more people. Campground needs showers.
- People have “wants” and “needs”; recreation is a “want”. Armstrong Co. has too many people who have “needs”, meaning water lines, and sewage lines, flood prevention, etc. Until the needs are taken care of, the Co. should not spend any money on recreation.
- I would love to see a campground with cabins, recreation center, and swimming pool.
- We have people that are in trouble. Work and let young kids have something to do.
- Planning for the future is important. I would like to suggest more public canoe/kayak launching areas on the local streams.

- No new recreation facilities are needed. Many more needy projects should be addressed, like healthcare, lower taxes, and no property tax.
- The Allegheny River is a virtually untouched resource. We enjoy it daily. Areas like Ford City have wasted space along the river that would make wonderful recreation areas. Instead, we have a view of a broken down factory filled with chemicals that can create serious health issues.
- Recreation needs to be directed more toward the youth.
- The Co. should sell Belmont complex.
- PA has so many beautiful areas to be explored. We need the resources to do this at a cost that everyone can enjoy them.
- Get as many people involved as possible. Most people in our county are not aware of what recreation we have. We need an incentive to get them outside and away from their TV's and video games.
- ATV use must be regulated; users are trespassing on private property.
- I'm excited about the possibility of having ATV/snowmobile trails in Armstrong Co.
- We need to find companies willing to move here and create jobs; then we will have a future generation to enjoy these ideas.
- The Belmont is expensive for swimming and ice skating.
- Would love to see a bike and hiking trail that went along the rivers into Pittsburgh and back. We need safe places to ride bikes and walk.
- A Co. brochure needs to be developed and distributed to inform of current recreation opportunities; people are not aware of existing facilities and programs.
- Who paid Pashek to conduct this survey?
- No new taxes to support these programs. Use private funds/user fees, etc. to operate/open and/ or expand any development.
- If it is decided to develop motorized vehicle trails or parks, these trails should not go through walking or hiking trails. Whatever facilities are developed, please budget, plan, and allow for maintenance and upkeep!! We really need these spaces. Northmoreland Park and Twin Lakes in Westmoreland are good examples. Keep hockey players off the tennis courts. Thanks!
- Good zoning would provide all that's needed. This is a rural Co. and has all facilities needed. No money for this kind of "feel-good" project; use it for education and roads.
- The Kiskiminitas River should be made boat accessible. This would be an economic boon to the area.
- If the poorer communities had "affordable" gyms, pools, basketball courts, our children, as well as adults would them, be in better shape, and kids would have something to do with their time.
- Our open space and rural setting is what sets us apart from more populated areas. We need to expand youth programs in the summer and after school. Unfortunately, childhood obesity and drug use havocs our County. Development of more programs could help alleviate these issues.
- By not having ATV trails, the law-abiding riders are kept at home. Others don't abide by the law and ride wherever they want.
- I've lived here 60 years. Armstrong is a dead County with no future. I've been in business for 35 years, and if I weren't so old I'd leave.
- Armstrong Co. cannot endure higher taxes. We must keep as a grant or self-owned.
- Hopefully there is planning for the handicapped, also.
- Crooked Creek park is rarely full; make it a place like Northmoreland Park – County Park – allow alcoholic beverages and eliminate fee for swimming at the lake.
- Apollo needs to connect with Roaring Run Trails and into North Apollo, along with boating, fishing, and picnic areas along the river.
- Our county is in need of a mountain bike trail that would be used by many riders. As an example: the Hatfield –McCoy trail development in WVA is a constant income source for various counties there with tourists from all over the country to ride ATV's and motorcycles.
- I do not support recreational facilities that are at the taxpayer's expense, directly or indirectly. We need to address crucial and important issues of daily living first before we "play".
- All areas of rec., programs, maintenance, etc., should not become a burden to already over taxed peoples. This should be accomplished by a balance of volunteers and grants, etc.
- We champion your cause!
- Continue to develop and connect greenways (i.e. Armstrong Trail to trails along watersheds and a walking trail

from W. Kittanning to Kittanning and to Franklin Village Mall). We need a trail from Franklin south through Armstrong Co. Tourism \$ will follow.

- These things are important, but the County could and should spend its money on industrial development. If no one lives here because they can't get a job then how will it be funded?
- Do not increase taxes just to support the above projects! We live in a depressed area!
- Recreational areas for motorized use should be provided in several areas of the County to reduce unwanted use of private property.
- The people in Kittanning should remember that the County is a large one; something should be done for other parts of the county. The community should make Belmont profitable or dump it.
- Funds should be acquired any way they can be. I would be interested in serving on a board of directors for this effort. (See # 233 for name and address.)
- Thank you for asking our opinion. We are an outdoor active family who frequently camps, fishes, hunts, etc. in Armstrong Co. This issue is very important to us as we also are in the business of tree preservation/care, and we use nature study as one of our main learning processes in home schooling our two boys, ages 13 and 11 yrs.
- No adding to our taxes, please!
- Have four-wheel-drive recreation areas.
- We should try to keep the County rural; that's the great thing we still have.
- This should all be done by private development, not government. I don't think this is part of our constitutional duty.
- Volunteers that do a lot of work to keep these projects open and running should receive free use, and all others should pay a fee.
- The Rails To Trails program is disgusting; it needs abolished immediately.
- Armstrong Co. is already over taxed. Jobs creation and property tax relief must be considered top priority.
- I would use more of the facilities and recreational areas if I knew what was available.
- Stock more streams and lakes with fish!!!
- I've lived here all my life and I'm not really sure what parks are available and when they are open; how do I go about finding out? I'm not even sure what programs are available for me. An advertisement of what is currently available would help. Is there security in the parks?
- Armstrong Co. has a big need for ATV, motorcycle, and snowmobile trails.
- I love living on the river and on the trail. I can walk out my front door and take a three mile walk for exercise, bird watching, or just relaxation. I am so grateful.
- Use as little tax money as possible.
- The Riverfront Park: millions of \$\$, a waste, no parking, and used very little.
- Public transportation busses are used very little; this is a waste of fuel and money.
- The Rails To Trails programs are great, but motorized vehicle users usually leave large ruts in the trail surfaces. Hills and descents are not very difficult for persons on ATV's, bikes, and snowmobiles, so the use of old railways for motorized use should be limited.
- ATV trails like Marienville and Hatfield/McCoy in WVA could do well here.
- Use people on Welfare who are able to do some degree of work; this is a way to use some of our "free riders". Also, ATV riders using the back roads are putting people at risk.
- Programs should not be funded by County and local taxes, but by those using the programs and facilities.
- There should be no governmental take-over of private land; land owners must want to sell their land.
- No taxes should be involved to get these facilities. We do need a new cinema here.
- The more open space, the better. We are an extremely active (running, hiking, biking, soccer, etc.) and involved (volunteer for several local conservation orgs.) family. There should be tax abatements for those who donate land.
- An off-road park would be a great idea.
- This is a way to get more people and money into Armstrong Co.
- The Rails To trails should be open to ATV's, also. Older folks can't ride a bike and some can't walk and are being discriminated against.
- Freeport Park used to be very nice, but it hasn't been taken care of for the past 8 years or so. The swimming pool was allowed to shut down; we tried to get grants but, because it was privately owned, we were not able to get any money. It should be taken over by someone who cares.
- We used to enjoy ATV, snowmobile, and motorcycle activities and hope to get back to them but, with two teens and school activities, our playtime and recreation is at a minimum.

- There is a need for a skate park for skate boards and for more basketball/baseball facilities.
- We can always work together to improve the area, but always remember to keep the environment – it is what keeps us.
- Public ATV trails are needed to avoid trespassing on private property.
- County and municipalities should not use tax dollars for recreation, parks, and open space.
- There is not much about equine trails and camping in Armstrong Co. There are many clubs and individuals who would support more equine activity.
- A recreation center is needed in Rural Valley; ideally, the old community center. It was built by the community. Why not use it? We need jobs in our area; too many people without work.
- If there were any way the County could develop a County recreation facility without using Co./local tax funds, it would be a huge selling point to the general public and even some state officials.
- We need handicapped places.
- Any ATV trail should be owned/maintained by the County. Permits to use it could be purchased at the courthouse.
- We need a fenced, free-run dog park badly, and better skateboarding facilities like Natrona Heights and Butler.
- I'm for an ATV park if it will keep ATV users from making all that noise in individual neighborhoods. The County should be actively involved in providing recreation opportunities; cooperation with local groups and communities is good, too.
- We need our trails connected, esp. in Manorville; going through there is dangerous.
- There must be accountability – not private nonprofit running amok like currently exists w/ the Land Trust abusive enforcement on the trails.
- Our County has too much overhead. Acquiring more recreational burden is the last thing taxpayers need. Work improving what we have – take on nothing more.
- Greenway development should not be supported.
- More areas need developed in Ford City Borough – 4-8 tennis courts: girls softball fields.
- Appropriate waste and garbage disposal – example: there are no garbage cans at Canfield-Holmes parking area; filthy restroom in early summer.

Appendix J: Land Conservation and Protection Techniques

METHODS FOR PROTECTING AND PRESERVING OPEN SPACE

There are a number of methods for protecting and preserving open space. The following identifies some that may be practical for Armstrong County.

Open Space and Natural Areas Acquisition

Description:

This practice is based on the acquisition of land by a municipality or any governmental agency for the purpose of preservation of open space and natural areas. The purchase can be of *fee simple title* or *conservation easements* and is usually done by a governmental or public agency or a non-profit land trust organization. Land acquisition can be made at every level of government.

Benefits:

Acquisition of fee simple title or a conservation easement on land provides a more permanent long-term protection of open space and natural areas than through other methods such as zoning or subdivision requirements. Acquisition provides a means to enable nonprofit groups in partnership with communities to protect open space and natural areas at minimal or no cost and little administrative burden to local governments.

Implementation:

Pennsylvania's Department of Conservation and Natural Resources has sources of funding to help communities and non-profit groups implement acquisition of open space and natural areas projects.

Forest Land Conservation Easements

Conservation easements on working forests are a market-driven tool used to preserve open space, like those used to protect working farmland. Easements can be used to protect forests for present and future economic benefit, with subsequent attendant benefits such as wildlife habitat, watershed protection, outdoor recreation, and soil conservation.

What Can You Do?

LANDOWNERS

- plant native species of trees and shrubs
- stop mowing to the stream's edge
- join your local watershed association
- protect buffers through conservation easements

FARMERS

- fence streams
- enroll buffers in set-aside programs
- partner with local watershed and sporting associations
- consider alternatives to cropping that also provide economic returns while preserving buffers

DEVELOPERS

- avoid removing streamside trees and shrubs
- incorporate conservation into your subdivision designs

BUSINESS OWNERS

- plant native species of trees and shrubs
- consider sponsoring a school or community organization that wants to plant trees
- consider options for limiting business activities that impact buffers

VOLUNTEERS

- plant native species of trees along streams
- partner with agricultural landowners and municipalities
- organize volunteers and work parties to help maintain buffers

MUNICIPAL OFFICIALS

- adopt zoning that protects and improves stream corridors
- support landowners who protect their buffers
- partner with neighboring municipalities to promote consistent ordinances
- create recreational greenways

TEACHERS AND STUDENTS

- conduct research to help further define buffer values and maintenance techniques
- incorporate buffer protection activities into lesson plans
- establish a buffer on school premises if you have a stream or pond

REGIONAL, STATE, OR FEDERAL AGENCY

- develop new information and act as a clearinghouse for existing information
- develop guidelines for establishing and maintaining buffers, and provide technical assistance
- establish incentives for participation

Benefits:

As open space diminishes while development advances, economically valuable forest land is lost. Timber is one of the top five sectors in Pennsylvania's economy, and its continued availability is dependent upon the existence and preservation of open space and forests. The benefits are economic as well as environmental. Site benefits of easements include lower property taxes for landowners.

Implementation:

Some non-profit organizations, such as conservancies and land trusts, provide financial support for purchasing easements from landowners; they also accept tax-deductible donations of easements from landowners. The U.S. Forest Service's Forest Legacy initiative provides funding to state governments to help purchase easements on private forestland.

Agricultural Protection Zoning

Agricultural protection zoning ordinances designate areas where farming is the primary land use, and discourage other land uses in those areas.

Benefits:

Agricultural protection zoning stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. This can reduce the likelihood of conflicts between farmers and their non-farming neighbors. Maintaining a critical mass of agricultural land can ensure that there will be enough farmland to support local agricultural services.

Implementation:

Agricultural protection zoning can be economically viable by using such tools as Transfer of Development Rights and Purchase of Development Rights.

Transfer/Purchase of Development Rights

Transfer of Development Rights (TDR's) is a zoning tool that allows conservation and development to coexist within a municipality. Growth is directed to preferred locations through the sale and purchase of development rights. Development rights are established for a given piece of land and can be separated from the title of that property. The sale of TDR's leaves the rural landowner in possession of title to the land and the right to use the property as a farm, open space, or for some related purpose. However, it removes the owner's right to develop the property for other purposes. The transfer of development rights allows the purchaser of the development rights to then develop another parcel more intensively than would otherwise be permitted. Purchase of Development Rights (PDR's) operates in a similar manner. However, with PDR's, an entity (either alone or jointly) buys the right to develop land from the landowner. The landowner retains the use of the land and receives tax benefits. The municipality can pass a bond issue to buy the rights and "bank" them. A developer may purchase the development rights from the municipality when he wishes to develop an area with high density. The municipal bond financing, which was entered into to purchase the rights, is paid off over the years by the purchase of development rights, as development occurs.

Benefits:

The value of each development right is controlled by the open market, not the municipality. TDR's are an equitable option for preserving open space and agricultural lands by compensating the owner of preserved land, while guiding growth of development through the allowance of increased density where existing infrastructure can support it.

PDR's give immediate return to the landowner. It compensates the landowners for reduction in development potential and facilitates the goals of the development district concept. PDR's also streamline the time line for development since private sales and negotiations for development rights are not necessary to go forward with high density development. It allows the municipality to guide growth since it owns all the development rights.

In Pennsylvania, TDR programs can only be used to transfer development rights within a single municipality or among municipalities with a joint ordinance. It is up to each municipality implementing TDR to set up a mechanism to accomplish this transfer.

Agricultural Security Areas

A landowner or group of landowners whose parcels together comprise at least 250 acres may apply to their local government for enrollment in this program.

Benefits:

Agricultural Security Designation encourages the preservation of agricultural land. Security Areas give a landowner protection from local ordinances that restrict farm practices unless those ordinances have a direct relationship to public health or safety. These areas also protect an area from nuisance ordinances. Additionally, the designation limits land condemnation procedures – eminent domain by the Commonwealth and local agencies – unless approval is gained from the Agricultural Lands Condemnation Approval Board.

The designation also qualifies the land (if it is an area of 500 acres or more) for purchase of conservation easements under the Pennsylvania statewide program. An attractive feature of the ASA designation is that it is not a permanent designation, and this may be suitable for some communities and landowners.

Implementation:

The process to designate an ASA must be initiated by a landowner or group of landowners.

Agricultural Conservation Easements

Conservation easements permanently protect farms from development. Landowners voluntarily sell conservation easements to a government entity or private conservation organization or land trust. The agency or organization usually pays them the difference between the value of the land for agricultural use and the value of the land for its “highest and best use”, which is generally residential or commercial development.

Benefits:

Conservation easements permanently preserve land for agricultural use. Purchase of easements by municipalities on their own can be done more selectively and expeditiously as they do not have to conform to the county or state guidelines.

Implementation:

County Agricultural Land Preservation Boards have primary responsibility for developing application procedures. They also establish priority for easement purchases based on a numerical ranking system. The ranking system is modeled upon state regulations that require consideration of soil quality, conservation practices, development pressures in the County, and the location of other permanently preserved farmland and open space.

Agricultural Tax Incentives

Differential assessment laws direct local governments to assess agricultural land at its value for agriculture, instead of at its full market value, which is generally higher. Differential assessment laws are enacted in the state and implemented at the local level.

Benefits:

These programs afford protection to farmers to continue operating an agricultural operation in the face of development, thus helping to ensure the economic viability of agriculture. These tax laws align agricultural property taxes with what it actually costs local governments to provide services to the land.

Implementation:

Landowners must apply to the County Assessment Office.

CONSERVATION TECHNIQUES

(summarized from *Land Use in Pennsylvania: Practices and Tools, An Inventory*)

Open Space Zoning/Conservation Design

The purpose of this technique is to preserve a larger amount of land for conservation uses, while still allowing full-density development. In contrast to cluster zoning, where the emphasis is more often placed on providing active recreation areas, open space zoning is more suited for protecting farmland, woodland habitat, historic sites, and scenic views. Subdivisions are required to dedicate a significant portion of their unconstrained land to permanent open space uses. The open space is typically owned and managed (according to an approved management plan) by a homeowners association. Other possible owners include land trusts, the local municipality, or individuals with large “conservancy lots”, which are a form of non-common open space.

Benefits:

This technique preserves large open spaces while allowing full-density development. When done, the open space in each new subdivision will ultimately join together to form interconnected systems of conservation lands.

Implementation:

This technique can be implemented through a municipality’s zoning ordinance. The number of dwellings permitted is based on the net acreage of buildable land and the underlying density in the zoning district. Easements are then placed on the open space to ensure that it will not be further subdivided or developed.

Overlay Zoning Districts

An overlay zoning district applies regulations to, and are in addition to and supersede, the requirements of the underlying zoning district(s). Such a district may recognize unique features, either natural or man-made, requiring special attention or may facilitate development of a special character.

Benefits:

Overlay zoning allows regulations to be tailored to specific conditions. Administration is the same as any zoning district.

Implementation:

In general, the provisions of a zoning district must apply uniformly to each class of uses or structures within each district. However, Section 605 of the Municipal Planning Code authorizes additional classifications, potentially through the use of overlay zoning, for:

- making transitional provisions at and near the boundaries of districts
- regulating non-conforming uses and structures
- regulating, restricting, or prohibiting uses and structures at, along, or near:
 - major thoroughfares, their intersections and interchanges, transportation arteries, and rail or transit terminals
 - natural or artificial bodies of water, boat docks, and related facilities
 - places of relatively steep slope or grade, or the areas of hazardous geological or topographic features
 - public buildings and public grounds
 - aircraft, helicopter, rocket, and spacecraft facilities
 - places having unique historical architectural, or patriotic interest or value
 - floodplain areas, agricultural areas, sanitary landfills, and other places having a special character or use affecting and affected by their surroundings
- encouraging innovations and the promotion of flexibility, economy, and ingenuity in development, including subdivisions and land developments; and for the purpose of authorizing increases in the permissible density of population or intensity of a particular use based upon expressed standards and criteria set forth in the zoning ordinance
- regulating transferable development rights on a voluntary basis

Riparian Buffers

Riparian buffers are areas of vegetation along waterways that protect water quality and stabilize stream channels. Vegetated areas along streams are of significant ecological importance because they:

- slow flood waters and reduce the volume of water through root absorption
- improve water quality by filtering runoff and promoting sediment deposition
- allow water storage in plant roots and provide pathways to ground water layers
- provide canopy cover, which shades and cools streams, thus improving habitat conditions for in-stream organisms, while providing relief from the extreme heat for terrestrial animals
- provide habitat for a variety of birds and small mammals, while acting as corridors to similar habitat, providing food, shelter, and nesting sites
- provide great opportunities for recreational activities such as fishing, hiking, bird watching, picnicking, and camping

Stream bank habitat restoration can include three techniques: structural (i.e. installing stone riprap to reduce erosion), vegetative (i.e. planting vegetation to absorb water, filter pollutants, and reduce erosion), and bioengineering, which combines both structural and vegetative approaches (i.e. bundles of willow cuttings tied together and inserted in stream bank trenches).

Stream bed and stream bank improvements can improve the ecological health of the riparian zone, but they cannot compensate for land abuses affecting the stream. Land use management techniques may include the installation of fencing to keep livestock out of the creeks or the installation of storm water management structures.

Appendix K: Conservation by Design

3/30/07

Natural Lands Trust

Description of Growing Greener: Conservation by Design in County Greenway Plans Suitable for inclusion as a separate chapter.

Chapter _____ Putting Conservation into Local Plans and Ordinances

This _____ County Greenways Plan exemplifies the commitment of residents and elected officials in charting a future for the county that is both “green” in terms of open space preservation and as a tool to create long term economic value for the region. However, having adopted the plan, (*allocated funding*), and made the decision to manage growth in a way that protects natural resources, there are still additional choices facing local residents and officials to achieve the goals set forth. There is a limit to the resources that can be preserved solely through acquisition or the generosity of charitably-minded landowners who voluntarily preserve their lands. Land not protected from development in any municipality will eventually be developed. The development choices facing communities lie between relying on conventional zoning and subdivision codes, or turning to newer conservation-based tools that can effectively protect the community’s most valued resources and its most special places -- while still accommodating full-density growth.

The future that faces most communities that have adopted standard land use regulations is to witness the systematic conversion of every acre of buildable land into development. Typically most development will be devoted to residential uses. As long as such standard regulations remain on the books, the future will inevitably consist of one development after another, each consisting entirely of house lots, streets and lawns. Municipalities will get what they zone for.

Fortunately, for those who would like to see substantial acres of open space conserved each time a tract is subdivided, practical alternatives exist. The most promising of these alternatives is known as “conservation subdivision design.” The tools for implementing conservation subdivision design have already been developed and are available to Pennsylvania municipalities through the statewide *Growing Greener: Conservation by Design* program. Conservation subdivision design as promoted under *Growing Greener* helps local officials manage growth in a manner that uses the development process to their advantage, by adding land to a community’s greenway network each time a property is developed. Using this approach, a developer can build the maximum number of homes permitted under existing, conventional zoning, but in a less land consumptive manner. Conservation design rearranges the density on each development parcel as it is being planned, so that only half (or less) of the buildable land is consumed by houses, streets and lawns. By permitting development using conservation-based tools, a community can protect its most valued resources and special places, while still accommodating full-density growth.

Growing Greener: Conservation by Design is a collaborative effort of Natural Lands Trust, a non-profit land conservancy located in Media, PA; the Pennsylvania Department of Conservation and Natural Resources (DCNR); the Governor’s Center for Local Government Services, DCED; and an advisory committee comprised of officials from state and local agencies, non-profits and the private sector. The Governor’s 1999 statewide environmental funding initiative shares the same *Growing Greener* name, but is a separate program funding natural resource protection and land preservation efforts across the Commonwealth.

As of January 2007, 27 communities in nine counties have adopted rigorous versions of the model *Growing Greener: Conservation by Design* ordinance. These Townships are preserving an average of 62% of land subject to development as permanently protected open space. Sound land use practices, such as those available through the *Growing Greener: Conservation by Design* program, coupled with acquisition, conservation easements and stewardship efforts, provide the full compliment of conservation techniques for a “greener future.”

In order to implement conservation design, zoning and subdivision ordinances are revised to focus not only on development-related issues (such as lot dimensions, street geometry, stormwater management, etc.), but to place equal emphasis on conserving a variety of environmental, cultural, historic and scenic features. It is precisely those features that typically give a community its special character.

Revised zoning and subdivision ordinances work together with planning documents such as local Comprehensive, Open Space and Greenway Plans. Communities should be guided by these plans as to where their greenway network should be located as development proposals are submitted. Such plans should include, or be amended to include, a very useful Map of Potential Conservation Lands, described below.

Mapping Potential Conservation Lands

What is a *Map of Potential Conservation Lands*? You can walk into most any municipal building in the Commonwealth and look at their map of “gray infrastructure” - the streets, sanitary and storm sewer lines that the community keeps close tabs on. But few communities give the same level of attention to mapping the “green infrastructure,” yet this is an equally important community resource. This relatively new approach identifies those parts of undeveloped properties where the municipality has preliminarily determined the importance of designing new development around certain land and water features in such a way that a network of conservation lands can be protected. Such areas typically include land along stream valleys, but also potentially include blocks of mature woodland, prime farming soil, historic and cultural features, etc. This technique is very useful in developing the greenway network discussed in Chapter _____.

Starting with the Big Picture. As part of this Greenways Plan, resources of countywide importance have been mapped. These resource inventories provide an extremely useful working document that shows the pattern of resources in relation to undeveloped properties -- which is where future changes will occur. These data sets incorporated in the County’s GIS allow data layers to be displayed individually or as composite resource maps to assist decision-makers early in the development process. Most communities will want to develop their own smaller-scale Map of Potential Conservation Lands tailored to the special resources in their own communities. But, as a starting point for resource protection, the County level mapping is an invaluable resource that should be referred to, refined and built upon at the local level.

Creating a local green infrastructure map. The first step in managing growth is determining what features of a community are most important to preserve. The mapping begins with a base map showing municipal streets and parcels upon which all of the natural and cultural features of the community can be drawn. The first layer, rendered in the darkest shade of green and blue (water resources) includes inherently unbuildable resources such as wetlands, floodplains and slopes greater than 25 percent -- called “Primary Conservation Areas.” A second layer in a slightly lighter shade of green would indicate those properties permanently protected from development such as land under conservation easement, or parkland. The final category, in lightest shades of green includes other land

of potential resource value (but buildable) such as woodlands, agricultural lands, scenic views, slopes between 15 and 25 percent, and historic sites -- known as "Secondary Conservation Areas". When overlain on parcel boundaries the potential conservation network unfolds.

Involving the public. Potential Conservation Lands mapping provides one of the best opportunities to involve citizens in shaping the future of their community. Involving the public in a positive vision for the future can provide a basis for future ordinance revisions and ease the adoption process. Following are a few suggestions for involving residents:

- Create a series of resource inventory maps for the public to use, including primary (*unbuildable* floodplain, wetlands and steep slopes) and secondary features (*buildable* woodlands, productive farmland, moderate slopes, groundwater recharge areas, significant wildlife habitat, PNDI sites, historic, archeological and cultural features and scenic features. Aerial photographs are also useful. The community can get involved in determining which features should be preserved.
- Identify Stakeholders. Try to be inclusive and involve all segments of the local population. Some communities notify all residents, others reach out to smaller, stakeholder groups representative of the community at large.
- Photo preference sessions. One way to involve the public is to do a photo preference survey of secondary resources in the community. Groups of three to six people can be given a disposable camera and asked to photograph the places in their community that most represent the character they would like to see conserved. Give a deadline for camera drop off and make sure that each group identifies their camera and maintains a photo log. Once the photos are printed, place the photos on a community map. Look for common ground - what resources do several groups value?
- "Places of the Heart" meetings. Residents can give short presentations on how they value the open space and natural areas in their community. At the end of the presentations, participants can be given colored sticky dots that they place on the municipal map, indicating parcels that they would most like to see conserved. Those areas filled with the most dots are features of greatest importance to the community.
- Stakeholder interviews. Representative groups can be interviewed and a record of their perspectives compiled on the maps by municipal staff or consultants.
- Greenway Teams. There may already be an informal greenway in a community, known primarily by the residents who walk the area. Residents can be called upon to map these informal open space networks.

There are many ways to include residents in the "greener vision" of their future. Make the exercise fun and make sure that the final product reflects their contributions.

Formally adopt the Map of Potential Conservation Lands as part of the local

Comprehensive Plan. At the conclusion of the mapping process, a composite Map of Potential Conservation Lands is adopted as part of the municipal Greenway Plan. The map should reflect the highest-community priorities and should be made available at the municipal building to anyone who wants a copy. Publish the results of the community effort and celebrate the success.

Once adopted, make the map available to the development community just as you would street maps and other infrastructure information. Most developers are relieved to have access to a community's conservation and development goals as this saves them time and money and they can allocate more money to better development rather than to costly plans that do not reflect the community's interests. Developers need to understand that the path of least resistance for development approvals will be a conservation one!

The Ordinance Assessment Process: establishing a work plan for change.

The Ordinance Assessment examines the community's current package of plans and ordinances that affect the density and layout of new subdivisions. It also takes into account the level of public funding that is likely to be available to acquire land for conservation purposes, and the degree of success that private conservation efforts might reasonably be expected to have in terms of encouraging donations of land and/or easements limiting new development.

The assessment should be completed by a professional who is well-versed in land use regulations. He or she evaluates the probable effectiveness of a community's existing regulatory and nonregulatory tools in achieving its land conservation goals as expressed in its Comprehensive Plan, Open Space Plan and ideally, on its Map of Potential Conservation Lands. The staff of Natural Lands Trust, the conservation organization which originated the *Growing Greener: Conservation by Design* program, is available to conduct ordinance assessments across the state. If, after reviewing the results of the assessment, residents and officials are satisfied that the future will shape up in an acceptable manner, they can resume "business as usual" with settled minds. However, as is typically the case, the results serve a very useful purpose as a "wake-up call". Invariably, the land use regulations that are in place will not result in fully carrying out the visions of the planning documents.

The professional conducting the assessment should identify shortcomings or limitations of the zoning and subdivision and land development ordinances that would inhibit or restrict good conservation design, and offer specific suggestions for improved standards. The most valuable aspect of completing an assessment is that the community then has a work plan for updating its land use regulations.

Subdivision ordinances should contain, at a minimum:

- Procedures that strongly encourage dialogue between the applicant and municipality before detailed plans are engineered (the pre-application meeting).
- A requirement for a context map, showing all natural and manmade features surrounding the site.
- A requirement for a site inventory of existing features upon which to base decisions regarding the development (the Existing Resources and Site Analysis Plan).
- A required site visit by the planning commission members accompanied by the developer, with the site inventory in hand.
- A design process in which the conservation areas are determined first, before houses, streets and lot lines are established (the Four-Step Design Process).
- Standards for the configuration and location of the conservation lands.

Zoning ordinances should contain, at a minimum:

- The ability for an applicant to obtain full-density, through a "by-right" (versus conditional use) approval process, but *only* when a conservation option is selected.
- A requirement that protected lands in conservation subdivisions are comprised of at least 50% of the buildable ground, whenever the underlying density is one unit per acre or lower.
- Strong disincentives to discourage "conventional" development, usually by reducing the density by half.
- Restrictive covenants that ensure that the conservation lands are perpetually restricted from further development.
- Locational design standards for conservation lands.

Implementing Conservation Design

Building Green Infrastructure, One Development at a Time

Communities that document natural and cultural resources on the Map of Potential Conservation Lands and set priorities for their conservation in their Comprehensive or Open Space Plan can use their land use regulations to establish a community-wide greenway network. The Map of Potential Conservation Lands provides an overview of the community-wide network, but the details have to be worked out as each development proposal is submitted. How is this accomplished? The best way to work through the intricacies of greenway design is to require that the developer provide a detailed Existing Resources and Site Analysis Plan as early in the review and approval process as possible.

The Existing Resources and Site Analysis Plan would typically be prepared by a landscape architect for the developer. It would reflect a thorough understanding of the site by those who have walked it extensively, in order to identify significant features (including details such as vernal pools, stone walls or single large trees). As the most important document in the subdivision design process, it provides the factual foundation upon which all design decisions are based.

The Existing Resources and Site Analysis Plan works best when it is paired with requirements to follow a Four-Step Design process in which the conservation lands are identified first, before development areas are chosen. When local land use regulations require that developers design around special natural and cultural features, developers can become the community's greatest conservationists, at no cost to the community and with no loss of profit to the developer.

Subdivision Procedures to Encourage Conservation Design

One of the most effective means of achieving better development is simply to change the way many communities do business. Rather than seeing a plan for the first time after it has been fully engineered, municipal officials should talk to landowners and applicants before huge sums of money are spent on engineering making applicants unwilling to consider revisions. A few procedural changes to the subdivision code can help the process. These include the following:

- Require a pre-application meeting where municipal officials describe the development process, go over the plan requirements, schedule a site visit and introduce the applicant to the municipal Map of Potential Conservation Lands and other resources to be considered.
- The Site Visit. No review should be considered complete without arranging a time for Planning Commission members to walk the property with the developer, their engineer and site designer. The purpose of the site visit is to familiarize all parties with the property's existing conditions and special features, to identify potential site design issues, and to provide an informal opportunity to discuss site design concepts.
- Four-Step Design Process. The most effective way to produce subdivision layouts which are based on the principle of land conservation is one that begins with the determination of open space as the first step. Potential locations for stormwater management are also delineated during this step. The second step is to select house sites, with homes positioned to take maximum advantage of the open space in greenways, farmland, forest preserves, playing fields or neighborhood greens. The third step involves "connecting the dots" by aligning the streets and trails to serve the new homes. Lot lines are drawn in last, as step four. This Four-Step Design Process is required to be documented by the developer in the plan submittal (Sketch or Preliminary Plan). This documentation enables local Planning Commissioners to

easily see how well, or how poorly, the development areas fit with the conserved areas.

- The Sketch Plan. This is an optional plan where the overall concept is outlined, showing areas of proposed development and areas of proposed conservation. Although voluntary Sketch Plans cannot be formally acted upon, the shortcomings of a proposal should be communicated to the applicant, so that these deficiencies can be corrected prior to submitting the more costly engineered Preliminary Plan. Sketch Plans benefit the developer by facilitating early discussions with the municipality, thereby reducing impasses later in the process.
- Greenway Design Standards. Although most communities adopt rigid subdivision standards for streets, storm sewers and other “gray infrastructure,” few communities adopt adequate standards for the design of open space in conservation subdivisions. A list of *Prioritized Resources to be Conserved* guides developers to the most important features to preserve. These standards require the open space in conservation subdivisions to conform to a community-wide conservation network, thereby ensuring that the community realizes an interconnected open space network that evolves as development occurs. Standards for the configuration, minimum size and dimensions of open space areas are also added.

Shortcomings of Typical Cluster Regulations in Most Ordinances Today

Conservation design is an evolution of older basic “cluster” techniques. Below is a description of why typical “cluster” regulations should be replaced by updated *Growing Greener* conservation design standards.

- Conditional Use versus By Right. Most “cluster” provisions are by conditional use, an expensive and sometimes lengthy process that discourages applicants from using it. Conservation design is by right, informing the applicant of all likely development requirements through the ordinance
- Minimum Tract Size. “Clustering” usually requires a minimum tract size of 25-30 acres. Conservation design is appropriate on tracts as small as four acres.
- Inadequate Open Space. Many old “cluster” codes require only 25 or 35 percent of the *gross* tract area to be set aside as open space. Conservation design sets minimum open space requirements as a percentage of the *net buildable* land area (excluding floodplain, wetlands and steep slopes over 25%). Under *Growing Greener*, 50% to 70% of the net buildable tract area must be conserved, in addition to any constrained land.
- Limiting Active Recreation Uses as Open Space. Golf courses and other active recreation uses that require grading should not consume more than half of the unconstrained open space. The great degree of grading required for these uses usually reduces the quality of the natural resources, or eliminates them altogether, and should be viewed as development, not conservation land.
- Inadequate Lot Size Reduction. Many outdated “cluster” regulations provide for only a small reduction in lot size, resulting in only a small percentage of the land protected as open space. Conservation design permits significant reductions in lot sizes, beyond the lower limits in most

existing cluster regulations. Developers, however, routinely use the largest lot they can while still meeting the minimum open space requirement.

- A New Look at Density Incentives. Most of the older “cluster” ordinances try to entice developers to select this optional form of development by providing a density bonus. Under the *Growing Greener* program, however, the only way to get full density is by using conservation design.
- The Modern Idea of “Density Disincentives”. Most “cluster” ordinances make the grave error of continuing to permit conventional sprawl development as a full-density option, granted “by right.” *Growing Greener* actively discourages large-lot subdivisions by reducing the overall density (or “lot yield”) for applicants who elect not to participate in the conservation design approach. Those who wish to continue with conventional, cookie-cutter designs covering the entire development tract with house lots and streets (with no open space) may do so, but only at a lower density (Options 3 and 4 under “Menu” of Options below are examples of such development).
- Requiring Conservation Design in Certain Situations. Municipalities might consider requiring conservation design in certain areas (with no provision for conventional lotting even at reduced density) to ensure that possible future greenway connections are not lost. Conservation design could also be required on properties abutting public parks, forest preserves, game lands, conservancy lands, working farms, etc.

Brief Overview of Zoning Ordinance Provisions

“Menu” of Options. Under the *Growing Greener* approach, developers can choose from a “menu” of density options established by the municipality in any given residential district. The model ordinance provides five options for the municipality to choose from. One option matches the density that could be achieved with conventional lotting under existing zoning. Two other density options permit a greater number of lots in exchange for higher percentages of open space, while two further options permit developers to produce designs with no common open space, but only at lower densities.

Conspicuously absent in these options, is the ability to do standard wall-to-wall lotting, with no open space, at full density. A density bonus is not provided to try to entice developers to use conservation design. In fact, the *only* way to get full density is with conservation design. Standard lotting at full density is no longer permitted. Full density, by-right, remains available without any special extended review processes (such as for conditional uses). The options are explained further below and illustrations are provided on pages _____.

Option 1, Density Neutral. The first option is “density-neutral,” permitting the applicant the same number of units as would be permitted under conventional lotting, with at least 50 percent open space required.

Option 2, Enhanced Density, Greater Conservation. This option permits more dwelling units in exchange for more open space. To achieve this, lot sizes are smaller than would occur in Option 1. A density bonus of perhaps 20% could be offered where at least 60% open space is provided. This option is most suitable for age-restricted or age-targeted developments.

Option 3: Estate Lots. This option permits standard lotting with no open space, but with only half the number of lots normally permitted in the full-density conservation subdivision. These lots are restricted against further subdivision.

Option 4: Country Properties. This option permits large lots of ten acres or more, with no common open space. Certain encouragements such as density based on gross acreage rather than on adjusted tract acreage, gravel lanes instead of standard paved subdivision streets, and up to two accessory dwelling units can be provided as incentive to use this option. These lots are restricted against further subdivision and may appeal to a certain market of buyers looking for “farmettes.” These lots also have the advantage of qualifying for Act 319 preferential assessment.

Option 5: Village/Hamlet Design. This option permits double density in exchange for 70% open space and requires central or public sewer and water. One of the benefits of this option is that it provides design standards for village lots, squares and greens, street patterns and even architecture. It also provides for a variety of housing types. This option should be permitted by conditional use.

Communities across the state which have adopted the *Growing Greener* approach have typically applied three or four of these options to their zoning ordinances, although some have used all five options. Communities can choose those which are most appropriate to their local conditions.

Summary

When it appears that development is inevitable, conservation subdivision design regulations can help a community meet its conservation goals, at little or no public cost. The County should encourage and assist municipalities in adopting conservation design in their Comprehensive, Greenway and Open Space Plans.

Just as communities map their “gray infrastructure” (streets, sewers, utilities, etc.), they also need to map their “green infrastructure” so that it can be given equal consideration during the design process. The municipal Map of Potential Conservation Lands, which builds upon the county natural resources mapping, provides a local record of the “green” features that a community is striving to preserve. Once the open space planning policy is established and mapping is completed, revisions can be made to the Subdivision and Zoning Ordinances so that conservation goals can be implemented on each parcel proposed for residential development.

Recommendations for Local Implementation of *Growing Greener: Conservation by Design Concepts*

1. Develop and adopt a municipal Map of Potential Conservation Lands.
 - a. Using the County Map of Potential Conservation Lands as a starting point, prepare local Maps of Conservation Lands;
 - b. Involve the public in the process of mapping conservation lands, this helps build consensus around the resources the community wishes to see preserved as development occurs;
 - c. Use the map to determine priorities for conservation of key parcels - those properties encumbered by multiple resources that can not accommodate development without compromising the resource;

- d. Make the map readily available to developers so that they understand how their property relates to the conservation network and before large sums are spent developing plans;
- e. Adopt the Map of Potential Conservation Lands and supporting text as official policy in the Comprehensive Plan.
- f. Explore opportunities to complete a multi-municipal Map of Potential Conservation Lands. This is most appropriate when sensitive natural resources cross municipal boundaries and shared conservation approaches are desired.

2. Complete ordinance assessments.

Ordinance assessments tell you how well (or how poorly) your local land use regulations implement conservation goals. Assessments of plans and codes should be conducted at the municipal level, but within each study/planning area, municipalities sharing common findings and resources can work jointly to identify the best approach to land use regulation. For example, there may be cost savings if one consultant were hired to work for two neighboring communities with similar conservation challenges.

3. Amend local land use regulations.

- a. Amend the subdivision and zoning codes to incorporate conservation design standards similar to those set forth in the model *Growing Greener: Conservation by Design* ordinances;
- b. Enlist the services of professionals with experience writing conservation land use regulations.
- c. Conduct reviews of subdivision and land development proposals/applications as early as possible especially with respect to potential conservation lands.
- d. In addition to the engineering consultant that most municipalities rely upon to review development applications, municipalities should use design professionals, especially landscape architects, to review sketch plan developments. These costs can be borne by the applicant as authorized by the Municipalities Planning Code.

4. Train your local officials.

Conduct training sessions for elected and appointed local officials, so they understand the concepts and principles of conservation design and the requirements of their own ordinances. Educational sessions could be conducted on a multi-municipal level.

Note: Illustrations are available from Natural Lands Trust at no cost. Municipalities wishing to insert illustrations into this chapter can call Ann Hutchinson or Monica Drewniany at 610-353-5587.

3/30/07

Natural Lands Trust

Description of *Growing Greener: Conservation by Design* in County Greenway Plans
Suitable for inclusion in a chapter that lists other forms of implementation.

Growing Greener: Conservation by Design is a collaborative program of Natural Lands Trust, a non-profit land conservancy located in Media, PA; the Pennsylvania Department of Conservation and Natural Resources (DCNR); the Governor's Center for Local Government Services, DCED; and an advisory committee comprised of officials from state, local and non-profit agencies and the private sector. The Governor's 1999 statewide environmental funding initiative shares the same *Growing Greener* name, but is a separate program funding natural resource protection and land preservation efforts across the Commonwealth.

As of January 2007, 27 communities in nine counties have adopted rigorous versions of the model *Growing Greener: Conservation by Design* ordinance. These Townships are preserving an average of 62% of land subject to development as permanently protected open space.

In order to implement conservation subdivision design, zoning and subdivision ordinances are revised to focus not only on development-related issues (such as lot dimensions, street geometry, stormwater management, etc.), but to place equal emphasis on conserving a variety of environmental, cultural, historic and scenic features. It is precisely those features that typically give a community its special character and are often destroyed by conventional development practices.

When local land use regulations require developers to design around special natural and cultural features, developers can become the municipality's greatest conservationists, at no cost to the community. To achieve this, several revisions must usually be made to the subdivision and zoning ordinances.

Subdivision ordinances must contain, at a minimum:

- Procedures that strongly encourage dialogue between the applicant and municipality before detailed plans are engineered.
- Standards for the configuration and location of the conservation lands.
- A requirement for a context map, showing all natural and manmade features surrounding the site.
- A requirement for a detailed site inventory of existing features upon which to base decisions regarding the location of areas to be protected.
- A required site visit by the planning commission members accompanied by the developer, with the site inventory in hand.
- A Four-Step Design process in which the conservation areas are determined first, before houses, streets and lot lines are established.

Revisions to the zoning ordinance create a "menu of options" for developers to choose from, relating density to the provision of open space. The options offer density increases when greater open space is proposed and reduced density when less open space is proposed. In addition, the zoning ordinance needs to be made flexible to accommodate development in patterns that preserve natural resources.

Zoning ordinances must contain, at a minimum:

- The ability for an applicant to obtain full-density, through a “by-right” (versus conditional use) approval process, but *only* when a conservation option is selected.
- A requirement that protected lands in conservation subdivisions are comprised of at least 50% of the buildable ground, whenever the underlying density is one unit per acre or lower.
- Strong disincentives to discourage “conventional” development, usually by reducing the density by half.
- Restrictive covenants that ensure that the conservation lands are perpetually restricted from further development.
- Open space locational design standards.

Successful communities employ a wide array of conservation planning techniques simultaneously, over an extended period of time. Complementary tools which a community should consider adding to its “toolbox” of techniques include the purchase of development rights; donations of sales to conservancies; the transfer of development rights; and “landowner compacts” involving density shifts between contiguous parcels. Other techniques can be effective, but their potential for influencing the “big picture” is limited. The *Growing Greener: Conservation by Design* approach offers the greatest potential because it:

- does not require public expenditure,
- does not depend upon landowner charity,
- does not involve complicated regulations for shifting rights to other parcels, and
- does not depend upon the cooperation of two or more adjoining landowners to make it work.

Additional informational material describing *Growing Greener: Conservation by Design* concepts is available from Natural Lands Trust.¹

¹ Natural Lands Trust
Hildacy Farm
1031 Palmers Mill Road
Media, PA 19063
ph 610-353-5587 www.natlands.org

Appendix L: Land Conservation Tools

LAND CONSERVATION TOOLS

Most proposed greenways pass through privately-owned land. This section takes a comprehensive look at tools that can be used to conserve land for greenways.

Protection of open space is primarily achieved in one of two ways: through acquisition of property or its underlying rights; or through regulatory requirements. Land conservation mechanisms in each of these two categories are detailed below. Many are discussed in "Land Use in Pennsylvania: Practices and Tools", a publication released in 2000 by the Pennsylvania Department of Community and Economic Development, Governor's Center for Local Government Services.

ACQUISITION TOOLS

These mechanisms generally provide permanent protection of land and are preferred when establishing greenways.

Fee Simple Purchase

- ☛ **Description:** Direct purchase of land, at a price agreeable to the landowner, is done by a governmental or public agency or non-profit land trust organization. Land acquisition can be made at every level of government.
- ☛ **Benefits:** Acquiring fee simple title provides more permanent protection than other methods such as zoning or subdivision requirements. Acquisition by non-profit groups partnering with communities imposes little or no cost and little administrative burden on local governments.
- ☛ **Implementation:** DCNR and DEP's Growing Greener Program has sources of funding to help communities and non-profit groups implement acquisition of land for inclusion in greenways.

Option / First Right of Refusal

- ☛ **Description:** A municipality enters into an agreement with a landowner that, should the landowner decide to sell, gives the government entity the right to bid on the land before anyone else.
- ☛ **Benefits:** This technique gives the municipality time to assemble funds needed to purchase the property or to reach an agreement with the landowner through other means.
- ☛ **Implementation:** The option is negotiated and memorialized in a legal agreement. If the property is sold, the municipality may, but is not obligated to, submit a bid to the landowner.

Conservation Easements

- ☛ **Description:** A landowner voluntarily agrees to sell the right to develop his land in certain ways by granting an easement to another entity such as a land trust. The landowner retains title to the land and continues to pay taxes on it. The easement may or may not allow the grantee access to the land for certain purposes.
- ☛ **Benefits:** Establishment of conservation easements provides long-term protection, but is less costly than fee simple acquisition because the buyer receives less than full title to the land. Where the easement is held by a non-profit group, cost and burden on local government are minimized. Moreover, the landowners pays reduced real estate taxes, subject to terms of the conservation easement.
- ☛ **Implementation:** Generally, the buyer pays the landowner the difference between the value of the land that can be fully developed and the value of the land without development potential. The easement is recorded with the property deed and remains if the land is sold.

Through both state-wide and local chapter efforts, Audubon Pennsylvania (AP) promotes conservation through a variety of education programs. Among these programs are workshops aimed at promoting the establishment of conservation easements.

Although AP does not hold conservation easements, it promotes establishment of easements through other qualified land trust organizations. The protection of these areas is of great interest to AP, and conservation efforts in these areas may attract the support of the organization in the form of landowner education. More information is available through the AP website, <http://pa.audubon.org>, or through the local chapter: the Audubon Society of Western Pennsylvania (www.aswp.org).

Agricultural Conservation Easements

- ☛ **Description:** A subset of conservation easements described above, these easements protect farms from development. Landowners voluntarily sell the rights to develop the farm to a government entity or land trust. The agency or organization usually pays them the difference between the value of the land for agricultural use and the value of the land for its "highest and best" use, which is generally residential or commercial development.
- ☛ **Benefits:** Conservation easements preserve land for agricultural use. They provide a financial benefit to farmers while conserving farmland that often

provides wildlife habitat. Also, owners of land subject to conservation easements pay reduced real estate taxes.

- ☛ **Implementation:** County Agricultural Land Preservation Boards have primary responsibility for developing application procedures. They also establish priority for easement purchases based on a numerical ranking system. The ranking system is modeled on Pennsylvania Dept. of Agriculture (PDA) regulations that require consideration of soil quality, conservation practices, development pressure, and proximity to other preserved farmland and open space.

Forest Land Conservation Easements

- ☛ **Description:** These easements are a market driven tool used to preserve working forests, in the same way agricultural conservation easements protect working farmland.
- ☛ **Benefits:** Easements can be used to protect forests for present and future economic benefit, simultaneously preserving wildlife habitat, protecting watersheds, providing outdoor recreation opportunities, and promoting soil conservation. In addition, benefits to landowners include reduced property taxes. These easements are of great importance to the Commonwealth of Pennsylvania, as timber is one of the top sectors of the state's economy.
- ☛ **Implementation:** Some non-profit groups such as conservancies and land trusts provide financial support for purchasing easements from landowners. They also accept tax-deductible donations of easements.

The U.S. Forest Service's Forest Legacy Plan (FLP) aids in the identification and protection of environmentally-important forest lands threatened by conversion to non-forest uses. The FLP provides funding to state governments to help purchase easements on private forestland. Eligible forest lands must be located in a designated Forest Legacy Area and must meet other specific eligibility requirements. The DCNR Bureau of Forestry, in cooperation with the State Forest Stewardship Committee (SFSC), is responsible for implementation of this program in Pennsylvania. For more information, visit www.dcnr.state.pa.us/forestry.

Transfer / Purchase of Development Rights

- ☛ **Description:** Transfer of Development Rights (TDR) is a tool that allows conservation and development to coexist within a municipality or group of municipalities with joint zoning. TDR permits landowners in conservation target areas to transfer some or all of the development rights to their land (sending areas) to areas where growth is desired at higher densities than zoning allows (receiving areas). The landowner keeps title to the land and the right to sue it, but gives up the right to develop it for other purposes. The buyer of development rights uses

them to develop another parcel at greater density than would otherwise be permitted. With TDR, transfer of rights occurs at the time of development.

- ☛ Purchase of Development Rights (PDR) operates in a similar manner. However, with PDR, an entity buys the rights to develop land from the landowner. The landowner retains title and use of the land, and receives tax benefits. A municipality can pass a bond issue to buy the rights and "bank" them. A developer may then purchase the development rights from the municipality when ready develop an area with high density. The municipal bond financing is paid off over time by the purchase of development rights as development occurs.
- ☛ Benefits: The value of each development right is controlled by the open market, not the municipality. TDR is an equitable option for preserving open space and agricultural land, compensating the owner of the preserved land while guiding the growth of development by allowing increased density where existing infrastructure can support it.
- ☛ PDR provides an immediate return to the landowner, as he/she is compensated for the reduction in development potential of their land. At the same time, PDR supports the development district concept. PDR also streamlines the development process, since private sales and negotiations for development rights are eliminated. It allows a municipality to guide growth to places where it is desired.
- ☛ Implementation: In Pennsylvania, TDR can only be used to transfer development rights within a single municipality or among municipalities with a joint zoning ordinance. It is up to each municipality implementing TDR to set up a mechanism to accomplish the transfer.

REGULATORY TOOLS

Regulatory techniques can also be used to establish greenways. However, because they can always be amended or even abolished by local officials, they cannot be relied on for permanent protection of land. Nevertheless, they should not be overlooked when discussing long-term strategies for assembling a greenway network.

Many of Armstrong's municipalities did not have zoning ordinances at the time of this study, and some did not have subdivision and land development ordinances (SALDOs). Some municipalities are covered under the county's SALDO. However, it is apparent that many of the county's municipalities currently have limited or no provisions to protect resources associated with greenways. Thus, special attention should be given to the following techniques.

Open Space Zoning / Conservation-by-Design

- ❖ Description: This preserves a large amount of land for conservation uses while still allowing full-density development. In contrast to cluster zoning, where the

emphasis is more often placed on providing active recreation areas, open space zoning is more suited for protecting farmland, forests, historic sites, or scenic views. Subdivisions are required to dedicate a significant portion of their unconstrained land to permanent open space uses. The open space is typically owned and managed (according to an approved management plan) by a homeowners' association. Other possible owners include land trusts or the municipality.

- ❖ Benefits: While a regulatory tool, open space zoning provides a means of permanent protection of undeveloped land while allowing full-density development. Ideally, the open space in each new subdivision will be planned to abut one another, forming an interconnected system of conservation land.
- ❖ Implementation: This technique is implemented through a municipal zoning ordinance. The number of dwellings permitted is based on the net acreage of buildable land and the allowable density in the property's zoning district. Easements are then placed in the open space to ensure that it will not be further subdivided or developed.

Overlay Zoning Districts

- ❖ Description: An overlay zoning district applies additional regulations to an underlying zoning district or districts. The restrictions of the overlay district supplement and supersede (where there is a conflict) the provisions of the underlying district. Overlay districts have been used to conserve floodplains and other sensitive natural features.
- ❖ Benefits: Overlay zoning allows regulations to be tailored to specific conditions. Administration is similar to any other zoning district.
- ❖ Implementation: Provisions of a zoning district must apply uniformly to each class of uses or structures within the district. However, Section 605 (2) of the Municipal Planning Code authorizes additional classifications, potentially through overlay zoning, for "regulating, restricting, or prohibiting uses and structures at, along, or near...."
 - (ii) Natural and artificial bodies of water.....
 - (iii) Places of relatively steep slope or grade, or areas of hazardous geological or topographic features.....
 - (vi) Places having unique historical, architectural, or patriotic interest or value.
 - (vii) Floodplain areas,.....sanitary landfills, and other places having a special character or use affecting and affected by their surroundings."

Buffer Zones

❖ **Description:** Municipalities enact regulations requiring buffers of a prescribed width between incompatible uses such as residential and commercial areas or adjacent to sensitive resources such as streams or drinking water supplies. This tool allows the municipality to limit or prohibit development within the buffer area.

❖ **Benefits:** Buffers can be used to protect large, linear corridors of valuable resources like stream and river banks, which are often included in greenways. They allow municipalities to protect areas of sensitive land without having to shoulder the expense of acquisition.

Implementation: Requirements for buffers are enacted as part of a zoning ordinance or subdivision and land development ordinance. Buffer restrictions should be wide enough to protect the resource or shelter the less intensive use. However, care must be taken not to create buffers that are so wide that they will disproportionately reduce the value of land in the municipality.

Agricultural Protection Zoning

❖ **Description:** This zoning designates areas where farming is the primary land use and discourages other land uses in those areas.

❖ **Benefits:** Agricultural Protection Zoning stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. This reduces the likelihood of conflicts between farmers and non-farming neighbors. Maintaining unbroken masses of farmland ensures continued support for local agricultural service businesses.

❖ **Implementation:** Agricultural Protection Zoning is economically viable when coupled with tools such as Transfer of Development Rights or Purchase of Development Rights.

Mandatory Dedication Ordinance

❖ **Description:** Township officials require developers to dedicate a portion of the undeveloped land on a development parcel for open space preservation purposes. The amount of open space dedication is often reflective of the type, amount, and intensity of development to occur on the site.

Fees in-lieu-of dedication are required of the owner or developer as a substitute for dedication of land. Fees are usually calculated in dollars per lot, and referred to as "in-lieu fees." The municipality then uses these funds to purchase new park or conservation land.

- ❖ Benefits: Mandatory dedication ensures that open space will be preserved as a municipality develops. With careful planning by municipal officials, these areas of open space can be aligned to create greenway corridors. However, many municipalities prefer payment of in-lieu fees because they allow the municipality to combine funds from several developments and purchase large tracts of recreation or conservation land.

It is important to note that mandatory dedication ordinances can include specific clauses requiring the dedication of land that includes environmentally-sensitive features such as wetlands, floodplains, etc. Ordinances can also require negotiation with municipal officials so that other lands desired by the municipality can be identified for dedication.

- ❖ Implementation: Provisions requiring mandatory dedication or in-lieu fees can be added to municipal zoning ordinances by amendment. The Municipal Planning Code requires that "the land to be dedicated or the fees to be paid shall bear a reasonable relationship to the use of the park or recreational facilities [developed on that land] by future inhabitants of the development....". The municipality is also required to expend any fees collected within three years of payment by the owner / developer.

The Official Map

- ❖ Description: A municipality creates an "official map" that designates public or private land that has been identified as a current or future public need. This can be land for roads or other infrastructure, as well as open space for conservation or recreation. Making this map available to the public notifies landowners and developers about land that the municipality is planning to use for public purposes.
- ❖ Benefits: The Official Map is a very powerful tool for municipalities planning for conservation and recreation. It gives municipalities time to assemble funds to purchase identified lands through First Right of Refusal (described earlier in this section).
- ❖ Implementation: The Official Map does NOT result in taking of land, but simply gives the municipality right of first refusal to purchase the land or obtain an easement. The municipality has one year to make an offer to the landowner should the property be made available for sale. After one year, the landowner can sell the property to any other interested buyer.

Municipalities wanting to establish should only do so after they have identified lands needed for conservation or recreation through a comprehensive planning process. Such lands must be identified on a parcel-by-parcel basis, with greater detail than is given in this greenways plan. If lands are to be reserved in an official map, the municipality should have a reasonable prospect of obtaining the funds necessary to purchase the property of interest.

The Official Map is a tool of great importance in Armstrong County because a municipality can implement an official map with or without a zoning ordinance. Nearly half of the county's municipalities lack local zoning. If established in the near future, the official map will allow municipalities within the county to plan ways to meet recreation needs and protect natural resources while development pressures are low. Then, if development pressures increase in the future, municipalities can take immediate action to acquire identified lands for public use.

OTHER RECOMMENDATIONS

The action plan also includes several other conservation- and recreation-based recommendations essential to maintaining the quality of life that defines Armstrong County. The following mechanisms are methods of land conservation or resource protection that do not involve acquisition of land or enactment of ordinances by a municipality, but are no less effective.

Agricultural Security Areas

- ◊ **Description:** A landowner or group of landowners whose parcels together comprise at least 250 acres, may apply to their local government for designation as an Agricultural Security Area.

Although ASAs do not offer conservation-based protection, they help ensure continuation of agricultural practices, which are a large part of the quality of life in the County. This plan recommends that the county continue to accept applications for agricultural security areas, and couple that effort with a strong conservation-based education program showing farmers in ASAs the benefits of best agricultural best management practices and natural resource conservation.

Agricultural Tax Incentives

- ◊ **Description:** Differential assessment laws direct local governments to assess agricultural land at its value for agriculture, rather than its full market value, which is usually higher. Differential assessment laws are enacted at the state level, but implemented locally.
- ◊ **Benefits:** The programs allow farmers to continue operating an agricultural operation in the face of development, thus helping ensure the economic viability of agriculture. These tax laws align agricultural property taxes with what it actually costs local governments to provide services to the land.
- ◊ **Implementation:** Landowners must apply to the County Assessment Office.

Clean and Green Program

- ◊ Description: Pennsylvania ACT 319 (also known as Clean and Green) provides real estate tax benefit to owners of agricultural or forest land by taxing that land on the basis of its "use value" rather than its true market value. This act provides preferential assessment to any individuals who agree to maintain their land solely devoted to one of the three following uses:
- ◊
 - Agricultural Use: Land used for producing an agricultural commodity or devoted to (and qualifying for) payments or other compensation under a soil conservation program under an agreement with a Federal government agency.
 - Agricultural Reserve: A non-commercial open space used for outdoor recreation or enjoyment of scenic or natural beauty, offering public use without fee or charge. Agricultural reserve land is the only use under the Clean and Green program that requires landowners to permit nondiscriminatory public access. This use is generally requested by landowners that wish to maintain their land in a natural state, free of farming, timbering, or any other activities.
 - Forest Reserve: A 10+ acre parcel of land stocked by forest trees that are capable of producing timber or other wood products. Forest reserve lands include any farmstead land on the same property parcel as the timber trees.
- ◊ Benefits: Clean and Green reduces property taxes for owners of farm, timber, or conservation land.
- ◊ Implementation: Landowners applying for the Clean and Green Program must have 10 or more acres of active agricultural or forest land unless they gross at least \$2,000 annual income from the land.

The Clean and Green Program measures "use values" (i.e. value of land for farming) against market values. Because the assessment was recent, land values are up to date and thus more accurate. This plan recommends that landowners contact the Armstrong County Penn State Agricultural Extension (phone: 724-458-3447, email: ArmstrongExt@psu.edu) to obtain application forms and for more information on the Clean and Green program.

Partnership with a Land Trust Organization

- ◊ Description: The regular acquisition of property rights (using several of the conservation tools mentioned previously in this section) for conservation defines an organization as a land trust. Land trusts are non-profit organizations focused on working cooperatively with landowners and organizing land acquisition projects that benefit both landowner and community. Nearly 100 land trusts operate in Pennsylvania.

Land trusts can be private charitable organizations, or in some cases governmental agencies, that vary greatly in size and conservation priorities. They may be staffed entirely by volunteers concentrating efforts in a small area or municipality, or may be large regional entities staffed by many professionals (i.e. the Western Pennsylvania Conservancy). Among the various possible focuses of land trusts are:

- Operating public recreation areas or nature preserves;
- Owning no property but hold conservation easements for the protection of natural resources;
- Acquiring land that is to be turned over to governments for public parks or other recreation such as State Game Lands;
- Focusing on protection of water resources such as lakes, rivers, and streams;
- Preserving scenic views, wildlife habitat, or open space for public recreation;
- Promoting the preservation of productive farmland, forested areas, or hunting grounds; or
- Promoting smart land-use planning, environmental education, or trail development for transportation.

- ◊ Benefits: Conservation of open space in Pennsylvania is essential not only to the environment, but to the State's economy. Agriculture, timber production, ecotourism, hunting, fishing, wildlife observation, and other outdoor recreation are all dependent on preservation and management of Pennsylvania's natural resources, upon which the State's economic success depends.

Because they are devoted to working directly with landowners, land trusts can dispel any fears about government "taking" of land. Their efforts can comply with community conservation interests while spelling out benefits to the landowner, thus creating a "win-win" situation.

In addition, land trusts may have considerably more success than municipalities in attracting funding for acquisition projects. They sometimes qualify for Federal, State, and local government funds available for conservation projects.

Pennsylvania DCNR supports land trust acquisitions with Keystone Fund and Environmental Stewardship Fund (Growing Greener) grants, which support 50% of the costs of priority acquisitions. Land acquisition projects were a main focus of the Growing Greener grant funding in 2006. Of further interest, the Pennsylvania Land Trust Association (PALTA) also offers a similar program with a newly-increased maximum \$6,000 reimbursement grant for conservation easements on natural areas and also for trail easements. (see www.conserveland.org/ceap).

- ◊ Implementation: Conservation priorities of such land trusts must be considered. This will allow the county to gauge the interest a land trust may have in expanding its role in the county's conservation efforts.

The following organizations are among the potential land trust partners with conservation interest in Armstrong County:

- *The Western Pennsylvania Conservancy*
The Western Pennsylvania Conservancy (WPC) is a large regional land trust that conserves land of ecological, scenic, or recreational significance, and often conveys those lands to government agencies such as the municipalities, counties, and the Commonwealth of Pennsylvania. Detailed information about the WPC is available at www.paconserve.org.
- *Allegheny Valley Land Trust*
The Allegheny Valley Land Trust (AVLT) is a local land trust that currently owns and maintains the Armstrong Trail corridor, as well as other properties. For more information about AVLT, visit the PALTA website listed below or www.armstrongtrail.org, call 724-543-4478, or email at armtrail@alltel.net

Many of Pennsylvania's land conservation organizations are members of the *Pennsylvania Land Trust Association* (PALTA), whose mission is to increase the quality and pace of land conservation state-wide by strengthening conservation efforts, improving related government policy, and raising public awareness while building positive relationships between land conservation organizations and other partners. The WPC is a current member of PALTA, and at the time of this report, the WPC was in the progress of gaining land trust accreditation through PALTA. Information on these and other land trusts is available at www.conserveland.org.

Continue to Promote Agricultural Best Management Practices

Pashek Associates recommends that the Armstrong Conservation District continue its work with farmers to promote and implement best management practices, thus protecting water quality in the county's streams. Agricultural runoff may cause siltation and may alter nutrient content of streams, adversely affecting aquatic ecosystems. Best management practices such as stabilized cattle stream crossings, streambank fencing to limit livestock access to streams, and planting vegetative stream buffers may help to prevent excessive runoff from agricultural fields.

The County Conservation District currently offers landowner education on agricultural best management practices, and has helped landowners implement such practices throughout the county. In addition, the Western Pennsylvania Conservancy (WPC) provides outreach and implementation services for best management practices via the Pennsylvania Conservation Reserve Enhancement Program (CREP). CREP rewards agricultural producers and landowners for agreeing to install conservation practices on their land. More information is available at www.creppa.org and through the Armstrong Conservation District.

Caution must also be taken to preserve farm-related infrastructure such as farm supply stores, etc. A regional example of preservation without proper planning is Montgomery County, Maryland. Agricultural preservation areas were concentrated in one area of the county only, while other areas were left open to development. Once land was developed in other portions of the county, farm-related infrastructure like supply businesses moved out of the county towards larger customer bases. The farms that remained protected in the county then experienced financial hardship due to lack of nearby support businesses like supply stores, machinery dealers, etc.

Pennsylvania Game Commission Cooperative Programs

Hunting is a part of life in Armstrong County, as is agriculture. Both of these facts are apparent during any drive through the county's countryside, and in the county's abundance of State Game Lands. It is recommended that the county encourage its landowners in rural areas to make land available for public hunting via the *Cooperative Farm-Game Program* and *Cooperative Safety Zone Program* administered by the Pennsylvania Game Commission (PAGC).

These programs benefits both sportsmen and farmers. They provide more accessible hunting grounds, support the implementation of sound land use practices associated with game species habitat, and foster a mutual respect between hunters and landowners. Landowners may also receive the following:

- ~ increased law enforcement patrol during regular hunting seasons;
- ~ food and cover seedlings attractive to game species;
- ~ special preference in the commission's pheasant stocking program;
- ~ informational and warning signage for property borders and for safety zones, which are located within 150 yards of occupied dwellings or other buildings;
- ~ free advice on soil conservation and other farm-related land use practices;
- and
- ~ cutting of tree roots and limbs from crop field borders to increase sunlight on crops and provide cover for small game species and other wildlife.

Cooperating property owners enrolled in the Safety Zone Program execute an agreement with the PAGC that may be terminated at any time with 60-days advanced written notice. Landowners in the Farm-Game Program execute an agreement giving the commission hunting rights to the property for a minimum of 5 years. As of 2003, over 21,000 such agreements were in place, spanning 59 Pennsylvania Counties and keeping almost 2.5 million acres open to public hunting. Further information is available from PAGC field officers, any of the 6 regional PAGC offices, through the Bureau of Land Management at the PAGC Harrisburg headquarters, or through the PAGC website: www.pgc.state.pa.us.

Enhancement of Trails through Wayfaring Signage

This plan recommends the implementation of a *wayfaring signage system* that will make trail users aware of the historical, cultural, recreational, and aesthetic features in the County. For instance, a bicyclist using an on-road route might ride past a community park or historic feature near a trail if no signage is in place to signify the location of the feature. When visiting features that are far from the proposed bike trail or lane, bicyclists could share the road with vehicular traffic in the event that formal bike lanes to the feature are not developed.

The addition of such simple wayfaring signage could introduce a new tourism opportunity for bicyclists visiting the county, offer residents a chance to learn about local history, and provide small communities containing historic features with a potential economic benefit.

Appendix M: Model Conservation Easement Agreement and Commentary

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT dated as of _____ (the "Easement Date") is by and between _____ ("the undersigned Owner or Owners") and _____ (the "Holder").

Article I. Background

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:

Municipality:

County:

Parcel Identifier:

State: Pennsylvania

Acreage:

1.02 Conservation Plan

Attached as Exhibit "B" is a survey or other graphic depiction of the Property (the "Conservation Plan") showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area and the Minimal Protection Area.

1.03 Conservation Objectives

This Conservation Easement provides different levels of protection for the areas shown on the Conservation Plan so as to achieve the goals and resource protection objectives (collectively, the "Conservation Objectives") for the Property set forth below:

(a) Resource Protection Objectives

- (i) **Water Resources.** This Conservation Easement seeks to protect the quality of water resources by maintaining buffer within the vicinity of streams, wetlands and other water resources described in the Baseline Documentation. Barnyard runoff controls and preservation of conservation cover on Steep Slopes are also implemented to protect water resources. These measures help to protect water resources from sediment and non-point pollution and promote the infiltration, detention and natural filtration of storm water. The restrictions also preserve habitat for Native Species dependent on water resources.
- (ii) **Forest and Woodland Resources.** This Conservation Easement seeks to promote biological diversity and to perpetuate and foster the growth of a healthy and unfragmented forest or woodland. Features to be protected include Native Species; continuous canopy with multi-tiered understory of trees, shrubs, wildflowers and grasses; natural habitat, breeding sites and corridors for the migration of birds and wildlife. Species other than Native Species often negatively affect the survival of Native Species and disrupt the functioning of ecosystems. Trees store carbon, offsetting the harmful by-products of burning fossil fuels and trap air pollution particulates, cleaning air.
- (iii) **Wildlife Resources.** This Conservation Easement seeks to protect large intact areas of wildlife habitat and connect patches of wildlife habitat. Large habitat patches typically support greater

biodiversity and can maintain more ecosystem processes than small patches. Large intact habitats allow larger, healthier populations of a species to persist; thus, increasing the chance of survival over time. Fragmentation of large habitats often decreases the connectivity of systems, negatively affecting the movement of species necessary for fulfilling nutritional or reproductive requirements.

- (iv) **Scenic Resources.** This Conservation Easement seeks to preserve the relationship of scenic resources within the Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Property.
- (v) **Sustainable Land Uses.** This Conservation Easement seeks to ensure that Agriculture, Forestry, and other uses, to the extent that they are permitted, are conducted in a manner that will neither diminish the biological integrity of the Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes. Agricultural and Forestry activities are regulated so as to protect soils of high productivity; to ensure future availability for Sustainable uses; and to minimize adverse effects of Agricultural and Forestry uses on water resources described in the Conservation Objectives.
- (vi) **Compatible Land Use and Development.** Certain areas have been sited within the Property to accommodate existing and future development taking into account the entirety of the natural potential of the Property as well as its scenic resources.

(b) Goals

- (i) **Highest Protection Area.** This Conservation Easement seeks to protect natural resources within the Highest Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly Native Species.
- (ii) **Standard Protection Area.** This Conservation Easement seeks to promote good stewardship of the Standard Protection Area so that its soil and other natural resources will always be able to support Sustainable Agriculture or Sustainable Forestry.
- (iii) **Minimal Protection Area.** This Conservation Easement seeks to promote compatible land use and development within the Minimal Protection Area so that it will be available for a wide variety of activities, uses and Additional Improvements subject to the minimal constraints necessary to achieve Conservation Objectives outside the Minimal Protection Area.

1.04 Baseline Documentation

As of the Easement Date, the undersigned Owner or Owners and Holder have signed for identification purposes the report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Conservation Plan and other information sufficient to identify on the ground the protection areas identified in this Article; that describes Existing Improvements; that identifies the conservation resources of the Property described in the Conservation Objectives; and that includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date.

1.05 Structure of Conservation Easement

This Conservation Easement is divided into eight Articles. Articles II, III and IV contain the restrictive covenants imposed by the undersigned Owner or Owners on the Property. In Article V the undersigned Owner or Owners grant to Holder and Beneficiaries (if any) certain rights to enforce the restrictive covenants in perpetuity against all Owners of the Property ("Enforcement Rights"). Article V also contains the procedure for Review applicable to those items permitted subject to Review under Articles II, III and IV. Article VI details the procedures for exercise of Enforcement Rights. Article VII contains provisions generally applicable to both Owners and Holder. The last Article entitled "Glossary" contains definitions of capitalized terms used in this Conservation Easement and not defined in this Article I.

1.06 Federal Tax Items

(a) Qualified Conservation Contribution

This Conservation Easement has been donated in whole or in part to Holder by the undersigned Owner or Owners. It is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code, a "Qualified Conservation Contribution") to a qualified organization (as defined in §1.170(A)-14(c)(1) of the Regulations, a "Qualified Organization").

(b) Public Benefit

The Baseline Documentation identifies public policy statements and other factual information supporting the significant public benefit of this Conservation Easement as defined in §1.170A-14(d)(4)(iv) of the Regulations.

(c) Mineral Interests

No Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations.

(d) Property Right

In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that this Conservation Easement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair market value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that this Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the "Proportionate Value"). If the Proportionate Value exceeds the compensation otherwise payable to Holder under Article VI, Holder is entitled to payment of the Proportionate Value. Holder must use any funds received by application of this provision in a manner consistent with the Conservation Objectives.

(e) Notice Required under Regulations

To the extent required for compliance with §1.170A-13(g)(4)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Conservation Easement, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests associated with the Property.

(f) Qualification under §2031(c) of the Code

To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, and only to the extent such activity is not otherwise prohibited or limited under this Conservation Easement, Owners agree that commercial recreational uses are not permitted within the Property.

1.07 Beneficiaries

As of the Easement Date, no Beneficiaries of this Conservation Easement have been identified by the undersigned Owner or Owners and Holder.

Article II. Subdivision

2.01 Prohibition

No Subdivision of the Property is permitted except as set forth below.

2.02 Permitted Subdivision

The following Subdivisions are permitted:

(a) Lot Line Change

Subdivision resulting in (i) no additional Lot; and (ii) no material decrease in the acreage of the Property; or (iii) subject to Review, other change in the boundary of the Property or any Lot not creating any additional Lot.

(b) Transfer to Qualified Organization

Subdivision to permit the transfer of a portion of the Property to a Qualified Organization for use by the Qualified Organization for park, nature preserve, public trail or other conservation purposes consistent with and in furtherance of Conservation Objectives.

(c) Agricultural Lease

Transfer of possession (but not ownership) of land by lease for Sustainable Agriculture or Sustainable Forestry purposes in compliance with applicable requirements of this Conservation Easement.

2.03 Subdivision Requirements

(a) Establishment of Lots; Allocations.

Prior to transfer of a Lot following a Subdivision, Owners must (i) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of the each Lot created or reconfigured by the Subdivision; (ii) mark the boundaries of each Lot with permanent markers; and (iii) allocate in the deed of transfer of a Lot created by the Subdivision those limitations applicable to more than one Lot under this Conservation Easement. This information will become part of the Baseline Documentation incorporated into this Conservation Easement.

(b) Amendment

Holder may require Owners to execute an Amendment of this Conservation Easement to reflect changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

Article III. Improvements

3.01 Prohibition

Improvements within the Property are prohibited except as permitted below in this Article.

3.02 Permitted Within Highest Protection Area

The following Improvements are permitted within the Highest Protection Area:

(a) Existing Improvements

Any Existing Improvement may be maintained, repaired and replaced in its existing location. Existing Improvements may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.

(b) Existing Agreements

Improvements that Owners are required to allow under Existing Agreements are permitted.

(c) Additional Improvements

The following Additional Improvements are permitted:

- (i) Fences, walls and gates.
- (ii) Regulatory Signs.
- (iii) Habitat enhancement devices such as birdhouses and bat houses.
- (iv) Trails covered (if at all) by wood chips, gravel, or other highly porous surface.
- (v) Subject to Review, footbridges, stream crossing structures and stream access structures.
- (vi) Subject to Review, Access Drives and Utility Improvements to service Improvements within the Property but only if there is no other reasonably feasible means to provide access and utility services to the Property.

3.03 Permitted Within Standard Protection Area

The following Improvements are permitted within the Standard Protection Area:

(a) Permitted under Preceding Sections

Any Improvement permitted under a preceding section of this Article is permitted.

(b) Additional Improvements

The following Additional Improvements are permitted:

- (i) Agricultural Improvements.
- (ii) Utility Improvements and Site Improvements reasonably required for activities and uses permitted within the Standard Protection Area.

(c) Limitations on Additional Improvements

Additional Improvements permitted within the Standard Protection Area are further limited as follows:

- (i) The Height of Improvements must not exceed ___ feet except for Utility Improvements (such as windmills) providing alternative sources of energy approved by the Holder after Review.

- (ii) Impervious Coverage must not exceed a limit of ___ square feet per roofed Improvement. Impervious Coverage must not exceed a limit of ___ square feet in the aggregate for all Improvements within the Standard Protection Area. The limitation on aggregate Impervious Coverage excludes Impervious Coverage associated with ponds and Access Drives.
- (iii) Access Drives and farm lanes are limited to ___ feet in width and are further limited, in the aggregate, to ___ feet in length.
- (iv) Ponds are limited, in the aggregate, to ___ square feet of Impervious Coverage.
- (v) In addition to Regulatory Signs, signs are limited to a maximum of ___ square feet per sign and ___ square feet in the aggregate for all signs within the Property.
- (vi) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground or where used as a means of providing alternative sources of energy (such as wind or solar). The following Utility Improvements are not permitted unless Holder, without any obligation to do so, approves after Review: (A) exterior storage tanks for petroleum or other hazardous or toxic substances (other than reasonable amounts of oil, petroleum or propane gas for uses within the Property permitted under this Conservation Easement); and (B) Utility Improvements servicing Improvements not within the Property.

3.04 Permitted Within Minimal Protection Area

The following Improvements are permitted within Minimal Protection Area:

(a) Permitted under Preceding Sections

Any Improvement permitted under a preceding section of this Article is permitted.

(b) Additional Improvements

The following Additional Improvements are permitted:

- (i) Residential Improvements.
- (ii) Utility Improvements and Site Improvements servicing activities, uses or Improvements permitted within the Property. Signs remain limited as set forth for the Standard Protection Area.

(c) Limitations

- (i) Not more than ___ Improvements (whether an Existing Improvement or Additional Improvement) may contain Dwelling Units (if any) permitted under Article IV.
- (ii) Additional Improvements are subject to a Height limitation of ___ feet.

Article IV. Activities; Uses; Disturbance of Resources

4.01 Prohibition

Activities and uses are limited to those permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.

4.02 Density Issues under Applicable Law

(a) Promoting Development outside the Property

Neither the Property nor the grant of this Conservation Easement may be used under Applicable Law to increase density or intensity of use or otherwise promote the development of other lands outside the Property.

(b) Transferable Development Rights

Owners may not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under Applicable Law.

4.03 Permitted Within Highest Protection Area

The following activities and uses are permitted within the Highest Protection Area:

(a) Existing Agreements

Activities, uses and Construction that Owners are required to allow under Existing Agreements.

(b) Disturbance of Resources

- (i) Cutting trees, Construction or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons, property or health of Native Species on or about the Property. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
- (ii) Planting a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.
- (iii) Removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of and maintain access to Improvements within the Highest Protection Area with restoration as soon as reasonably feasible by replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.
- (iv) Vehicular use (including motorized vehicular use) in connection with an activity permitted within the Highest Protection Area or otherwise in the case of emergency.
- (v) Except within Wet Areas, cutting trees for use on the Property not to exceed ___ cords per year.
- (vi) Subject to Review, removal of vegetation to accommodate replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials.
- (vii) Other resource management activities consistent with maintenance or attainment of Conservation Objectives and conducted in accordance with the Resource Management Plan approved for that activity after Review.

(c) Release and Disposal

- (i) Application of substances (other than manure) to promote health and growth of vegetation in accordance with manufacturer's recommendations and Applicable Law. Within Wet Areas only substances approved for aquatic use are permitted.
- (ii) Piling of brush and other vegetation to the extent reasonably necessary to accommodate an activity permitted within the Highest Protection Area under this Conservation Easement.

(d) Recreational and Educational Uses

Activities that do not require Improvements other than those permitted within the Highest Protection Area and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (i) walking, horseback riding on trails, cross-country skiing on trails, bird watching, nature study, fishing and hunting; and (ii) educational or scientific activities consistent with and in furtherance of the Conservation Objectives.

4.04 Permitted Within Standard Protection Area

The following activities and uses are permitted within the Standard Protection Area:

(a) Permitted under Preceding Sections

Activities and uses permitted under preceding sections of this Article are permitted within the Standard Protection Area.

(b) Agricultural and Forestry Uses; Disturbance of Resources

- (i) Uses and activities that maintain continuous vegetative cover (other than Invasive Species) such as pasture and grazing use, meadow, turf or lawn.
- (ii) Sustainable Agricultural uses that do not maintain continuous vegetative cover (such as plowing, tilling, planting and harvesting field crops, equestrian, horticultural and nursery use) if conducted in accordance with a Soil Conservation Plan furnished to Holder.
- (iii) Removal of vegetation and other Construction activities reasonably required to accommodate Improvements permitted within the Standard Protection Area.
- (iv) Sustainable Forestry uses in accordance with a Resource Management Plan approved after Review. Woodland Areas within the Standard Protection Area may not be used for or converted to Agricultural uses unless Holder, without any obligation to do so, approves after Review.
- (v) Subject to Review, Sustainable Agricultural uses within Steep Slope Areas if conducted in accordance with a Soil Conservation Plan implementing measures to minimize adverse effects on water resources such as a conservation tillage system, conservation cover, conservation cropping sequence, contour farming or cross slope farming.

- (vi) Subject to Review, Agricultural uses that involve removal of soil from the Property (such as sod farming and ball-and-burlap nursery or tree-farming uses) if conducted in accordance with a Resource Management Plan providing for, among other features, a soil replenishment program that will qualify the activity as a Sustainable Agricultural use.
 - (vii) Subject to Review, removal or impoundment of water for activities and uses permitted within the Standard Protection Area under this Conservation Easement but not for sale or transfer outside the Property.
- (c) Release and Disposal**
- (i) Piling and composting of biodegradable materials originating from the Property in furtherance of Agricultural Uses within the Property permitted under this Article. Manure piles must be located so as not to create run-off into Wet Areas.
 - (ii) Subject to Review, disposal of sanitary sewage effluent from Improvements permitted under Article III if not reasonably feasible to confine such disposal to Minimal Protection Area.
- (d) Recreational and Open-Space Uses**
- Non-commercial recreational and open-space uses that do not require Improvements other than those permitted within the Standard Protection Area; do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and do not require vehicular use other than for resource management purposes.

4.05 Permitted Within Minimal Protection Area

The following activities and uses are permitted within the Minimal Protection Area:

- (a) Permitted under Preceding Sections**
- Activities and uses permitted under preceding sections of this Article are permitted within the Minimal Protection Area.
- (b) Disturbance of Resources**
- Disturbance of resources within the Minimal Protection Area is permitted for residential landscaping purposes and other purposes reasonably related to uses permitted within the Minimal Protection Area. Introduction of Invasive Species remains prohibited.
- (c) Release and Disposal**
- (i) Disposal of sanitary sewage effluent from Improvements permitted under this Article.
 - (ii) Other piling of materials and non-containerized disposal of substances and materials but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Minimal Protection and Area; and does not adversely affect Conservation Objectives applicable to the Minimal Protection Area including those pertaining to scenic views.
- (d) Residential and Other Uses**
- (i) Residential use is permitted but limited to not more than ___ Dwelling Units.
 - (ii) Any occupation, activity or use that is wholly contained within an enclosed Improvement permitted under Article III is permitted. Subject to Review, exterior vehicular parking and signage accessory to such uses may be permitted by Holder.

Article V. Rights and Duties of Holder and Beneficiaries

5.01 Grant to Holder

- (a) Grant in Perpetuity**
- By signing this Conservation Easement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a conservation servitude over the Property in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in Articles II, III, and IV in furtherance of the Conservation Objectives.
- (b) Superior to all Liens**
- The undersigned Owner or Owners warrant to Holder that the Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Conservation

Easement as an Exhibit the legally binding subordination of any Liens affecting the Property as of the Easement Date.

5.02 Rights and Duties of Holder

The grant to Holder under the preceding section gives Holder the right and duty to perform the following tasks:

(a) Enforcement

To enforce the terms of this Conservation Easement in accordance with the provisions of Article VI including, in addition to other remedies, the right to enter the Property to investigate a suspected, alleged or threatened violation.

(b) Inspection

To enter and inspect the Property for compliance with the requirements of this Conservation Easement upon reasonable notice, in a reasonable manner and at reasonable times.

(c) Review

To exercise rights of Review in accordance with the requirements of this Article as and when required under applicable provisions of this Conservation Easement.

(d) Interpretation

To interpret the terms of this Conservation Easement, apply the terms of this Conservation Easement to factual conditions on or about the Property, respond to requests for information from Persons having an interest in this Conservation Easement or the Property (such as requests for a certification of compliance), and apply the terms of this Conservation Easement to changes occurring or proposed within the Property.

5.03 Other Rights of Holder

The grant to Holder under this Article also permits Holder, without any obligation to do so, to exercise the following rights:

(a) Amendment

To enter into an Amendment with Owners if Holder determines that the Amendment is consistent with and in furtherance of the Conservation Objectives; will not result in any private benefit prohibited under the Code; and otherwise conforms to Holder's policy with respect to Amendments.

(b) Signs

To install one or more signs within the Property identifying the interest of Holder or one or more Beneficiaries in this Conservation Easement. Any signs installed by Holder do not reduce the number or size of signs permitted to Owners under Article III. Signs are to be of the customary size installed by Holder or Beneficiary, as the case may be, and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owners.

5.04 Review

The following provisions are incorporated into any provision of this Conservation Easement that is subject to Review:

(a) Notice to Holder

At least thirty (30) days before Owners begin or allow any Construction, activity or use that is subject to Review, Owners must notify Holder of the change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on natural resources within the Property.

(b) Notice to Owners

Within thirty (30) days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (i) accept Owners' proposal in whole or in part; (ii) reject Owners' proposal in whole or in part; (iii) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Owners' notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of the proposed Improvement, activity, use or Construction constitutes acceptance by Owners of all conditions set forth in Holder's notice.

(c) **Failure to Notify**

If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.

(d) **Standard of Reasonableness**

Holder's approval will not be unreasonably withheld; however, it is not unreasonable for Holder to disapprove a proposal that may adversely affect natural resources described in the Conservation Objectives or that is otherwise inconsistent with maintenance or attainment of Conservation Objectives.

5.05 Reimbursement

Owners must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Conservation Easement other than monitoring in the ordinary course. These costs and expenses include the allocated costs of employees of Holder.

Article VI. Violation; Remedies

6.01 Breach of Duty

(a) **Failure to Enforce**

If Holder fails to enforce this Conservation Easement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Conservation may be (i) exercised by a Beneficiary or a Qualified Organization designated by a Beneficiary; and/or (ii) transferred to another Qualified Organization by a court of competent jurisdiction.

(b) **Transferee**

The transferee must be a Qualified Organization and must commit to hold this Conservation Easement exclusively for conservation purposes as defined in the Code.

6.02 Violation of Conservation Easement

If Holder determines that this Conservation Easement is being or has been violated or that a violation is threatened or imminent then the provisions of this Section will apply:

(a) **Notice**

Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Property damaged or altered as a result of the violation.

(b) **Opportunity to Cure**

Owners' cure period expires thirty (30) days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

- (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;
- (ii) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation;
- (iii) Owners commence to cure within the initial thirty (30) day period; and
- (iv) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) **Imminent Harm**

No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Property described in the Conservation Objectives.

6.03 Remedies

Upon expiration of the cure period (if any) described in the preceding Section, Holder may do any one or more of the following:

(a) **Coercive Relief**

Seek coercive relief to specifically enforce the terms of this Conservation Easement; to restrain present or future violations of this Conservation Easement; and/or to compel restoration of natural resources destroyed or altered as a result of the violation.

(b) Civil Action

Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Conservation Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.

(c) Self-Help

Enter the Property to prevent or mitigate further damage to or alteration of natural resources of the Property identified in the Conservation Objectives.

6.04 Modification or Termination

If this Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

(a) Compensatory Damages

Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred.

(b) Restitution

Holder or any Beneficiary is entitled to recover from the Person seeking the modification or termination, (i) restitution of amounts paid for this Conservation Easement (if any) and any other sums invested in the Property for the benefit of the public as a result of rights granted under this Conservation Easement plus (ii) reimbursement of Litigation Expenses as if a violation had occurred.

6.05 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

6.06 No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with this Conservation Easement or a waiver of Holder's rights to exercise its rights or remedies at another time.

6.07 No Fault of Owners

Holder will waive its right to reimbursement under this Article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

6.08 Multiple Owners; Multiple Lots

If different Owners own Lots within the Property, only the Owners of the Lot in violation will be held responsible for the violation.

6.09 Multiple Owners; Single Lot

If more than one Owner owns the Lot in violation of this Conservation Easement, the Owners of the Lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

6.10 Continuing Liability

If a Lot subject to this Conservation Easement is transferred while a violation remains uncured, the transferor Owners remain liable for the violation jointly and severally with the transferee Owners. This provision does not apply if Holder has issued a certificate of compliance evidencing no violations within thirty (30) days prior to the transfer. It is the responsibility of the Owners to request a certificate of compliance to verify whether violations exist as of the date of transfer.

Article VII. Miscellaneous

7.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Conservation Easement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

7.02 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Conservation Easement.

7.03 Assignment and Transfer

Neither Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Conservation Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this Section is void.

(a) By Holder

Holder may assign its rights and duties under this Conservation Easement, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Conservation Easement. The assigning Holder must deliver the Baseline Documentation to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Conservation Easement to another Qualified Organization if Holder becomes the Owner of the Property.

(b) By Owners

This Conservation Easement is a servitude running with the land binding upon the undersigned Owners and, upon recordation in the Public Records, all subsequent Owners of the Property or any portion of the Property are bound by its terms whether or not the Owners had actual notice of this Conservation Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Conservation Easement.

7.04 Binding Agreement

Subject to the restrictions on assignment and transfer set forth in the preceding Section, this Conservation Easement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

7.05 No Other Beneficiaries

This Conservation Easement does not confer any Enforcement Rights or other remedies upon any Person other than Owners, Holder and the Beneficiaries (if any) specifically named in this Conservation Easement. Owners of Lots within or adjoining the Property are not beneficiaries of this Conservation Easement and, accordingly, have no right of approval or joinder in any Amendment other than an Amendment applicable to the Lot owned by such Owners. This provision does not preclude Owners or other Persons having an interest in this Conservation Easement from petitioning a court of competent jurisdiction to exercise remedies available under this Conservation Easement for breach of duty by Holder.

7.06 Amendments, Waivers

No Amendment or waiver of any provision of this Conservation Easement or consent to any departure by Owners from the terms of this Conservation Easement is effective unless the Amendment, waiver or consent

is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given.

7.07 Severability

If any provision of this Conservation Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Conservation Easement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Conservation Easement invalid, illegal or unenforceable in any respect.

7.08 Counterparts

This Conservation Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

7.09 Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to (a) any breach or violation of this Conservation Easement or Applicable Law; and (b) damage to property or personal injury (including death) occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

7.10 Guides to Interpretation

(a) Captions

Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Conservation Easement are for convenience only and do not constitute a part of this Conservation Easement.

(b) Glossary

If any term defined in the Glossary is not used in this Conservation Easement, the defined term is to be disregarded as surplus material.

(c) Other Terms

- (i) The word “including” means “including but not limited to”.
- (ii) The word “must” is obligatory; the word “may” is permissive and does not imply any obligation.

(d) Conservation and Preservation Easements Act

This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Conservation Easements Act.

(e) Restatement of Servitudes

This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of Servitudes.

7.11 Entire Agreement

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Conservation Easement. The terms of this Conservation Easement supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Conservation Easement.

7.12 Incorporation by Reference

The following items are incorporated into this Conservation Easement by means of this reference:

- The Baseline Documentation
- The legal description of the Property attached as Exhibit “A”
- The Conservation Plan attached as Exhibit “B”

7.13 Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the requirements of the Conservation Easements Act:

NOTICE: This Conservation Easement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.

Article VIII. Glossary

8.01 Access Drive(s)

Roads or drives providing access to and from Improvements or Minimal Protection Areas and public rights-of-way.

8.02 Additional Improvements

All buildings, structures, facilities and other improvements within the Property other than Existing Improvements. The term Additional Improvements includes Agricultural Improvements, Residential Improvements, Utility Improvements and Site Improvements.

8.03 Agricultural Improvements

Improvements used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage buildings, feeding and irrigation facilities.

8.04 Agricultural or Agriculture

Any one or more of the following and the leasing of land for any of these purposes:

(a) Farming

- (i) Production of vegetables, fruits, seeds, mushrooms, nuts and nursery crops (including trees) for sale.
- (ii) Production of poultry, livestock and their products for sale.
- (iii) Production of field crops, hay or pasture.
- (iv) Production of sod to be removed and planted elsewhere.

(b) Equestrian

Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders.

8.05 Amendment

An amendment, modification or supplement to this Conservation Easement signed by Owners and Holder and recorded in the Public Records.

8.06 Applicable Law

Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Property or this Conservation Easement as amended through the applicable date of reference.

8.07 Beneficiary

Any governmental entity or Qualified Organization that is specifically named as a Beneficiary of this Conservation Easement under Article I.

8.08 Best Management Practices

A series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state and/or county resource management agencies for proper application of farming and forestry operations, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats. Examples of resource management agencies issuing pertinent BMP's as of the Easement Date are: the Natural Resource Conservation Service of the United States Department of Agriculture (with respect to soil resources); the Pennsylvania Department of Environmental Protection (with respect to soil erosion, sedimentation and water resources) and the following sources of BMP's with respect to forest and woodland management: the Forest Stewardship Council principles and criteria, Sustainable Forestry Initiative standards, Forest Stewardship Plan requirements, American Tree Farm standards and Best Management Practices for Pennsylvania Forests.

8.09 Code

The Internal Revenue Code of 1986, as amended through the applicable date of reference.

8.10 Conservation Easements Act

The Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390 as amended through the applicable date of reference.

8.11 Construction

Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

8.12 Default Rate

An annual rate of interest equal at all times to two percent (2%) above the “prime rate” announced from time to time in *The Wall Street Journal*.

8.13 Dwelling Unit

Use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

8.14 Existing Agreements

Easements and other servitudes affecting the Property prior to the Easement Date and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Conservation Easement.

8.15 Existing Improvements

Improvements located on, above or under the Property as of the Easement Date as identified in the Baseline Documentation.

8.16 Existing Lots

Lots existing under Applicable Law as of the Easement Date.

8.17 Forestry

Planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat and other Conservation Objectives.

8.18 Height

The vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

8.19 Impervious Coverage

The aggregate area of all surfaces that are not capable of supporting vegetation within the applicable area of reference. Included in Impervious Coverage are the footprints (including roofs, decks, stairs and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake); bedrock and naturally occurring stone and gravel; and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

8.20 Improvement

Any Existing Improvement or Additional Improvement.

8.21 Indemnified Parties

Holder, each Beneficiary (if any) and their respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

8.22 Invasive Species

A plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “Plant Invaders of the Mid-Atlantic Natural Areas”, by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.

8.23 Lien

Any mortgage, lien or other encumbrance securing the payment of money.

8.24 Litigation Expense

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Conservation Easement including in each case, attorneys' fees, other professionals' fees and disbursements.

8.25 Losses

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

8.26 Lot

A unit, lot or parcel of real property separated or transferable for separate ownership or lease under Applicable Law.

8.27 Market Value

The fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

8.28 Native Species

A plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is native.

8.29 Owners

The undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Property.

8.30 Person

An individual, organization, trust or other entity.

8.31 Public Records

The public records of the Office for the Recording of Deeds in and for the County in which the Property is located.

8.32 Qualified Organization

A governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a Qualified Organization under the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.

8.33 Regulations

The provisions of C.F.R. §1.170A-14 as amended through the applicable date of reference.

8.34 Regulatory Signs

Signs (not exceeding one square foot each) to control access to the Property or for informational, directional or interpretive purposes.

8.35 Residential Improvements

Dwellings and Improvements accessory to residential uses such as garage, swimming pool, pool house, tennis court and children's play facilities.

8.36 Resource Management Plan

A record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Objectives during certain operations potentially affecting natural resources protected under this Conservation Easement. The Resource Management Plan (sometimes referred to as the "RMP") includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate) and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

8.37 Review

Review and approval of Holder under the procedure described in Article V.

8.38 Review Requirements

Collectively, any plans, specifications or information required for approval of the Subdivision, activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Conservation Easement either as an Exhibit or as part of the Baseline Documentation or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

8.39 Site Improvements

Unenclosed Improvements such as driveways, walkways, boardwalks, storm water management facilities, bridges, parking areas and other pavements, lighting fixtures, signs, fences, walls, gates, man-made ponds, berms and landscaping treatments.

8.40 Soil Conservation Plan

A plan for soil conservation and/or sedimentation and erosion control that meets the requirements of Applicable Law.

8.41 Steep Slope Areas

Areas greater than one acre having a slope greater than 15%.

8.42 Subdivision

Any transfer of an Existing Lot into separate ownership; any change in the boundary of the Property or any Lot within the Property; and any creation of a unit, lot or parcel of real property for separate use or ownership by any means including by lease or by implementing the condominium form of ownership.

8.43 Sustainable

Land management practices that provide goods and services from an ecosystem without degradation of biodiversity and resource values at the site and without a decline in the yield of goods and services over time.

8.44 Utility Improvements

Improvements for the reception, storage or transmission of water, sewage, electricity, gas and telecommunications or other sources of power.

8.45 Wet Areas

Areas within 100-feet beyond the edge of watercourses, springs, wetlands and non-impounded standing water.

8.46 Woodland Areas

Area(s) designated on the Conservation Plan and subject to use limitations intended to allow the maintenance or growth of hedgerows or other wooded areas within a portion of the Property that would otherwise be available for Agricultural use.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Conservation Easement as of the Easement Date.

Witness/Attest:

Owner's Name:

Owner's Name:

By: _____

Name:

Title:

Acceptance by Beneficiary:

[NAME OF BENEFICIARY]

By: _____

Name:

Title:

This document is based on the *Pennsylvania Conservation Easement* (4/20/06 ed.) provided by the Pennsylvania Land Trust Association.

This document should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The *Pennsylvania Conservation Easement* must be revised to reflect specific circumstances under the guidance of legal counsel.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

Pennsylvania Conservation Easement & Commentary

a model document and guidance

Prepared by the
Pennsylvania Land Trust Association

with support from the

William Penn Foundation



and the

Pennsylvania Department of Conservation and
Natural Resources Bureau of Recreation and
Conservation "Growing Greener" Program



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www.conserveland.org

4/20/2006 edition

Introduction

The *Pennsylvania Conservation Easement & Commentary* provides Pennsylvanians with a model state-of-the-art easement together with an expansive commentary covering alternative and optional provisions and the reasoning behind it all. User-friendliness, flexibility and best practices are key design elements.

The model uses plain language and careful formatting to improve readability. It is structured to help users avoid drafting errors when adapting it to their particular projects. The model provides for three levels of protection to deal with differing needs across a property, but one or two of these levels can easily be removed for simpler projects.

The model is tailored to Pennsylvania state law, and the PA Department of Conservation and Natural Resources has approved its use for DCNR grant projects. Chester County uses it for its conservation program, and others are expected to follow.

The model sets a strong standard for easement drafting. With continued input from users, it will continue to provide Pennsylvanians with the state-of-the-art for many years to come.

Comments Requested

To maintain the model as the state-of-the-art, we will update it once a year. ***We encourage you to suggest improvements for the next edition!***

Please suggest cleaner language, optional and alternative provisions, and structural adjustments. We also encourage you to identify issues in need of further investigation.

Comments may be directed to Andy Loza at aloza@conserveland.org.

Acknowledgements

Financial support from the Pennsylvania Department of Conservation and Natural Resources Bureau of Recreation and Conservation and the William Penn Foundation makes this endeavor possible!

Notes on Second Edition

This is the second edition of the *Pennsylvania Conservation Easement & Commentary*. The first edition was published in July 2005 and a *public beta* was distributed in April 2005.

The 1st edition continues to stand as a model of excellence. Differences between 1st and 2nd editions are relatively minor. Nevertheless, improvements have been made, and we encourage people to use the 2nd edition for projects that have not advanced far in the negotiation process. You can view the differences between editions at www.conserveland.org/model_documents.

The 2nd edition model is a page shorter thanks to deletions of redundant or superfluous text and tweaks in formatting. The 2nd edition commentary, on the other hand, features five additional pages of alternative and optional provisions.

The Future

In addition to seeking comments in preparation for a next edition, the Pennsylvania Land Trust Association plans to develop a series of modules that will provide supplemental guidance and alternative easement provisions to address various resource protection issues in greater depth. Forestry, agriculture, water resources, biodiversity and public access are among the topics to be addressed. Suggestions for other topics are welcome.

PALTA also plans to implement a document assembly program at www.conserveland.org. Users will be able to automatically generate customized easements by answering a series of questions at the website. This will enable users to easily discard easement content they do not need, add optional content and choose alternative provisions as appropriate.

Documents can be generated in Word, PDF and other formats. Users also will be able to save their settings and change their answers as they desire.

COMMENTARY

to the

Pennsylvania Conservation Easement (4/20/06 ed.)

last updated 9/27/06

General Instructions

- Users of the *Pennsylvania Conservation Easement* are encouraged to read through the commentary at least once. The commentary follows the same Article and Section structure as the easement to make cross-referencing easy. To address different situations, the commentary often suggests alternative language to that found in the model or suggests deleting sections altogether. The commentary also explains the purposes behind many provisions.
- The *Pennsylvania Conservation Easement* and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The *Pennsylvania Conservation Easement* must be revised to reflect the specific circumstances of the particular conservation project under the guidance of legal counsel.
- **S&P.** Standard 9. Practice A. of the 2004 edition of *Land Trust Standards & Practices* published by the Land Trust Alliance (hereafter referred to in this Commentary as S&P) requires the land trust to obtain legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced in real estate law.
- **Disclaimer Box.** Once a document based on the *Pennsylvania Conservation Easement* has been prepared or reviewed on behalf of the Holder by an attorney licensed to practice law in the Commonwealth of Pennsylvania, the box at the bottom of the signature page that begins “This document should not be construed or relied upon as legal advice...” may be deleted.
- **Other States.** Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.
- In the commentary, titles in bold preceded by numbers refer to sections of the same title in the model. Bullets preceding text indicate a comment. Text without bullets varies with the context, covering alternative or optional text to add as well as excerpts from other documents.
- **Updates.** Check www.conserveland.org periodically for updates to the *Pennsylvania Conservation Easement & Commentary*.

Preliminary Matters

Margins

- Several counties (Montgomery and Chester, for example) require a minimum 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right and bottom margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5 inch by 11 inch paper. Many counties require type size not less than 10-point. The model has been formatted to conform to these requirements.

Header

- In the final version of a document prepared using the model as the base, it is good practice to remove the header “Revised through: [date].” In MS Word, click on *View*, then *Header and Footer*, delete the phrase and close.

Title of Document

- Some land trusts prefer the title “Grant of Conservation Easement and Declaration of Covenants” which is acceptable.
- The title “Deed of Grant of Conservation Easement and Declaration of Covenants” is sometimes used; however, this title may result in confusion with deeds conveying fee simple title and, as it is unnecessary to describe the type of grant, one of the other options is preferable.
- There is a growing belief in the land trust community that it would be preferable to have a substitute phrase for the term “conservation easement”. PALTA has suggested “land conservation agreement” as a possible alternative. The rationale for this change is to eliminate a needless source of confusion and misconception that, if a conservation easement is granted, the Holder (and perhaps the public) will have a continuing right of way over the property to enter at will and/or actively use the property. Most people, lawyers and non-lawyers alike, are unfamiliar with the concept of a “negative” easement – the right to compel an owner *not* to do something on his property. The vast majority of easements (other than conservation easements) grant affirmative rights of way to travel over or to maintain improvements on the property of another. If a land trust desires to discontinue use of the term “conservation easement”, the Pennsylvania Conservation Easement can be adapted fairly easily to substitute “Land Conservation Agreement” as the title; substitute “this Agreement” for “this Conservation Easement” throughout the document and substitute “Agreement Date” for “Easement Date” throughout the document. In places that refer to Owners “granting a conservation easement”, Owners instead would grant to Holder in perpetuity Enforcement Rights with respect to the covenants and restrictions contained in the Agreement. The term “Enforcement Rights” is defined in Article I of the model.
- The title “Conservation Servitude” is also a possible option. The Restatement of Servitudes (Third) (a recently published summary of legal principles recommended by respected authorities) uses the term “conservation servitude” rather than conservation easement. The term “servitude” is an umbrella term for all types of promises that are binding on future landowners as well as the landowner making the promises. So both easements and restrictive covenants are included within a single concept.
- The addition of the word “Agricultural” before “Conservation Easement” may help to assure preferential tax treatment under certain Preferential Tax Programs. For example, the Preserved Farmland Tax Stabilization Act provides for assessment at the land’s restricted farmland value for lands under agricultural conservation easements whether the agricultural conservation easement was donated or sold and whether the agricultural conservation easement is held by a municipality or a land trust. For further information, *see* Land Savers, Conservation Easements at www.greenworks.tv/landsavers/webcast-conservationeasements2.htm. Agricultural conservation easements also qualify for reimbursement of costs from the Pennsylvania Department of Agriculture under the Land Trust Reimbursement Grant Program authorized under Act 15 of 1999. The program will reimburse qualified land trusts up to \$5,000 for expenses incurred in the acquisition of agricultural conservation easements. These expenses include appraisal costs, legal services, searches, document preparation, title insurance, closing costs, and survey costs. The subject property must meet certain minimum criteria published in the 10/28/00 PA Bulletin. The Bureau of Farmland Protection has advised PALTA that while the Department does not require the document to be titled “Agricultural Conservation Easement” to qualify for the Land Trust Reimbursement Grant Program, it is important that it be readily apparent in the document that agricultural lands are in fact being protected.

Opening Recital

- **Purpose.** The purpose of the opening recital is to identify the parties to the document and the effective date of the document.

Easement Date

- The date can be added in hand writing at the time of signing.
- The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), substitute for “dated as of ____”: “signed _____ but delivered _____”. The date of delivery is the effective “Easement Date”.

Undersigned Owner or Owners

- Insert names exactly as set forth in the deed by which the undersigned Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title. The customary practice is to recite these facts either in the Background section or at the end of the legal description attached as Exhibit “A”.
- All owners as of the Easement Date must join in the Conservation Easement to be effective under Applicable Law and to qualify as a Qualified Conservation Contribution under §1.170A-14(b)(1) of the Regulations.
- The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.
- If a Person other than an individual is granting the Conservation Easement, a phrase identifying the type of entity and state in which the Person was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.
- The model has been constructed to use the term “Owners” rather than “Grantor” or “Grantors”. This term was chosen to avoid any confusion about whether specific provisions were intended to apply only to the Persons signing the document or to subsequent owners of the Property as well. If a provision is intended to apply only to the Person signing the Conservation Easement, the phrase “the undersigned Owner or Owners” is used. In this limited case, some land trusts may prefer substituting the term Grantor or Grantors for the phrase “undersigned Owner or Owners” where this phrase is used in the model. In all other cases, the term “Owners” (always plural) is used. This arrangement of setting apart the undersigned Owner or Owners from all Owners present and future also has the practical advantage of not requiring conversion of plural to singular or vice versa throughout the document depending upon whether one or more than one persons signed the document.

Holder

- The full legal name of the Holder (including Inc. or Incorporated if part of the legal name) should be inserted here.
- A phrase identifying the type of entity and state in which the Holder was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania non-profit corporation.
- “Grantee” may be substituted for “Holder” but is not recommended for several reasons. First, the term “Holder” avoids any possible confusion in the future between the land trust that signed the document and a subsequent transferee who becomes the “Holder” but was never the “Grantee” of the original document. The second reason is that the terms Owners and Holder are more distinctive and recognizable than Grantor and Grantee whose similarity in spelling can sometimes be confusing.
- Other parties to the document can be added here, if desired; however, the model has been constructed to name additional “Beneficiaries” (if any) in Article I. It is not necessary for purposes of giving public notice of the content of the document to name additional Beneficiaries in the opening paragraph.

Article I. Background

- **Purpose.** The purposes of Article I “Background” are to inform the reader of the factual information necessary to understand the subject matter of the document and the intentions of the parties in entering into a legally binding relationship. The material in the Background section should never be used to set forth enforceable restrictions on the Property.
- **Articles and Sections.** The model has been structured in Articles and Sections rather than a list of paragraphs. There are several practical reasons for this. One reason is to encourage additional provisions to be clustered with similar provisions instead of adding them to the end where they may be missed in a quick review. Another reason is to avoid wherever possible cross-references to specific

paragraphs. A common drafting error is to add or delete paragraphs and not check whether cross-references are still correct. This structure seeks to minimize the opportunities for that error to occur.

- **Whereas Clauses.** The content of Article I can be restated as a series of “Whereas” clauses; however, modern legal practice is to state the facts supporting the intentions of the parties in a “Background” section. The facts are then set out as simple declarative sentences rather than a series of “whereas” clauses conjoined with a series of “ands”.

1.01 Property

- **Purpose.** The purpose of this Section is to identify the land that will be bound by the terms of the Conservation Easement.
- **Conservation Area.** If the undersigned Owner or Owners and the Holder intend the Conservation Easement to apply only to a portion of the Property, change the caption of §1.01 to “Property; Conservation Area”; substitute the following for the first two sentences in §1.01; and replace “Property” with “Conservation Area” throughout the *remainder* of the document *following* §1.01.

The undersigned Owner or Owners are the sole owners in fee simple of the Property described below (the “Property”). A certain portion of the Property (the “Conservation Area”) is the subject of this Conservation Easement and is described in Exhibit “A”.

- **Description of Conservation Area.** The Pennsylvania Conservation and Preservation Easements Act imposes a higher standard on describing a “Conservation Area” than a “Property”. Section 4(b) of the Conservation Easements Act provides as follows:

[A] conservation easement may encompass an entire fee simple interest in a parcel of real property as described in the deed to the property, or any portion thereof or estate therein. Except when referencing an easement’s boundary using setback descriptions from existing deed boundaries or natural or artificial features, such as streams, rivers or railroad rights-of-way, a metes and bounds description of the portion of property subject to the easement shall be provided in the easement document.

- **S&P.** Practice D. of Standard 9 of S&P requires that the land trust determine the boundaries of every protected property through legal descriptions, accurately marked boundary corners or, if appropriate, a survey.
- **Street Address:** Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example: 100 acres more or less north side of ___Road west of the intersection of ___ Road and ___ Road.
- **Municipality:** Insert the city, township or borough in which the Property is located. This may or may not be the name of the town used for mailing address purposes.
- **County:** Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in both counties.
- **Parcel Identifier:** The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. *See* Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337). Some counties charge additional recording fees to note the tax parcel number and/or uniform parcel identifier number on the document presented for recording if not furnished in the document itself or the legal description attached as Exhibit “A”.
- **Acreage:** Insert the number of acres comprising the Property.

1.02 Conservation Plan

- **Purpose.** The purpose of this section is to incorporate a separate document (the Conservation Plan) into the text of the Conservation Easement. A Conservation Plan must be incorporated into the model Conservation Easement unless the entirety of the Property is in the “Highest Protection Area” or the “Standard Protection Area”. See Commentary to §1.03 for a detailed explanation of the three levels of

restriction used in the model – the Highest Protection Area, the Standard Protection Area and the Minimal Protection Area.

- **Identification of Areas.** The relevant areas should be identified on the Conservation Plan with sufficient specificity to locate them on the ground, sometimes with the assistance of other materials included in the Baseline Documentation.
 - Aerial photographs and topographical maps frequently provide sufficient information to differentiate the Highest Protection Area from the Standard Protection Area.
 - The Minimal Protection Area may require surveying if it is not feasible to establish it by reference to existing natural features or survey points. The Minimal Protection Area should be marked with permanent markers on the ground prior to the Easement Date or, if later, in any event prior to construction of Improvements.
- **DCNR Requirements.** The Pennsylvania Department of Conservation and Natural Resources (the “DCNR”) has advised that, for conservation easements acquired through funding provided by the DCNR, the survey plat constituting the Conservation Plan must show the boundary of the Property (or Conservation Area, as the case may be) by metes and bounds and must provide a calculation of the acreage within the State Program Area. See §1.07(b) below for a further description of the State Program Area.
- **S&P.** Standard 9. Practice D. of S&P provides that, if an easement contains restrictions that are specific to certain zones or areas within the property, the locations of these areas should be clearly described in the easement and supporting materials and can be identified in the field.
- **Exclusion of Minimal Protection Area.** The question often arises whether a Minimal Protection Area should be included or excluded from the property subjected to the Conservation Easement. The Regulations (§1.170A-14(v)) provide that “a deduction will not be allowed for the preservation of open space under §170(h)(4)(A)(iii), if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmental conservation policy that is being furthered by the donation. See 1.170A-14(e)(2) for rules relating to inconsistent use.” On the one hand, by excluding the area subject to future development, the undersigned Owner or Owners and the Holder avoid falling afoul of this limitation. On the other hand, by excluding the area, the Holder loses the right to exert some control over the future use and development of the Minimal Protection Area so as to protect other conservation values outside the Minimal Protection Area. The model is written to cover the entire Property. If the Minimal Protection Area is excluded from the Property, follow the directions under the Commentary to §1.01 for describing a “Conservation Area” that is less than the entirety of the Property.
- **Establishment of Minimal Protection Area after Easement Date.** If one or more of the Minimal Protection Areas permitted under the Conservation Easement have not been established as of the Easement Date by reference to the Conservation Plan, add the following to §1.02:

Minimal Protection Area A has been established as of the Easement Date in its location shown on the Conservation Plan. Minimal Protection Area B may be established after the Easement Date [within the area identified as “Designation Area” on the Conservation Plan] under applicable provisions of Article II. *The phrase within the brackets is omitted if a “Designation Area” is not the selected alternative as discussed in Article II of this commentary.*
- **Plan Identification Information.** Since recorded versions of plans are sometimes reduced to the extent that not all the notes are legible, it is good practice to identify the plan with some specificity in the Background section so that there is no question as to the plan that was intended as the Conservation Plan. Example: “Attached as Exhibit “B” is a plan of the Property prepared by ___ dated ___ entitled ___ plan number ___” or “Attached as Exhibit “B” is a plan of the Property prepared by the Holder dated ___ based upon a survey prepared by ___ dated ___ entitled ___.” A full size copy of the plan will, of course, be kept on file as part of the Baseline Documentation.
- **Multiple Plans.** Some land trusts attach a site plan as well as the Conservation Plan. If that is desired, it is advisable to incorporate them as Exhibits “B-1” and “B-2” so as to keep the identification of subsequent Exhibits uniform.

- **S&P.** Standard 8. Practice G. of S&P provides that all land and easement projects should be individually planned so that the property's important conservation values are identified and protected, the project furthers the land trust's mission and goals, and the project reflects the capacity of the organization to meet future stewardship obligations.

1.03 Conservation Objectives

- **Purpose.** This Section serves a number of important purposes. First and most obvious is that it sets out the intentions of the parties with respect to the conservation of the Property. Second it is intended as an educational tool for future Owners. Third, it will serve as a guide for future Amendment: there may be perfectly acceptable alternative means to achieve the same ends. Fourth, if the Conservation Easement becomes the subject of litigation, it will help inform the court of the rationale underpinning particular covenants or higher standards applicable to particular areas. Last, this Section (together with public policy statements) will help support (if otherwise applicable) an undersigned Owner's claim of a charitable deduction for a Qualified Conservation Contribution.
- **S&P.** Standard 8. Practice F. of S&P requires the land trust to document the condition of the important conservation values on the property and to reveal potential threats to those values.

(a) Resource Protection Objectives

- Subsection (a) explains the rationale for protection of various natural and scenic resources within the Property. If any one or more of the categories is not applicable to the Property, delete the inapplicable subsection.

(i) Water Resources

- Add a brief description of the water resources on or about the Property that are more fully described in the Baseline Documentation. Example:

The Property is traversed for approximately ___ feet by ___ Creek. The ___ Creek is classified by the Pennsylvania Department of Environmental Protection as a "high quality" stream. A high quality stream is recognized as having excellent water quality with a minimum of pollutants and contaminants and environmental features that require special water quality protection. The creek is a tributary of ___ River, a source of drinking water for the ___ area.

(ii) Forest and Woodland Resources

- Add brief description of forest, woodland and vegetative resources on or about the Property that are more fully described in the Baseline Documentation. Example:

The Highest Protection Area is covered by a canopy of mixed hardwoods primarily of Native Species including the following: _____. Layered under the canopy are woody perennials such as _____ and herbaceous materials such as _____.

- If the Property contains any "Specimen Trees", they should be identified on the Conservation Plan, and mentioned here. (Add to Article VIII of the Conservation Easement the definition for "Specimen Tree" set forth in Article VIII of the commentary.) Example:

Several trees have been identified on the Conservation Plan as Specimen Trees. The Specimen Trees consist of a ___ approximately ___ years old and a ___ rarely found in the vicinity of the Property.

(iii) Wildlife Resources

- Add brief description of Native Species found on or about the Property that are more fully described in the Baseline Documentation and/or the potential of the Property to provide habitat for Native Species.
- Example: The Highest Protection Area contains approximately ___ acres of unbroken, deep woods habitat within which the following Native Species have been observed: _____. The edge between the woodlands and field areas provides cover for species adapted to more sunlight such as _____. The following rare or endangered species have been observed on or about the Property: _____.

(iv) Scenic Resources

- Add brief description of scenic views more fully described in the Baseline Documentation. Example:

From the public right-of-way of ___ Road, the public is afforded scenic views of pastures and cropland interspersed by hedgerows and framed by a heavily forested ridge. Conservation of the Property under the terms of this Conservation Easement will extend the panorama of protected open space within the ___ Valley to approximately ___ acres.

(v) Sustainable Land Uses.

- Add brief description of importance of Agricultural and Forestry uses to the community and/or summary of information contained in the Baseline Documentation re: suitability of soils for Sustainable Agriculture or suitability of timber for Sustainable Forestry. Examples:

The Property is located within an area that historically has been devoted to Agricultural uses; however, development pressures have interspersed residential development with Agricultural uses to the detriment of productive agriculture. This Conservation Easement and others applicable to properties in the vicinity of the Property are intended to preserve an economically viable area devoted to Agricultural production.

Approximately ___% of the Standard Protection Area contains soils classified as ___ as defined by the U.S. Department of Agriculture. Timber within the Standard Protection Area consists predominantly of hardwoods such as _____.

- The National Resource Conservation Service of the United States Department of Agriculture has prepared detailed soil maps that can help to determine the capability class of the soils on a particular farm. Briefly, the classes are defined as follows:
 - Classes I-II are considered “prime farmland”, the best in the nation.
 - Class III generally is very productive and worthy of saving. (Watch for Class IIIe land, however. The “e” stands for erosion-prone and this kind of land requires special conservation practices to retain its fertility.)
 - Class IV usually is more steeply sloped and includes lands particularly well suited to orchards. Some land in this category is called “unique farmland”.
 - Class V is wetlands, which generally should not be cultivated.
- The source of this discussion of soil types is *The Conservation Easement Handbook*, page 27.
- Information on soils of statewide importance and local importance may be inserted here as well. For a variety of maps and information, see the NRCS Pennsylvania website in cooperation with the Penn State College of Agricultural Sciences at <http://mcdc.cas.psu.edu/usdanrcs.htm>.

(vi) Compatible Land Use and Development

- Add brief description of the rationale underlying the size and location of Minimal Protection Areas. Examples:

The Minimal Protection Area has been located around Existing Improvements with additional space for expansion sited so as to minimize intrusion into scenic views from ___ Road.

Minimal Protection Area A has been established around existing Agricultural Improvements and Residential Improvements. Minimal Protection Area B has been established as a site for additional Agricultural Improvements and more intense Agricultural uses in a location that will confine barnyard runoff so as not to endanger water resources.

(b) Goals

- Subsection (b) differentiates the goals for the three levels of protection that may be applied to different portions of the Property. If any one or more of the levels will not be used for this Property, either delete the applicable subsection or leave the heading (for example, (i) Highest Protection Area) and substitute for the text under that heading the following: “None of the Property has been designated as Highest Protection Area on the Conservation Plan”.

(i) Highest Protection Area

- Designate as “Highest Protection Area” those portions of the Property that should remain forever wild or largely undisturbed. If Agricultural use (including grazing) or Forestry use for commercial timbering is contemplated, the area should be designated as “Standard Protection Area” not “Highest Protection Area”. There may or may not be any habitat worthy of being protected as Highest Protection Area within a Property. However, to protect water resources, PALTA recommends that areas within at least 50 and preferably 100 feet from the edge of a stream or other watercourse on the Property should be identified as “Highest Protection Area”. See, for example, the recommendations in *Riparian Forest Buffers* (Welsch, 1991), Forest Resources Management, USDA Forest Service, Radnor, PA, NA-PR-07-91, available on-line at http://www.na.fs.fed.us/spfo/pubs/n_resource/riparianforests/Tab%20II.htm.

(ii) Standard Protection Area

- Designate as “Standard Protection Area” those portions of the Property that will be available for a variety of open-space uses (such as active recreational, Agricultural and Forestry uses) but will have limited Additional Improvements. As a general rule, the Standard Protection Area is the remainder of the Property that is not within either the Highest Protection Area or the Minimal Protection Area. Some Properties may not have any “Standard Protection Area” – for example, a Property covered entirely with old-growth forest but for a clearing designated as “Minimal Protection Area”.

(iii) Minimal Protection Area

- Designate as “Minimal Protection Area” those portions of the Property that will be available for a high degree of human activity including Construction of Additional Improvements. Minimal Protection Areas are sometimes referred to as “building areas”; but the model avoids using that term for several reasons. First, the intent is not to suggest that Construction ought to occur there but to indicate the limited nature of the Holder’s interest in that area. Second, an area could be designated as “Minimal Protection Area” to confine programmatic activities (such as a camp use) irrespective of plans for Construction of existing or future buildings. Land trusts may, if they like, choose to substitute the term Building Area for Minimal Protection Area. Substituting the term “building envelope” is discouraged as that phrase is commonly used in zoning and land use law to mean the area of a lot within setback lines and that is definitely not the meaning intended in the model. Note that some public funding sources may not fund the minimal protections placed on the portion of a Property designated as “Minimal Protection Area” or “building area” for fear of creating a misperception that they are supporting efforts contrary to conservation.

1.04 Baseline Documentation

- **Purpose.** The purpose of this section is to incorporate the Baseline Documentation into the text of the Conservation Easement even though it is not attached to the recorded documentation. Because it is not attached to the recorded document, it is imperative that the definitive baseline report be signed by the undersigned Owners and the Holder with a notation identifying the report as the Baseline Documentation referred to in the Conservation Easement between Owners and the Holder dated ____.
- **Necessity.** Baseline documentation is required for compliance with the Code and Regulations (*see* §1.170A-14(g)(5) of the Regulations) but it is also critical whether or not the Conservation Easement was donated to the Holder. For this reason, it is separated from other Code and Regulation requirements in Article I.
- **Obligation to Prepare.** Common practice is for the Holder to prepare the Baseline Documentation; however, under the Regulations it is the obligation of donor (the undersigned Owner or Owners) to make available to donee (the Holder) *prior to the time the donation is made*, documentation sufficient to establish the condition of the Property as of the Easement Date.
- **Items Included.** According to the Regulations, the documentation *may* include: (A) USGS maps, (B) map of the area drawn to scale showing Existing Improvements, vegetation and identification of flora and fauna, land use history (including present uses and recent past disturbances) and distinct natural features such as large trees and aquatic areas; (C) aerial photograph at an appropriate scale taken as close as possible to the Easement Date; (D) on-site photographs taken at appropriate locations on the Property. The on-site photographs should be keyed to a location map of the Property and dated and signed by the

photographer. To monitor restrictions on the Standard Protection Area properly, Baseline Documentation in support of a donation of a Conservation Easement based upon the model should include a computation (individually and in the aggregate) of Impervious Coverage of Existing Improvements within the Standard Protection Area as of the Easement Date.

- **S&P.** Standard 2. Practice D. of S&P provides that land trusts should adopt “a written records policy that governs how organization and transaction records are created, collected, retained, stored and disposed.” Among the critical records covered by the policy are the baseline documentation reports for all conservation easements held by the land trust. Standard 9. Practice G. provides that pursuant to its records policy, the land trust must keep originals of all irreplaceable documents essential to the defense of each transaction in one location and copies in a separate location. Original documents should be protected from daily use and are secure from fire, floods and other damage. Baseline documentation should also include a report of the steps taken by the land trust to identify and document whether there are hazardous or toxic materials on or near the property. Land trusts are required to take these steps, as appropriate for the project, to conform to Standard 9. Practice C. of S&P. Standard 11 Practice B requires that for every easement, the land trust has a baseline documentation report that includes a baseline map prepared prior to closing and signed by the landowner at closing. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgment of interim data that for donations meets Regulations are signed by landowner at closing.

1.05 Structure of Conservation Easement

- **Purpose.** The purpose of this section is to give a reader unfamiliar with conservation easements in general or this model in particular, a sense of the organizing principles on which it is based.
- **Order of Articles.** It is important to note that it is the undersigned Owner (not the Holder) who establishes the restrictive covenants on the Property (Articles II, III and IV). Many forms start with the “grant of a conservation easement” and follow with the restrictive covenants but this is illogical. There’s nothing to grant until Owners establish the restrictive covenants. Under the model, Owners grant to the Holder the right to enforce the restrictive covenants under Article V.
- **Glossary.** Another key point in this Section is to direct the reader to Article VIII for definitions of initially capitalized terms used in the Conservation Easement that are not defined in Article I. Some land trusts may prefer labeling Article VIII “Other Defined Terms” rather than “Glossary” so as to reaffirm the legally binding nature of the definitions set forth in that Article.

1.06 Federal Tax Items

- **Purpose.** All of the requirements for qualification as a Qualified Conservation Contribution have been merged into this Section. If there is no donation, the Section can be simply deleted or (to be sure there is a meeting of the minds between Owners and the Holder on this issue) retain the caption and replace the text with the following: “The undersigned Owners and Holder confirm that the grant to the Holder of this Conservation Easement is not intended to be a Qualified Conservation Contribution under the Code and Regulations”.
- **Mandatory.** All of the requirements *must* be satisfied in order to qualify for charitable deduction. Two other requirements are dealt with outside this Section because they ought to apply to all Conservation Easements whether or not donated. These requirements are included in the model as §1.04 (Baseline Documentation) and §5.01(b) (requiring subordination of any liens affecting the Property as of the Easement Date).
- **S&P.** Standard 10 of S&P provides that the land trust must work diligently to see that every charitable gift of a Conservation Easement meets federal and state tax law requirements. However, Standard 10 Practice C. clarifies that the land trust should not make assurances as to whether a particular conservation easement will be deductible, what monetary value of the gift the Internal Revenue Service and/or state will accept, what the resulting tax benefits of the deduction will be, or whether the donor’s appraisal is accurate.

(a) Qualified Conservation Contribution

- **Bargain Sale.** In the case of a bargain-sale of the Conservation Easement, the donation has been made “in part.” See §5.01(c) of this commentary for the section captioned “Purchase Price” that is to be added to the model Conservation Easement whenever the Conservation Easement is purchased in whole or in part.

(b) Public Benefit

- **Public Benefit Tests.** The conservation values described in the Conservation Objectives should describe facts and circumstances particular to the Property that will serve to substantiate qualification under one or more of the categories of public benefit set forth in §170(h) of the Code and the Regulations; for example, preservation of open space with scenic views visible from a public right-of-way, preservation of open space in furtherance of public policies; or preservation of a relatively natural habitat. For an in-depth discussion, *see* Small, Stephen J. *The Federal Tax Law of Conservation Easements*. If desired by the undersigned Owner or Owners and Holder, a sentence may be added to §1.06(a) identifying the category or categories of public benefit under which the Conservation Easement is intended to qualify; for example: “This Conservation Easement qualifies as a public benefit by (i) preserving a relatively natural environment as described in the Conservation Objectives; and (ii) preserving open space in furtherance of the public policies identified in Exhibit “___”.
- **Model Approach.** Recitations of public policy statements have been omitted from Article I of the model because they tend to be lengthy and the approach taken by the model is to focus on resource protection goals and to keep the document as brief and easily readable as possible.
- **Summary as Exhibit.** Land trusts are encouraged to attach a summary of public policy statements into the Conservation Easement as an Exhibit. Neither the Code nor the Regulations require inclusion of this material in the body of the Conservation Easement; however, public policy statements may be useful for future interpretation of the intentions of the parties.
- **Example.** Add to the end of the “Public Benefit” paragraph: “Attached as Exhibit “___” is a summary of the public policy statements and other information supporting the public benefit of the terms of the Conservation Easement in addition to the conservation values described in the Conservation Objectives.”
- **PALTA Website.** PALTA intends to publish on its website (www.conserveland.org) examples of public policy statements adopted by various federal, state and local governmental bodies.
- **S&P.** Standard 8. Practice D. of S&P provides that the land trust should evaluate and clearly document the public benefit of each land and easement transaction and how the benefits are consistent with the mission of the organization. If the transaction involves public purchase or tax incentive programs, the land trust satisfies and federal, state or local requirements for public benefit. Standard 8. Practice C. provides that, for land and easement projects that may involve federal or state tax incentives, the land trust should determine that the project meets the applicable federal or state requirements, especially the conservation purposes test of the Code and Regulations. Both of these Standards should be read, however, in conjunction with Standard 9. Practice B. which provides that the land trust should refrain from giving specific legal, financial and tax advice and should recommend in writing that each party to a land or easement transaction obtain independent legal advice.

(c) Mineral Interests

- **Disqualification.** Rights to extract or remove minerals by surface mining will disqualify the donation for charitable contribution purposes unless the probability of extraction or removal is so remote as to be negligible.
- **Factors.** According to §1.170A-14(g)(4)ii(3) of the Regulations, the determination is a question of fact and is to be made on a case-by-case basis. Relevant factors to be considered in determining the probability include geological, geophysical or economic data showing the absence of mineral reserves on the Property or the lack of commercial feasibility at the time of the contribution of surface mining the mineral interest.

(d) Property Right

- **Application of “Proportionate Value” Rule.** “The rule works like this. Assume a property has a value of 100 before an easement and a value of 80 after an easement. The easement has a value of 20 and therefore is worth 20% of the value of the entire property.” (Small, Stephen J., *The Federal Tax Law of Conservation Easements, Fourth Edition*, 1997, p. 16-5)
- **Application to §6.04.** Under Article VI, the Holder is entitled to compensation in a broader range of circumstances than “extinguishment”. If the undersigned Owner or Owners received a federal tax benefit for the donation, the Proportionate Value is required to be paid to Holder rather than the measure of compensatory damages in Article VI so as to conform to the Regulations. It is good practice for the Holder to keep a record of the Proportionate Value established as of the Easement Date in the Baseline Documentation.

(e) Notice Required under Regulations

- **Purpose.** The purpose of this subsection is to avoid the possibility of non-compliance with §1.170A-13(g)(4)(ii) of the Regulations, which provides as follows: “In the case of any donation referred to in paragraph (g)(4)(i) of this section, the donor must agree to notify the donee, in writing before exercising any reserved right, *e.g.*, the right to extract certain minerals which may have an adverse impact on the conservation interests associated with the property”.
- **Review.** The approach taken by the model is to require Review (which includes both notice and approval) prior to activities with a potential for adverse impact similar to the example given in the Regulations. The Regulations only require notice (not review or approval) but apply to undefined set of activities that *may* adversely impact conservation interests. Accordingly, this provision for notice is included solely for the purpose of assuring strict compliance with the Regulations and not as a substitute for Review where required under Articles II, III and IV.

(f) Qualification under §2031(c) of the Code

- **Purpose.** The purpose of this subsection is to assure that, for purposes of qualifying the Conservation Easement for favorable estate tax treatment under §2031(c) of the Code, the prohibition on commercial recreational use applies to the entirety of the Property.

OPTIONAL SUBSECTION:

- The following provision should be inserted if the undersigned Owner otherwise qualifies as a "qualified farmer or rancher" under the Pension Protection Act of 2006; *i.e.*, a taxpayer who earns more than 50% of his or her gross income from the business of farming in the taxable year in which the conservation contribution is made. A qualified farmer or rancher may deduct the conservation easement value up to 100% of their Adjusted Gross Income for up to 15 years.

(g) Qualification under Pension Protection Act of 2006

To the extent required to qualify the undersigned Owner or Owners as a "qualified farmer" or "qualified rancher" under applicable provisions of the Pension Protection Act of 2006 and subject to applicable limitations set forth in this Conservation Easement, the Property must be used, or available for use, for agricultural or livestock production.

OPTIONAL SUBSECTION:

- It is good policy to evidence in a writing signed by undersigned Owner or Owners prior to or at the time of the donation, that the Holder has not promised any particular tax treatment of the donation of the Conservation Easement. The recommendation of PALTA is to document that understanding as soon as possible in an engagement letter or donation agreement; however, the Holder may want to include a provision to that effect in the Conservation Easement either in addition to or in substitution for an earlier agreement. If so, the following provision may be added to §1.06:

(h) No Representation of Tax Benefits

The undersigned Owner or Owners represent, warrant and covenant to Holder that:

- (i) The undersigned Owner or Owners have not relied upon any information or analyses furnished by Holder with respect to either the availability, amount or effect of any deduction, credit or other benefit to Owners under the Code, the Regulations or other Applicable Law; or the value of this Conservation Easement or the Property.
- (ii) The undersigned Owner or Owners have relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the undersigned Owner or Owners. If any Person providing services in connection with this Conservation Easement or the Property was recommended by Holder, the undersigned Owner or Owners acknowledge that Holder is not responsible in any way for the performance of services by these Persons.
- (iii) The donation of this Conservation Easement is not conditioned upon the availability or amount of any deduction, credit or other benefit under the Code, Regulations or other Applicable Law.

1.07 Beneficiaries

- **Purpose:** The purpose is to identify (and limit) the universe of Persons having a “third-party right of enforcement” defined in the Conservation Easements Act as follows: “[a] right provided in a conservation easement to enforce any of its terms, granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.”
- **Rights.** The particular rights each Beneficiary has with respect to the Property are set forth in Article V.
- **No Beneficiary.** The model’s default provision states that “As of the Easement Date, no Beneficiaries of this Conservation Easement have been identified by the undersigned Owner or Owners and Holder.” This statement clarifies that there is no Person who can claim that the Person was an intended Beneficiary. Should the parties want to name a Beneficiary in the future, all that is needed is a simple Amendment identifying a Beneficiary under Article I and specifying the rights of that Beneficiary under Article V.
- **Acceptance.** The Conservation Easement Act requires Beneficiaries to sign the Conservation Easement (or record a separate document of acceptance) to evidence their acceptance of the rights and duties. The text of the relevant provision of the Conservation Easements Act is as follows:

No right or duty of a holder, successive holder named in the conservation or preservation easement or person having a third-party right of enforcement may arise under a conservation or preservation easement before the acceptance of the easement by the holder, successive holder or third party with right of enforcement and recordation of the acceptance.
- Several points need to be made concerning the statutory provision. First, the acceptance does not have to be made a part of the initial Conservation Easement but can be recorded later if and when the need arises for Beneficiary to enforce its rights under the Conservation Easement independent of the Holder. For example, the Beneficiary wants to replace the Holder for failure to exercise its Enforcement Rights. Second, the specific rights set forth in the Conservation Easement supplement rather than replace the rights and remedies of state or local agencies under applicable programs and grant contracts. For example, if a grant contract requires prior approval by County of any Amendment to a Conservation Easement, then the land trust is contractually bound to seek County approval whether or not County has recorded an acceptance.
- **Identifying Beneficiaries.** If certain Persons are intended to be Beneficiaries, delete the default “no Beneficiaries” language and add the following opening clause to 1.07, then identify in subsections each Beneficiary.

Each of the Persons identified below in this Section is a Beneficiary of this Conservation Easement. The specific rights vested in each Beneficiary are described in Article V.

(a) Land Trust Beneficiary

_____, a Qualified Organization (the “Land Trust Beneficiary”) is a Beneficiary of this Conservation Easement.

- **Identification.** Insert the full legal name of the land trust identified as the Land Trust Beneficiary (if any).
- **Rights.** Depending upon the number of rights granted under Article, the identified Qualified Organization may simply be a “back-up grantee” or may be given all four of the rights listed in §5.01, which essentially constitutes the Land Trust Beneficiary as a “co-holder” of the Conservation Easement.
- **S&P.** Standard 8. Practice I. of S&P provides that a land trust should evaluate whether it has the skills and resources to protect the important conservation values of the property effectively, or whether it should refer the project to, or engage in partnership with, another qualified conservation organization. One of the reasons that the model incorporates the concept of “Land Trust Beneficiary” is to facilitate partnerships among land trusts, watershed associations and other qualified organizations for these purposes.

(b) State Beneficiary

- **Pennsylvania Department of Conservation and Natural Resources.** If DCNR funds have been used to acquire the Conservation Easement in whole or in part, insert the following provision as §1.07(b) (or §1.07(a) if there is no Land Trust Beneficiary):

The Pennsylvania Department of Conservation and Natural Resources (the “Department”) has provided assistance for the acquisition of this Conservation Easement as it applies to the State Program Area (described below).

- (i) The State Program Area is defined as follows: [insert description such as: “the entirety of the Property”; “the entirety of the Conservation Area”; “the entirety of the Highest Protection Area”; or “that portion of the Property identified as “State Program Area” on the Conservation Plan”].
 - (ii) The rights and powers vested in the Department as Beneficiary of this Conservation Easement are set forth in Article V and may be enforced by the Department and its successors, in perpetuity.
- **Other State Programs.** If another Pennsylvania state program is funding the acquisition and the relevant department desires to be named a Beneficiary, the following provision could be used (insert name of Department and name of funding program):

This Conservation Easement has been purchased in whole or in part by funds provided to Holder by the Commonwealth of Pennsylvania acting through the Department of ____ (“Department”) under the authority granted by the ____ Act (such statute, with the regulations and program requirements promulgated under the authority of such statute are referred to in this Conservation Easement, collectively, as the “State Program”). The portions of the Property as to which state funds have been used to purchase this Conservation Easement are referred to, collectively, as the “State Program Area”.

- **State Program.** The term “State Program” has been defined expansively to incorporate all of the policies, procedures and guidelines promulgated under the authority of the identified statute. Note that the definition is not fixed in time to those programmatic requirements enacted as of the Easement Date.
- **Multiple Departments.** The model has been structured so as to be adaptable to a number of funding programs. Ideally, a single conservation easement could be used as a funding mechanism for several programs: for example, the Department of Conservation and Natural Resources could fund acquisition of the conservation easement for the acreage included in the Highest Protection Area and the Department of Agriculture could fund acquisition of the conservation easement for the acreage included in the Standard Protection Area. Each Department would be a Beneficiary entitled to the Enforcement Rights specified for that Beneficiary under Article V.
- **Multiple Programs.** If more than one State agency or department is a Beneficiary, the umbrella term “State Program” can be replaced with more specific terms, for example, the “DCNR Program” or the “PDA Program”.

(c) County as Beneficiary

- **County Program.** Set forth below is a provision that can be added to §1.07 if County funds have been used to acquire the Conservation Easement in whole or in part.

This Conservation Easement has been purchased in whole or in part by funds provided to Holder by the County of _____ (the “County”) acting under the authority granted by _____ (such ordinance, with the regulations and program requirements promulgated under the authority of such ordinance are referred to in this Conservation Easement, collectively, as the “County Program”). The portions of the Property as to which County funds have been used to purchase this Conservation Easement are referred to, collectively, as the “County Program Area”.

- **County Contribution.** Some counties require a recitation of the funding contributed by County towards the acquisition and want the Public Records to be clear that County funds have not gone towards acquisition of the Conservation Easement with respect to acreage included in any Minimal Protection Area. The following provision may be added for those purposes:

The purchase price or portion of the purchase price funded by County for this Conservation Easement is the sum of \$_____ (the “County Contribution”). The County Program Area does not include any acreage within any Minimal Protection Area. Accordingly, the County Contribution does not include any funding for acquisition of the Conservation Easement with respect to the Minimal Protection Area.

- **County Supplement.** Some County Programs require the incorporation of certain terms or information into each County-funded Conservation Easement. To maximize uniformity, these standard terms can be set forth in a standardized exhibit to be attached to all County-funded conservation easements. If an exhibit is to be incorporated, add the following to the model provision and add the County Supplement to the list of Exhibits incorporated into the Conservation Easement under §7.12.

Attached as Exhibit “___” (the “County Supplement”) is a rider to this Conservation Easement containing certain provisions that must be incorporated into this Conservation Easement as a condition of funding the County Contribution under the County Program. The terms and provisions of the County Supplement supersede, to the extent of any inconsistency, the provisions of this Conservation Easement as applied to the County Program Area.

(d) Township Beneficiary

- **Township Program.** Set forth below is a provision that can be added to §1.07 if Township funds have been used to acquire the Conservation Easement in whole or in part.

This Conservation Easement has been purchased in whole or in part by funds provided to Easement Holder by the Township of _____ (the “Township”) acting under the authority granted by _____ (such ordinance, with the regulations and program requirements promulgated under the authority of such ordinance are referred to in this Conservation Easement, collectively, as the “Township Program”). The portions of the Property as to which Township Funds have been used to purchase this Conservation Easement are referred to, collectively, as the “Township Program Area”.

- **Township Contribution.** Some Townships require a recitation of the funding contributed by Township towards the acquisition and want the public record to be clear that Township funds have not gone towards acquisition of the Conservation Easement with respect to acreage included in any Minimal Protection Area. The following provision may be added for those purposes:

The purchase price or portion of the purchase price funded by Township for this Conservation Easement is the sum of \$_____ (the “Township Contribution”). The Township Program Area does not include any acreage within any Minimal Protection Area. Accordingly, the Township Contribution does not include any funding for acquisition of the Conservation Easement with respect to the Minimal Protection Area.

- **Township Supplement.** Some Township Programs require the incorporation of certain terms or information into each Township-funded Conservation Easement. To maximize uniformity, these standard terms can be set forth in a standardized exhibit to be attached to all Township-funded conservation easements. If an exhibit is to be incorporated, add the following to the model provision and

add the Township Supplement to the list of Exhibits incorporated into the Conservation Easement under §7.12.

Attached as Exhibit “___” (the “Township Supplement”) is a rider to this Conservation Easement containing certain provisions that must be incorporated into this Conservation Easement as a condition of funding the Township Contribution under the Township Program. The terms and provisions of the Township Supplement supersede, to the extent of any inconsistency, the provisions of this Conservation Easement as applied to the Township Program Area.

- **Township as “Co-holder”.** Whether or not Township contributes funding towards acquisition of the Conservation Easement, it may be desirable to appoint Township as a Beneficiary for purposes of qualifying the Township as “co-holder” of the Conservation Easement under certain Preferential Tax Programs. Act 153 of 1995 authorized school districts to exempt municipally-eased properties from real estate millage increases. The Act also requires County assessors to take into consideration the diminution in fair market value of a conservation easement held by a municipality. If the Township desires to be named as a Beneficiary for those purposes, add the following provision to §1.07 and add to Article VIII of the Conservation Easement the definition for “Preferential Tax Programs” provided in Article VIII of this commentary.

As a Beneficiary of this Conservation Easement, the Township is agreed to be a co-holder of this Conservation Easement for purposes of qualifying this Conservation Easement under applicable Preferential Tax Programs.

- **Implementing a Township Program.** For additional information on Township Programs, *see* “Implementing a Municipal Open Space Program” a publication of Heritage Conservancy available by link from the PALTA website (www.conserveland.org).

ADDITIONAL SECTION, IF APPLICABLE:

1.08 Administrative Agent

- **County or Township as Holder; Land Trust as Administrative Agent.** The approach taken by the model is that only one Person should be identified as Holder. Any number of governmental and non-governmental Qualified Organizations can be named as Beneficiaries but, ultimately, when a decision has to be made, the Holder must make the decision and take responsibility for the reasonableness of its decision. If a County or Township is not satisfied with a right of prior consultation and instead requires a veto power on Review, then the County or Township (rather than the land trust) should be named as the Holder and, in that case, the land trust might be named as an Administrative Agent under the following provision which would be added as §1.08.

The Holder has appointed _____, a Qualified Organization (the “Administrative Agent”) as the agent of Holder for purposes of administration of this Conservation Easement as more fully described in Article V.

- See §5.07 of the commentary to view additional provision necessary to implement the Administrative Agent.

Article II. Subdivision

- **Purpose.** The purpose of Article II is to regulate separation of ownership or control the Property for several reasons:
 - To avoid fragmentation of habitat.
 - To maintain sufficient acreage in single ownership to support Sustainable Agriculture and Sustainable Forestry uses.
 - To maintain uniformity in appearance for aesthetic reasons.
 - To avoid the enforcement problems arising from a multiplicity of owners.

- To control allocation of rights and limitations among lots.

2.01 Prohibition

- **Broad Definition.** The definition of Subdivision in Article VIII is intended to cover any kind of separation of ownership or control.
- **Transfer of Existing Lot.** The definition of Subdivision for purposes of the model includes transfer of an Existing Lot. The reason is to treat the entirety of the Property for purposes of the Conservation Easement as if it were one lot and then make the list of permitted Subdivisions in Article II the universe of permitted transfers. If, in a particular case, Owners and Holder want to recognize Existing Lots, then simply add “Transfer of an Existing Lot” as a permitted action in a new subsection under §2.02. This makes the intentions of the parties clear. Conservation Easements that do not deal with this issue are frequently very difficult to interpret and apply to specific fact situations.
- **Transfer by Lease.** Transfer of possession and control of land by lease is included as a Subdivision. This is consistent with the definition of Subdivision in the Pennsylvania Municipalities Planning Code and many local ordinances.
- **Transfer by Condominium Unit.** Some Owners attempt to circumvent restrictions on Subdivision by creating condominium units. The definition of Subdivision controls these transfers as well.

2.02 Permitted Subdivision

- **Purpose.** The list in §2.02 should be the universe of permitted exceptions from the general prohibition in §2.01. It is critically important for uniform administration of Conservation Easements based on the model that land trusts *not* alter the definition of Subdivision to remove transfers that they customarily permit. Just add those permitted transfers to the list in §2.02.
- (a) **Lot Line Change**
- **Some Review.** The model permits Owners to realign lot lines as a matter of right without any Review so as long as there is no material decrease in the acreage of the Property. Other lot line changes require Review.
 - **No Review.** If a land trust does not want to review any lot line changes, simply delete the phrase “subject to Review” from the provision.
 - **All Review.** If a land trust wants to exercise rights of Review over any lot line change, the phrase “subject to Review” should be moved to the beginning of the paragraph.
- (b) **Transfer to Qualified Organization**
- **No Review.** The model permits transfer to a Qualified Organization without Review by Holder. Some land trusts may want to add “subject to Review” at the beginning of the paragraph.
 - **Conservation Purpose.** The conservation purpose of the transfer is included so that the transfer to the Qualified Organization cannot be used as an intermediate step to circumvent Subdivision controls.
- (c) **Agricultural Lease**
- **Purpose.** This provision is provided to permit transfer of care, custody and control of land by lease for the specified purposes.
- (d) **Separate Minimal Protection Areas**
- **Purpose.** The following provision can be added as subsection (d) to §2.02 so as to permit separate ownership of Minimal Protection Areas. Also add to Article VIII of the Conservation Easement the definition of “Preferential Tax Programs” provided in Article VIII of this commentary.

Subdivision to create an additional Lot containing Minimal Protection Area B (i) in the location (if any) shown on the Conservation Plan; or (ii) subject to Review, in a location or other configuration of the Lot that is of the minimum size required to conform to Applicable Law and, if applicable,

Preferential Tax Programs. The additional Lot containing Minimal Protection Area B must avoid including Highest Protection Area to the extent reasonably feasible.

- **Rationale**
 - **Zoning Compliance.** One reason to permit separation of Minimal Protection Areas is that many zoning ordinances prohibit more than one dwelling per Lot.
 - **Other Considerations.** Frequently a dwelling needs to be on a separate lot so as to accommodate separate mortgage financing or even to lease it with surrounding land under Applicable Law.
 - **Planning.** The provision is structured so that substantially all of the acreage of the Property remains attached to “Minimal Protection Area A”. This is intended to further Conservation Objectives in particular those associated with maintaining viable and Sustainable Agricultural uses within the Property.

2.03 Subdivision Requirements

- **Purpose.** To provide Holder with the information necessary to administer the Conservation Easement and exercise enforcement Rights as applied to multiple Lots.
- (a) **Establishment of Lots; Allocations.**
 - Some land trusts may want to exercise rights of Review to determine whether allocations determined by Owners are reasonable.
- (b) **Amendment**
 - Most municipalities that have adopted subdivision ordinances require the plan of Subdivision approved under Applicable Law to be recorded and, if that is so, and the Subdivision conforms to the requirements of the Conservation Easement, an Amendment is not necessary. Subdivisions that vary from the requirements of the recorded Conservation Easement should be documented by Amendment.

ADDITIONAL SECTION, IF APPLICABLE:

2.04 Establishment of Minimal Protection Areas

- Article II may be expanded to incorporate “Establishment of Minimal Protection Areas” in cases where, as of the Easement Date, not all of the Minimal Protection Areas have been definitively established.
- It is not good practice (and risks falling afoul of the Regulations) to leave Minimal Protection Areas to be established in the future totally “floating”. Article II should contain some rules to describe where additional Minimal Protection Areas may be established or must not be established.
- A useful tool is to establish a “Designation Area” on the Conservation Plan within which one or more additional Minimal Protection Areas can be established by Owners.
- Another way to limit the discretion of Owners in establishing additional Minimal Protection Areas is to rule out areas which cannot be converted to more intensive use or which would detract from maintenance of scenic views described in the Easement Objectives.
- In either case, a procedure must be established to incorporate the additional Minimal Protection Area(s) into the Conservation Easement recorded in the Public Records.
- A sample provision using each alternative is provided below:

(a) **Limitations on Minimal Protection Areas**

In addition to Minimal Protection Area A shown on the Conservation Plan, two (2) additional Minimal Protection Areas (Minimal Protection Area B and Minimal Protection Area C) may be established after the Easement Date in compliance with this Section.

- (i) Minimal Protection Area B is limited to not more than two (2) acres in the aggregate and must be established (if at all) only within the Designation Area shown on the Conservation Plan.

- (ii) Minimal Protection Area C is limited to not more than one (1) acre in the aggregate and must be established (if at all) outside the Highest Protection Area and outside any Wet Areas or Steep Slope Areas. Minimal Protection Area C must be set back at least ___ feet from the public right-of-way of _____.

(b) Procedure for Establishment of Minimal Protection Areas

- (i) Owners must (i) furnish Holder for Review an amended Conservation Plan showing the location of Minimal Protection Area B or C, as the case may be, and legal description of each Minimal Protection Area to be established; and (ii) mark the boundaries of each Minimal Protection Area with permanent markers. This information will become part of the Baseline Documentation incorporated into this Conservation Easement.
- (ii) The Minimal Protection Area becomes established upon recordation in the Public Records of an Amendment of this Conservation Easement that incorporates the amended Conservation Plan into this Conservation Easement and, if applicable, allocates limitations on Improvements or intensity of uses within Minimal Protection Areas set forth in Article III or Article IV, as the case may be.

Article III. Improvements

- **Purpose.** To control the size and location of Improvements consistent with Conservation Objectives.

3.01 Prohibition

- **Purpose.** The purpose of the prohibition is to assure that the list of permitted items set forth below in this Article comprise the universe of Improvements permitted within the designated area.
- **Guides to Interpretation.** The definition of Improvements in Article VIII covers all man-made buildings, structures and facilities.
- **Examples.** A man-made pond is an Improvement; a naturally occurring lake is not. A berm created by earth-moving equipment is an Improvement; a naturally occurring feature is not. Dirt roads and riding rings are considered Improvements. Agricultural fields are not considered Improvements even if “man made” by removing vegetation.

3.02 Permitted Within Highest Protection Area

- **No Highest Protection Area.** If there is no Highest Protection Area, there are two drafting alternatives. The first alternative is to leave the caption for §3.02, delete the remainder of the section and state: “No Highest Protection Area has been designated within the Property”. The second alternative (if references to Highest Protection Area have been deleted from Article I), is to delete this section in its entirety. In either case, move “Existing Improvements” and “Existing Agreements” to §3.03.
- **Conformity for Review.** PALTA recommends the first alternative noted above because uniform numbering of sections will streamline administrative review not only for the Holder in the course of monitoring numerous Conservation Easements but also for Beneficiaries who must review the text of numerous Conservation Easements based on the model.
- **Review Function.** The “compare documents” function in Word can be used to highlight all changes made in a particular Conservation Easement compared to the model. While the revised Conservation Easement is open, go to the “Tools” menu, click on “Compare and Merge Documents” and select the stored version of the model. Also check the “legal black lining” option so that deleted text is visible.

(a) Existing Improvements

- **Purpose.** Existing Improvements are always permitted to remain in their existing locations as of the Easement Date wherever they may be within the Property. If an Existing Improvement (perhaps a dwelling) is located within the Highest Protection Area as of the Easement Date, and the Holder wants to encourage relocation to a less ecologically sensitive area, a sentence along the lines of the following can be added to §3.02(a):

The dwelling identified as an Existing Improvement within the Highest Protection Area may, at the election of Owners by notice to Holder, be removed from the Highest Protection Area and, in that case: (i) Owners are not entitled to replace that Existing Improvement within the Highest Protection Area; but (ii) will be permitted to replace the Existing Improvement within the Minimal Protection Area or, subject to Review, within the Standard Protection Area without counting against limitations otherwise applicable to Improvements in that area.

(b) Existing Agreements

- **Purpose.** Existing Agreements are entitled to priority over the Conservation Easement under Applicable Law so there is no point in trying to control the exercise of those rights by Persons who are not a party to the Conservation Easement.
- **S&P.** Standard 9. Practice H. of S&P provides that the land trust should investigate title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owners and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction.

(c) Additional Improvements

- **Purpose.** Additional Improvements within the Highest Protection Area should be limited to those that the Holder has determined are consistent with Conservation Objectives for this highest level of protection. If the list is materially expanded, the Holder should consider whether designation as Highest Protection Area is, in fact, appropriate.
- **Additions to List.** The model is constructed with a very limited list of Additional Improvements in the Highest Protection Area. Because the list of items is so limited, additional limitations such as those provided for the Standard Protection Area were not considered necessary. However, if the list in this section is expanded to include items with the potential for significant Impervious Coverage, then a “Limitations on Additional Improvements” section similar to that provided for the Standard Protection Area should be added as well.
- **Fences.** Some land trusts may want to further limit fences, etc. by adding “but only around the perimeter of the Property or the Highest Protection Area” so as to permit fencing to accommodate Owners’ privacy interests but minimize adverse effects of fragmentation of habitat. Also consider whether a Height restriction would be appropriate for the same reasons or to maintain scenic views. Example: “Fences must not exceed ___ feet in Height and must be constructed of post-and-rail or other open weave construction that preserves scenic views described in the Conservation Objectives.”
- **Signs.** Some land trusts may want to further limit signage to “a reasonable number of Regulatory Signs along the perimeter of the Property.” If an easement for a Public Trail is being incorporated into the Conservation Easement, this provision may need to be expanded to include Regulatory Signs associated with the Public Trail. *See* Article V of this commentary for sample Public Trail provision.
- **Trails.** Frequently limitations are imposed on the width of trails. Some land trusts limit to a relatively narrow width (such as 4-6 feet). Other land trusts prefer a wider path (particularly when used as a bridle path) so it is less likely to become rutted. If a right-of-way for a Public Trail is being incorporated into the Conservation Easement, the restriction on trails may need to permit other surfaces (whether or not pervious or porous) if required for compliance of the Public Trail with Applicable Law. The term “Applicable Law” as defined in Article VIII includes the requirements for compliance with the Americans with Disabilities Act. For information on ADA accessibility requirements with respect to a Public Trail, see “Outdoor Accessibility”, *The Back Forty Anthology* (Summer 2003 Volume 9, No. 1) published by Hastings School of Law.
- **Wet Areas.** The model imposes a Review requirement on Improvements within Wet Areas because of the heightened environmental concerns. Note that including “stream access structures” implies that livestock would be permitted to enter Wet Areas to access the stream. Omit if that is not intended.

3.03 Permitted Within Standard Protection Area

- **No Standard Protection Area.** If there is no Standard Protection Area, elect one of the alternatives described in §3.02 above.
- (a) **Permitted under Preceding Sections**
 - **Purpose.** The model uses a cumulative approach so as to avoid repetition. Anything permitted in the Highest Protection Area is automatically permitted within the Standard Protection Area. Anything permitted in the Standard Protection Area is automatically permitted within the Minimal Protection Area.
- (b) **Additional Improvements**
 - **Interpretation.** Additional Improvements are limited in this subsection by the requirement that the Improvement be related to the uses and activities permitted within the Standard Protection Area.
 - **Example.** A detention basin or septic system required for residential use of the *Minimal* Protection Area would not be permitted in the *Standard* Protection Area under the model provision.
 - **Notice.** Some land trusts may want to add a requirement to notify Holder of material (for example, 500 square feet or more) increases in Impervious Coverage whether or not Review is required; for example:
 - Owners must notify Holder of any Construction that increases Impervious Coverage within the Standard Protection Area by 500 square feet or more whether or not Review is required for such Construction under the terms of this Article.
 - **Expansion of List.** Specifically add other Improvements that may be permitted consistent with Conservation Objectives for Standard Protection Area
 - **Possible Expansion Items.**
 - (i) Septic system to service Improvements within the Minimal Protection Area if not reasonably feasible to install entirely within the Minimal Protection Area.
 - (ii) Utility Facilities to service Improvements within the Minimal Protection Area if not reasonably feasible to install entirely within Minimal Protection Area.
- (c) **Limitations on Additional Improvements**
 - **Height.** Limitations on Height of Improvements serve several purposes – first, is to protect the flight paths of birds and second is to preserve scenic views. Exceptions can be made for silos, windmills, etc. in appropriate cases where agricultural needs outweigh other concerns.
 - **Impervious Coverage.** Impervious Coverage limitations are aimed primarily at protecting water resources and assuring continued availability of agricultural soils. Limitations per roofed structure are aimed at avoiding agri-business type installations and to minimize the intrusion of Improvements on scenic views.

3.04 Permitted Within Minimal Protection Area

- **No Minimal Protection Area.** If no Minimal Protection Area has been established within the Property, elect one of the alternatives described in the commentary to §3.02.
- (a) **Permitted under Preceding Sections**
 - **No Standard Protection Area.** If there is no Standard Protection Area, add Agricultural Improvements to the list of Additional Improvements permitted under §3.04(b).
- (b) **Additional Improvements**
 - **Interpretation.** Besides Residential Improvements, the rule established in the model allows Improvements within the Minimal Protection Area to support Agricultural, Forestry and other activities permitted within the Standard Protection Area and Highest Protection Area.

- **Example.** A Minimal Protection Area could serve as a staging area for Forestry uses in more restricted portions of the Property.
- **Example.** A Minimal Protection Area could be established to confine the location of additional Site Improvements needed to support outdoor recreation or camping uses within the Standard Protection Area.

(c) **Limitations on Additional Improvements**

- **Purpose.** The limitations listed in the model seek a balance between attaining the Conservation Objective of promoting compatible land uses and maintaining marketability and economic viability of the Property as a whole.
- The model is constructed so that the land trust may elect from several alternatives:
 - Limit the number of Improvements that can be used for residential purposes whether wholly or partly by limiting the number of Improvements that may contain Dwelling Units under §3.04(c)(i).
 - Limit intensity of residential use by limiting the number of Dwelling Units permitted within the Minimal Protection Area under §4.05(d)(i).
 - Limit both Improvements and use.
 - Not limit numbers of Residential Improvements or Dwelling Units within the Minimal Protection Area. To exercise this election, delete both §3.04(c)(i) and §4.05(d)(i). Also delete the definition for “Dwelling Units” from Article VIII.
- **Intensity of Residential Use.** A limitation on Improvements in §3.04 is a limitation on Construction. The general rule of Applicable Law pertaining to servitudes is that a limitation on Construction is not a limitation on use and vice versa. The Holder may regulate the intensity of residential use (i.e., how many Dwelling Units are permitted per Minimal Protection Area or per Improvement within the Minimal Protection Area), under §4.05.
- **Height.** Height limitations are frequently imposed even in the Minimal Protection Area so as to protect Improvements from intruding on scenic views and to avoid endangering birds in flight. If a Minimal Protection Area is located within a scenic vista described in the Conservation Objectives, the Holder may want to impose a more restrictive Height limitation within portions of the Minimal Protection Area; for example, “No Improvements greater than four (4) feet in Height are permitted within ___ feet of the public right-of-way of ____.”
- **Impervious Coverage.** Impervious Coverage limitations may be added if the Minimal Protection Area is so large that limitation becomes necessary; however, the preferred alternative is to keep the Minimal Protection Area of a reasonable size such that, assuming a high degree of Impervious Coverage within the Minimal Protection Area, the overall Impervious Coverage limitation on the Property would, nevertheless, be in acceptable range. If an Impervious Coverage limitation is desired, tailor the limitation to the Conservation Objective furthered by it. For example, if the Minimal Protection Area is a farmstead and preservation of Agricultural uses is a key Conservation Objective, the Holder may want to add: “Impervious Coverage associated with Residential Improvements must not exceed a maximum of ___ square feet exclusive of driveways and walkways.”
- **Guideline for Acceptable Range.** Guidelines for federal funding programs limit Impervious Coverage on properties of greater than 50 acres to two (2%) percent and, for properties of 50 acres or less, a maximum of 1 acre but not greater than six (6%).
- **Limitation on Habitable Improvements.** Some land trusts find limiting Habitable Improvements (Improvements that can be used for human habitation) to be useful. Residential Improvements, the focus of the model, encompasses both Habitable Improvements and accessory residential structures. If a land trust desires to include limitations of this type, a definition of “Habitable Improvements” has been included in Article VIII of this commentary for this purpose. The particular limitations desired by the Holder are to be added under 3.04(c). For example:

- (i) Not more than two Habitable Improvements (whether Existing Improvements or Additional Improvements) are permitted within the Minimal Protection Area.

Article IV. Activities; Uses; Disturbance of Resources

- **Purpose.** To control intensity of use of land and disturbance of natural resources identified in the Conservation Objectives. The model has been constructed so as to focus on resource protection issues rather than enforcement of zoning categories of usage such as residential, commercial, institutional, industrial, agricultural, etc. The rationale for this approach is that in an age of electronic commerce, buying and selling goods and services (i.e. commercial use) can occur with virtually no effect on resource protection values. On the other hand, permitting agricultural uses without good resource protection planning can result in the ruination of soil and water resources by intense agri-business operations. PALTA urges land trusts to concentrate their efforts on enforcing limitations that have a direct connection to achievement of Conservation Objectives.

4.01 Prohibition

- **Purpose.** This provision is intended to dovetail into the goals set forth in the Conservation Objectives; i.e., to reconcile increasing levels of human activity with the resource protection goals of the Highest Protection Area, Standard Protection Area and Minimal Protection Area. The emphasis on Sustainable Agriculture and Sustainable Forestry is to insure that permitted activities are consistent not only with Conservation Objectives but also with the requirements of §1.170A-14(e) of the Regulations. Under subsection (2) of that section, the phrase “exclusively for conservation purposes” is interpreted to mean that a deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit destruction of other significant conservation interests. For example, the preservation of farmland pursuant to a state program for flood prevention and control would not qualify under this section if under the terms of the contribution a significant naturally occurring ecosystem could be injured or destroyed by the use of pesticides in the operation of the farm. However, this requirement is not intended to prohibit uses of the property, such as selective timber harvesting or selective farming, if under the circumstances, those uses do not impair significant conservation interests.
- **Growing Greener.** The approach taken by the model is to allow Sustainable Forestry (whether the timbering is commercial or not) within the Standard Protection Area and, on a more limited basis, within the Highest Protection Area – in each case in accordance with a Resource Management Plan approved by the Holder. These provisions are intended to meet applicable statutory requirements for projects funded under the “Growing Greener” Act.

4.02 Density Issues under Applicable Law

- **Purpose.** PALTA urges land trusts to consider and adopt policies concerning whether or not Conservation Easements entered into by the land trust are intended to limit density or intensity of use of other land not included in the Property. The provisions of §4.02 deal with these issues.

(a) Promoting Development outside the Property

- **Purpose.** This provision is intended to preclude use of the Property to meet open space requirements or other land development ordinance criteria affording a bonus of some sort in exchange for retention of open space. The provision is also intended to prohibit Owners from profiting from the sale of sewage capacity (EDU’s) earmarked for the Property by transferring the EDU’s for use to increase development outside the Property.
- **Open Space Plan.** In appropriate circumstances, this provision will need to be altered when, in fact, an agreement to vest the Enforcement Rights in the Holder is being used in connection with a land-use approval so as to assure governmental agencies (prior to or as a condition of zoning relief) that open space will be protected in perpetuity. For example, a Township may require as a condition of approval of planned residential development that the developer enter into a conservation easement with a non-profit conservation organization to assure administration of the terms by conservation professionals. In those cases, the Township would, presumably, want Enforcement Rights as a Beneficiary and the Conservation

Easement would be recorded prior to the developer turning over ownership of the community open space to the homeowners' association.

(b) Transferable Development Rights

- **Issue.** Land trusts should consider whether or not, as a matter of policy, Conservation Easements entered into by the land trust extinguish transferable zoning rights created under a transferable development rights ordinance enacted under the authority granted by the Pennsylvania Municipalities Planning Code.
- **Zoning Rights.** A transferable rights ordinance allows the municipality to create a scheme that essentially issues licenses for a certain overall limit on density within the municipality; then designates some areas as receiving areas (i.e. targeted for development) and some areas as no development areas. Since there is a limited universe of licenses, a market for such licenses should develop and Owners within an area designated for no development should be able to recoup the negative impact of the restrictive zoning ordinance by selling their zoning density to owners within areas targeted for development.
- **Argument for Extinguishment.** A compelling argument for eliminating these rights can be made when the Conservation Easement is being purchased using public funds. Essentially, the Conservation Easement has been purchased once and ought not to be the subject of a subsequent sale. Whether or not a sale is involved, some land trusts adopt a policy of extinguishing transferable development rights on the grounds that the purpose of the Conservation Easement is to prohibit further development not only on the Property but wherever else it may occur in the township by virtue of zoning rights granted under a transferable development rights scheme.
- **Argument against Extinguishment.** The potential economic benefit to the Owners by sale of zoning density may help to support Sustainable Agricultural or Sustainable Forestry activities and does no harm to maintenance of Conservation Objectives with respect to the Property subjected to the Conservation Easement.
- **Drafting Alternatives.** If a land trust decides not to extinguish transferable development rights, §4.02(b) can be deleted or replaced with an affirmative statement such as: "This Conservation Easement is not intended to extinguish any existing or future rights of Owners to sell or otherwise transfer zoning or density under a transferable development rights ordinance enacted under the authority of the Pennsylvania Municipalities Planning Code."

4.03 Permitted Within Highest Protection Area

- **No Highest Protection Area.** If there is no Highest Protection Area, and references to Highest Protection Area have been deleted from Article I, then the entirety of §4.03 may be deleted. However, the preferred alternative, for the reasons set forth in the commentary to §3.01, is to retain the caption, delete the remainder of the section, and state: "No Highest Protection Area has been designated within the Property."
- **Transfer to Standard Protection.** If there is no Highest Protection Area the following items listed in §4.03 of the model need to be added to §4.04 to clarify that these items are always permitted anywhere within the Property:
 - Subparagraph (a) pertaining to Existing Agreements
 - Subparagraph (b)(i) pertaining to hazardous conditions

(a) Existing Agreements

- Activities, uses and disturbances of resources that a Person has a right to do under an Existing Agreement are permitted as a matter of right anywhere within the Property. Land trusts should obtain title information to determine what rights Persons have to disturb natural resources within the Property by exercise of rights under Existing Agreements.

(b) Disturbance of Resources

- **Purpose.** The purpose of this section is to describe those activities that are consistent with the habitat protection and other Conservation Objectives for the Highest Protection Area.
- **Hazardous Conditions.** The provision in subsection (i) is intended to shield the Holder from liability for personal injury or property damage occurring on or about the Property by trees limbs falling or similar hazards. Land trusts who are concerned that this provision creates a loophole for unwarranted interference with trees and other resources should consult with their legal counsel and insurance representatives before changing the provision.
- **Review.** Except for the provision pertaining to hazardous conditions in subsection (i) (which should be permitted without Review to avoid liability), land trusts may use their discretion whether or not the land trust wants to condition other activities on “subject to Review”.

(c) Release and Disposal

- Releasing, depositing and disposal of materials are human activities prohibited within the Highest Protection Area except for fertilizers and brush piles. Some land trusts may want to expand the permitted list to include herbicides and biological agents, compost piles and piling of timber or other products derived from Sustainable Forestry activities permitted within the Highest Protection Area. The preferred alternative is to handle these items as “subject to Review” under subsection (b)(vii) so that the land trust is given the opportunity to determine whether the location and intensity of the activity is consistent with Conservation Objectives.

(d) Recreational and Educational Uses

- The model avoids using the phrase “passive recreational use” as there does not appear to be any consensus of opinion on the meaning of that phrase.
- Hunting, fishing and other uses listed in this paragraph are permitted activities anywhere within the Property. This does not mean that public access must be given for these purposes. If Owners and Holder desire to establish an easement or license vesting a public right of access for these activities, they must either do so by separate agreement or by adding a section to Article V granting public access. *See* commentary to Article V re: “Grant of Public Access”. Whether or not formally granted, Owners may want to permit public access for deer hunting purposes on an informal basis. Harvesting the deer herd may be desirable to keep deer population at a level consistent with Conservation Objectives to encourage and maintain the growth of healthy and biologically diverse woodland.

4.04 Permitted Within Standard Protection Area

- **No Standard Protection Area.** If there is no Standard Protection Area, and references to Standard Protection Area in Article I have been deleted, then the entirety of §4.04 may be deleted. If not, retain the caption for §4.04, delete the remainder of section, and insert “No Standard Protection Area has been designated within the Property”. See discussion in commentary to §3.01.

(a) Permitted under Preceding Sections

- **No Highest Protection Area.** If there is no Highest Protection Area, delete this subsection and substitute “Existing Agreements” (formerly §4.03(a)).

(b) Agriculture, Forestry and other Disturbance of Resources

- **Purpose.** The purpose for the limitations within the Standard Protection Area is to be sure that Agricultural, Forestry and other open space uses preserve quality and quantity of soil and water resources.
- **Grazing.** Rather than relying on the general limitation on intensity and frequency of use in §4.01, some land trusts prefer a specific standard to determine when permitted grazing use becomes overgrazing. Example: Add to subsection (i): “Not more than one Animal Unit per 1.5 acres of fenced pasture is permitted.” A definition of “Animal Unit” has been provided in Article VIII of the commentary for this purpose.

- **Equestrian.** Rather than relying on the general limitation on intensity and frequency of use in §4.01, some land trusts may add a provision requiring Review of equestrian uses involving public participation such as shows, clinics and competitive events.
- **Forestry.** The approach taken by the model is that Woodlands within the Standard Protection Area may be the subject of Sustainable Forestry but not converted to Agricultural Uses. Delete if the understanding is that Woodlands within the Standard Protection Area can be converted to Agricultural uses; for example, by clear cutting.
- **Soil Conservation Plan.** The model does not require Review of a Soil Conservation Plan since that is the one type of Resource Management Plan that is prepared under and must conform to the requirements of Applicable Law.

(c) **Release and Disposal**

- **Composting.** Some land trusts limit the size of compost piles and further limit the composition – such as no construction materials.

(d) **Recreational and Open Space Uses**

- **Purpose.** The purpose of this section is a catch-all provision that allows (besides Sustainable Agricultural and Sustainable Forestry uses) a number of active, but non-commercial, open-space and recreational uses within the Standard Protection Area.
- **Vehicular Use.** Some land trusts may not want to be burdened by the obligation to enforce a restriction on vehicular use (such as all-terrain vehicles and snowmobiles). Others may want to restrict these uses for resource protection purposes.
- **Non-Commercial.** The term “non-commercial” as applied to recreational uses is required to qualify the grant of the Conservation Easement for exemption from estate taxes under §2031(c) of the Code.

4.05 Permitted Within Minimal Protection Area

- **Purpose.** The purpose of this section is to permit the widest range of human activity within the Minimal Protection Area consistent with maintenance of Conservation Objectives outside the Minimal Protection Area.

(a) **Permitted under Preceding Sections**

- **No Standard Protection Area.** If there is no Standard Protection Area, Agricultural and/or Forestry uses may need to be included under §4.05(b).

(b) **Disturbance of Resources**

- **General Rule.** The general rule of the model is that any trees, shrubs or herbaceous materials may be cut, mowed, cleared or removed within the Minimal Protection Area.
- **Specimen Trees.** The general rule needs to be modified if Specimen Trees have been identified within the Minimal Protection Area. Example: “No cutting or removal of Specimen Trees is permitted. Subject to Review, pruning of Specimen Trees in accordance with Best Management Practices is permitted.” A definition of “Specimen Trees” has been provided in Article VIII of the commentary for this purpose.

(c) **Release and Disposal**

- **Possible Expansion.** This provision may need to be expanded if herbicides and composting have been limited within the Standard Protection Area.

(d) **Residential and Other Uses**

- **Residential Use.** Subsection (i) creates a limitation on density of residential use. See Commentary to §3.04 pertaining to the interrelationship of this provision and the limitation on Improvements containing Dwelling Units.

- **Non-Residential Uses.** The approach taken by the model is not to attempt to regulate uses wholly contained within Improvements. Most land trusts do not ordinarily inspect the interior of Improvements to determine whether activities are in violation of the Conservation Easement. If that is so, then as long as the use or activity is wholly contained within an Improvement otherwise permitted (such as a dwelling, garage, barn, etc.) there is no reason for it to constitute a violation even if technically not “residential”.
- **Review.** The Review provision in (d)(ii) is intended to give the Holder some discretion as to whether or not external manifestations of non-residential use of Improvements adversely affect Conservation Objectives. In general, if granted at all, the intensity of use (parking, signs) should not exceed that of permitted residential or Agricultural uses.

Article V. Rights and Duties of the Holder and Beneficiaries

- **Purposes.** The purposes of Article V are first, to grant to the Holder the right to enforce the restrictive covenants imposed by the undersigned Owners in perpetuity and second, to explain the relationships between the Holder and Owners and the Holder and Beneficiaries (if any).

5.01 Grant to the Holder

(a) Grant

- **Purpose.** This section describes the necessary conditions to create a legally binding conveyance of an interest in real property whether or not consideration is present.
- **Unconditional and Perpetual.** The grant to the Holder must be both unconditional and perpetual to qualify as a charitable deduction under §1.170A-14(b)(2) of the Regulations. Conditional delivery is not sufficient; for example, if a signed document is delivered in escrow to a third party (a title company, for example) the document is not effective until released from escrow.
- **Recording.** Recording in the Public Records is necessary to make the covenants binding upon future owners who do not otherwise know about the terms of the Conservation Easement but the grant is complete once the document is signed and unconditionally delivered. Standard 9. Practice I. of S&P requires that all land and easement transactions are legally recorded at the appropriate records office according to local and state law.
- **Consideration.** The phrase “intending to be legally bound” is a valid substitute for consideration (that means it makes a promise to make a gift as enforceable as other contracts) under the Uniform Written Obligations Act, 33 Pa. Stat. §6.
- **Grant and Convey.** The words “grant and convey” have a special meaning in real estate law. When an Owner grants and conveys that automatically means that the Owner warrants that he or she owns the property (or interest in the property) being conveyed in fee simple and has a right to convey the property.
- **Conservation Servitude.** According to the Restatement (Third) of Servitudes, a “conservation servitude” is a servitude for conservation purposes. A servitude is promise that is binding upon future owners of the property. Conservation purposes include retaining or protecting the natural, scenic or open-space value of land, assuring the availability of land for agricultural, forest, recreational or open-space use, protecting natural resources, including plant and wildlife habitats and ecosystems, and maintaining or enhancing air or water quality or supply.

(b) Superior to all Liens

- **Subordination of Liens.** Subordination of any Lien affecting the Property as of the Easement Date is required for compliance with the Code and Regulations but, even if no charitable contribution is being claimed, Holder would want assurance that the Conservation Easement could not be extinguished by foreclosure of a Lien prior in right to the Conservation Easement. This would certainly be true in the case of a purchased Conservation Easement; the Holder would want the purchase price applied first to satisfy outstanding Liens. Standard 9 Practice H of S&P provides that mortgages, liens and other

encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values of the property must be discharged or properly subordinated to the easement.

- **Code Requirement.** A Qualified Conservation Contribution must be enforceable in perpetuity under §170(h)(5)(A) of the Code. Under Regulation §1.170A-14(g)(2) this requirement is satisfied in the case of mortgaged property (with respect to which the mortgagee has not subordinated its rights) only if the donor can demonstrate that the conservation purpose is protected in perpetuity without subordination of the mortgagee's rights.
- **Time.** Owners should be advised of this requirement early in the process. Satisfaction of this requirement frequently requires substantial time and effort.
- **Form.** PALTA intends to make available a model form of subordination on its website www.conserveland.org. No particular form is required by the Regulations.
- **Acceptance of Lien.** A Holder could exercise its business judgment to accept a Conservation Easement under and subject to an outstanding Lien provided that no tax benefit was being sought. Some of the factors influencing the decision to take that risk would be: the relative value of the Lien to the value of the Property; the creditworthiness of the Owners; and the financial resources of the Holder if, in a worst case scenario, Holder had to purchase the outstanding Lien so as to prevent extinguishment of the Conservation Easement upon foreclosure.

ADDITIONAL SUBSECTION, IF APPLICABLE:

(c) Purchase Price

- Add subsection (c) "Purchase Price" to §5.01 whenever the Conservation Easement is purchased in whole or in part.

The undersigned Owner or Owners acknowledge receipt of the sum of _____ (the "Purchase Price") in consideration of the grant of this Conservation Easement to Holder. The Purchase Price has been paid in full to the undersigned Owner or Owners on the Easement Date.

5.02 Rights and Duties of Holder

- **Standard of Care.** Note that in this section the Holder not only has the right but also the obligation to perform the tasks listed below. Whenever a Person owes a duty to another, the Person has the obligation to perform the duty in good faith and with a standard of care that a reasonably prudent person would use. The following section (§5.03) lists rights that the Holder may but is not obligated to perform.
- **S&P.** Standard 2 Practice F. of LTA Standards requires that each Conservation Easement accepted by a land trust be reviewed and approved by the board of the land trust with timely and adequate information prior to final approval.

(a) Enforcement

- **Regulations.** The right of enforcement is both a right and a duty under Regulation §1.170A-14(g)(5)(D)(ii). The Holder must have a right to enforce the conservation restrictions by appropriate legal proceedings including, but not limited, to the right to require the restoration of the Property to its condition as of the Easement Date.
- **S&P.** Standard 6. Practice G. of S&P requires the land trust to have a secure and lasting source of dedicated funds sufficient to cover the costs of stewarding its land and easements over the long term and enforcing its easements. Standard 11 Practice A. provides that the land trust must determine the long-term stewardship and enforcement expenses of each easement transaction and secures the dedicated or operating funds to cover current and future expenses. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure those funds and has a policy committing the funds to this purpose. Standard 11. Practice E. requires the land trust to have a written policy and/or procedure detailing how it will respond to a potential violation of a conservation easement, including the role of all parties involved (such as board members, volunteers, staff and partners) in any enforcement action. The

land trust takes necessary and consistent steps to see that violations are resolved and has available, or has a strategy to secure, the financial and legal resources for enforcement and defense.

(b) Inspection

- **Regulations.** Regulation §1.170A-14(g)(5)(ii) requires the Holder to have the right to enter the Property at reasonable times for the purpose of inspecting the Property to determine if there is compliance with the terms of the donation.
- **S&P.** Standard 11 Practice C. of S&P requires the land trust to monitor its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity. Inspection is also required prior to acceptance of a Conservation Easement under Standard 8. Practice E. of S&P.

(c) Review

- **Regulations.** Regulation §1.170A-14(g)(5)(ii) requires Owners to notify the Holder prior to the exercise of any reserved right, e.g., the right to extract certain minerals, which may have an adverse impact on the conservation interests associated with the qualified real property interest.
- **S&P.** Standard 11. Practice F. of S&P provides that the land trust must have an established procedure for responding to landowner required notices or requests for approvals in a timely and consistent manner, and has a system to track notices, approvals and the exercise of any significant reserved or permitted rights.

(d) Interpretation

- **Regulations.** This duty is not specifically required under the Regulations; however, most land trusts perform these tasks in the ordinary course of administration of a conservation easement.
- **S&P.** Standard 11 Practice D of S&P requires the land trust to maintain regular contact with owners of easement properties. When possible, the land trust should provide landowners with information on property management and/or referrals to resource managers. The land trust strives to promptly build a positive working relationship with new owners of easement property and informs them about the easement's existence and restrictions and the land trust's stewardship policies and procedures.
- **Alternatives.** Some Owners want to limit the universe of those Persons who can request administrative responses under this subsection to Owners and Persons approved by Owners. This is particularly if there is an obligation to reimburse the Holder's time in consultation with these Persons. Owners understandably do not want others to run up a bill on Owners' account without their knowledge and consent. On the other hand, the Holder frequently must spend considerable time in consultation with real estate agents and title companies when a property is changing ownership and ought to be compensated for that time. Consider adding: "If Persons other than Owners request the administrative determination under this section, the Holder is not entitled to reimbursement of administrative costs under this Article for such consultations unless approved by Owners".

5.03 Other Rights of the Holder

- **Purpose.** To give the Holder the right and power to perform at its election, the discretionary powers identified in this section.

(a) Amendment

- **Policy for Amendment.** PALTA urges land trusts to formulate and adopt a policy on Amendment. PALTA intends to publish on its website (www.conserveland.org) examples of Amendment policies adopted by land trusts in Pennsylvania. For an explanation of private benefit rules, refer to §501(c)(3) of the Code and associated Regulations.
- **S&P.** Standard 11 Practice I. of S&P provides that the land trust has a written policy or procedure guiding amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the land trust's conflict of interest policy; requires compliance

with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization's mission.

(b) Signs

- **Public Access.** Rights to install signage may need to be expanded if the Holder or Beneficiaries need to install Regulatory Signs in connection with Public Trail use.
- **Project Identification.** Installing signage may benefit the Holder in several ways. First, signs bring to the attention of the public the benefits of land conservation. Second, signs provide notice to a prospective purchaser, lessee or other user of the Property of the interest of the Holder. It then becomes their responsibility to inquire about the terms of the Conservation Easement.

5.04 Review

- **Purpose.** The purpose of this section is to provide the procedure for Review as and when Review is required under Articles II, III and IV.

(a) Notice to the Holder

- This provision contains the procedural requirements to initiate the Review process.
- Some land trusts may want a longer period of review. If one or more of the Beneficiaries has a right to participate in the Review, the number of days in this provision for the Holder to respond should be somewhat longer than the period Beneficiary is given to Review under this Article.
- If the Holder has adopted a specific set of minimum criteria for submission, then this provision should be modified to substitute following after "including with the notice": "the items required for such submission under the Review Requirements of the Holder". The definition of "Review Requirements" in Article VIII accommodates two approaches – the Review Requirements can be simply included in the Baseline Documentation or can also be attached as an Exhibit to the Conservation Easement. In either case, the definition incorporates changes to the Review Requirements over time.

(b) Notice to Owners

- Among the four possible responses to Owners' request for Review is rejection of Owners' proposal for insufficiency of information on which to base the Holder's decision. This alternative is included so as to avoid the need to incorporate detailed Review Requirements into the Conservation Easement and to give the Holder a reasonable opportunity to determine whether or not additional information is needed to give a definitive response to Owners' proposal.

(c) Failure to Notify

- This subsection sets forth the consequences of the Holder's failure to respond in a timely way. An alternative to extending the time in subsection (b) above to 45, 60 or 90 days is to reverse the "deemed approved" to "deemed disapproved." The rationale for this reversal is that it provides an incentive to Owners to contact the Holder before the running of the 30-days to be sure the Holder has received all of the information the Holder needs to make the decision. It is also more likely that, if additional time is needed to make the decision, it is to the benefit of Owners to grant the extension.

(d) Standard of Reasonableness

- The approach taken by the model is to require the Holder to act reasonably in discharging its duty to Review. The rationale for this approach is that courts are unlikely to sustain a "sole and arbitrary standard". However, to avoid the risk that a court might hold the Holder to a standard of commercial reasonableness, the model provides a standard of "ecological reasonableness".

5.05 Reimbursement

- The approach taken by the model is to correlate the obligation of Owners to reimburse with the obligations of the Holder to enforce, inspect, review and interpret under §5.02. Note that expenses under

§5.03(a) entitled “Amendment” are not automatically covered. These should be handled as part of the Amendment agreement.

ADDITIONAL SECTION, IF APPLICABLE:

5.06 Beneficiaries

- **Purpose.** The purposes of this section are to describe the relationship between the Holder and one or more Beneficiaries and to specify exactly what rights have been vested in each Beneficiary.
- **S&P.** Standard 8. Practice J. of S&P provides that land trusts engaging in a partnership or joint acquisition of a long term stewardship project should document in writing, as appropriate, the goals of the project, roles and responsibilities of each party, legal and financial arrangements, communications to the public and between parties, and public acknowledgment of each partner’s role in the project. The provisions of Article V are intended to document the Enforcement Rights of each Beneficiary consistent with Standard 8. Practice J. Other arrangements as between Holder and Beneficiary covering matters described in Standard 8. Practice J. may be documented by grant agreements or other writings separate from the Conservation Easement.

(a) Land Trust Beneficiary

- If a land trust will be named a Beneficiary in §1.07, the specific rights to be held by that land trust are to be listed in §5.06. The land trust relationship can range from “back-up grantee” (only the right of enforcement in (i) below is granted) to “co-holder” (all four rights listed below are granted).
- Model provision:
Owners and Holder grant to the Land Trust Beneficiary the following rights and benefits with respect to this Conservation Easement:
 - (i) The right to exercise Holder’s rights and duties under this Conservation Easement should Holder fail to uphold and enforce in perpetuity the restrictions under this Conservation Easement.
 - (ii) A right of prior consultation with Holder when Owners request Review under Article V.
 - (iii) A right of prior approval of any Amendment of this Conservation Easement.
 - (iv) A right of prior approval of any transfer of Holder’s rights under this Conservation Easement.
- **S&P.** Standard 11. Practice H. of S&P provides that a land trust who regularly consents to being named as a backup or contingency Holder should have a policy or procedure for accepting conservation easements from other land trusts and has a plan for how it will obtain the financial resources and organizational capacity for conservation easements that it may receive at a future date.

(b) State Program

- If the DCNR has been named as a Beneficiary as described in §1.07 of this commentary, add the following provisions to §5.06 of the Conservation Easement:

This Conservation Easement was either acquired with, or donated as a match for, funds provided by the Pennsylvania Department of Conservation and Natural Resources under the [Environmental Stewardship and Watershed Protection Act, the act of December 15, 1999, P.L. 949, No. 68, as amended (27 Pa.C.S.A. §§ 6101 et seq.) *OR* Keystone Recreation, Park and Conservation Fund Act, the act of July 2, 1993, P.L. 359, No. 50 (32 P.S. §§ 2011 et seq.) *OR* other grant legislation]. This easement is a conservation servitude over the property in perpetuity and as such is binding on all current and subsequent easement holders and their personal representatives, successors and assigns. The Department and its successors have the following rights with respect to this easement: a) the right to compel transfer of the easement holder’s rights and duties to another entity, including a municipality, if the easement holder fails to uphold and enforce the provisions of the easement, b) the right of prior approval of any amendment of this easement, c) the right of prior approval of any transfer of the easement holder’s rights or interests under this easement, and d) the right to exercise

the easement holder's rights and duties under this easement if the easement holder fails to uphold and enforce the provisions of the easement.

(c) County Program

- **County Beneficiary.** If the County has been named as a Beneficiary as described in §1.07 of this commentary, add the following provision to §5.06 of the Conservation Easement:

Owners and Holder grant and convey to the County the following rights and benefits with respect to this Conservation Easement:

- (i) The right to exercise Enforcement Rights or to compel transfer of Holder's Enforcement Rights to another Qualified Organization should Holder fail to uphold and enforce in perpetuity the restrictions applicable to the County Program Area under this Conservation Easement.
 - (ii) A right of prior consultation with Holder when Owners request review under Article V.
 - (iii) A right of prior approval of any Amendment of this Conservation Easement to determine whether the Amendment permits uses of the County Program Area not permitted under the County Program.
 - (iv) A right of prior approval of any transfer of Holder's rights under this Conservation Easement with respect to the County Program Area other than to the Land Trust Beneficiary.
- **Accounting of Stewardship Funds.** At least one County wants to expand the right granted in subsection (i) above to include the following:

In furtherance of County's right compel transfer of Enforcement Rights, County also has the right to require an accounting of any contribution made by County to Holder to fund stewardship of this Conservation Easement and the right to compel Holder to transfer with this Conservation Easement the residue of such stewardship fund that remains with Holder.

(d) Local Program

- **Township Beneficiary.** If the Township has been named as a Beneficiary as described in §1.07 of the commentary, add the following provision to §5.06 of the Conservation Easement:

Owners and Holder grant and convey to Township the following rights and benefits with respect to this Conservation Easement:

- (i) The right to exercise Enforcement Rights or to compel transfer of Holder's Enforcement Rights to another Qualified Organization should Holder fail to uphold and enforce in perpetuity the restrictions applicable to the Township Program Area under this Conservation Easement.
- (ii) A right of prior consultation with Holder when Owners request review under Article V.
- (iii) A right of prior approval of any Amendment of this Conservation Easement to determine whether the Amendment permits uses of the Township Program Area not permitted under the Township Program.
- (iv) A right of prior approval of any transfer of Holder's rights under this Conservation Easement with respect to the Township Program Area other than to the Land Trust Beneficiary.

ADDITIONAL SECTION, IF APPLICABLE:

5.07 Administrative Agent

- **Land Trust as Administrative Agent.** If a land trust has been named as Administrative Agent as described in §1.08 of the commentary, add the following provision to Article V of the Conservation Easement:

Owners and Holder acknowledge that the duty of Administrative Agent is to provide inspection, review and interpretation services in the ordinary course; to communicate decisions of Holder with respect to items subject to Review; and to perform such other services as are requested by Holder under the terms of a separate agreement between Holder and Administrative Agent.

ADDITIONAL SECTION, IF APPLICABLE:**5.08 Grant of Public Access**

- **No Requirement for Public Access.** Public access is not required except when required as a condition of public grants funding acquisition of the Conservation Easement. A grant of public access can be helpful to support the public benefit test applicable to charitable donations of Qualified Conservation Contributions. The grant of this easement in the nature of a right-of-way may be to the Holder or one or more of the Beneficiaries.
- **Grant of Right-of-way to Holder or Beneficiary.** If the Holder and/or one or more of the Beneficiaries is to be granted a right-of-way to install a Public Trail within the Property as a condition of funding or otherwise; and if the right-of-way has not been established in the Public Records by a separate easement agreement between Owners and the Holder or Beneficiary, then, the grant can be incorporated into Article V by adding the following provision and by adding to the Conservation Easement the definitions for “Public Trail” and “Trail Area” set forth in Article VIII of this commentary. *See*, the Model Trail Easement Agreement and commentary available online at the PALTA website (www.conserveland.org). If a Beneficiary (such as Township or County) is intended to be vested directly with the rights and responsibilities of controlling usage of the Public Trail, then it may be preferable to establish the grant of public access by signing and recording a separate Trail Easement Agreement identifying Township or County as Holder.
- **Example of Provision Establishing Trail Area:**

By signing this Conservation Easement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder an exclusive easement and right of way over, under, and across the Trail Area in perpetuity for the purposes and subject to the limitations set forth below.

(a) Purpose

The Trail Area may be used only for non-commercial recreational, educational and open-space purposes.

(b) Limitations on Use

Use of and activities within the Trail Area must conform to the requirements of Article IV of this Conservation Easement. Access to the Trail Area by the general public is further subject to the following limitations:

- (i) The Public Trail may be used only for walking, horseback riding, cross-country skiing, nature study and the like. Motorized vehicles are prohibited except in the case of emergency or in connection with Construction and maintenance of the Public Trail, patrol of the Trail Area or by persons confined to motor-driven wheelchairs.
- (ii) Use is limited to the hours between dawn and dusk.
- (iii) Smoking or lighting of fires is prohibited.
- (iv) Consumption of alcoholic beverages is prohibited.
- (v) Trapping and hunting are prohibited.
- (vi) Swimming and fishing are prohibited.
- (vii) Holder may impose additional reasonable limitations upon the time, place and manner of use so as to regulate access to the Trail Area.

(c) Limitations on Construction

Construction within the Trail Area must conform to the requirements of Article III of this Conservation Easement and is further limited as follows:

- (i) Holder must notify Owners prior to commencement of initial Construction of the Trail and prior to any relocation of the Trail within the Trail Area.
 - (ii) Owners are not responsible for costs associated with Construction and maintenance of Improvements within the Trail Area.
- (d) Reserved Rights of Owners**
- The easement for Public Trail granted to Holder in this Section is exclusive. This means that Owners have no rights to enter or use the Trail Area except to exercise rights accorded to the general public and except as specifically set forth below in this Section:
- (i) Owners may cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Trail Area; however, Owners do not assume any responsibility or liability to the general public for failing to do so.
 - (ii) Owners reserve the right to install fencing, at Owners' expense, along the perimeter of the Trail Area subject to compliance applicable requirements of Article III.
 - (iii) Owners may close public access to the Trail Area for public safety reasons from Monday after Thanksgiving through the month of December so as to reasonably accommodate hunting by or under control of Owners within the Trail Area.

(e) Recreational Use Act

The grant of public access under this Section is intended to be interpreted so as to convey to Owners and Holder all of the protections from liability provided by the Pennsylvania Recreational Use of Land and Water Act, 68 P.S. §477-1 et seq., as amended through the applicable date of reference, or any other Applicable Law that provides immunity or limitation of liability for owners or possessors who make their property available to the public for recreational purposes.

- **Purpose and Limitations.** The list is comprised of typical public trail uses but can be varied to reflect special circumstances. For example, bicycling may be appropriate on some trails but not on others; for example, on Steep Slopes within Woodland Area.
- **Limitations.** This is a list of limitations frequently requested by Owners to assure that use of the Public Trail will be compatible with their use of the Property. The list has not been approved or disapproved by the DCNR or any County.
- **Recreational Use Statute.** The Recreational Use Statute immunizes landowners from liability for personal injury (including death) occurring on or about the landowner's property to anyone who enters the property for recreational purposes so long as no charge is made for the entry and there is no willful or malicious failure to guard or warn against a dangerous condition.
- **Time, Place and Manner of Entry.** Examples of reasonable limitations on time, place and manner of entry would be prohibiting animals or requiring animals to be leashed; prohibiting picking flowers or cutting vegetation; prohibiting picnicking, alcoholic beverages or loud noise.

Article VI. Violation; Remedies

6.01 Breach of Duty

- **Purpose.** The purpose of this provision is to ensure that the Conservation Easement will be enforceable in perpetuity. This provision is also required for the Conservation Easement to qualify as a charitable contribution under Regulation §1.170A-14(g)(5)(D)(ii).
- **S&P.** Standard 11. Practice G. of S&P requires the land trust to have a contingency plan for all of its easements in the event the land trust ceases to exist or can no longer steward and administer them. If a backup grantee is listed in the easement, the land trust secures prior consent of the backup grantee to

accept the easement. To ensure that a backup or contingency holder will accept an easement the land trust has complete and accurate files and stewardship and enforcement funds available for transfer.

6.02 Violation of Conservation Easement

- **Purpose.** This section sets forth the procedure for enforcement of the Conservation Easement.
- **Persons Responsible.** Do not alter this provision to create a connection between the violation and some act or failure to act by Owners. A violation is a violation whether or not caused by Owners. Tenants, invitees and trespassers can violate the restrictive covenants set forth in the Conservation Easement. It is up to Owners to maintain control over the Property; however, see commentary §6.07 captioned “No Fault of Owners”.

(a) Notice

- **Purpose.** This provision is to give Owners some comfort that, before they are exposed to monetary damages or other remedies, they will be given notice of the alleged violation. See Article VIII for requirements applicable to notices.

(b) Opportunity to Cure

- **Purpose.** The approach taken by the model is to provide a reasonable period to cure if, within the initial 30-day period, there is a meeting of the minds between Owners and the Holder as to what constitutes a reasonable cure and what constitutes a reasonable period of time to effectuate that cure.

(c) Imminent Harm

- **Purpose.** If the Holder becomes aware of a prohibited activity that will destroy protected resources, the Holder cannot delay obtaining a court order to cease the activity. For example, if the violation is tree cutting, the trees will be gone by the time the cure period expires.
- **Consultation.** On the other hand, Owners frequently want some kind of notice before they become responsible for Litigation Expenses incurred by the Holder based on an alleged violation. If that is an issue, land trusts can consider adding a statement to the effect that the Holder will endeavor to communicate or consult with Owners regarding the alleged violation prior to commencement of remedies. Do not use the words “notice” or “notify” because that will require written notice given in accordance with Article VII. Consulting or communicating with Owners can be accomplished via a telephone call.

6.03 Remedies

- **Purpose.** The purpose of this section is to describe the specific remedies that the undersigned Owners and the Holder agree are appropriate if a violation should occur in the future.
- **Enforceability of Waivers.** Land trusts and their counsel need to keep in mind that not all promises of the undersigned Owners are binding upon future Owners of the Property who did not, themselves, make the promise. The rule developed by case law over many centuries required that the promise had to be about something pertaining to the land itself. For example, the restrictive covenants in Articles II, III and IV are unquestionably binding upon future Owners. On the other hand, it is highly questionable whether a court would enforce against future Owners waivers of procedural or constitutional rights just because the Person signing the Conservation Easement did so.
- **Due Process of Law.** The approach taken by the model is to include only those remedial provisions that a court would be willing to enforce against all Owners and that do not purport to waive the constitutional rights of Owners to notice, opportunity to be heard, to have the dispute determined by a court before a jury and any other constitutionally protected right of due process of law.
- **Arbitration; Mediation.** Provisions for arbitration and/or mediation are sometimes added to conservation easements; however, it is doubtful that the undersigned Owner can waive the constitutional right of future Owners to a trial by jury so requirements for mandatory arbitration or mediation may be of limited usefulness in a conservation easement. Land trusts who want to insert provisions for arbitration or mediation should consult with counsel and choose an effective and enforceable provision. For

information on arbitration and mediation, consult the website of the American Arbitration Association (www.adr.org) which provides a “Practical Guide to Drafting Dispute Resolution Clauses”.

(a) **Coercive Relief**

- **Purpose.** Relief in the nature of a court order forcing a Person to do or refrain from doing certain activity is a special remedy that under Applicable Law usually requires a showing that other relief will not suffice to make the Person harmed by the activity whole.
- **Restatement.** The Restatement recommends special treatment for a conservation servitude held by a governmental body or a conservation organization: it is enforceable by coercive remedies and other relief designed to give full effect to the purposes of the servitude without the showing otherwise required under Applicable Law.

(b) **Civil Action**

- This remedy is intended to furnish the Holder with a judgment for a specific sum of money that the Holder is entitled to collect from Owners. The judgment automatically creates a lien on the real property of Owners in the county in which the judgment is entered and can be enforced against any assets of Owners. The amount of the judgment will be set by the court in the reasonable amount necessary to compensate the Holder for Losses, Litigation Expenses and other sums owing by Owners under the Conservation Easement.

(c) **Self-Help**

- Many land trusts want the power to enter the Property so as to stop a violation while a court order is being sought to restrain further activity. Land trusts are urged to consult with counsel and, if circumstances suggest that the entry is unwelcome, consider requesting police escort. The power of self-help should be used only if the entry can be made without violence and without harm to persons or property.

6.04 Modification or Termination

- **Purpose.** This provision is intended to apply whenever the Conservation Easement is at risk for modification or termination due to a claim of “changed circumstances”, “impossibility” or condemnation (the exercise of the power of eminent domain by a governmental entity).
- **S&P.** Standard 11 Practice J of S&P requires the land trust to understand its rights and obligations under condemnation and the Code and has appropriate documentation of the important conservation values and of the percentage of the full value of the property represented by the easement. The land trust works diligently to prevent a net loss of conservation values. Standard 11 Practice K provides that, in rare cases, it may be necessary to extinguish, or a court may order the extinguishment of an easement in whole or in part. In these cases, the land trust notifies any project partners and works diligently to see that the extinguishment will not result in private inurement or impermissible private benefit and to prevent a net loss of important conservation values or impairment of public confidence in the land trust or in easements.
- **Changed Circumstances.** In regard to claims of “changed circumstances”, the view of legal scholars set forth in §7.11 of Restatement is as follows: A conservation servitude held by a governmental body or a conservation organization may not be modified or terminated because of changes that have taken place since its creation except as follows:
 - If the particular purpose for which the servitude was created becomes impracticable, the servitude may be modified to permit its use for other purposes selected in accordance with the *cy pres* doctrine, except as otherwise provided by the document that created the servitude. When the *cy pres* doctrine is applied, the court will try to find a purpose as near as possible to the particular purpose for which the servitude was created.
 - If the servitude can no longer be used to accomplish any conservation purpose, it may be terminated on payment of appropriate damages and restitution. Restitution may include expenditures made to

acquire or improve the servitude and the value of tax and other government benefits received on account of the servitude.

- If the changed conditions are attributable to the holder of the servient estate [i.e. the Owners], appropriate damages may include the amount necessary to replace the servitude, or the increase in value of the servient estate resulting from the modification or termination.
- Changes in the value of the servient estate for development purposes are not changed conditions that permit modification or termination of a conservation servitude.

(a) Compensatory Damages

- This provision is intended to be a powerful disincentive to litigation aimed at invalidating a conservation easement. It removes the monetary reward that might otherwise result by successful litigation.

(b) Restitution

- The view of legal scholars is that the remedy of restitution should be available, if desired by the Holder, in the case of violation of a conservation servitude.

(c) Application of Proceeds

- Required by §1.170A-14(g)(6)(i) of the Regulations.

6.05 Remedies Cumulative

- **Purpose.** The purpose of this provision is to negate the presumption under Applicable Law that once a Person chooses a particular remedy, the Person has made his election and cannot choose others or pursue more than one remedy at the same time.

6.06 No Waiver

- **Purpose.** The purpose of this provision is to negate the equitable defense of laches. That defense applies when a Person who has a right fails to assert that right and the other Person changes the Person's position relying on what appears to be acquiescence.

6.07 No Fault of Owner

- **Purpose.** This provision is intended to give some comfort to Owners that they will not be held responsible for the acts of others.
- **Burden of Proof.** The provision is specifically worded to avoid imposing on the Holder the burden of proving that a particular violation was the fault of Owners and no one else.

6.08 Multiple Owners; Multiple Lots

- **Purpose.** To give some comfort to Owners that they are not responsible for violations on portions of the Property that they do not control.
- **Joint and Several.** Some forms provide for joint and several liability of Owners that could result in an unfair result under certain circumstances. For example, two Owners own two different lots within the Property. X is wealthy and Y has no assets but the lot. Y is in violation of the Conservation Easement. Under a provision that simply states "all Owners are jointly and severally liable", the Holder could collect the entirety of its Losses and Litigation Expenses from X.

6.09 Multiple Owners; Single Lot

- **Purpose.** This provision means that, if two Owners own the Property 50% each, the Holder can collect from either or both of the Owners even if one pays more than 50%. The paying Owner can collect from the non-paying Owner under the doctrine of subrogation, but it is not the Holder's problem.

6.10 Continuing Liability

- **Purpose.** Many forms have a requirement for prior notice of a transfer but there is really no remedy if the transferring Owner fails to do so. This provision is intended to provide a compelling incentive for the Owners to obtain a certificate of compliance prior to a transfer.
- **S&P.** Standard 11 Practice D. of S&P requires the land trust to establish and implement systems to track changes in land ownership.

Article VII. Miscellaneous

- **Purpose.** The purpose of this Article is to group together a variety of provisions pertaining to both Owners and the Holder or pertaining to the administration or interpretation of the Conservation Easement.

7.01 Notices

- The purpose of this Section is to provide a procedure for the giving of formal notices under the Conservation Easement.
- (a) **Form of Notices**
 - Electronic mail and telefax can be added as well if the land trust is confident these means of communication will be duly noted. The customary practice is to require that notices by these means be followed promptly by notice delivered by one of the methods listed above.
- (b) **Address for Notices**
 - A street address should be furnished as commercial couriers (such as FedEx or UPS) cannot deliver to P.O. Boxes.

7.02 Governing Law

- In case the undersigned Owner or a future Owner is an out-of-state resident, this provision makes it clear that only the laws of the Commonwealth of Pennsylvania apply. This avoids a dispute about whether the laws of another jurisdiction or the choice of law rules of the Commonwealth of Pennsylvania apply.

7.03 Assignment and Transfer

- **Purpose.** The purpose of this section is to set forth the rules governing the transferability of rights and duties under the model Conservation Easement.
- (a) **By the Holder**
 - **Purpose.** The limitations on the Holder's ability to transfer its interest are required under §1.170A-14(g)(6)(1) of the Code.
 - **Notice.** Some Owners request prior notice and rights of approval as to the identity of the proposed transferee. Rights of prior notice may be given to Owners if the Holder desires to do so. That will give Owners the opportunity to contact the Holder for additional information and, perhaps, suggest other choices.
 - **Example.** The Holder must notify Owners within 30-days prior to the assignment of the identity and address for notices of the Qualified Organization who has agreed to assume the obligations of the Holder under this Conservation Easement.
 - **Rights of Approval of Transferee.** The question often arises whether Owners should be given a right of prior approval over the identity of the proposed transferee Qualified Conservation Organization. The rationale in support of that argument is that the Owner selected a particular Holder anticipating a good working relationship with that Holder. If Holder can transfer at will to any Qualified Conservation Organization, the expectations of Owner regarding that good working relationship may not be met. The argument against that position is that it is inappropriate to bind the Holder to continuing holding a

Conservation Easement that may not be consistent with its mission in the future. Alternatives can be negotiated that provide a mechanism for Owners to object to a particular transferee and suggest another Qualified Conservation Organization willing to accept the transfer of the Conservation Easement.

- **S&P.** Standard 9. Practice L. of S&P provides that if the land trust transfers a conservation easement, the land trust must consider whether the new Holder can fulfill the long-term stewardship and enforcement responsibilities, ensures that the transaction does not result in a net loss of important conservation values and, for donated properties, ensures that the transfer is in keeping with the donor's intent.

(b) By Owners

- **Purpose.** Owners can freely transfer their interest in the Property; however, they can only transfer under and subject to the Conservation Easement whether or not specifically mentioned in the deed of transfer.
- **Restraint on Transfer.** Restraints on the free transferability of real estate are frequently not enforceable under Applicable Law. This is why the model does not purport to require 30-days prior notice to the Holder or issuance of a satisfactory Certificate of Compliance as an impediment to transfer. Instead see §6.10 Continuing Liability which is intended to serve as a powerful incentive for Owners to notify the Holder of the intended transfer and seek issuance of a compliance certificate.

7.04 Binding Agreement

- **Purpose.** To set forth the understanding of Owners and the Holder that the Conservation Easement is not just the agreement of the undersigned Persons but binds and benefits all Persons who succeed to their respective interests.
- **Voluntary.** When a Conservation Easement is donated in whole or in part, it may be helpful to add a provision along the lines of the following to underscore that the donation was knowing and voluntary.

The undersigned Owner or Owners have been represented by legal counsel of their selection (or had the opportunity to be so represented) and understand that they are permanently imposing restrictions on the future use and development of the Property that constrain the full use and development otherwise available under Applicable Law.

7.05 No Other Beneficiaries

- **Purpose.** To limit the universe of Persons who may claim to have an enforceable right to object to any Amendment. Normally contracting parties may modify or terminate a contract by subsequent agreement. However, if a third party beneficiary has enforceable rights, the parties cannot do either without the beneficiary's consent if the beneficiary's rights have been vested.

7.06 Amendments, Waivers

- **Purpose.** This provision has several purposes. First, it puts Owners on notice that they should never rely on an oral statement of an employee or other representative of the land trust that is contradictory to the terms of the Conservation Easement. Second, it puts land trusts on notice of their need to inform staff or other Persons performing monitoring or administrative duties of the limits of their authority.
- **Authorization.** Land trusts need to establish what authorization is needed for Amendments, waivers or consents.
- **Amendment.** Ordinarily, an Amendment needs to be approved by the Board or other governance committee that approves acceptance of the Conservation Easement. An Amendment is signed with all of the formalities required of the original Conservation Easement and is intended to be recorded in the Public Records. An Amendment permanently changes the terms of the Conservation Easement.
- **Consent or Waiver.** A discretionary consent or waiver (even if in writing) does not constitute an Amendment. It is granted for a particular purpose and only for a limited time due to extraordinary circumstances not contemplated under the Conservation Easement. For example, a forest fire or extended drought may necessitate Owners taking extraordinary measures not specifically permitted under the terms of the Conservation Easement. The terms of the Conservation Easement remain unchanged but the

Holder waives its right to invoke its remedies under Article VI. A consent or waiver should always be memorialized in writing but it can simply be a letter from the Holder to Owners in response to a written request from Owners to the Holder requesting a waiver to permit specified activities for a specific period of time.

7.07 Severability

- **Purpose.** If the provisions of a document are dependent on each other, then if one fails they all fail. The provision set forth in this section is intended to avoid application of that rule – if one provision fails (for example, the Holder is not permitted a self-help remedy under Applicable Law) the others remain in full force.

7.08 Counterparts

- **Purpose.** There are several purposes for this provision. First, it makes clear that more than one counterpart of the Conservation Easement can be signed. Second, it allows the undersigned Owners, the Holder and Beneficiaries to exchange signature pages signed separately rather than circulate original documents back and forth to collect necessary signatures.

7.09 Indemnity

- **Purpose.** The Property is not in the care, custody or control of the Holder. The Holder needs to be protected from claims that are the responsibility of the Owners in the first place so that Owners (or their insurer) will defend those claims without the need for the Holder to furnish its own defense and incur Litigation Expenses.

(a) Violation

- Among other liabilities under Applicable Law, this provision is intended to avoid Litigation Expenses in case the Holder is named as a potentially responsible party with respect to an alleged violation of environmental laws on or about the Property.

(b) Liability Coverage

- This provision is intended to place the burden for defense of claims ordinarily covered by homeowners insurance on the Owners and their insurer.
- Sometimes the issue arises when public access is granted under Article V whether this indemnity extends to the Public Trail. A suggestion in this case is to add at the end: “other than claims as to which Owners are entitled to immunity under the Recreational Use Statute”.

7.10 Guides to Interpretation

- **Purpose.** The provisions of this section are intended to assist future readers of the document to interpret it correctly.

(a) Captions

- **Purpose.** This provision is self-explanatory; however, drafters need to be aware of the consequences of falling afoul of this provision. You cannot rely on a caption to convey meanings that are not in the text itself.

(b) Glossary

- **Purpose.** It is good practice to delete those terms provided in Article VIII that were not used in the Conservation Easement as modified to reflect particular circumstances. However, if that does not occur, the error should not be allowed to affect the interpretation of the document.

(c) Other Terms

- **Purpose.** These provisions avoid needless repetition of phrases.

(d) Conservation Easement Act

- **Purpose.** The purpose of this paragraph is to state the intention of the undersigned Owners to grant to the Holder all rights, powers and privileges accorded to the holder of a conservation easement under Applicable Law.

(e) Restatement of Servitudes

- **Purpose.** The purpose of this paragraph is to increase the likelihood that a court interpreting this Conservation Easement, should there be any doubt as to the correct interpretation of a provision, will look to the Restatement of Servitudes as the better view of the law applicable to conservation servitudes.

7.11 Entire Agreement

- **Purpose.** The written text of the Conservation Easement signed by Owners and the Holder is final and definitive. Whatever was proposed in previous drafts and said in previous negotiations is of no further consequence in interpreting the intentions of the parties.
- **Representations in Prior Agreement.** Holder may want to modify this Section if there are any representations, warranties or agreements contained in an engagement letter or donation agreement that are intended to survive the grant of the Conservation Easement.

7.12 Incorporation by Reference

- **Purpose.** The provision serves several purposes (1) it avoids needless repetition of phrases; and (2) it serves as a handy list to check which Exhibits need to be attached to the document.
- **Additions.** Add additional Exhibits that have been incorporated into the text. Some possibilities are:
Exhibit “___” Public Policy Statements.
Exhibit “___” Review Requirements
Exhibit “___” Mortgage Subordination
Exhibit “___” County Supplement
Exhibit “___” Township Supplement

7.13 Coal Rights Notice

- **Purpose.** To satisfy the requirements of §9(d) of the Conservation Easements Act. The notice must be in at least 12-point type and be preceded by the word “Notice” in at least 24-point type.
- **Coal Distribution.** To see a DCNR map of coal distribution in Pennsylvania, click on DCNR website at www.dcnr.state.pa.us, click on GEOLOGY, click on PUBLICATIONS, click on EDUCATIONAL RESOURCES, under the heading “Page-Size Maps” click on Distribution of PA Coals (Map 11).

Article VIII. Glossary

- **Purpose.** To keep all defined terms in one Article for convenience of reference. All initially capitalized terms not defined in Article I should be defined in the Glossary not in the body of the Conservation Easement. Occasionally, exceptions to this rule are appropriate and, in that case, cross-reference the definition in the Glossary. The phrase “Other Defined Terms” may be substituted for “Glossary”, if desired.
- **Commentary.** Article VIII of the commentary includes all of the following:
 - Definitions of initially capitalized terms used in alternative provisions included in the commentary (but not in the model). Definitions of initially capitalized terms are intended to be legally binding on the parties to the document.
 - Definitions of terms used in the model (but not initially capitalized) are included in the commentary for informational purposes only. These are terms familiar to conservation professionals that may or may not be familiar to Owners or their counsel.

- Commentary is “bulleted” so as to differentiate it from definitions.

8.01 Access Drive(s)

- See commentary §3.02(c).

8.02 Additional Improvements

- See commentary to Article III.

8.03 Agricultural Improvements

- See commentary to §3.03(b).

8.04 Agricultural

- See definition of Sustainable when used as a modifier to Agricultural.
- The source of subparagraph (a) of this definition is the *Draft Soil and Erosion and Sedimentation Control Manual for Agriculture* published by the Pennsylvania Department of Environmental Protection and available online at www.dep.state.us (hereafter referred to as “DEP Manual for Agriculture”).
- The phrase is used in the discussion of resource protection objectives for water resources in the model.

8.05 Amendment

- See commentary to §7.06.

8.06 Animal Unit

One thousand pounds (live weight) of any animal.

- This definition is provided to set a standard to determine overgrazing as discussed in commentary to §4.04(b).

8.07 Applicable Law

- This definition is intended to incorporate changes in law over time. For example, if the question of compliance arises in 2020, the reference is to Applicable Law at that time (not the Easement Date).

8.08 Beneficiary

- See commentary to §1.07.

8.09 Best Management Practices

- See definition of Resource Management Plan. The phrase can also be used to provide a standard for activities permitted without a Resource Management Plan. See, for example, §4.03(b).
- The recommendations of the Natural Resource Conservation Service of the United States Department of Agriculture for key conservation practices are available online at <http://www.nrcs.usda.gov/technical/ECS/agronomy/core4.pdf>.
- The recommendations of the Pennsylvania Department of Environmental Protection for watershed management (including erosion and sedimentation requirements) are available online at:
- <http://164.156.71.80/WXOD.aspx?fs=0442d740780d00008000049b0000049b&ft=1>.
- Forest Stewardship Council principles and criteria are available online at http://www.fscus.org/standards_criteria.
- The Sustainable Forestry Initiative Standard 2005-2009 is available online at <http://www.aboutsfb.org/SFBStandard2005-2009.pdf>.
- The National Standards and Guidelines for the Forest Stewardship Program established by the United States Department of Agriculture (Forest Service) are available online at <http://www.fs.fed.us/spf/coop/library/FSP%20National%20Standards%20&%20Guidelines.pdf>. For implementation of standards and guidelines into a forest management plan, see “Planning for Forest

Stewardship – a Desk Guide” available online at <http://www.fs.fed.us/spf/coop/library/Forest%20Stewardship%20deskguide.pdf>.

- The American Forest Foundation’s Standards of Sustainability for Forest Certification (2004-2008) are available online at http://65.109.144.60/cms/test/26_34.html.
- Best Management Practices for Pennsylvania Forests, prepared by the Best Management Practices Task Force under the auspices of the Forest Issues Working Group, Shelby E. Chunko, editor, is available online at <http://pubs.cas.psu.edu/FreePubs/pdfs/uh090.pdf>.

8.10 Biological Diversity

Biological diversity (or biodiversity) is the variety of life and its processes which includes the abundances of living organisms, their genetic diversity and the communities and ecosystems in which they occur. Diversity at all levels from genes to ecosystems need to be maintained to preserve species diversity and essential ecosystem services like climate regulation, nutrient cycling, water production and flood/storm protection.

- The source of this definition is *Conservation Thresholds for Land Use Planners*, Environmental Law Institute, 2003. ISBN #1-58576-085-7 available online at www.elistore.org (hereafter referred to in this commentary as *Conservation Thresholds*.)
- The term is used in the discussion of resource protection objectives for wildlife resources in the model.

8.11 Biological Integrity

Biological (or ecological) integrity refers to a system’s wholeness, including presence of all appropriate elements and occurrences of all processes at appropriate rates, that is able to maintain itself through time.

- The source of this definition is *Conservation Thresholds*.
- The term is used in the discussion of resource protection objectives for Sustainable land uses in the model.

8.12 Buffer

Linear bands of permanent vegetation, preferably consisting of native and locally adapted species, located between aquatic resources and adjacent areas subject to human alteration.

- The source of this definition is *Conservation Thresholds*.

8.13 Barnyard Runoff Controls

The collection and reduction of runoff water and agricultural wastes from barnyards, feedlots and other outdoor livestock concentration areas for storage or treatment to improve water quality.

- The source of this definition is the DEP Manual for Agriculture.
- The phrase is used in the discussion of resource protection objectives for water resources in the model.

8.14 Code

- This definition is intended to incorporate changes in the Internal Revenue Code over time. *See also Applicable Law above.*

8.15 Conservation Easements Act

- *See commentary to §7.10.*

8.16 Conservation Cover

Establishing and maintaining perennial vegetative cover to protect soil and water resources on land retired from agricultural production. This will help reduce soil erosion and sedimentation, thus protecting water quality and creating or enhancing wildlife habitat.

- The source of this definition is the DEP Manual for Agriculture.
- The phrase is used in the discussion of Agricultural uses on Steep Slopes in §4.03 of the model.

8.17 Conservation Cropping Sequence

An adapted sequence of crops designed to provide adequate organic residue for maintenance or improvement of soil tilth. By utilizing this practice one will help improve the physical, chemical and biological soil conditions, maintain or improve soil productivity, protect the soil against erosion and overload runoff and maintain or improve water quality.

- The source of this definition is the DEP Manual for Agriculture.
- The phrase is used in the discussion of Agricultural uses on Steep Slopes in §4.03 of the model.

8.18 Conservation Tillage System

Any tillage and planting system in which at least 30 percent of the soil surface is covered by plant residue after planting to reduce soil erosion by water during the critical erosion period.

- The source of this definition is the DEP Manual for Agriculture.
- The phrase is used in the discussion of Agricultural uses on Steep Slopes in §4.03 of the model.

8.19 Construction

- Note that the definition of Construction encompasses a variety of activities that go beyond construction of Improvements.

8.20 Contour Farming

Farming sloping lands in such a way that tillage, planting and harvest are done on the contour (this includes following established grades of terraces or diversions). This practice may be applied to reduce sheet and rill erosion, to manage runoff, to increase plant available moisture, and to improve surface water quality by reducing siltation.

- The source of this definition is the DEP Manual for Agriculture.
- The phrase is used in the discussion of Agricultural uses on Steep Slopes in §4.03 of the model.

8.21 Cross Slope Farming

Farming sloping land in such a way that tillage, planting and harvesting are done perpendicular to the predominant slope, but not necessarily on the contour. This practice is used to reduce sheet and rill erosion and improve surface water quality by reducing siltation.

- The source of this definition is the DEP Manual for Agriculture.
- The phrase is used in the discussion of Agricultural uses on Steep Slopes in §4.03 of the model.

8.22 Default Rate

- A factor of two percentage points over prime has been included in the definition in Article VIII; however, this can be varied by agreement of the parties. The purpose is to provide an incentive to prompt payment but not be so high as to constitute a penalty.

8.23 Dwelling Unit

- The purpose of defining a Dwelling Unit is to create a standard for measuring intensity of use. See also commentary §4.05.

8.24 Ecosystem

An ecosystem is a geographic area including all the living organisms (e.g. people, plant, animals and microorganisms), their physical surroundings (e.g. soil, water and air) and the natural cycles (nutrient and hydrologic cycles) that sustain them. Ecosystems can be small (e.g., a single forest stand) or large (e.g. an entire watershed including hundreds of forest stands across many different ownerships).

- The source of the definition is *Conservation Thresholds*.
- The term is used in the discussion of resource protection objectives for Sustainable land uses.

8.25 Existing Agreements

- See commentary §3.02(b). PALTA recommends obtaining appropriate title information to identify Existing Agreements as part of the Baseline Documentation. At a minimum, land trusts should request a copy of Owners title policy and inquire whether Owners have granted any easements or other servitudes during their period of ownership.

8.26 Existing Improvements

- This definition is sufficient if, in fact, there is an exhaustive list of Existing Improvements included in the Baseline Documentation. It is also acceptable for land trusts to list Existing Improvements here assuming the list is relatively short.
- Example: “Existing Improvements as of the Easement Date are as follows: ____.”

8.27 Existing Lot

- See definition of Subdivision in this Article as well as commentary §2.02.

8.28 Forestry

- This definition was selected from many because it included woodland management activities not only for commercial timbering purposes but also for resource protection purposes. See definition of Sustainable when used as a modifier to Forestry.

8.29 Fragmentation

The breaking up of a previously continuous habitat into spatially separated and smaller parcels. Fragmentation results from human land use associated with forestry, agriculture and settlement but can also be caused by natural disturbances like wildfire, wind or flooding. Suburban and rural development commonly change patterns of habitat fragmentation of natural forests, grasslands, wetlands and coastal areas as a result of adding fences, roads, houses, landscaping and other development activities.

- The source of this definition is *Conservation Thresholds*.
- The term is used in the discussion of resource protection objectives for wildlife resources in the model.

8.30 Habitable Improvements

Any dwelling, guesthouse, tenant house, dormitory, clubhouse, bunkhouse or other Improvement containing an apartment or other sleeping accommodations for human habitation.

- This definition is provided to regulate the number of buildings that can be used for one or more Dwelling Units. This definition is particularly useful in cases such as clubhouses, bunkhouses, bed-and-breakfast establishments or quarters for employees where the number of Dwelling Units is less important than the size of the Improvements used for these purposes.

8.31 Habitat

The physical features (e.g. topography, geology, stream flow) and biological characteristics (e.g. vegetation cover and other species) needed to provide food, shelter and reproductive needs of animal or plant species.

- The source of this definition is *Conservation Thresholds*.

8.32 Height

- This definition is widely accepted by Owners as it does not penalize Owners who want steeply roofed Improvements or want to fit Improvements into an existing hillside.

8.33 Impervious Coverage

- The definition in the model is purposely expansive so as to include any kind of cover (including packed earth and impounded water) that does not support vegetation.

8.34 Improvement

- The definition provides a collective term for all buildings and structures on the Property whether existing as of the Easement Date or later constructed.

8.35 Indemnified Parties

- The definition is intended to be sufficiently expansive to cover claims against Persons acting on behalf of the Holder. Nevertheless, PALTA recommends that land trusts consult with their insurance carriers to evaluate their coverage under this indemnity.

8.36 Invasive Species

- The source of the definition is Executive Order 13112 authorizing formation of the National Invasive Species Council which coordinates federal responses to the problem of Invasive Species. *See* www.invasivespecies.gov – the gateway to federal efforts concerning Invasive Species. On this site is information about the impacts of Invasive Species and the federal government’s response, as well as read select species profiles and links to agencies and organizations dealing with Invasive Species issues.
- The definition provided in the model applies to plant species only and is, accordingly, more limited than the federal definition. The definition in the model can be expanded, if desired, to include all biota – not just plants.

8.37 Lien

- The definition is used in §5.01 pertaining to the obligation of Owners to obtain and deliver subordinations of Liens existing as of the Easement Date.

8.38 Litigation Expense

- The definition includes fees incurred in connection with investigation of a violation. Frequently survey fees are required to establish whether or not a violation has occurred. These would be included in Litigation Expenses whether or not litigation has commenced.
- The source of this definition is Stark, Tina, *Negotiating and Drafting Contract Boilerplate*, ALM Publishing 2003. ISBN 1588521052, §10.08(l) (hereafter referred to in this commentary as *Negotiating Boilerplate*).

8.39 Losses

- This definition is intended to encompass the items that may be included in a civil action under §6.03.
- The source of this definition is *Negotiating Boilerplate*.

8.40 Lot

- The definition is typical of that found in zoning and subdivision ordinances.

8.41 Market Value

- This term is used as measure of the Holder’s Losses under §6.04.

8.42 Native Species

- This definition may be refined to refer to a specific valley or region if desired by the Holder.
- The source of the definition is the Pennsylvania Department of Conservation and Natural Resources, State Forest Resource Management Plan “*Management of Natural Genetic Diversity in Pennsylvania State Forest Lands*” available online at www.dcnr.state.pa.us/forestry/sfrmp/eco.htm#biodiversity.
- For a listing of plants identified as Native Species in Pennsylvania, *see* the listing provided by the Pennsylvania Natural Heritage Program available online at www.dcnr.state.pa.us/forestry/pndi.

8.43 Owners

- The defined term is always used in the plural because it refers to all Owners starting with the undersigned Owners and encompassing all future Owners in perpetuity.

8.44 Patch

A patch is a relatively homogeneous type of habitat that is spatially separated from other similar habitat and differs from its surroundings.

- The source of the definition is *Conservation Thresholds*.
- The term is used in the discussion of resource protection objectives for wildlife resources in the model.

8.45 Person

- The definition avoids the need for repetitious phrases.

8.46 Preferential Tax Program

Any program under Applicable Law that, as of the applicable date of reference, provides preferential tax treatment for farmland, forestland, open space or other property under conservation easement. As of the Easement Date, examples of Preferential Tax Programs are Act 153 of 1995, Act 319 (sometimes referred to as “Clean and Green”) (72 Pa. Stat. 5490.1 et seq.) and Act 515 (16 Pa. Stat. 11941), and the Preserved Farmland Tax Stabilization Act of 1994, P.L. 605, No. 91.

- This definition is provided for use in connection with Subdivision requirements (*see* commentary to §2.03). The definition may also be used when a Township is named as a Beneficiary (*see* commentary to §1.07). The definition includes future programs that may provide a tax benefit for conservation or resources or preserving open space or making land available to the public for recreational use.

8.47 Proportionate Value

- This definition conforms to the requirements of the Code.
- The Regulations permit valuation of the Conservation Easement using a before-and-after approach; i.e., by comparing the value of the Property immediately prior to the Easement Date with the value of the Property immediately following the Easement Date. The diminution in value attributable the restrictions in the Conservation Easement constitutes Market Value for these purposes.

8.48 Public Trail

A trail for use by the general public to be established within the Trail Area.

- This definition is provided for use when a “Grant of Public Access” is included in Article V. *See* also commentary to §3.02(c). The rules applicable to the Public Trail may need to be differentiated from the rules otherwise applicable to trails in general.

8.49 Qualified Organization

- This is the definition provided in the Code.

8.50 Regulations

- The definition includes future changes to the regulations.

8.51 Regulatory Signs

- These are intended to be the typical no trespassing and no hunting signs but also include signage to indicate trails and interpret resources along trails.

8.52 Residential Improvements

- The definition includes both dwellings and accessory residential improvements. If the Holder desires to limit dwellings separate from other Residential Improvements, use the term Habitable Improvements.

8.53 Resource Management Plan

- There are many ways to describe a Resource Management Plan. This definition emphasizes that the plan is, in the first instance, prompted by what the Owners want to do on their Property. The RMP is then developed so as to accommodate, to the extent consistent with Conservation Objectives, the Owners' desires so long as the methodology complies with Best Management Practices.

8.54 Review

- See commentary to Article V.

8.55 Review Requirements

- The definition is intended to incorporate future changes in Review Requirements and incorporate Review Requirements set forth as an Exhibit or included in the Baseline Documentation.

8.56 Site Improvements

- The definition is intended to encompass all kinds of Improvements that are not buildings.

8.57 Soil Conservation Plan

- See commentary to §4.04(b). The requirements of Applicable Law include preparation by the Natural Resource Conservation Service; however, that requirement can be added to the definition if desired.
- The source of this definition is the DEP Manual for Agriculture.

8.58 Specimen Tree

An unusually large or well-shaped tree that is worthy of special consideration and has been identified as a "Specimen Tree" on the Conservation Plan.

- This definition is provided for use when a higher standard of care is to be applied under Article IV to activities affecting certain trees.

8.59 Steep Slope Areas

- This definition can be varied depending upon the locale. In some parts of the Commonwealth, slopes are not considered steep unless in excess of 20% to 25%.

8.60 Subdivision

- See commentary to Article II.

8.61 Sustainable

- This definition was selected as it keyed in to the Conservation Objectives for the Standard Protection Area.
- The source of the definition is Hubbard, Lee and Long, "*Forest Terminology for Multiple-Use Management*", University of Florida available online at www.sfrc.ufl.edu/Extension/ssfor11.htm.
- Sustainability is widely regarded as economically and ecologically desirable and the only viable long term pattern of human land use.

8.62 Trail Area

The area designated the "Trail Area" on the Conservation Plan.

- This definition is provided for use when a "Grant of Public Access" has been included in Article V. The Trail Area will usually be wider than the actual Public Trail to be established within the Trail Area. Sometimes the definition is varied to include the approximate width or maximum width of the Trail Area.

8.63 Utility Improvements

- The definition is expansive to include other future sources of power.

8.64 Wet Areas

- PALTA generally recommends the 100-foot setback standard; however, land trusts may vary this requirement depending upon the circumstances.

8.65 Woodland Areas

- This definition can be varied depending upon whether or not hedgerows are important to Conservation Objectives. The term is used in §4.04 (b) to identify those portions of the Standard Protection Area that (a) if wooded as of the Easement Date, are intended to remain covered with tree canopy (even if timbered) and are not intended to be converted to Agricultural uses; and (b) if not wooded as of the Easement Date, are intended to remain uncultivated so as to permit succession to woodland.

Closing Matters

- **Closing:** The phrase “INTENDING TO BE LEGALLY BOUND” is especially important where there is no consideration being given for the donation because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania. The term “consideration” means something of value given in return for a promise.
- **Witness/Attest:** It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.
- **Acknowledgment.** The date of the acknowledgment should not be earlier than the Easement Date. *See* commentary to opening recitals of Conservation Easement.
- **Exhibits.** Check that all Exhibits referenced in the Conservation Easement are attached to the Conservation Easement before it is signed and recorded in the Public Records. *See* commentary to §7.12.

Disclaimer Required by IRS Rules of Practice

Any discussion of tax matters contained in this message is not intended or written to be used and cannot be used for the purpose of avoiding any penalties that may be imposed under Federal tax laws.

Appendix N: Model Fishing Access Easement Agreement and Commentary

FISHING ACCESS AGREEMENT

THIS FISHING ACCESS AGREEMENT (this "Agreement") dated as of _____ (the "Agreement Date") is by and between _____ (the "undersigned Owner or Owners") and _____ (the "Holder").

Article I. Background

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:

Municipality:

Parcel Identifier:

County:

State: Pennsylvania

1.02 Easement Objectives

The purpose of this Agreement is to establish an Easement Area (defined below) within the Property for the purposes set forth below (collectively, the "Easement Objectives"):

- To provide public access to _____ (the "Waterway") and its banks for recreational fishing and boating.
- To preserve vegetative cover in a riparian buffer so as to protect water quality and riparian habitat.
- To provide sites for fishery and habitat management, research and educational programs.

1.03 Easement Area; Easement Plan

The portions of the Property that are the subject of this Agreement (collectively, the "Easement Area") consist of the following areas shown on the plan attached as Exhibit "B" (the "Easement Plan"):

(a) Riparian Corridor

The bed and banks of the Waterway and areas within thirty-five feet of the top of the banks of the Waterway (collectively, the "Riparian Corridor"). If a width greater or lesser than this is set forth on the Easement Plan for all or any portion of the Riparian Corridor, the greater or lesser width will apply. If the location of the Waterway changes, the Riparian Corridor will likewise change location so as to maintain the agreed upon width set forth in this subsection. In any event, the Riparian Corridor is limited to the Property.

(b) Outside Riparian Corridor

Sites for construction, installation and use of Accessory Facilities outside the Riparian Corridor in the locations (if any) shown on the Easement Plan.

1.04 Purchase Price (if any)

The undersigned Owner or Owners acknowledge receipt of the sum of \$_____ in consideration of the grant of easement to Holder under this Agreement.

Article II. Grant of Easement

2.01 Rights of Holder

By signing this Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a perpetual easement and right-of-way over the Easement Area for the purposes described in the Easement Objectives. The easement granted to Holder includes the rights described below in this Section.

(a) Public Access

Subject to Access Restrictions, public use of the Riparian Corridor for recreational fishing and boating together with accessory use of any Accessory Facilities (defined below in this Section) identified for public use by the Holder. The term "Access Restrictions" means the rules, regulations and/or limitations established by Holder to regulate fishing and boating activities.

(b) Management Activities

Use of the Easement Area by or under the auspices of the Holder for stocking fish, improving stream habitat, stabilizing stream banks and other educational, scientific and resource management activities in furtherance of Easement Objectives.

(c) Accessory Facilities

Installation, construction, maintenance, repair and replacement of Accessory Facilities either within the Riparian Corridor or, if outside the Riparian Corridor, in the locations identified on the Easement Plan or such other locations as are mutually agreeable to Owners and Holder. The phrase "Accessory Facilities" means temporary or permanent structures and improvements used or usable in connection with Easement Objectives; for example, a driveway, trail, footpath, boardwalk or other access way connecting the Riparian Corridor with the public right-of-way; parking area; dock, boat launch, structures that enhance fishing opportunities or fish habitat, and signage to mark the Easement Area and provide information regarding applicable time, place and manner restrictions.

(d) Access

Reasonable means of access (both vehicular and pedestrian) to and from the public right-of-way for the purposes described in (b) and (c) above. As to the public use described in (a) above, access to the Riparian Corridor is via the Waterway unless and to the extent (i) the Riparian Corridor is accessible directly from the public right-of-way; or (ii) a footpath, trail or drive providing access to the Riparian Corridor has been identified by Holder on the Easement Plan for public use purposes.

2.02 Rights of Owners

(a) Consistent with Easement Objectives

The easement granted to Holder in this Article is non-exclusive. Owners are permitted to continue to use the Easement Area so long as Owners' use is and remains consistent with Easement Objectives, does not prevent or impair access to the Riparian Corridor or use of Accessory Facilities and otherwise does not violate any specific limitation set forth in this Agreement. Owners may from time to time request from Holder clarification of activities and uses that conform to the standard set forth in this Section. Any such clarifications of conforming activities or uses that, prior to the Agreement Date, have been agreed upon by the undersigned Owner or Owners and Holder are listed in an Exhibit entitled "Permitted Uses" attached to this Agreement.

(b) Not Consistent with Easement Objectives

Owners' reserved rights to use the Easement Area are subject to the following limitations unless specifically listed as a "Permitted Use" or Holder (without any obligation to do so) notifies Owners of its approval:

- (i) No removal, impoundment or diversion of water from the Waterway or other change of natural flow of the Waterway is permitted.
- (ii) No change in topography or removal or disturbance of soil, rock or vegetative resources that, individually or in the aggregate, results in the impairment of Easement Objectives is permitted within the Riparian Corridor; however, Owners may cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons or property on or about the Easement Area. By exercising such right Owners do not assume any responsibility to inspect the Easement Area or otherwise take responsibility for the safety of any persons entering the Easement Area.

- (iii) No permanent structures or improvements are permitted within the Easement Area other than improvements existing on the Agreement Date in their existing locations as shown on the Easement Plan.
 - (iv) No pasturing, grazing or other agricultural use, or forestry use, of the Riparian Corridor is permitted. Any such uses within other portions of the Easement Area are conducted at Owners' risk; i.e., Holder is not responsible for loss or damage to crops or livestock occasioned by exercise of its rights under this Agreement.
 - (v) No dumping or placement of ashes, trash, garbage, sewage, manure or other offensive material is permitted within the Easement Area.
 - (vi) No charge or fee is permitted for access to the Easement Area for fishing, boating and other water-related activities or uses or for use of any Accessory Facilities.
- (c) Owners' Enforcement Rights**
Owners reserve the right to take any action permitted under law to remove from the Property persons entering the Easement Area for purposes other than set forth in the grant of public access under this Article.

2.03 Rights of Beneficiaries

The Persons identified below are beneficiaries of this Agreement (each, a "Beneficiary") and have the right to exercise the same rights, powers and privileges as are vested in the Holder under this Agreement:

- As of the Agreement Date, there are no Beneficiaries of this Agreement.

Article III. Other Legal Matters

3.01 Enforcement

If Holder determines that this Agreement is being or has been violated then Holder may, in addition to other remedies available at law or in equity, do any one or more of the following:

- (a) Injunctive Relief**
Seek injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; and/or to compel restoration of natural resources destroyed or altered as a result of the violation.
- (b) Self Help**
Enter the Property to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

3.02 Warranty

The undersigned Owner or Owners warrant to Holder that:

- (a) Subordination of Liens**
The Property is, as of the Agreement Date, free and clear of all mortgages, liens and other encumbrances (collectively, "Liens") or, if it is not, that Owners have obtained and attached to this Agreement as an exhibit the legally binding subordination of any Liens affecting the Property as of the Agreement Date.
- (b) Existing Agreements**
No one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the Agreement Date) to use the Easement Area for purposes inconsistent with Easement Objectives or to prevent Holder from exercising any one or more of its rights under this Agreement.
- (c) Hazardous Materials**
The Easement Area is not contaminated with materials identified as hazardous or toxic under applicable law (collectively, "Hazardous Materials") and no Hazardous Materials have been stored or generated within the Easement Area.

3.03 Repair of Accessory Facilities; No Duty to Inspect

If any Accessory Facilities are constructed by or on behalf of Holder, Holder is responsible for providing such repairs (other than repairs necessitated by misuse by Owners) as are reasonably required to eliminate or mitigate dangerous or unsafe conditions of which Holder has been notified. Holder disclaims any duty to

inspect the Easement Area for dangerous or unsafe conditions; accordingly, Holder's obligation to repair under this Section commences in each case upon receipt of notice of the dangerous or unsafe condition requiring repair.

3.04 Immunity under Applicable Law

Nothing in this Agreement limits the ability of Owners, Holder or any Beneficiary to avail itself of the protections offered by any applicable law affording immunity to Owners, Holder or any Beneficiary including, to the extent applicable, the Recreational Use of Land and Water Act, Act of February 2, 1966, P.L. (1965) 1860, No. 586, as amended, 68 P.S. §477-1 *et seq.* (as may be amended from time to time).

Article IV. Miscellaneous

4.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Agreement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

With a copy to
each Beneficiary:

4.02 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Agreement.

4.03 Binding Agreement

This Agreement is a servitude running with the land binding upon the undersigned Owner or Owners and, upon recordation in the public records of the office for the recording of deeds in and for the county in which the Property is located, all subsequent Owners of the Easement Area or any portion of the Easement Area are bound by its terms whether or not the Owners had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. Subject to such limitations (if any) on Holder's right to assign as may be set forth in this Agreement, this Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

4.04 Guides to Interpretation

(a) Conservation and Preservation Easements Act

This Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390 (the "Conservation Easements Act"). Each Beneficiary identified in Article II (if any) has a third-party right of enforcement as defined in the Conservation Easements Act. The following notice is given to Owners solely for the purpose of compliance with the requirements of the Conservation Easements Act:

NOTICE: This Conservation Easement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.

(b) Restatement of Servitudes

This Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of Servitudes.

(c) Certain Terms

The following terms, whenever used in this Agreement, are to be interpreted as follows:

- “Including” means “including, without limitation”.
- “May” is permissive and implies no obligation.
- “Must” is obligatory.
- “Owners” means the undersigned Owner or Owners and each Person thereafter holding an interest in the Property.
- “Person” means an individual, organization, trust or other entity.

(d) Incorporation by Reference

Each exhibit referred to in this Agreement is incorporated into this Agreement by this reference.

4.05 Amendments; Waivers

No amendment or waiver of any provision of this Agreement or consent to any departure by Owners from the terms of this Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given.

4.06 Severability

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

4.07 Counterparts

This Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

4.08 Entire Agreement

This is the entire agreement of Owners and Holder pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Agreement.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

Witness/Attest:

Witness/Attest:

Owner’s Name:

Owner’s Name:

HOLDER

By: _____
Name:
Title:

Acceptance by Beneficiary:

[NAME OF BENEFICIARY]

_____ By: _____
Name:
Title:

*This document is based on the model Fishing Access Agreement (2007 ed.)
provided by the Pennsylvania Land Trust Association.*

*This document should not be construed or relied upon as legal advice or
legal opinion on any specific facts or circumstances. It must be revised to
reflect specific circumstances under the guidance of legal counsel.*

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a _____, and that he/she as such authorized official, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the Holder by her/himself as such authorized official.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

Fishing Access Agreement & Commentary

a model document and guidance

Prepared by the
Pennsylvania Land Trust Association

in partnership with the
Pennsylvania Fish and Boat Commission



and with support from the
William Penn Foundation
and the



Pennsylvania Department of Conservation and
Natural Resources Bureau of Recreation and
Conservation "Growing Greener" Program



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May 8, 2007 edition

COMMENTARY

to the Fishing Access Agreement

Introduction to the Access Agreement

This model Fishing Access Agreement (the “Agreement”) provides a framework for non-profit organizations, the Pennsylvania Fish and Boat Commission (the “Commission”) and other governmental entities to build cooperative relationships with private landowners (called “Owners” in the Agreement) to expand fishing opportunities within lakes, streams, rivers and other waterways within the Commonwealth (any of these is called a “Waterway” in the Agreement) and to ensure good fishing for both residents and visitors to the Commonwealth of Pennsylvania.

The Agreement achieves these objectives while keeping the property in the ownership and control of the Owners.

In the Agreement, the Owners agree that anglers can fish within and along the banks of the Waterway and agree that the banks of the Waterway will remain undeveloped and undisturbed. Where appropriate, the Agreement may also provide anglers with access to the Waterway via an access point on a nearby public road. The Agreement also provides the “Holder” with access to improve the health of the Waterway and the fish that live within the Waterway. The Holder commits to watch over the Waterway and adjoining banks (called the “Riparian Corridor” in the Agreement) and to enforce the restrictions.

The Holder may be a non-profit organization, the Commission or a local government. Participants other than the Holder are identified as Beneficiaries in Article II. Beneficiaries have all of the rights and none of the obligations of the Holder.

General Instructions

- Users of the Agreement are encouraged to read through the commentary at least once. The purpose of each section is explained and, sometimes, variations are provided to address alternatives that may be useful in particular situations.
- The commentary follows the same Article and Section structure as the Agreement to make cross-referencing easy. Titles or captions in bold lettering preceded by numbers refer to sections of the same title in the Agreement. Bullets preceding text indicate a comment. Text without bullets varies with the context, covering alternative or optional text to add as well as excerpts from other documents.
- The Agreement and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The Agreement must be revised to reflect the specific circumstances of the particular project under the guidance of legal counsel.
- **Disclaimer Box.** Once a document based on the model has been prepared or reviewed on behalf of the Holder by an attorney licensed to practice law in the Commonwealth of Pennsylvania, the box following the signature area that begins “This document should not be construed or relied upon as legal advice...” may be deleted.
- **Other States.** Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.
- **Updates.** Check conserveland.org periodically for updates to the model.

Preliminary Matters

Margins

- Several counties (Montgomery and Chester, for example) require a minimum 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right and bottom margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5 inch by 11 inch paper. Many counties require type size not less than 10-point. The model has been formatted to conform to these requirements.

Header

- In the final version of a document prepared using the model as the base, it is good practice to remove the header “Revised through: [date].” In MS Word, click on *View*, then *Header and Footer*, delete the phrase and close.

Opening Recital

- **Purpose.** The purpose of the opening recital is to identify the parties to the document and the effective date of the document.

Agreement Date

- The date can be added in hand writing at the time of signing.
- The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), substitute for “dated as of ____”: “signed _____ but delivered _____”. The date of delivery is the effective “Agreement Date”.

Undersigned Owner or Owners

- Insert names exactly as set forth in the deed by which the Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title. The customary practice is to recite these facts either in the Background section or at the end of the legal description attached as Exhibit “A”.
- The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.
- If a Person other than an individual is entering into the Agreement, a phrase identifying the type of entity and state in which the entity was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.
- If a provision is intended to apply only to the individuals or entity signing the Agreement, the phrase “the undersigned Owner or Owners” is used. In all other cases, the term “Owners” (always plural) is used. This arrangement of setting apart the undersigned Owner or Owners from all Owners present and future also has the practical advantage of not requiring conversion of plural to singular or vice versa throughout the document depending upon whether one or more than one Persons signed the document.

Holder

- The full legal name of the Holder (including Inc. or Incorporated if part of the legal name) should be inserted in the blank. If the Commission is the Holder, complete the blank with “the Commonwealth of Pennsylvania acting through the Fish and Boat Commission”.

- A phrase identifying the type of entity and state in which the Holder was created is desirable but not necessary for recording or other purposes. Example: Trout Unlimited, a non-profit corporation organized under the laws of the State of Michigan.

Article I. Background

- **Purpose.** The purposes of Article I “Background” are to inform the reader of the factual information necessary to understand the subject matter of the document and the intentions of the parties in entering into a legally binding relationship. The material in the Background section should not be used to set forth enforceable restrictions on the Property.
- **Articles and Sections.** The model has been structured in Articles and Sections rather than a list of paragraphs. There are several practical reasons for this. One reason is to encourage additional provisions to be clustered with similar provisions instead of adding them to the end where they may be missed in a quick review. Another reason is to avoid wherever possible cross-references to specific paragraphs. A common drafting error is to add or delete paragraphs and not check whether cross-references are still correct. This structure seeks to minimize the opportunities for that error to occur.

1.01 Property

- **Purpose.** The purpose of this Section is to identify one or more parcels of land affected by this Agreement. The legal description attached as Exhibit “A” can be a photocopy of the legal description in the deed vesting title in the undersigned Owner or Owners.

Street Address:	Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example: 100 acres more or less north side of ___ Road west of the intersection of ___ Road and ___ Road.
Municipality:	Insert the city, township or borough in which the Property is located. This may or may not be the name of the town used for mailing address purposes.
County:	Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in both counties.
Parcel Identifier:	The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. <i>See</i> Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337). Some counties charge additional recording fees to note the tax parcel number and/or uniform parcel identifier number on the document presented for recording if not furnished in the document itself or the legal description attached as Exhibit “A”.

1.02 Easement Objectives

- **Purpose.** This Section serves a number of important purposes. First and most obvious is that it explains why the Owners and Holder are entering into this Agreement. Second it is intended as an

educational tool for future Owners. Third, it will serve as a guide for future amendment: there may be perfectly acceptable alternative means to achieve the same ends. Fourth, it expressly provides the rationale underpinning particular covenants.

- The first objective of the Agreement is to expand fishing opportunities for anglers. If desired, the first bullet point can be expanded to add specific reference to the value of this particular Waterway to one or more programs of the Holder. Here is an example:

The Property is traversed for approximately ___ feet by the Waterway, which is classified by the Pennsylvania Department of Environmental Protection as a “high quality” stream. A high quality stream is recognized as having excellent water quality with a minimum of pollutants and contaminants and environmental features that require special water quality protection. Providing anglers access to the Waterway under this Agreement furthers the goals of the Lake Erie Access Improvement Program developed by the Pennsylvania Fish and Boat Commission.

- The second objective of the Agreement is to improve the habitat for fish provided by the Waterway and its adjoining banks by preserving riparian buffer. If desired, the second bullet point can be expanded to explain the reasons why preservation of riparian buffer is important for the health of the Waterway. Here is an example:

A continuous buffer of trees, shrubs and understory along the banks of the Waterway will minimize soil erosion into the Waterway and will provide shady overhang to moderate water temperature changes and provide hiding places for fish and other aquatic species.

- Where appropriate, the second bullet point could also be expanded to explain the conservation values of preserving appropriate habitat within the Riparian Corridor for particular amphibian or other animal species or to preserve bog, marsh or other water-dependent vegetation.
- The third objective is to enable the Holder to use its resources to improve the health of the Waterway as well as conduct research and educational programs.

1.03 Easement Area; Easement Plan

- The purpose of this Section is to set the areas within the Property that are the subject of the Agreement. These are called, collectively, the “Easement Area”.

(a) Riparian Corridor

- At a minimum, the Easement Area will consist of the Riparian Corridor described in subsection (a). If a Riparian Corridor of a set width is the only Easement Area, then there is no need to attach an Easement Plan and references to the Easement Plan can be deleted throughout the Agreement. In the alternative (and to save editing of the document), a simple drawing showing the distance from the top of the bank of the Waterway can be attached as the “Easement Plan”.
- This description creates a Riparian Corridor that moves with the Waterway if the Waterway should meander. This supports a key purpose of the Agreement – to protect the aquatic habitat – wherever the Waterway may be at any particular time.
- A stream may meander off the Owners’ property. In that case, the Holder would not be able to require compliance with the Agreement as applied to areas outside the Property.
- The width of the Riparian Corridor should be as wide as is acceptable to the Owner who enters into the Agreement. A width of thirty-five (35) feet is furnished in the model but may be changed to reflect the width agreed upon by the Owners. The 35-foot minimum is consistent with the minimum width for riparian forest buffer required under the Conservation Reserve Program originally authorized under the Food Security Act of 1985 and regulations promulgated under that act set forth in Title 7 of the Code of Federal Regulations Part 1410 (“CRP”) and the Conservation Resource Enhancement Program, 16 U.S.C.S. §3831 *et seq.* (“CREP”). See also the recommendations in *Riparian Forest Buffers* (Welsch, 1991), Forest Resources Management, USDA Forest Service, Radnor, PA, NA-PR-07-91, available on-line at www.na.fs.fed.us/spfo/pubs/n_resource/riparianforests/Tab%20II.htm.

- A description of the Riparian Corridor by means of a setback from a stream bank conforms to the requirements of §4(b) of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. No. 330 set forth below. Otherwise, a metes and bounds description is required if the Riparian Corridor is less than the entirety of the Property.

[A] conservation easement may encompass an entire fee simple interest in a parcel of real property as described in the deed to the property, or any portion thereof or estate therein. Except when referencing an easement's boundary using setback descriptions from existing deed boundaries or natural or artificial features, such as streams, rivers or railroad rights-of-way, a metes and bounds description of the portion of property subject to the easement shall be provided in the easement document.

- If a question arises as to the precise location of the "top of the bank", a 1932 Pennsylvania Superior Court case provides guidance (*Cole v. Pittsburgh & L.E.R. Co.*, 162 A. 712) as to the interpretation of that phrase under applicable law.
- Locations where Holder intends to install Accessory Facilities within the Riparian Corridor may be shown but it is not necessary to do so. Section 2.01(c) permits Holder to install Accessory Facilities anywhere within the Riparian Corridor.

(b) Outside Riparian Corridor

- If Holder or public is permitted to access the Waterway via a pathway from a nearby public road, the location (perhaps with an indication of the width, if desired) should be identified on the Easement Plan. Locations for improvements outside the Riparian Corridor must be shown (see discussion of §2.01(c) below). If appropriate, the following can be substituted as the text under 1.03 (b): The undersigned Owner or Owners and Holder have not designated any areas outside the Riparian Corridor as "Easement Area".

1.04 Purchase Price (if any)

- The purpose of this Section is to set forth the amount of consideration (if any) being paid for the grant of easement to Holder. If there is no consideration, complete the blank with \$1.00 to denote nominal consideration.
- If the undersigned Owner or Owners intend to claim the donation of easement under the Agreement as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Internal Revenue Code) to a qualified organization (as defined in §1.170A-14(c)(1) of the regulations promulgated under the Internal Revenue Code), add to the Agreement a new §1.05 captioned "Federal Tax Items" containing subsections (a) through (i) set forth below.

1.05 Federal Tax Items

- If the Owners intend to claim a charitable contribution for the donation, in whole or in part, of the Agreement, the provisions set forth in (a) through (i) below must be included in the Agreement. This commentary does not attempt to explain all of the requirements for qualification of the Agreement as a "qualified conservation contribution" under the provisions of §170(h) of the Internal Revenue Code. Owners should be advised to seek legal counsel and should be encouraged to review pertinent information provided by the Pennsylvania Land Trust Association on its website (conserveland.org) or the Land Trust Alliance on its website (www.lta.org). Commentary as to the content of this Section is provided in footnotes for clarity and should not be included in the text of the Agreement.

(a) **Qualified Conservation Contribution**¹

The rights granted to Holder under this Agreement have been donated in whole or in part by the undersigned Owner or Owners. This Agreement is intended to qualify as a charitable donation of a partial interest in real estate (as defined in §170(f)(3)(B)(iii) of the Internal Revenue Code of 1986, as amended (the “Code”)) to a qualified organization (a “Qualified Organization”) as defined in §1.170A-14(c)(1) of the regulations promulgated under the Code (the “Regulations”).

(b) **Public Benefit**²

The undersigned Owner or Owners have entered into this Agreement to provide a significant public benefit (as defined in §1.170A-14(d)(2)(i) of the Regulations) by making the Riparian Corridor available to members of the general public to engage in the outdoor recreational activities of fishing and boating and by preserving scenic views of vegetated buffer along the Waterway for public users of the Waterway. Preservation of riparian buffer within the Riparian Corridor furthers numerous policies of the Commonwealth of Pennsylvania to improve water quality and preserve aquatic and riparian habitat established by the Pennsylvania Fish and Boat Commission, the Pennsylvania Department of Environmental Protection and the Pennsylvania Department of Natural Resources.

(c) **Mineral Interests**³

No Person has retained a qualified mineral interest in the Easement Area of a nature that would disqualify the Agreement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Agreement Date, the grant of any such interest is prohibited and Holder has the right to prohibit the exercise of any such right or interest if granted in violation of this provision.

(d) **Notice Required under Regulations**⁴

To the extent required for compliance with §1.170A-13(g)(4)(ii) of the Regulations, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests or public recreational purposes associated with the Easement Area.

¹ The purpose of this subsection is to set forth the intention of the parties that the Agreement is intended to qualify for tax deductibility as a charitable donation under §170 of the Internal Revenue Code. In the case of a bargain-sale of an Agreement, the donation is being made “in part”. The amount of the donation is the diminution in value (if any) of the Property resulting from the Agreement as determined by an independent appraiser in accordance with applicable Regulations. In the case of a bargain-sale, the purchase price received by the Owners reduces dollar for dollar the amount of the donation.

² The terms of the Agreement must further a significant public benefit of a kind recognized in the Regulations to qualify for tax deductibility. One type of public benefit is making land available for public outdoor recreation and education for the substantial and regular use of the general public or the community. Another public benefit is preservation of open space to preserve scenic views or further public policies. Reference to county or municipal policies furthered by the protections afforded in the Agreement can be added to subsection (b).

³ If someone other than Owner has the right to extract or remove minerals by surface mining, the Agreement will be disqualified for charitable contribution purposes unless the probability of extraction or removal is so remote as to be negligible.

⁴ The Regulations specifically mention the right to extract certain minerals as an example of a reserved right for which notice under the Regulations is required.

(e) **Baseline Documentation**⁵

The undersigned Owner or Owners and Holder have signed for identification purposes the report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Easement Plan together with other pertinent information regarding the conservation and public recreational interests served by the Agreement, including photographs depicting existing conditions of the Easement Area as of the Agreement Date.

Whether or not attached to this Agreement, the Baseline Documentation is incorporated into this Agreement by this reference.

(f) **Easement Area Right**⁶

In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that the easement granted under this Agreement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair market value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that this easement as of the Agreement Date bears to the value of the Property as a whole as of the Agreement Date. Holder must use any funds received by application of this provision in a manner consistent with the recreational and conservation purposes of this Agreement.

(g) **Qualified Organization**⁷

Holder declares that it is a Qualified Organization and promises not to assign its interest under this Agreement to any Person other than a Qualified Organization.

⁵ The Baseline Documentation is intended to serve as an objective information baseline for monitoring compliance with the terms of the Agreement. Among other information describing and depicting the Waterway and the vegetative and other resources to be found within the Riparian Corridor, the Baseline Documentation should include photographs identifying the location of the Waterway as of the Agreement Date. The Baseline Documentation is incorporated into the text of the Agreement under this subsection even though it is not attached to the recorded documentation. Because it is not attached to the recorded document, it is imperative that the definitive baseline report be signed by the undersigned Owners and the Holder with a notation identifying the report as the Baseline Documentation referred to in the Agreement between Owners and the Holder dated _____. Whether or not tax deductibility is an issue, it is good practice for the Holder to keep on file a record of the aquatic and riparian habitat values within the Riparian Corridor and existing improvements on or about the Easement Area as of the Agreement Date. This information will assist the Holder in enforcing the terms of the Agreement should enforcement become necessary.

⁶ If the original Owners entering into the Agreement claim on their federal income tax return that the value of the Property was diminished by 20% due to the Agreement, the Owners as of the date of condemnation must turn over 20% of the proceeds of any condemnation affecting the Easement Area to the Holder.

⁷ A "Qualified Organization" is either a governmental entity or a non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) has the funds and commitment to enforce this conservation easement in perpetuity; and (d) is duly authorized to acquire and hold conservation easements under applicable law.

(h) Perpetuity⁸

Holder has the right and duty to enforce the terms of this Agreement in perpetuity. If Holder fails to enforce this Agreement, a court of competent jurisdiction is authorized to appoint another Qualified Organization to enforce this Agreement in perpetuity.

(i) Acknowledgment of Donation

Except for such monetary consideration as is set forth in Article I, the undersigned Owner or Owners have received no money, goods or services in consideration of the grant of this Easement. The value of the donation is to be established by appraisal performed by an appraiser engaged by the undersigned Owner or Owners.⁹

Article II. Grant of Easement

- **Purpose.** The purpose of this Article is to set forth the nature and extent of the rights granted to Holder within the Easement Area and the nature and extent of the rights retained by Owners to continue using the Easement Area without interfering with the fishing and boating recreational access intended to be provided for the benefit of the public.

2.01 Rights of Holder

- **Purpose.** This Section operates to grant to Holder the perpetual right to enforce up to four easement rights in the Easement Area no matter who owns the Property. These easement rights must be exercised only in furtherance of the Easement Objectives identified in Article I.
- **Unconditional.** The grant to the Holder is unconditional. Conditional delivery is not sufficient; for example, if a signed document is delivered in escrow to a third party (a title company, for example) the document is not effective until released from escrow.
- **Perpetual.** The model has been constructed to extend for a perpetual term. If the Owners intend to qualify for a charitable contribution under §170(h) of the Code, the term must be perpetual.
- **Recording.** Recording in the public land records of the county in which the Property is located is necessary to make the covenants binding upon future owners who do not otherwise know about the terms of the Agreement but the grant is complete once the document is signed and unconditionally delivered.
- **Consideration.** The phrase “intending to be legally bound” is a valid substitute for consideration (that means it makes a promise to make a gift as enforceable as other contracts) under the Uniform Written Obligations Act, 33 Pa. Stat. §6.
- **Grant and Convey.** The words “grant and convey” have a special meaning in real estate law. When an Owner grants and conveys that automatically means that the Owner warrants that he or

⁸ Note that enforcement is not optional with the Holder – it must be a duty in order for the Agreement to qualify for tax deductibility as a charitable donation. The Holder must have the right to enforce the conservation restrictions by appropriate legal proceedings including, but not limited, to the right to require restoration of the Easement Area to its condition as of the Agreement Date.

⁹ All donations (whether cash or non-cash) of \$250 or more must be acknowledged contemporaneously in accordance with the requirements of §170(f)(8) of the Internal Revenue Code. This includes donations of real property interests (whether ownership interests or conservation easements) and cash donations received in connection with acceptance of real property interests. The amount of cash received must be specified; however, as to non-cash property (for example, an easement) a description (but not value) of the donation will suffice. The acknowledgment will be considered to be contemporaneous if received on or before the date the taxpayer files a return for the taxable year in which the contribution was made. PALTA recommends that Holders acknowledge the donation by separate letter; acknowledgment within the Agreement guards against inadvertent failure to provide acknowledgment by separate letter.

she owns the property (or interest in the property) being conveyed in fee simple and has a right to convey the property.

(a) Public Access

- The easement granted in subsection (a) is the only right that flows directly to the benefit of the public. The right of entry by the public is limited by Access Restrictions and that term has been defined expansively to include any rules, regulations or limitations established by Holder on public access. These rules may, but need not necessarily, include all of the rules and regulations promulgated by the Commission with respect to fishing activities.
- If required by Owners as a condition of the grant, particular limitations on time, place or manner of public access may be incorporated into the Agreement in either of two ways. If Owners and Holder intend that Holder is to enforce the limitations as part of its regulatory program, then the limitations should be incorporated into the definition of “Access Restrictions” in §2.01(a). For example, a sentence could be added to existing §2.01(a) as follows: “Included in the Access Restrictions is a limitation on public entry to the hours between dawn and dusk. Holder agrees to include that limitation on signage posted within the Easement Area.” If there are a number of additional Access Restrictions, an alternative might be: “The phrase “Access Restrictions” also includes the limitations set forth in Exhibit “__” attached to this Agreement.”
- If Holder does not have a problem with one or more limitations desired by Owners so long as Owners have the right (and Holder has no obligation) to enforce them, those limitations should not be listed as Access Restrictions but, instead, should be incorporated into the Agreement under §2.02(c) entitled “Owners’ Enforcement Rights”.

(b) Management Activities

- The easement granted in subsection (b) (as well as those set forth in (c) and (d)) run to the benefit of the Holder but may also be exercised by any Beneficiary in furtherance of its scientific, educational and resource management programs.

(c) Accessory Facilities

- The easement granted in subsection (c) permits Holder to install temporary or permanent improvements within the Easement Area. Note that locations outside the Riparian Corridor are limited to those (if any) shown on the Easement Plan.
- The phrase “Accessory Facilities” is defined broadly. If required by the Owners as a condition of entering into the Agreement, a limitation such as the following can be added at the end of existing subsection (c) rather than modifying the definition of “Accessory Facilities”: “Notwithstanding the breadth of the grant of easement set forth in this §2.01(c), unless Owners, without any obligation to do so, agree otherwise, Accessory Facilities to be installed by Holder under this Agreement are limited to the following: _____.”
- If an Owner is concerned about potential liabilities involved in construction of Accessory Facilities, the following may be added to subsection (c): “Holder must give Owners at least 10 days notice before commencing construction or installation of Accessory Facilities, must furnish to Owners certificates of insurance from Persons (other than government employees) engaged in construction or installation of Accessory Facilities, and must complete and pay in full for any Accessory Facility commenced by Holder within a reasonable period of time.”

(d) Access

- This grants a right-of-way over the Property from the public right-of-way to accommodate the exercise of the rights granted in the previous subsections. For example, if Holder has a right to stock fish within the Riparian Corridor, the Holder has a right to cross the Property to do so using a vehicle, if reasonably necessary. The public’s right to access, however, is more limited. Unless specifically identified as a public access corridor connecting the public right-of-way to the Riparian Corridor, anglers are limited to entering the Riparian Corridor via the Waterway itself.

- If required by Owners as a condition of entering into the Agreement, a limitation can be added to the end of existing subsection (d) defining a particular route for Holder's vehicular access or providing for the Owner's right to relocate public access points to accommodate changes in Owners' agricultural or other uses of the Property.

2.02 Rights of Owners

- **Purpose.** The purpose of this section is to balance the interests of Owners in continuing their beneficial ownership and use of the Easement Area with the rights granted to Holder in §2.01.
- (a) **Consistent with Easement Objectives**
- The general rule set forth in subsection (a) is that Owners can continue to use their entire Property including the Easement Area so long as the use is consistent with the Easement Objectives and does not interfere with the rights granted to Holder in Article II. The schedule of "Permitted Uses" can be used for two purposes (i) to assure Owners that they can continue to engage in particular activities and uses that are important to them; and (ii) to allow for exceptions to the activities listed in subsection (b) that are generally considered not consistent with Easement Objectives.
- (b) **Not Consistent with Easement Objectives**
- The list of limitations should be reviewed carefully with Owners to see if any exceptions need to be made by listing the exceptions as "Permitted Uses". The limitations list is intended to keep the Riparian Corridor as undeveloped and undisturbed as possible; however, exceptions can be made where appropriate.
 - The following are some examples of activities that a Holder might be willing to list as "Permitted Uses" in appropriate circumstances:
 - (i) Mowing grassy areas that have been maintained as lawn or turf as of the Agreement Date.
 - (ii) Watering of livestock within a stream access structure (including installation of such structure if not existing as of the Agreement Date) in the location identified on the Easement Plan or, if no location is identified, then in a location approved by Holder.
 - (iii) Removal of Invasive Species. The term "Invasive Species" means a plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as "Plant Invaders of the Mid-Atlantic Natural Areas", by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.
 - (iv) Sustainable forestry subject to Holder's review and approval of a forest management plan and utilizing best management practices.
 - Owners should be aware that compliance with the limitations set forth in subparagraph (b) may require fencing off the Riparian Corridor from pasture areas where livestock graze.
- (c) **Owners' Enforcement Rights**
- The purpose of this provision is to give Owners comfort that they are not totally dependent upon the Holder to enforce Access Restrictions and that they can consider persons entering the Property for purposes other than fishing and boating as trespassers.
 - If required by the Owners as a condition of entering into the Agreement, specific limitations that Owners may enforce at Owners' discretion can be added to the existing provision. The following is an example of objectionable uses that Owners may want to handle with the assistance of local police rather than calling on the Holder to regulate as an Access Restriction.

Without limiting the generality of the preceding sentence, Holder agrees that Owner has the right to enforce the following limitations upon public access:

- (i) No swimming, picnicking, barbecuing or lighting of fires.
- (ii) No loitering, littering or consumption of alcoholic beverages.

2.03 Rights of Beneficiaries

- Any non-profit or governmental entity can be named as a “Beneficiary” of this Agreement (e.g., the Commonwealth of Pennsylvania acting through the Pennsylvania Fish and Boat Commission). The Beneficiary has all of the rights (but none of the responsibilities) of a Holder. See also §4.04(a), Each Beneficiary is vested with the “rights of third party enforcement” under the Conservation and Preservation Easement Act.
- If a county, township or other political subdivision of the Commonwealth is participating in the Easement acquisition transaction, land trusts may want to consider naming the county or township as the Holder rather than as Beneficiary or, if the land trust is initially named as Holder, its rights and responsibilities of Holder with respect to the Easement could be transferred to the governmental entity by inserting an assignment and assumption clause as set forth below. Land trusts and governmental entities can both assert immunity under the Recreational Use Act referred to in Article III but governmental entities can also assert immunity under the Sovereign Immunity Act and the Political Subdivision Tort Claims Act. In addition, should public access result in a claim that is for some reason not barred by immunity, the cost of defending and settling or paying the claim would be borne by the public rather than the assets of the land trust.
- If an assignment clause is used, the assignee must sign the Agreement in order to assume responsibility. The Department of Conservation and Natural Resources requires that the assignee sign the document and that the Holder remain responsible for enforcement should the Beneficiary fail to do so.

Optional Provision: Assignment and Assumption:

By signing this Agreement, Holder assigns to Township, and Township assumes, all of Holder’s rights, powers and responsibilities with respect to the public access granted under this Easement. Holder reserves the right, power and responsibility to enforce the grant of public access under this Agreement should Township fail to do so.

Article III. Other Legal Matters

- This Article is intended to address other issues that need to be addressed to give Owners or Holder, as the case may be, assurance as to their legal rights, powers and responsibilities.

3.01 Enforcement

- The purpose of this Section is to give the Holder assurance that, besides its right to commence a civil action in a court of competent jurisdiction for damages, the Holder has the right to obtain relief in the nature of a court order forcing the Owners to do or refrain from doing certain activity. For example, if an Owner refused to remove a barrier to access, the Holder may need to obtain a court order requiring him to do so. Sometimes the Holder may want the power to enter the Property so as to stop a violation while a court order is being sought to restrain further activity. In that case, the Holder (if not otherwise vested with police power) is urged to consult with counsel and, if circumstances suggest that entry is unwelcome, to consider requesting police escort. The power of self-help (for Holders not vested with police power) should be used only if the entry can be made without violence and without harm to persons or property.

3.02 Warranty

- The purpose of this Section is to evidence the assumptions under which Holder is willing to enter into this Agreement with the undersigned Owner or Owners.

(a) Subordination of Liens

- Subordination of any mortgage or other lien affecting the Property as of the Agreement Date is important because Holder needs assurance that the Agreement could not be extinguished by foreclosure of a mortgage or other lien prior in right to the Agreement.

(b) Existing Agreements

- The Holder wants assurance that, for example, the Owners haven't given a tenant farmer a lease that would prevent Holder from crossing the Property to access the Riparian Corridor or that someone else has been granted the right to divert water away from the Waterway.

(c) Hazardous Materials

- Before taking an interest in land, it is prudent to request confirmation that the Owners do not know of any environmental problems associated with the Easement Area.

3.03 Repair of Accessory Facilities; No Duty to Inspect

- The purpose of this Section is to give Owners comfort that any Accessory Facilities installed by Holder will not become the problem of Owners to maintain and repair. While not requiring Owners to inspect regularly, the provision encourages Owners or members of the public utilizing Accessory Facilities to notify the Holder if they observe a dangerous or unsafe condition.

3.04 Immunity under Applicable Law

- The purpose of this Section is to give Owners comfort that, should a claim be asserted by someone injured within the Easement Area, they can, to the extent available, assert the defense of statutory immunity under the Recreational Use of Land and Water Act.
- Owners may want to be indemnified from claims for personal injury or property damage arising from the access to the Easement Area granted to the public under the Agreement. If the Commonwealth of Pennsylvania or any of its Departments or instrumentalities (including the Commission) is the Holder, the Commonwealth of Pennsylvania does not offer any indemnity to others for claims as to which it is immune from liability under the doctrine of sovereign immunity. Counties, local governments and private organizations acting as Holder may or may not be willing to indemnify Owners from such claims.
- If a Holder is willing to indemnify Owners from liability resulting from Public Access Claims, the following provision can be inserted as an additional section under Article III:

3.05 Responsibility for Losses and Litigation Expenses**(a) Public Access Claims; Owner Responsibility Claims**

If a claim for any Loss for personal injury or property damage occurring within the Easement Area after the Agreement Date (a "Public Access Claim") is asserted against either Owners or Holder, or both, it is anticipated that they will assert such defenses (including immunity under the Recreational Use of Land and Water Act) as are available to them under applicable law. The phrase "Public Access Claim" excludes all claims (collectively, "Owner Responsibility Claims") for Losses and Litigation Expenses arising from, relating to or associated with (i) personal injury or property damage occurring prior to the Agreement Date; (ii) activities or uses engaged in by Owners, their family members, contractors, agents, employees, tenants and invitees or anyone else entering the Property by, through or under the express or implied invitation of any of the foregoing; or (iii) structures, facilities and improvements within the Easement Area (other than Accessory Facilities installed by Holder).

(b) Indemnity

If immunity from any Public Access Claim is for any reason unavailable to Owners, Holder agrees to indemnify, defend and hold Owners harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim. Owner agrees to indemnify, defend and hold the

Holder harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.

(c) Loss; Litigation Expense

As used in this Agreement:

- (i) The term “Loss” means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.
- (ii) The term “Litigation Expense” means any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys’ fees, other professionals’ fees and disbursements.

Article IV. Miscellaneous

- **Purpose.** The purpose of this Article is to group together a variety of provisions pertaining to both Owners and Holder or pertaining to the administration or interpretation of the Agreement.

4.01 Notices

- The purpose of this Section is to provide a procedure for the giving of formal notices under the Agreement.

(a) Form of Notices

- Electronic mail and telefax can be added as well if the Holder is confident these means of communication will be duly noted. The customary practice is to require that notices by these means be followed promptly by notice delivered by one of the methods listed above.

(b) Address for Notices

- A street address should be furnished as commercial couriers (such as FedEx or UPS) cannot deliver to P.O. Boxes.

4.02 Governing Law

- In case the undersigned Owner or a future Owner is an out-of-state resident, this provision makes it clear that only the laws of the Commonwealth of Pennsylvania apply. This avoids a dispute about whether the laws of another jurisdiction or the choice of law rules of the Commonwealth of Pennsylvania apply.

4.03 Binding Agreement

- **Purpose.** To set forth the understanding of Owners and the Holder that the Agreement is not just the agreement of the undersigned persons but binds and benefits all persons who succeed to their respective interests.

4.04 Guides to Interpretation

- The provisions of this section are intended to assist future readers of the document to interpret it correctly.

(a) Conservation and Preservation Easements Act

- The purpose of this paragraph is to state the intention of the undersigned Owners to grant to the Holder all rights, powers and privileges accorded to the holder of a conservation easement under Applicable Law.

- The Conservation Easements Act defines a “third party right of enforcement” as “[a] right provided in a conservation easement to enforce any of its terms, granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.”
 - The Coal Rights Notice is required for compliance with §9(d) of the Conservation and Preservation Easements Act. The notice has been formatted to comply with the requirements of that Act – at least 12-point type and preceded by the word “Notice” in at least 24-point type.
- (b) Restatement of Servitudes**
- The purpose of this paragraph is to increase the likelihood that a court interpreting this Agreement, should there be any doubt as to the correct interpretation of a provision, will look to the Restatement of Servitudes as the better view of the law applicable to conservation easements. *See* Pregmon, Patricia L. “How Changes in the Law of Servitudes Affect Conservation Easements”, *Exchange: The National Journal of Land Conservation*, Vol. 24, No. 2, pp. 27-28.
- (c) Terms**
- The purpose is to avoid needless repetition of phrases.
- (d) Incorporation by Reference**
- The purpose is to avoid needless repetition of phrases.

4.05 Amendments; Waivers

- **Purpose.** This provision has several purposes. First, it puts Owners on notice that they should never rely on an oral statement of an employee or other representative of the Holder that is contradictory to the terms of the Agreement. Second, it puts the Holder on notice of their need to inform staff or other persons performing monitoring or administrative duties of the limits of their authority.
- **Authorization.** Holder must establish what authorization is needed for amendments, waivers or consents.
- **Amendment.** Ordinarily, an amendment needs to be approved by the same official or governing body that approves acceptance of the Agreement. An amendment is signed with all of the formalities required of the original Agreement and is intended to be recorded in the public records just as the original Agreement. An amendment permanently changes the terms of the Agreement.
- **Consent or Waiver.** A discretionary consent or waiver (even if in writing) does not constitute an amendment. It is granted for a particular purpose and only for a limited time due to extraordinary circumstances not contemplated under the Agreement. For example, a fire or extended drought may necessitate Owners taking extraordinary measures not specifically permitted under the terms of the Agreement. The terms of the Agreement remain unchanged but the Holder waives its right to invoke its remedies. A consent or waiver should always be memorialized in writing but it can simply be a letter from the Holder to Owners in response to a written request from Owners to the Holder requesting a waiver to permit specified activities for a specific period of time.

4.06 Severability

- **Purpose.** If the provisions of a document are dependent on each other, then if one fails they all fail. The provision set forth in this section is intended to avoid application of that rule – if one provision fails (for example, the Holder is not permitted a self-help remedy under applicable law) the others remain in full force.

4.07 Counterparts

- **Purpose.** There are several purposes for this provision. First, it makes clear that more than one counterpart of the Agreement can be signed. Second, it allows the undersigned Owners and Holder to exchange signature pages signed separately rather than circulate original documents back and forth to collect necessary signatures.

4.08 Entire Agreement

- The written text of the Agreement signed by Owners and the Holder is final and definitive. Whatever was proposed in previous drafts and said in previous negotiations is of no further consequence in interpreting the intentions of the parties.

Closing Matters

- **Closing:** The phrase “INTENDING TO BE LEGALLY BOUND” is especially important in Agreements where there is no consideration being given for the donation of the conservation servitude because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania. The term “consideration” means something of value given in return for a promise.
- **Witness/Attest:** It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.
- **Signature lines.** Add as many signature lines as are necessary to accommodate the number of Owners who will be signing the Conservation Easement. It is good practice to sign in black ink rather than blue ink so that signatures are legible on microfilm or microfiche.

- **Acceptance by Beneficiary.** The Conservation and Preservation Easements Act requires beneficiaries to sign the Agreement (or record a separate document of acceptance) to evidence their acceptance of the rights and duties. The acceptance does not have to be made a part of the initial Agreement but can be recorded later if and when the need arises for beneficiary to enforce its rights under the Agreement independent of the Holder. Delete or add Beneficiary signature lines as necessary.
- **Acknowledgment.** The date of the acknowledgment should not be earlier than the Agreement Date. *See* commentary to opening recitals of Agreement.
- **Exhibits.** Check that all exhibits referenced in the Agreement are attached to the Agreement before it is signed and recorded in the public records!

Appendix O: Model Flood Plain Overlay District Ordinance

Flood Plain Overlay District

COMMENT: These model regulations are primarily intended to address the problem of flash flooding along smaller creeks and stream valleys. They suggest that flood-prone areas (floodways and flood fringe areas) be left essentially as they are now, and that reconstruction or expansion of existing development be prohibited. The minimum flood plain standards that most municipalities now have would allow development in flood-fringe areas with minimal flood-proofing precautions and would also allow uses that are highly susceptible to flood damage, such as mobile homes. These model regulations would prohibit almost all uses in flood-fringe areas, and thus would eliminate the need for detailed flood-proofing standards. In municipalities where there is existing development in flood plain areas, the restrictions on new development in flood prone areas should be enacted as an amendment to the existing flood plain regulations. In such communities the standards for flood-proofing of structures and certain other requirements contained in DCA's guidelines should be retained.

Ordinance No. _____

AN ORDINANCE OF [MUNICIPALITY] AMENDING THE ZONING ORDINANCE; PROVIDING FOR A FLOOD PLAIN OVERLAY DISTRICT; PROVIDING FOR PURPOSES OF THE ORDINANCE; PROVIDING DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR USE RESTRICTIONS; PROVIDING FOR NOTICE; PROVIDING FOR WARNING AND DISCLAIMER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Whereas, the [Municipality] has prepared a comprehensive plan;

1 Whereas, the goals, policies and objectives of the comprehensive plan
2 provide that the character, location and magnitude of development should
3 be carefully reviewed to determine the impact of proposed development; and

4 Whereas, the [Municipality] desires to ensure that no new
5 development of structural uses occurs within protected flood plain areas and
6 aspires to protect existing development that is located in flood-prone areas;

7 NOW THEREFORE BE IT ENACTED AND ORDAINED by the [Governing
8 Body] of [Municipality] as follows.

9 **Section 1.** The Zoning Ordinance of [Municipality] is hereby amended to
10 add the following to [section of ordinance where amendment is appropriate]:

11 **A. Purpose.** The intent of the Flood Plain Overlay District is to:

- 12 (1) minimize the risk of flood damage, danger to the public safety,
13 risk of damage to property and financial burdens which may be
14 imposed on the community by the continued development of
15 flood-prone areas;
- 16 (2) encourage existing development in flood-prone areas to utilize
17 appropriate flood-proofing practices in order to prevent or
18 minimize flood damage in the future; and
- 19 (3) Comply with federal and state flood plain management
20 requirements.

21 **COMMENT:** *The Pennsylvania Department of*
22 *Community Affairs has issued three publications*
23 *containing suggested provisions meeting the*
24 *minimum requirements of Section 60.3(b), Section*
25 *60.3(c) and Section 60.3(d) of the National Flood*
26 *Insurance Program and the Pennsylvania Flood*
27 *Plain Management Act (1978-166), dated March*
28 *and June 1988. However, these publications*
29 *acknowledge that the minimum suggested*
30 *regulations do not contain everything that is*
31 *necessary or desirable for good flood plain*
32 *management. These model regulations suggest a*
33 *more aggressive approach to reducing the risk of*

**Model Regulations
Flood Plains**

1 *flood damage than the minimum requirements*
2 *published by the State.*

- 3 B. **Definitions.** For the purposes of these regulations, the terms below
4 shall have the meanings ascribed to them as follows:

5 "One Hundred (100) Year Flood Elevation" means the highest level
6 of flooding that, on the average, is likely to occur every 100 years;
7 that is, that has a one percent chance of occurring each year, although
8 the flood may occur in any year, and which is identified as Zone A
9 (Area of Special Flood Hazard) on community panel # __ of the most
10 recent Flood Insurance Rate Map (FIRM) issued by FEMA prepared for
11 [Municipality], effective _____ [date].

12 "Flood of Record Elevation" means the highest level of flooding that
13 has actually occurred within the past 100 years.

- 14 C. **Applicability.** The Flood Plain Overlay District imposes a set of
15 requirements in addition to those of the underlying zoning district
16 within the One Hundred (100) Year Flood Elevation. Land within the
17 Flood Plain Overlay District may be used only under the conditions of
18 this district and the underlying zoning districts.

19 *COMMENT: If no flood insurance maps have been*
20 *prepared for a municipality, the municipality*
21 *might consider requiring an applicant within fifty*
22 *(50) feet of the top-of-bank of a watercourse to*
23 *identify the one hundred year elevation or flood of*
24 *record elevation, whichever is greater, as well as a*
25 *floodway area, if possible, based on other sources*
26 *of flood information. If flood insurance maps*
27 *have been prepared, the Federal Insurance*
28 *Administration approval may be necessary to*
29 *adjust flood plain boundaries shown on these*
30 *maps.*

- 31 D. **Use Restrictions.** No new construction or development (including
32 enlargement or replacement of existing structures) shall be permitted
33 below the 100-year flood elevation, or, if the 100-year flood elevation
34 has not been mapped, within any area measured fifty (50) feet
35 landward from the top-of-bank of any watercourse except:

- 1 (1) Non-structural accessory uses, such as yards, gardens, and
2 parking areas; and
- 3 (2) Parks, playgrounds and outdoor recreation facilities not
4 requiring structures.

5 *COMMENT: The suggested use list above is more*
6 *restrictive than the minimum requirements of the*
7 *flood plain law. The flood plain law would allow*
8 *even vulnerable land uses, such as mobile homes,*
9 *hospitals, jails, nursing homes, etc., within flood*
10 *plain areas subject to special development*
11 *standards. Municipalities should examine the*
12 *underlying zoning districts carefully to determine*
13 *which uses should be prohibited, and list these uses*
14 *above. The famous case of First English*
15 *Evangelical Lutheran Church v. County of Los*
16 *Angeles, 482 U.S. 304, 107 S.Ct. 2378 (1987),*
17 *may have scared some municipalities into believing*
18 *that use restrictions in flood plains constitute an*
19 *illegal "taking" for which a municipality must pay*
20 *compensation. The Los Angeles ordinance in that*
21 *case prohibited any buildings or structures within*
22 *an interim flood protection area. Although the*
23 *Supreme Court held that it was possible for a*
24 *municipality to have to pay damages for a*
25 *regulatory taking, when the case was remanded,*
26 *no taking was found to occur. The law in this*
27 *area continues to rely heavily on the facts in a*
28 *specific case. In general, municipal regulations*
29 *stand a greater chance of surviving a takings*
30 *challenge if the reasons for the regulations are well*
31 *documented.*

32 E. Notice to Prospective Purchasers. No subdivision plat or land
33 development plan shall be recorded for any parcel in the Flood Plain
34 Overlay District unless the landowner records the following notice
35 with their deed:

36 "NOTICE TO PROSPECTIVE PURCHASERS": All or part
37 of this parcel has been classified as a flood-prone area,

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1 subject to special Flood Plain Overlay District
2 requirements set forth in the Zoning Ordinance.
3 Permitted land uses in flood-prone areas are strictly
4 limited to non-structural uses.

5 F. Warning and Disclaimer of Liability. The degree of flood protection
6 sought by the provisions of these overlay district regulations is
7 considered reasonable for regulatory purposes and is based on
8 acceptable engineering methods. Larger floods may occur. Flood
9 heights may be increased by man-made or natural causes, such as ice
10 jams and bridge openings restricted by debris. These regulations do
11 not imply that areas outside any identified floodplain overlay district,
12 or that uses permitted within such area will be free from flooding or
13 flood damage. These regulations shall not create liability on the part
14 of the [Municipality] or any officer or employee thereof for any flood
15 damage that result from reliance on this Zoning Ordinance or any
16 decision lawfully made hereunder.

17 Section 2. If any section or specific provision or standard of these
18 regulations that now exists or may exist in the future is found by a court to
19 be invalid for any reason, the decision of the court shall not affect the
20 validity of any other section, provision, or standard of these regulations
21 except the provision in question. The other portions of the regulations not
22 affected by the decision of the court shall remain in full force and effect.

23 Section 3. This Ordinance shall be effective upon its adoption in accordance
24 with applicable law.

Appendix P: Model Forest Management Ordinance

Model Regulations

Section 1. Policy; Purpose. In order to conserve forested open space and the environmental and economic benefits they provide, it is the policy of the Township [Borough] of _____ to encourage the owners of forest land to continue to use their land for forestry purposes, including the long-term production of timber, recreation, wildlife, and amenity values. The timber harvesting regulations contained in sections 1 through 8 are intended to further this policy by (1) promoting good forest stewardship; (2) protecting the rights of adjoining property owners; (3) minimizing the potential for adverse environmental impacts; and (4) avoiding unreasonable and unnecessary restrictions on the right to practice forestry.

Section 2. Scope; Applicability. To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout the township [borough], forestry activities, including timber harvesting, shall be a permitted use by right in all zoning districts. Sections 1 through 8 apply to all timber harvesting within the Township [Borough] where the value of the trees, logs, or other timber products removed exceeds \$1,000. These provisions do not apply to the cutting of trees for the personal use of the landowner or for pre-commercial timber stand improvement.

Section 3. Definitions. As used in Sections 1 through 8, the following terms shall have the meanings given them in this section.

- a. "Felling" means the act of cutting a standing tree so that it falls to the ground.
- b. "Forestry" means the management of forests and timberlands when practiced in accordance with accepted silvicultural principals, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.²
- c. "Landing" means a place where logs, pulpwood, or firewood are assembled for transportation to processing facilities.
- d. "Litter" means discarded items not naturally occurring on the site such as tires, oil cans, equipment parts, and other rubbish.
- e. "Lop" means to cut tops and slash into smaller pieces to allow the material to settle close to the ground.
- f. "Operator" means an individual, partnership, company, firm, association, or corporation engaged in timber harvesting, including the agents, subcontractors, and employees thereof.

² Only forests and timberlands subject to residential or commercial development shall be regulated under the township's [borough] land development and subdivision ordinance.

- g. "Landowner" means an individual, partnership, company, firm, association, or corporation that is in actual control of forest land, whether such control is based on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all the timber on such land in any manner, and any agents thereof acting on their behalf, such as forestry consultants, who set up and administer timber harvesting.
- h. "Pre-commercial timber stand improvement" means a forest practice, such as thinning or pruning, which results in better growth, structure, species composition, or health for the residual stand but which does not yield a net income to the landowner, usually because any trees cut are of poor quality, too small or otherwise of limited marketability or value.
- i. "Skidding" means dragging trees on the ground from the stump to the landing by any means.
- j. "Slash" means woody debris left in the woods after logging, including logs, chunks, bark branches, uprooted stumps, and broken or uprooted trees or shrubs.
- k. "Stand" means any area of forest vegetation whose site conditions, past history, and current species composition are sufficiently uniform to be managed as a unit.
- l. "Stream" means any natural or artificial channel of conveyance for surface water with an annual or intermittent flow within a defined bed and banks.
- m. "Timber harvesting," "tree harvesting," or "logging" means that part of forestry involving cutting down trees and removing logs from the forest for the primary purpose of sale or commercial processing into wood products.
- n. "Top" means the upper portion of a felled tree that is unmerchantable because of small size, taper or defect.
- o. "Wetland" means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar areas.

Section 4. Notification; preparation of a logging plan.

- a. **Notification of commencement or completion.** For all timber harvesting operations that are expected to exceed ___ acres, the landowner shall notify the township [borough] enforcement officer at least ___ business days before the operation commences and within ___ business days before the operation is complete. No timber harvesting shall occur until the notice has been provided. Notification shall be in writing and shall specify the land on which harvesting will

occur, the expected size of the harvest area, and, as applicable, the anticipated starting or completion date of the operation.

- b. Logging plan.** Every landowner on whose land timber harvesting is to occur shall prepare a written logging plan in the form specified by this ordinance. No timber harvesting shall occur until the plan has been prepared. The provisions of the plan shall be followed throughout the operation. The plan shall be available at the harvest site at all times during the operation and shall be provided to the township [borough] enforcement officer upon request.
- c. Responsibility for compliance.** The landowner and the operator shall be jointly and severally responsible for complying with the terms of the logging plan.

Section 5. Contents of the logging plan.

- a. Minimum requirements.** As a minimum, the logging plan shall include the following:
 - (1) Design, construction, maintenance, and retirement of the access system, including haul roads, skid roads, skid trails and landings;
 - (2) Design, construction, and maintenance of water control measures and structures such as culverts, broad-based dips, filter strips, and water bars;
 - (3) Design, construction, and maintenance of stream and wetland crossings; and
 - (4) The general location of the proposed operation in relation to municipal and state highways, including any accesses to those highways.
- b. Map.** Each logging plan shall include a sketch map or drawing containing the following information:
 - (1) Site location and boundaries, including both the boundaries of the property on which the timber harvest will take place and the boundaries of the proposed harvest area within that property;
 - (2) Significant topographic features related to potential environmental problems;
 - (3) Location of all earth disturbance activities such as roads, landings, and water control measures and structures;
 - (4) Location of all crossings of waters of the Commonwealth; and

- (5) The general location of the proposed operation to municipal and state highways, including any accesses to those highways.
- c. Compliance with state law.** The logging plan shall address and comply with the requirements of all applicable state laws and regulations including, but not limited to, the following:
- (1) Erosion and sedimentation control regulations contained in 25 Pennsylvania Code, Chapter 102, promulgated pursuant to the Clean Streams Law (35 P.S. §§691.1 et seq.);
 - (2) Stream crossing and wetlands protection regulations contained in 25 Pennsylvania Code, Chapter 105, promulgated pursuant to the Dam Safety and Encroachments Act (32 P.S. §§693.1 et seq.); and
- d. Relationships of state laws, regulations, and permits to the logging plan.** Any permits required by state laws and regulations shall be attached to and become part of the logging plan. An erosion and sedimentation pollution control plan that satisfies the requirements of 25 Pennsylvania Code, Chapter 102, shall also satisfy the requirements for the logging plan and associated map specified in paragraphs (a) and (b) of this section, provided that all information required by these paragraphs is included or attached.

Section 6. Forest practices. The following requirements shall apply to all timber harvesting operations in the Township [Borough].

- a. Felling or skidding on or across any public thoroughfare is prohibited without the express written consent of the Township [Borough] or the Pennsylvania Department of Transportation, whichever is responsible for maintenance of the thoroughfare.
- b. No tops or slash shall be left within twenty-five feet of any public thoroughfare or private roadway providing access to adjoining residential property.
- c. All tops and slash between twenty-five and fifty feet from a public roadway or private roadway providing access to adjoining residential property or within fifty feet of adjoining residential property shall be lopped to a maximum height of four feet above the surface of the ground.
- d. No tops or slash shall be left on or across the boundary of any property adjoining the operation without the consent of the owner thereof.
- e. Littering resulting from a timber harvesting operation shall be removed from the site before it is vacated by the operator.

Section 7. Responsibility for road maintenance and repair; road bonding. Pursuant to Title 75 Pennsylvania Consolidated Statutes, Chapter 49; and Title 67 Pennsylvania Code, Chapter 189, the landowner and the operator shall be responsible for repairing any damage to Township [Borough] roads caused by traffic associated with the timber harvesting operation to the extent the damage is in excess of that caused by normal traffic may be required to furnish a bond to guarantee the repair of such damages.

Section 8. Enforcement.

- a. **Township [Borough] Enforcement Officer.** The _____ shall be the enforcement officer for sections 1 through 8.
- b. **Inspections.** The township [borough] enforcement officer may go upon the site of any timber harvesting operation before, during, or after active logging to (1) review the logging plan or any other required documents for compliance with sections 1 through 8 and (2) inspect the operation for compliance with the logging plan and other on-site requirements of these regulations.
- c. **Violation notices; suspensions.** Upon finding that a timber harvesting operation is in violation of any provision of sections 1 through 8, the township [borough] enforcement officer shall issue the operator and the landowner a written notice of violation describing each violation and specifying a date by which corrective action must be taken. The township [borough] enforcement officer may order the immediate suspension of any operation upon finding that (1) corrective action has not been taken by the date specified in a notice of violation; (2) the operation is proceeding without a logging plan; or (3) the operation is causing immediate harm to the environment. Suspension orders shall be in writing, shall be issued to the operator and the landowner, and shall remain in effect until, as determined by the township [borough] enforcement officer, the operation is brought into compliance with sections 1 through 8 or other applicable statutes or regulations. The landowner or the operator may appeal an order or decision of an enforcement officer within thirty days of issuance to the governing body of the Township [Borough].
- d. **Penalties.** Any landowner or operator who (1) violates any provision of sections 1 through 8; (2) refuses to allow the township [borough] enforcement officer access to a harvest site pursuant to paragraph (b) of this section or who fails to comply with a notice of violation or suspension order issued under paragraph (c) of this section is guilty of a summary offense and upon conviction shall be subject to a fine of not less than one hundred dollars nor more than three hundred dollars, plus costs, for each separate offense. Each day of continued violation of any provision of sections 1 through 8 shall constitute a separate offense.

Appendix Q: Model Riparian Forest Buffer Protection Agreement and Commentary

RIPARIAN FOREST BUFFER PROTECTION AGREEMENT

THIS RIPARIAN FOREST BUFFER PROTECTION AGREEMENT (this "Protection Agreement") dated as of _____ (the "Agreement Date") is by and between _____ (the "undersigned Owner or Owners") and _____ (the "Holder").

Article I. Background

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:

Municipality:

County:

Parcel Identifier:

1.02 Purpose

(a) Conservation Objectives

The undersigned Owner or Owners and Holder are entering into this Protection Agreement to establish a riparian forest buffer (the "Riparian Buffer") along _____ Creek (the "Creek") for the following purposes (collectively, the "Conservation Objectives"): to maintain and improve the quality of water resources associated with the Creek; to perpetuate and foster the growth of healthy forest; to preserve habitat for Native Species dependent on water resources or forest; and to ensure that activities and uses in the Riparian Buffer are sustainable, i.e., they neither diminish the biological integrity of the Riparian Buffer nor deplete the soil, forest and other natural resources within the Riparian Buffer over time.

(b) Riparian Buffer Area

The Riparian Buffer consists of the strips of land stretching _____ (__) feet landward from the Top of the Banks of the Creek, together with the banks and bed of the Creek, to the extent that the strips, banks and bed are contained within the Property.

(c) Baseline Documentation

The report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, describes the conservation values of the Riparian Buffer identified in the Conservation Objectives, describes existing conditions of the Riparian Buffer including Existing Improvements as of the Agreement Date, and includes, among other information, photographs depicting the Riparian Buffer.

1.03 Owners' Control

Owners reserve all rights and responsibilities pertaining to their ownership of the Property but for the rights *specifically* granted to Holder in this Protection Agreement. No public access is granted by virtue of this Protection Agreement.

1.04 Defined Terms

Initially capitalized terms used and not otherwise defined in this Article I are defined in the last Article of this Protection Agreement (the "Glossary").

Article II. Restrictive Covenants: Improvements

No Improvements are permitted within the Riparian Buffer except as set forth in this Article II.

2.01 Existing Improvements

Any Existing Improvement may be maintained, repaired and replaced in its existing location. An Existing Improvement may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to an Additional Improvement of the same type set forth in this Article.

2.02 Additional Improvements

Only the following Additional Improvements are permitted within the Riparian Buffer:

(a) Existing Agreements

Improvements that Owners are required to allow under Existing Agreements.

(b) Other Additional Improvements

- (i) Fences, walls and gates along the perimeter of the Riparian Buffer; signs not exceeding one square foot each; and habitat improvement devices such as birdhouses and bat houses.
- (ii) Trails of highly porous surface and footbridges for non-motorized use.
- (iii) Subject to Review, fish passage, fish habitat improvement and stream bank stabilization structures.
- (iv) Subject to Review, irrigation facilities accessory to agricultural use of the Property.
- (v) Subject to Review, stream crossing and access structures and associated access corridor for the purpose of allowing passage across the Riparian Buffer by livestock, horses and agricultural equipment to cross the Creek or access water in the Creek in a specified location. It is Owners' responsibility to install fencing whenever necessary to prevent grazing within or other unrestricted access to the Riparian Buffer by horses or livestock.
- (vi) Subject to Review, access drives and utility lines but only if there is no other reasonably feasible means to provide access and utility services to the Property except via the Riparian Buffer.

Article III. Restrictive Covenants: Activities; Uses; Disturbance of Resources

No activities, uses or disturbances of resources are permitted within the Riparian Buffer except as set forth in this Article III.

3.01 Existing Agreements

Activities, uses and Construction that Owners are required to allow under Existing Agreements are permitted.

3.02 Other Activities and Uses

Except as provided in the preceding section, activities and uses within the Riparian Buffer are limited to those permitted below and provided in any case that the intensity or frequency of the activity or use does not have the potential to materially and adversely impair maintenance or attainment of Conservation Objectives.

(a) Disturbance of Resources

- (i) Cutting trees, Construction or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons, property or health of Native Species on or about the Riparian Buffer. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
- (ii) Planting Native Species but no monoculture.
- (iii) Removal of Invasive Species to accommodate replanting with Native Species.
- (iv) Sustainable forestry in accordance with a Resource Management Plan approved for that activity after Review but not within fifty (50) feet of the top of the bank of the Creek.

- (v) Agricultural use is limited to passage of horses, livestock and equipment via a corridor (if any) permitted under Article II to access water at a specified location or stream crossing structures (if any) permitted under Article II.
- (vi) Subject to Review, stream bank stabilization, dam removal and other habitat improvement activities.
- (vii) Other resource management activities consistent with Conservation Objectives and conducted in accordance with the Resource Management Plan approved for that activity after Review.
- (viii) Subject to Review, removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of and maintain access to Improvements within the Riparian Buffer with restoration as soon as reasonably feasible by replanting with Native Species.
- (ix) Vehicular use (including motorized vehicular use) in connection with an activity permitted within the Riparian Buffer or otherwise in the case of emergency.

(b) Recreational and Educational Uses

Activities that do not require Improvements other than those permitted within the Riparian Buffer and do not have the potential to materially and adversely affect Conservation Objectives such as (i) walking, nature study, bird watching, fishing and hunting; and (ii) other educational or scientific activities consistent with maintenance or attainment of the Conservation Objectives.

Article IV. Rights and Duties of Holder and Beneficiaries

4.01 Grant to Holder

By signing this Protection Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a conservation servitude over the Riparian Buffer in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in this Protection Agreement. The undersigned Owner or Owners warrant to Holder that the Riparian Buffer is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Protection Agreement as an exhibit the legally binding subordination of any Liens affecting the Riparian Buffer as of the Agreement Date.

4.02 Rights and Duties of Holder

The grant to Holder under the preceding section gives Holder the right and duty to perform the following tasks:

(a) Enforcement

To enforce the terms of this Protection Agreement in accordance with applicable provisions of this Protection Agreement including, in addition to other remedies, the right to enter the Property to investigate a suspected, alleged or threatened violation.

(b) Inspection

To enter the Property and inspect the Riparian Buffer for compliance with the requirements of this Protection Agreement upon reasonable notice, in a reasonable manner and at reasonable times.

(c) Review

To exercise rights of Review in accordance with the requirements of this Article as and when required under applicable provisions of this Protection Agreement.

(d) Interpretation

To interpret the terms of this Protection Agreement, apply the terms of this Protection Agreement to factual conditions on or about the Riparian Buffer, respond to requests for information from Persons having an interest in this Protection Agreement or the Riparian Buffer (such as requests for a certification of compliance), and apply the terms of this Protection Agreement to changes occurring or proposed within the Riparian Buffer.

4.03 Other Rights of Holder

The grant to Holder under this Article also permits Holder, without any obligation to do so, to exercise the following rights:

(a) Amendment

To enter into an amendment of this Protection Agreement with Owners if Holder determines that the amendment is consistent with and in furtherance of the Conservation Objectives; will not result in any private benefit prohibited under the Internal Revenue Code; and otherwise conforms to Holder's policy with respect to amendments of conservation servitudes.

(b) Signs

To install one or more signs identifying the protected status of the Riparian Buffer which may be located (i) within the Riparian Buffer or (ii) in another location within the Property readable from the public right of way and otherwise reasonably acceptable to Owners.

4.04 Review

The following provisions are incorporated into any provision of this Protection Agreement that is subject to Review:

(a) Notice to Holder

At least thirty (30) days before Owners begin or allow any Construction, activity or use that is subject to Review, Owners must notify Holder of the change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on natural resources within the Riparian Buffer.

(b) Notice to Owners

Within thirty (30) days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (i) accept Owners' proposal in whole or in part; (ii) reject Owners' proposal in whole or in part; (iii) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Owners' notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of the proposed Improvement, activity, use or Construction constitutes acceptance by Owners of all conditions set forth in Holder's notice.

(c) Failure to Notify

If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.

(d) Standard of Reasonableness

Holder's approval will not be unreasonably withheld; however, it is not unreasonable for Holder to disapprove a proposal that may adversely affect Conservation Objectives.

4.05 Beneficiaries

Owners and Holder grant and convey to any of the Persons identified below (collectively, the "Beneficiaries") the right to exercise Holder's rights and duties under this Protection Agreement should Holder fail to uphold and enforce in perpetuity the restrictions under this Protection Agreement.

- The conservation district of the county in which the Property is located.
- The Commonwealth of Pennsylvania acting through the Department of Environmental Protection.

Article V. Violation; Remedies

5.01 Breach of Duty

If Holder fails to enforce this Protection Agreement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Protection Agreement may be (i) exercised by a Beneficiary or a Qualified Organization designated by a Beneficiary; and/or (ii) transferred to another Qualified Organization by a court of competent jurisdiction.

5.02 Violation of Protection Agreement

If Holder determines that this Protection Agreement is being or has been violated or that a violation is threatened or imminent then the provisions of this Section will apply:

(a) Notice

Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Riparian Buffer damaged or altered as a result of the violation.

(b) Opportunity to Cure

Owners' cure period expires thirty (30) days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied: (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice; (ii) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation; (iii) Owners commence to cure within the initial thirty (30) day period; and (iv) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) Imminent Harm

No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm to natural resource within the Riparian Buffer described in the Conservation Objectives in clear violation of the terms of this Protection Agreement.

5.03 Remedies

Upon expiration of the cure period (if any) described in the preceding Section, Holder may do any one or more of the following:

(a) Coercive Relief

Seek coercive relief to specifically enforce the terms of this Protection Agreement; to restrain present or future violations of this Protection Agreement; and/or to compel restoration of natural resources destroyed or altered as a result of the violation.

(b) Civil Action

Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Protection Agreement together with interest thereon from the date due at an annual rate of interest equal at all times to two percent above the "prime rate" announced from time to time in *The Wall Street Journal*. These monetary obligations include, among others, Losses and Litigation Expenses.

(c) Self-Help

Enter the Property to prevent or mitigate irreparable harm to natural resources within the Riparian Buffer identified in the Conservation Objectives in clear violation of the terms of this Protection Agreement.

(d) Restitution

Seek restitution of any amounts paid for this Protection Agreement if the Riparian Buffer is the subject of a taking in eminent domain or other civil action seeking modification or termination of this Protection Agreement or release of the Riparian Buffer from this Protection Agreement.

5.04 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or otherwise under Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other remedies available to Holder at the same time or at any other time.

5.05 No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with this Protection Agreement or a waiver of Holder's rights to exercise its rights or remedies at another time.

5.06 No Fault of Owners

Holder will waive its right to reimbursement under this Article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

5.07 Continuing Liability

If the Riparian Buffer is transferred while a violation remains uncured, the transferor Owners remain liable for the violation jointly and severally with the transferee Owners. This provision does not apply if Owners (a) notify Holder of the names and address for notices of the transferees and, if less than the entirety of the Property is transferred, furnish Holder with a survey and legal description of the portion of the Property transferred; and (b) Holder has issued a certificate of compliance evidencing no violations within thirty (30)

days prior to the transfer. It is the responsibility of the Owners to notify Holder of the transfer and request a certificate of compliance to verify whether violations exist as of the date of transfer.

Article VI. Miscellaneous

6.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Protection Agreement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

6.02 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Protection Agreement.

6.03 Binding Agreement

This Protection Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

6.04 Amendments, Waivers

No amendment or waiver of any provision of this Protection Agreement or consent to any departure by Owners from the terms of this Protection Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given.

6.05 Severability

If any provision of this Protection Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Protection Agreement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Protection Agreement invalid, illegal or unenforceable in any respect.

6.06 Counterparts

This Protection Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

6.07 Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) any breach or violation of this Protection Agreement or Applicable Law; (b) damage to property or personal injury (including death) occurring on or about the Riparian Buffer if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

6.08 Guides to Interpretation

(a) Captions

Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Protection Agreement are for convenience only and do not constitute a part of this Protection Agreement.

(b) Terms

The word "including" means "including but not limited to". The word "must" is obligatory; the word "may" is permissive and does not imply any obligation.

(c) Conservation and Preservation Easements Act

This Protection Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390.

(d) Restatement of Servitudes

This Protection Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of Servitudes.

6.09 Entire Agreement

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Protection Agreement. The terms of this Protection Agreement supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Protection Agreement.

6.10 Incorporation by Reference

The following items are incorporated into this Protection Agreement by means of this reference:

- The Baseline Documentation
- The legal description of the Property attached as Exhibit "A"

6.11 Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the requirements of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390:

NOTICE: This Protection Agreement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Riparian Buffer.

Article VII. Glossary

7.01 Additional Improvements

All buildings, structures, facilities and other improvements within the Riparian Buffer other than Existing Improvements.

7.02 Applicable Law

Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Riparian Buffer or this Protection Agreement as amended through the applicable date of reference.

7.03 Beneficiary or Beneficiaries

The Persons (if any) designated as a Beneficiary under Article IV.

7.04 Construction

Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

7.05 Existing Agreements

Easements and other servitudes affecting the Riparian Buffer prior to the Agreement Date and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Protection Agreement.

7.06 Existing Improvements

Improvements located on, above or under the Riparian Buffer as of the Agreement Date as identified in the Baseline Documentation.

7.07 Improvement

Any Existing Improvement or Additional Improvement.

7.08 Indemnified Parties

Holder, each Beneficiary (if any) and their respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

7.09 Invasive Species

A plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “Plant Invaders of the Mid-Atlantic Natural Areas”, by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.

7.10 Lien

Any mortgage, lien or other encumbrance securing the payment of money.

7.11 Litigation Expense

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Protection Agreement including in each case, attorneys’ fees, other professionals’ fees and disbursements.

7.12 Losses

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

7.13 Native Species

A plant indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is Native.

7.14 Owners

The undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Riparian Buffer.

7.15 Person

An individual, organization, trust or other entity.

7.16 Resource Management Plan

A record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Objectives during certain operations potentially affecting natural resources protected under this Protection Agreement. The Resource Management Plan includes a resource assessment, identifies appropriate performance standards and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

7.17 Review

Review and approval of Holder under the procedure described in Article IV.

7.18 Review Requirements

Collectively, any plans, specifications or information required for approval of an activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Protection Agreement either as an exhibit or as part of the Baseline Documentation or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

7.19 Top of the Bank

The elevation at which rising waters begin to inundate the floodplain. In case of ambiguous, indefinite or nonexistent floodplain or question regarding location, the Top of the Bank shall be the bankfull water elevation as delineated by a person trained in fluvial geomorphology and utilizing the most recent edition of *Applied River Morphology* by Dave Rosgen or reference book of greater stature.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Protection Agreement as of the Agreement Date.

Witness/Attest:

Name:

By: _____
Name:
Title:

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

Riparian Forest Buffer Protection Agreement & Commentary

a model document and guidance

Prepared by the
Pennsylvania Land Trust Association

with support from the

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COMMENTARY

to the Riparian Forest Buffer Protection Agreement

Introduction to the Tool

The model Riparian Forest Buffer Protection Agreement (the “Protection Agreement”) is a tool to help private landowners and conservation organizations work in partnership to establish permanent riparian buffers along Pennsylvania’s waterways and lakes. The purpose of establishing these buffers is to:

- maintain and improve the quality of water resources associated with the waterway or lake
- perpetuate and foster the growth of healthy forest (or if natural conditions are not conducive to forest growth, then healthy marsh, shrub land, etc.)
- preserve habitat for native species dependent on water resources or forest; and
- ensure that activities and uses in the riparian buffer are sustainable, neither diminishing the biological integrity nor depleting the soil, forest and other natural resources within the riparian buffer over time.

The Protection Agreement achieves these conservation objectives while keeping the property in the landowner’s ownership and control.

The Protection Agreement is an agreement between the landowner (the “Owner”) and the conservation organization (the “Holder”). In the Protection Agreement, the Owner places permanent restrictions on activities that would harm the water, forest, or soil, and the Holder commits to watch over the land and enforce the restrictions.

The Holder of the Protection Agreement may be a charitable entity with a conservation purpose holding IRS 501(c)(3) tax status and registered with the Pennsylvania Bureau of Charitable Organizations (such as many “land trusts”, “watershed associations” or “conservancies”). Or the Holder may be a governmental body such as a county conservation district.

The Right Tool?

The Protection Agreement, also known as a *conservation easement* or *conservation servitude*, can be an appropriate tool to protect natural resources when it is necessary or desirable to keep the land in a private landowner’s ownership and control. If a conservation organization wants to manage the land in a significant way or to have substantial access to and use of the property, then acquisition of the land itself should be considered.

The Right Model?

The Protection Agreement is tailored specifically for where:

- The goal is to protect a relatively narrow ribbon of land along a waterway or lake for the purposes stated above; and
- The landowner is donating the conservation servitude, or the conservation organization is paying no more than a nominal amount for the conservation servitude; and
- The landowner is not seeking a charitable tax deduction on his or her federal income taxes for donation of the conservation servitude.

Presumably, the riparian buffers will most often comprise lands of severely limited development potential due to periodic flooding. The acreages to be restricted will most often be small due to the narrow width of the buffers. Consequently, the potential tax deduction (which generally equals the value of the development rights given up) may very well be less than the costs of securing the appraisal and other services needed for substantiating a federal tax deduction.

If the conservation situation is not as described in the above three points, then users should consider as an alternative base model the *Pennsylvania Conservation Easement & Commentary* available at conserveland.org.¹

General Instructions

- Users of the Protection Agreement are encouraged to read through the commentary at least once. The commentary follows the same Article and Section structure as the easement to make cross-referencing easy. To address different situations, the commentary often suggests alternative language to that found in the model. The commentary also explains the purposes behind many provisions.
- The Protection Agreement and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The Protection Agreement must be revised to reflect the specific circumstances of the particular conservation project under the guidance of legal counsel.
- Standard 9. Practice A. of the 2004 edition of *Land Trust Standards & Practices* published by the Land Trust Alliance (hereafter referred to in this commentary as S&P) requires the land trust to obtain legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced in real estate law.
- In the following commentary, titles in bold preceded by numbers refer to sections of the same title in the Protection Agreement. Bullets preceding text indicate a comment. Text without bullets varies with the context, covering alternative text to add to the Protection Agreement and extracts from other documents.
- Check conserveland.org periodically for updates to the Protection Agreement and commentary pertaining to the Protection Agreement.

Preliminary Matters

Margins

- Several counties (Montgomery and Chester, for example) require a minimum 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right and bottom margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5 inch by 11 inch paper. Many counties require type size not less than 10-point. The model has been formatted to conform to these requirements.

¹ If users seek to protect land beyond a relatively narrow riparian area or seek to establish multiple protection levels with substantially differing restrictions to address varying conservation objectives within a property, then the Pennsylvania Conservation Easement could be better suited to the task. If the economic value being given up is high, and the landowner wishes to pursue a federal tax deduction, then it is best if users either use the Pennsylvania Conservation Easement, which is specifically designed to meet IRS requirements, or very carefully incorporate the needed provisions into the riparian buffer model. If the conservation organization is paying the landowner a substantial sum for the conservation easement, then users should consider using the Pennsylvania Conservation Easement, which offers the landowner and purchaser more protections than are contained in the Riparian Buffer Conservation Easement.

Header

- In the final version of a document prepared using the model Protection Agreement as the base, it is good practice to remove the header “Revised through: [date].” In MS Word, click on *View*, then *Header and Footer*, delete the phrase and close.

Title of Document

- The document has been labeled a “Protection Agreement” because we believe that landowners will respond more favorably to it than the traditional alternative. It has been a common but not universal practice to use the term “conservation easement” to refer to the restrictive covenants and right to enforce the restrictive covenants contained in the Protection Agreement. However, there is growing momentum in the land trust community to use a more marketable term, such as Protection Agreement. To quote Public Opinion Strategies and Fairbank, Maslin, Maullin & Associates in a 6/1/04 memo to The Nature Conservancy and the Trust for Public Land:

Our research demonstrates clearly and unequivocally that the language the environmental community has been using on this issue has NOT been helpful in positioning the issue with the public. Instead, we recommend the following: DO NOT say “conservation easement.” DO say “land preservation agreements” or “land protection agreements.” ... The focus groups demonstrate that “easements” itself is NOT a positive term. It tends to evoke being forced into doing (or not doing) something with part of your land. In focus groups, the word “easements” made them think of restrictions on their property when they purchased a home or land.

- The term “conservation easement” causes immediate confusion and misconception. People fear that if a conservation easement is granted, the Holder (and perhaps the public) will have a continuing right of way over the property to enter at will and/or actively use the property. Most people, *lawyers and non-lawyers alike*, are unfamiliar with the concept of a “negative” easement – the right to compel an owner *not* to do something on his property. The vast majority of easements (other than conservation easements) grant affirmative rights of way to travel over or to maintain improvements on the property of another.
- The Restatement of Servitudes (Third) (a recently published summary of legal principles recommended by respected authorities) uses the term “conservation servitude” rather than conservation easement. The term “servitude” is an umbrella term for all types of promises that are binding on future landowners as well as the landowner making the promises. So both easements and restrictive covenants are included within a single concept. However, while many legal professionals may more quickly grasp the workings of the conservation tool if the term “conservation servitude” is used, the term seems unlikely to resonate with landowners. Hence, while “conservation servitude” is used in the commentary, it is generally avoided in the Protection Agreement itself.

Opening Recital

- **Purpose.** The purpose of the opening recital is to identify the parties to the document and the effective date of the document.

Agreement Date

- The date can be added in hand writing at the time of signing.
- The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), substitute for “dated as of ___”: “signed _____ but delivered _____”. The date of delivery is the effective “Agreement Date”.

Undersigned Owner or Owners

- Insert names exactly as set forth in the deed by which the Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title. The

customary practice is to recite these facts either in the Background section or at the end of the legal description attached as Exhibit “A”.

- The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.
- If a Person other than an individual is granting the conservation servitude, a phrase identifying the type of entity and state in which the Person was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.
- If a provision is intended to apply only to the Person signing the Protection Agreement, the phrase “the undersigned Owner or Owners” is used. In all other cases, the term “Owners” (always plural) is used. This arrangement of setting apart the undersigned Owner or Owners from all Owners present and future also has the practical advantage of not requiring conversion of plural to singular or vice versa throughout the document depending upon whether one or more than one persons signed the document.

Holder

- The full legal name of the Holder (including Inc. or Incorporated if part of the legal name) should be inserted here.
- A phrase identifying the type of entity and state in which the Holder was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania non-profit corporation.

Article I. Background

- **Purpose.** The purposes of Article I “Background” are to inform the reader of the factual information necessary to understand the subject matter of the document and the intentions of the parties in entering into a legally binding relationship. The material in the Background section should never be used to set forth enforceable restrictions on the Property.
- **Articles and Sections.** The model has been structured in Articles and Sections rather than a list of paragraphs. There are several practical reasons for this. One reason is to encourage additional provisions to be clustered with similar provisions instead of adding them to the end where they may be missed in a quick review. Another reason is to avoid wherever possible cross-references to specific paragraphs. A common drafting error is to add or delete paragraphs and not check whether cross-references are still correct. This structure seeks to minimize the opportunities for that error to occur.

1.01 Property

- **Purpose.** The purpose of this Section is to identify the land affected by this Protection Agreement.

Street Address:

Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example: 100 acres more or less north side of ___ Road west of the intersection of ___ Road and ___ Road.

Municipality:

Insert the city, township or borough in which the Property is located. This may or may not be the name of the town used for mailing address purposes.

County: Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in both counties.

Parcel Identifier: The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. *See* Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337). Some counties charge additional recording fees to note the tax parcel number and/or uniform parcel identifier number on the document presented for recording if not furnished in the document itself or the legal description attached as Exhibit “A”.

1.02 Purpose

- **Purpose.** This Section serves a number of important purposes. First and most obvious is that it sets out the intentions of the parties with respect to the conservation of the Riparian Buffer. Second it is intended as an educational tool for future Owners. Third, it will serve as a guide for future amendment: there may be perfectly acceptable alternative means to achieve the same ends. Fourth, if the Protection Agreement becomes the subject of litigation, it will help inform the court of the rationale underpinning particular covenants.
- (a) **Conservation Objectives**
- Substitute “Stream”, “River” or “Lake” as appropriate for “Creek” by universal change throughout the document.
 - If all or portions of the land to be protected are naturally incapable of supporting forest but can support ecologically important habitat, then alter the Conservation Objectives as appropriate. (Also, remove “Forest” from the title of the document if appropriate.) For example:
 - to maintain and improve the quality of water resources associated with the Creek; to perpetuate and foster the growth of healthy forest, shrub land or other biological communities as would be naturally found with the Riparian Buffer; to preserve habitat for Native Species dependent on water resources, forest or other natural habitat; ...
- (b) **Riparian Buffer Area**
- The Protection Agreement defines the Riparian Buffer as: (i) the strips of land stretching ___ feet landward from the Top of Banks of the Creek, (ii) the banks of the Creek, and (iii) the bed of the Creek. The definition goes on to limit this area to that portion actually contained within the Property.
 - This approach enables users to use the same definition whether the Owner owns one side of the stream or both sides.
 - This description creates a Riparian Buffer that moves with the stream if the stream should meander. This supports a key purpose of the Protection Agreement – to protect the stream’s water resources – wherever the stream may be at any particular time.
 - The alternative to a moveable Riparian Buffer is to describe the Riparian Buffer as a fixed location permanently marked on the ground. The fixed location may be less desirable because (i) the water resources would likely receive less effective protection if the stream meandered; and (ii) the fixed location would have to be described in accordance with a metes and bounds survey to conform to

the requirements of the Pennsylvania Conservation Easements Act which would result in additional expense.

- Another alternative is to establish the Riparian Buffer as a uniform width measured from the centerline of the stream. This has the advantage of being simple to state in writing. However, with this approach a wider section of stream would receive less protection than a narrower section since a portion of the uniform buffer width includes the streambed, and less buffer is actually established as compared to a buffer measured from the bank with the same nominal buffer width. Also, measuring a buffer from a stream centerline can be more challenging in the field than from the Top of the Bank.
- A stream may meander off the Owners' property. In that case, whether the Riparian Buffer was fixed or moveable, measured from bank or centerline, the Holder would not be able to require compliance with the Protection Agreement as applied to areas outside the Property.
- The description of the Riparian Buffer might also reference a boundary established by another public document such as a 50-year or 100-year flood plain. A key challenge with this approach is translating a boundary on a map into markings on the ground.
- The width of the strips of land stretching landward from the Top of Banks of the Creek (i.e., the blank to be completed in §1.02(b)) may be any width but should be as wide as is acceptable to the Owner who enters into the Protection Agreement and, in any event, not less than thirty-five (35) feet. The 35-foot minimum is consistent with the minimum width for riparian forest buffer required under the Conservation Reserve Program originally authorized under the Food Security Act of 1985 and regulations promulgated under that act set forth in Title 7 of the Code of Federal Regulations Part 1410 ("CRP") and the Conservation Resource Enhancement Program, 16 U.S.C.S. §3831 *et seq.* ("CREP"). See also the recommendations in *Riparian Forest Buffers* (Welsch, 1991), Forest Resources Management, USDA Forest Service, Radnor, PA, NA-PR-07-91, available on-line at www.na.fs.fed.us/spfo/pubs/n_resource/riparianforests/Tab%20II.htm.
- A description of the Riparian Buffer by means of a setback from a stream bank conforms to the requirements of §4(b) of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. No. 330 set forth below. Otherwise, a metes and bounds description is required if the Riparian Buffer is less than the entirety of the Property.

[A] conservation easement may encompass an entire fee simple interest in a parcel of real property as described in the deed to the property, or any portion thereof or estate therein. Except when referencing an easement's boundary using setback descriptions from existing deed boundaries or natural or artificial features, such as streams, rivers or railroad rights-of-way, a metes and bounds description of the portion of property subject to the easement shall be provided in the easement document.

- In most cases, it is expected that parties should be able to reasonably agree to the location of the Top of the Bank. However, in case of ambiguous, indefinite or nonexistent floodplain or question regarding location, the model's approach provides science-based instructions for determining Top of the Bank to be found in the definition of Top of the Bank in Article VII.
- (c) **Baseline Documentation**
- The Baseline Documentation is intended to serve as an objective information baseline for monitoring compliance with the terms of the Protection Agreement. Among other information describing and depicting the Stream and the vegetative and other resources to be found within the Riparian Buffer, the Baseline Documentation should include photographs identifying the location of the Stream as of the Agreement Date. The Baseline Documentation is incorporated into the text of the Protection Agreement under §6.10 even though it is not attached to the recorded documentation. Because it is not attached to the recorded document, it is imperative that the definitive baseline report be signed by the undersigned Owners and the Holder with a notation identifying the report as the Baseline Documentation referred to in the Protection Agreement between Owners and the Holder dated ____.

1.03 Owners' Control

Applicable rules of law provide that, except for rights specifically granted, all other rights pertaining to the ownership of land remain vested in the Owners. This provision is intended to provide comfort to Owners that they are not relinquishing any control over their Property except as specifically set forth in Articles II and III and they are not granting any rights of access except to the Holder for monitoring purposes as set forth in Article IV.

1.04 Defined Terms

The purpose of this Section is to direct the reader to Article VII for the definitions of other terms used in this Protection Agreement.

Additional Provision, if applicable: The following section may be added to Article I if Owners receive payment for the grant of the Protection Agreement:

1.05 Purchase Price

In consideration of the grant of this conservation servitude, Holder has paid to the undersigned Owner or Owners the sum of \$_____ (the "Purchase Price"). The undersigned Owner or Owners acknowledge receipt of payment in full of the Purchase Price.

Additional Provision, if applicable: The following section title could be added to Article I along with other text as indicated below if Owners intend to seek a federal tax deduction for the grant of the Protection Agreement:

1.06 Charitable Contribution

- The model Protection Agreement must be adapted if the Owners intend to seek a charitable deduction on their federal income tax return for donating to Holder the rights to enforce the Protection Agreement. If Owners desire to claim a charitable contribution for the grant of the conservation servitude, consider using the Pennsylvania Conservation Easement (available at conserveland.org) as the base document. Alternatively, amend the Protection Agreement to include those provisions of the Pennsylvania Conservation Easement required to qualify the grant as a charitable contribution; for example, those set forth in Article I entitled "Charitable Contribution" of the Pennsylvania Conservation Easement. Owners and their counsel are also advised to review the commentary accompanying the Pennsylvania Conservation Easement for the requirements that apply to charitable deductions of Qualified Conservation Contributions under §170(h) of the Internal Revenue Code.

Article II. Restrictive Covenants: Improvements

- **Purpose.** The purpose of this Article is to control the size and location of Improvements within the Riparian Buffer consistent with Conservation Objectives.
- The Article begins with a broad prohibition on Improvements to assure that the list of permitted items comprises the universe of Improvements permitted within the Riparian Buffer.

2.01 Existing Improvements

- Existing Improvements within the Riparian Buffer are always permitted to remain in their existing locations as of the Agreement Date.

2.02 Additional Improvements

(a) Existing Agreements

- Existing Agreements are entitled to priority over the Protection Agreement under Applicable Law so there is no point in trying to control the exercise of those rights by persons who are not a party to the Protection Agreement.
- The model can be used in conjunction with existing CRP and CREP agreements.

(b) Other Additional Improvements

- The phrase “subject to Review” may be added to subsections (i) and/or (ii) if the undersigned Owners and Holder desire Holder to exercise rights of Review prior to commencement of Construction of the items permitted in those subsections.
- The list may be expanded; however, Additional Improvements within the Riparian Buffer should be limited to those that the Holder has determined are consistent with Conservation Objectives for conservation of this ecologically sensitive area.
- The model is constructed with a very limited list of Additional Improvements. Because the list of items is so limited, additional limitations such as impervious coverage limitations were not considered necessary. However, if the list in this section is expanded to include items with the potential for significant Impervious Coverage, then a “Limitations on Additional Improvements” section should be added. *See*, for example, limitations provided in the Pennsylvania Conservation Easement applicable to Improvements within the Standard Protection Area.
- Additional limitations may be imposed on trails. Trails may be limited to a relatively narrow width (such as 4-6 feet). On the other hand, a wider path (particularly when used as a bridle path) may be less likely to become rutted.
- The reference to “highly porous” in §2.02(b)(ii) includes paths covered by gravel, stone or wood chips.

Article III. Restrictive Covenants: Activities; Uses; Disturbance of Resources

- **Purpose.** The purpose of this Section is to control intensity of use of land and disturbance of natural resources identified in the Conservation Objectives.
- The Protection Agreement does not create affirmative obligations on the Owners to perform any particular resource management activities. Accordingly, Holders are encouraged to educate Owners as to appropriate activities to enhance forest buffers.

3.01 Existing Agreements

- Activities, uses and disturbances of resources that a Person has a right to do under an Existing Agreement are permitted as a matter of right anywhere within the Property. Land trusts should obtain title information to determine what rights Persons have to disturb natural resources within the Property by exercise of rights under Existing Agreements.

3.02 Other Activities and Uses

- **Purpose.** The purpose of this section is to describe those activities that are consistent with protection of water resources and other Conservation Objectives for the Riparian Buffer.

(a) Disturbance of Resources

- **Hazardous Conditions.** The provision in subsection (i) is intended to shield the Holder from liability for personal injury or property damage occurring on or about the Property by trees limbs falling or similar hazards. Holders who are concerned that this provision creates a loophole for

unwarranted interference with trees and other resources should consult with their legal counsel and insurance representatives before changing the provision.

- **Review.** Except for the provision pertaining to hazardous conditions in subsection (i) (which should be permitted without Review to avoid liability), Holders may use their discretion whether or not they want to condition other activities on “subject to Review”.
- (b) Nature Preserve and Trail Uses**
- Owners should be aware that permitting hunting, fishing and other uses listed in this paragraph does not mean that public access must be given for these purposes. If Owners and Holder desire to establish an easement or license vesting a public right of access for these activities, they must either do so by separate agreement or by adding a section to Article IV granting public access. *See* commentary to Article V of the Pennsylvania Conservation Easement re: “Grant of Public Access”.
 - The Holder may use its discretion to expand the list of permitted activities to include others – such as horseback riding and biking – that may or may not have the potential to materially and adversely affect Conservation Objectives applicable to the particular Riparian Buffer.

Article IV. Rights and Duties of Holder and Beneficiaries

4.01 Grant to Holder

- **Purpose.** This section describes the necessary conditions to create a legally binding conveyance of an interest in real property whether or not consideration is present.
- **Unconditional.** The grant to the Holder must be unconditional. Conditional delivery is not sufficient; for example, if a signed document is delivered in escrow to a third party (a title company, for example) the document is not effective until released from escrow.
- **Perpetual.** The model has been constructed to extend for a perpetual term the protection given to a Riparian Buffer for a term of years under CRP or CREP.
- **Recording.** Recording in the Public Records is necessary to make the covenants binding upon future owners who do not otherwise know about the terms of the Protection Agreement but the grant is complete once the document is signed and unconditionally delivered.
- **Consideration.** The phrase “intending to be legally bound” is a valid substitute for consideration (that means it makes a promise to make a gift as enforceable as other contracts) under the Uniform Written Obligations Act, 33 Pa. Stat. §6.
- **Grant and Convey.** The words “grant and convey” have a special meaning in real estate law. When an Owner grants and conveys that automatically means that the Owner warrants that he or she owns the property (or interest in the property) being conveyed in fee simple and has a right to convey the property.
- **Conservation Servitude.** According to the Restatement (Third) of Servitudes, a “conservation servitude” is a servitude for conservation purposes. A servitude is promise that is binding upon future owners of the property. Conservation purposes include retaining or protecting the natural, scenic or open-space value of land, assuring the availability of land for agricultural, forest, recreational or open-space use, protecting natural resources, including plant and wildlife habitats and ecosystems, and maintaining or enhancing air or water quality or supply.
- **Subordination of Liens.** Subordination of any Lien affecting the Property as of the Agreement Date is important because Holder needs assurance that the Protection Agreement could not be extinguished by foreclosure of a Lien prior in right to the Protection Agreement.

4.02 Rights and Duties of Holder

- **Standard of Care.** Note that in this section the Holder not only has the right but also the obligation to perform the tasks listed in §4.02. Whenever a Person owes a duty to another, the Person has the obligation to perform the duty in good faith and with a standard of care that a reasonably prudent person would use. The following section (§4.03) lists rights that the Holder may but is not obligated to perform.

4.03 Other Rights of Holder

- **Purpose.** To give the Holder the right and power to perform at its election, the discretionary powers identified in this section.

(a) Amendment

- **Policy for Amendment.** The Pennsylvania Land Trust Association (“PALTA”) urges Holders to formulate and adopt a policy on amendment. PALTA intends to publish at conserveland.org examples of amendment policies adopted by land trusts in Pennsylvania. For an explanation of private benefit rules, refer to §501(c)(3) of the Internal Revenue Code and associated regulations.

(b) Signs

- **Project Identification.** Installing signage may benefit the Holder in several ways. First, signs bring to the attention of the public the benefits of conservation of riparian buffer. Second, signs provide notice to a prospective purchaser, lessee or other user of the Property of the interest of the Holder. It then becomes their responsibility to inquire about the terms of the Protection Agreement.
- **Public Access.** Rights to install trail signage may need to be added if it is expected that Owners may someday grant a right of public access to the Riparian Buffer.

4.04 Review

- **Purpose.** The purpose of this section is to provide the procedure for Review as and when Review is required under Articles II and III.

(a) Notice to the Holder

- This provision contains the procedural requirements to initiate the Review process.
- If the Holder has adopted a specific set of minimum criteria for submission, then this provision should be modified to substitute following after “including with the notice”: “the items required for such submission under the Review Requirements of the Holder”. The definition of “Review Requirements” in Article VIII accommodates two approaches – the Review Requirements can be simply included in the Baseline Documentation or can also be attached as an Exhibit to the Protection Agreement. In either case, the definition incorporates changes to the Review Requirements over time.

(b) Notice to Owners

- Among the four possible responses to Owners’ request for Review is rejection of Owners’ proposal for insufficiency of information on which to base the Holder’s decision. This alternative is included so as to avoid the need to incorporate detailed Review Requirements into the Protection Agreement and to give the Holder a reasonable opportunity to determine whether or not additional information is needed to give a definitive response to Owners’ proposal.

(c) Failure to Notify

- This subsection sets forth the consequences of the Holder’s failure to respond in a timely way. An alternative to extending the time in subsection (b) above to 45, 60 or 90 days is to reverse the “deemed approved” to “deemed disapproved.” The rationale for this reversal is that it provides an incentive to Owners to contact the Holder before the running of the 30-days to be sure the Holder has received all of the information the Holder needs to make the decision. It is also more likely

that, if additional time is needed to make the decision, it is to the benefit of Owners to grant the extension.

(d) Standard of Reasonableness

- The approach taken by the model is to require the Holder to act reasonably in discharging its duty to Review. The rationale for this approach is that courts are unlikely to sustain a “sole and arbitrary standard”. However, to avoid the risk that a court might hold the Holder to a standard of commercial reasonableness, the model provides a standard of “ecological reasonableness”.

4.05 Beneficiaries

- **Purpose.** The purpose of this section is to describe one or more Beneficiaries who are intended to have rights to exercise Holder’s rights if the Holder should fail in its duties. Alternatively, one or more Beneficiaries could be granted additional rights. For example:

The _____ Conservation District has the following rights as Beneficiary of this Protection Agreement: (i) the right to exercise Holder’s rights and duties under this Protection Agreement should Holder fail to uphold and enforce in perpetuity the restrictions under this Protection Agreement; (ii) the right to approve any transfer of Holder’s rights under this Protection Agreement; and (iii) the right to approve any amendment of this Protection Agreement.

Additional Provision, if applicable: The following section may be added to Article IV to help the Holder cover costs in discharging its duties with respect to the Protection Agreement. This provision is particularly important if the Holder has not secured sufficient stewardship funding to cover all costs likely to be incurred as a result of holding the Protection Agreement.

4.06 Reimbursement

Owners must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Protection Agreement other than monitoring in the ordinary course. These costs and expenses include the allocated costs of employees of Holder.

- This provision correlates the obligation of Owners to reimburse with the obligations of the Holder to enforce, inspect, review and interpret under §4.02. Note that expenses under §4.03(a) entitled “Amendment” are not automatically covered. These should be handled as part of the amendment agreement.

Article V. Violation; Remedies

5.01 Breach of Duty

- **Purpose.** The purpose of this provision is to ensure that the Protection Agreement will be enforceable in perpetuity.

5.02 Violation of Protection Agreement

- **Purpose.** This section sets forth the procedure for enforcement of the Protection Agreement.
- **Persons Responsible.** Do not alter this provision to create a connection between the violation and some act or failure to act by Owners. A violation is a violation whether or not caused by Owners. Tenants, invitees and trespassers can violate the restrictive covenants set forth in the Protection Agreement. It is up to Owners to maintain control over the Property; however the section titled “No Fault of Owners” under this Article should give Owners comfort that they will not be unreasonably held responsible for the acts of others.

(a) Notice

- **Purpose.** This provision is to give Owners some comfort that, before they are exposed to monetary damages or other remedies, they will be given notice and opportunity to cure the violation. See Article VI for requirements applicable to notices.

(b) Opportunity to Cure

- **Purpose.** The approach taken by the model is to provide a reasonable period to cure if, within the initial 30-day period, there is a meeting of the minds between Owners and the Holder as to what constitutes a reasonable cure and what constitutes a reasonable period of time to effectuate that cure.

(c) Imminent Harm

- **Purpose.** If the Holder becomes aware of a prohibited activity that will destroy protected resources, the Holder cannot delay obtaining a court order to cease the activity. For example, if the violation is tree cutting, the trees will be gone by the time the cure period expires.
- **Consultation.** On the other hand, Owners frequently want some kind of notice before they become responsible for Litigation Expenses incurred by the Holder based on an alleged violation. If that is an issue, the Holder can consider adding a statement to the effect that the Holder will endeavor to communicate or consult with Owners regarding the alleged violation prior to commencement of remedies. Do not use the words “notice” or “notify” because that will require written notice given in accordance with Article VI. Consulting or communicating with Owners can be accomplished via a telephone call.

5.03 Remedies

- **Purpose.** The purpose of this section is to describe the specific remedies that the undersigned Owners and the Holder agree are appropriate if a violation should occur in the future.
- **Enforceability of Waivers.** Drafters of conservation servitudes need to keep in mind that not all promises of the undersigned Owners are binding upon future Owners of the Property who did not, themselves, make the promise. The rule developed by case law over many centuries required that the promise had to be about something pertaining to the land itself. For example, the restrictive covenants in Articles II and III are unquestionably binding upon future Owners. On the other hand, it is highly questionable whether a court would enforce against future Owners waivers of procedural or constitutional rights just because the undersigned Owner was willing to do so.
- **Due Process of Law.** The approach taken by the model is to include only those remedial provisions that a court would be willing to enforce against all Owners and that do not purport to waive the constitutional rights of Owners to notice, opportunity to be heard, to have the dispute determined by a court before a jury and any other constitutionally protected right of due process of law.
- **Arbitration; Mediation.** Provisions for arbitration and/or mediation are sometimes added to conservation servitudes; however, it is doubtful that the undersigned Owner can waive the constitutional right of future Owners to a trial by jury so requirements for mandatory arbitration or mediation may be of limited usefulness in a conservation easement. Holders who want to insert provisions for arbitration or mediation should consult with counsel and choose an effective and enforceable provision. For information on arbitration and mediation, consult the website of the American Arbitration Association (www.adr.org) which provides a “Practical Guide to Drafting Dispute Resolution Clauses”.

(a) Coercive Relief

- **Purpose.** Relief in the nature of a court order forcing a Person to do or refrain from doing certain activity is a special remedy that under Applicable Law usually requires a showing that other relief will not suffice to make the Person harmed by the activity whole.
- **Restatement.** The Restatement (Third) of Servitudes recommends special treatment for a conservation servitude held by a governmental body or a conservation organization: it is

enforceable by coercive remedies and other relief designed to give full effect to the purposes of the servitude without the showing otherwise required under Applicable Law.

(b) Civil Action

- This remedy is intended to furnish the Holder with a judgment for a specific sum of money that the Holder is entitled to collect from Owners. The judgment automatically creates a lien on the real property of Owners in the county in which the judgment is entered and can be enforced against any assets of Owners. The amount of the judgment will be set by the court in the reasonable amount necessary to compensate the Holder for Losses, Litigation Expenses and other sums owing by Owners under the Protection Agreement.

(c) Self-Help

- Many Holders will want the power to enter the Property so as to stop a violation while a court order is being sought to restrain further activity. Holders are urged to consult with counsel and, if circumstances suggest that the entry is unwelcome, consider requesting police escort. The power of self-help should be used only if the entry can be made without violence and without harm to persons or property.

5.04 Remedies Cumulative

- **Purpose.** The purpose of this provision is to negate the presumption under Applicable Law that once a Person chooses a particular remedy, the Person has made his election and cannot choose others or pursue more than one remedy at the same time.

5.05 No Waiver

- **Purpose.** If a violation of the Conservation Easement occurs and the Holder doesn't notice it or for some reason ignores it, a court could refuse to use its power to require correction of the violation if the court found that, under the circumstances, strict enforcement would be unfair or unjust to Owners. The purpose of this provision is to avoid application of that rule.

5.06 No Fault of Owners

- **Purpose.** This provision is intended to give some comfort to Owners that they will not be held responsible for the acts of others.
- **Burden of Proof.** The provision is specifically worded to avoid imposing on the Holder the burden of proving that a particular violation was the fault of Owners and no one else.

5.07 Continuing Liability

- **Purpose.** Many forms have a requirement for prior notice of a transfer but there is really no remedy if the transferring Owner fails to do so. This provision is intended to provide a compelling incentive for the Owners to obtain a certificate of compliance prior to a transfer.

Article VI. Miscellaneous

- **Purpose.** The purpose of this Article is to group together a variety of provisions pertaining to both Owners and the Holder or pertaining to the administration or interpretation of the Protection Agreement.

6.01 Notices

- The purpose of this Section is to provide a procedure for the giving of formal notices under the Protection Agreement.

(a) Form of Notices

- Electronic mail and telefax can be added as well if the Holder is confident these means of communication will be duly noted. The customary practice is to require that notices by these means be followed promptly by notice delivered by one of the methods listed above.

(b) Address for Notices

- A street address should be furnished as commercial couriers (such as FedEx or UPS) cannot deliver to P.O. Boxes.

6.02 Governing Law

- In case the undersigned Owner or a future Owner is an out-of-state resident, this provision makes it clear that only the laws of the Commonwealth of Pennsylvania apply. This avoids a dispute about whether the laws of another jurisdiction or the choice of law rules of the Commonwealth of Pennsylvania apply.

6.03 Binding Agreement

- **Purpose.** To set forth the understanding of Owners and the Holder that the Protection Agreement is not just the agreement of the undersigned Persons but binds and benefits all Persons who succeed to their respective interests.

6.04 Amendments, Waivers

- **Purpose.** This provision has several purposes. First, it puts Owners on notice that they should never rely on an oral statement of an employee or other representative of the Holder that is contradictory to the terms of the Protection Agreement. Second, it puts Holders on notice of their need to inform staff or other Persons performing monitoring or administrative duties of the limits of their authority.
- **Authorization.** Holders need to establish what authorization is needed for amendments, waivers or consents.
- **Amendment.** Ordinarily, an amendment needs to be approved by the Board or other governance committee that approves acceptance of the Protection Agreement. An amendment is signed with all of the formalities required of the original Protection Agreement and is intended to be recorded in the Public Records. An amendment permanently changes the terms of the Protection Agreement.
- **Consent or Waiver.** A discretionary consent or waiver (even if in writing) does not constitute an amendment. It is granted for a particular purpose and only for a limited time due to extraordinary circumstances not contemplated under the Protection Agreement. For example, a forest fire or extended drought may necessitate Owners taking extraordinary measures not specifically permitted under the terms of the Protection Agreement. The terms of the Protection Agreement remain unchanged but the Holder waives its right to invoke its remedies under Article V. A consent or waiver should always be memorialized in writing but it can simply be a letter from the Holder to Owners in response to a written request from Owners to the Holder requesting a waiver to permit specified activities for a specific period of time.

6.05 Severability

- **Purpose.** If the provisions of a document are dependent on each other, then if one fails they all fail. The provision set forth in this section is intended to avoid application of that rule – if one provision fails (for example, the Holder is not permitted a self-help remedy under Applicable Law) the others remain in full force.

6.06 Counterparts

- **Purpose.** There are several purposes for this provision. First, it makes clear that more than one counterpart of the Protection Agreement can be signed. Second, it allows the undersigned Owners and Holder to exchange signature pages signed separately rather than circulate original documents back and forth to collect necessary signatures.

6.07 Indemnity

- **Purpose.** The Riparian Buffer is not in the care, custody or control of the Holder. The Holder needs to be protected from claims that are the responsibility of the Owners in the first place so that Owners (or their insurer) will defend those claims without the need for the Holder to furnish its own defense and incur Litigation Expenses.

- Among other liabilities under Applicable Law, this provision is intended to avoid Litigation Expenses in case the Holder is named as a potentially responsible party with respect to an alleged violation of environmental laws on or about the Property.
- This provision is intended to place the burden for defense of claims ordinarily covered by homeowners insurance on the Owners and their insurer.

6.08 Guides to Interpretation

- The provisions of this section are intended to assist future readers of the document to interpret it correctly.
 - (a) Captions**
 - This provision is self-explanatory; however, drafters need to be aware of the consequences of falling afoul of this provision. You cannot rely on a caption to convey meanings that are not in the text itself.
 - (b) Terms**
 - These provisions avoid needless repetition of phrases.
 - (c) Conservation and Preservation Easements Act**
 - The purpose of this paragraph is to state the intention of the undersigned Owners to grant to the Holder all rights, powers and privileges accorded to the holder of a conservation easement under Applicable Law.
 - (d) Restatement of Servitudes**
 - The purpose of this paragraph is to increase the likelihood that a court interpreting this Protection Agreement, should there be any doubt as to the correct interpretation of a provision, will look to the Restatement of Servitudes as the better view of the law applicable to conservation servitudes. *See* Pregmon, Patricia L. “How Changes in the Law of Servitudes Affect Conservation Easements”, *Exchange: The National Journal of Land Conservation*, Vol. 24, No. 2, pp. 27-28.

6.09 Entire Agreement

- The written text of the Protection Agreement signed by Owners and the Holder is final and definitive. Whatever was proposed in previous drafts and said in previous negotiations is of no further consequence in interpreting the intentions of the parties.

6.10 Incorporation by Reference

- The provision serves several purposes (1) it avoids needless repetition of phrases; and (2) it serves as a handy list to check which Exhibits need to be attached to the document.
- The Baseline Documentation is incorporated into the text of the Protection Agreement here even though it is not attached to the recorded documentation. Because it is not attached to the recorded document, it is imperative that the definitive baseline report be signed by the undersigned Owners and the Holder with a notation identifying the report as the Baseline Documentation referred to in the Protection Agreement between Owners and the Holder dated _____.

6.11 Coal Rights Notice

- This statement is required for compliance with §9(d) of the Conservation and Preservation Easements Act. The notice has been formatted to comply with the requirements of that Act – at least 12-point type and preceded by the word “Notice” in at least 24-point type.

Article VII. Glossary

- **Purpose.** The purpose of this Article is to keep all defined terms in one Article for convenience of reference. All initially capitalized terms not defined in Article I should be defined in the Glossary not in the body of the Protection Agreement. Occasionally, exceptions to this rule are appropriate and, in that case, cross-reference the definition in the Glossary.

7.01 Additional Improvements

- See commentary to Article II.

7.02 Applicable Law

- This definition is intended to incorporate changes in law over time. For example, if the question of compliance arises in 2020, the reference is to Applicable Law at that time (not the Agreement Date).

7.03 Beneficiary or Beneficiaries

- See commentary to §4.06.

7.04 Construction

- Note that the definition of Construction encompasses a variety of activities that go beyond construction of Improvements.

7.05 Existing Agreements

- See commentary §3.02(b). PALTA recommends obtaining appropriate title information to identify Existing Agreements as part of the Baseline Documentation. At a minimum, land trusts should request a copy of Owners' title policy and inquire whether Owners have granted any easements or other servitudes during their period of ownership.

7.06 Existing Improvements

- If there are no Existing Improvements within the Riparian Buffer, substitute the following for the text in the model: "There are no Existing Improvements within the Riparian Buffer as of the Agreement Date".
- If there are only a few Existing Improvements within the Riparian Buffer, substitute a list of them for the text in the model. Example:

Existing Improvements as of the Agreement Date consist of an earthen trail, approximately 4-foot wide, along the south side of the Stream and a wooden pedestrian bridge crossing the Stream.

7.07 Improvement

- The definition provides a collective term to refer to all buildings and structures on the Property whether existing as of the Agreement Date or later constructed.

7.08 Indemnified Parties

- The definition is intended to be sufficiently expansive to cover claims against Persons acting on behalf of the Holder. Nevertheless, PALTA recommends that Holders consult with their insurance carriers to evaluate their coverage under this indemnity.

7.09 Invasive Species

- The source of the definition is Executive Order 13112 authorizing formation of the National Invasive Species Council which coordinates federal responses to the problem of Invasive Species. See www.invasivespecies.gov – the gateway to federal efforts concerning Invasive Species. On this site is information about the impacts of Invasive Species and the federal government's response, as well as profiles of select species and links to agencies and organizations dealing with Invasive Species issues.
- The definition provided in the model applies to plant species only and is, accordingly, more limited than the federal definition. The definition in the model can be expanded, if desired, to include all biota – not just plants.

7.10 Lien

- The definition is used in §5.01 pertaining to the obligation of Owners to obtain and deliver subordinations of Liens existing as of the Agreement Date.

7.11 Litigation Expense

- The definition includes fees incurred in connection with investigation of a violation. Frequently survey fees are required to establish whether or not a violation has occurred. These would be included in Litigation Expenses whether or not litigation has commenced.
- The source of this definition is Stark, Tina, *Negotiating and Drafting Contract Boilerplate*, ALM Publishing 2003. ISBN 1588521052, §10.08(l) (hereafter referred to in this commentary as *Negotiating Boilerplate*).

7.12 Losses

- This definition is intended to encompass the items that may be included in a civil action under §6.03.
- The source of this definition is *Negotiating Boilerplate*.

7.13 Native Species

- This definition may be refined to refer to a specific valley or region if desired by the Holder.
- The source of the definition is the Pennsylvania Department of Conservation and Natural Resources, State Forest Resource Management Plan “*Management of Natural Genetic Diversity in Pennsylvania State Forest Lands*” available online at www.dcnr.state.pa.us/forestry/sfrmp/eco.htm#biodiversity.
- For a listing of plants identified as Native Species in Pennsylvania, *see* the listing provided by the Pennsylvania Natural Heritage Program available online at www.dcnr.state.pa.us/forestry/pndi.

7.14 Owners

- The defined term is always used in the plural because it refers to all Owners starting with the undersigned Owners and encompassing all future Owners in perpetuity.

7.15 Person

- The definition avoids the need for repetitious phrases.

7.16 Resource Management Plan

- There are many ways to describe a Resource Management Plan. This definition emphasizes that the plan is, in the first instance, prompted by what the Owners want to do on their Property. The RMP is then developed so as to accommodate the Owners’ desires to the extent consistent with and in furtherance of the Conservation Objectives and the terms of the Protection Agreement.

7.17 Review

- *See* commentary to Article IV.

7.18 Review Requirements

- The definition is intended to incorporate future changes in Review Requirements and incorporate Review Requirements set forth as an Exhibit or included in the Baseline Documentation.

7.19 Top of the Bank

- In most cases, it is expected that parties should be able to reasonably agree to the location of the Top of the Bank. However, in case of ambiguous, indefinite or nonexistent floodplain or question regarding location, the definition provides science-based instructions for determining the location based on delineating the bankfull water elevation.

Closing Matters

- **Closing:** The phrase “INTENDING TO BE LEGALLY BOUND” is especially important in Protection Agreements where there is no consideration being given for the donation of the conservation servitude because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania. The term “consideration” means something of value given in return for a promise.

- **Witness/Attest:** It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.
- **Signature lines.** Add as many signature lines as are necessary to accommodate the number of Owners and Beneficiaries who will be signing the Conservation Easement. It is good practice to sign in black ink rather than blue ink so that signatures are legible on microfilm or microfiche.

Acceptance. The Conservation and Preservation Easements Act requires Beneficiaries to sign the Protection Agreement (or record a separate document of acceptance) to evidence their acceptance of the rights and duties. However, the acceptance does not have to be made a part of the initial Protection Agreement but can be recorded later if and when the need arises for Beneficiary to enforce its rights under the Protection Agreement independent of the Holder.

- **Acknowledgment.** The date of the acknowledgment should not be earlier than the Agreement Date. *See* commentary to opening recitals of Protection Agreement.
- **Exhibits.** It is very important to check that all exhibits referenced in the Protection Agreement are attached to the Protection Agreement before it is signed and recorded in the Public Records. *See* commentary to §6.10.

Appendix R: Model Stream Corridor Conservation Overlay District

Stream Corridor Protection Ordinance Upper Salford Township, Montgomery County

ARTICLE XVIII RCC - RIPARIAN CORRIDOR CONSERVATION OVERLAY DISTRICT

SECTION 1800.PURPOSES

In expansion of the Declaration of Legislative Intent found in Article 1, Section 101 of this Ordinance, and the Statement of Community Development Objectives found in Article 1, Section 102 of this Ordinance, the purpose of this Article, among others, is as follows:

- A. Reduce the amount of nutrients, sediment, organic matter, pesticides, and other harmful substances that reach watercourses, wetlands, subsurface, and surface water bodies by using scientifically- proven processes including filtration, deposition, absorption, adsorption, plant uptake, and denitrification, and by improving infiltration, encouraging sheet flow, and stabilizing concentrated flows.
- B. Improve and maintain the safety, reliability, and adequacy of the water supply for domestic, agricultural, commercial, industrial, and recreational uses along with sustaining diverse populations of aquatic flora and fauna.
- C. Regulate the land use, siting, and engineering of all development to be consistent with the intent and objectives of this ordinance, accepted conservation practices, and to work within the carrying capacity of existing natural resources.
- D. Assist in the implementation of pertinent state laws concerning erosion and sediment control practices, including the Pennsylvania Clean Streams Law, Act 394, P.L. 1987, Chapter 102 of the Administrative Code (as amended October 10, 1980 Act 157 P.L.), Title 25, and any subsequent amendments thereto, as administered by the Pennsylvania Department of Environmental Protection and the Montgomery County Conservation District.
- E. Conserve the natural features important to land or water resources (e.g., headwater areas, groundwater recharge zones, floodway, floodplain, springs, streams, wetlands, woodlands, prime wildlife habitats) and other features constituting high recreational value or containing amenities that exist on developed and undeveloped land.
- F. Work with floodplain, steep slope, and other ordinances that regulate environmentally sensitive areas to minimize hazards to life, property, and riparian features.
- G. Recognize that natural features contribute to the welfare and quality of life of the township's residents.

- H. Conserve natural, scenic, and recreation areas within and adjacent to riparian areas for the community's benefit.

SECTION 1801.DEFINITION, ESTABLISHMENT, AND WIDTH DETERMINATION OF THE DISTRICT

- A. Definition. The Riparian Corridor Conservation District is defined as an overlay district consisting of :
1. Areas surrounding municipally designated surface water bodies, including creeks, lakes, intermittent watercourses, and wetlands that intercept surface water runoff, wastewater, subsurface flow, and/or deep groundwater flows from upland sources and function to remove or buffer the effects of associated nutrients, sediment, organic matter, pesticides, or other pollutants prior to entry into surface waters. This area may also provide wildlife habitat, control water temperature, attenuate flood flow, and provide opportunities for passive recreation. This corridor area may or may not contain trees and other native vegetation at the time of ordinance enactment.
- B. Establishment
1. The Riparian Corridor Conservation District applies to the following watercourses and waterbodies and the land adjacent to them:
 - a. All naturally occurring watercourses that normally contain flowing water during all times of the year, including streams that may dry up during periods of extended drought. These shall include, but not be limited to:
 - i Perennial streams identified in the most recent Soil Survey of Montgomery County. (Note: Shown as solid lines on Soil Survey Maps)
 - ii Perennial streams identified on United States Geological Survey Maps (U.S.G.S.). (Note: Shown as solid blue lines on older USGS maps, and thick solid blue lines on newer maps)
 - b. All intermittent watercourses otherwise identified in the most recent Soil Survey of Montgomery County, or identified on plans submitted by applicants. (Note: Soil Survey shows intermittent streams as dots and dashes)
 - c. All watercourses bordered by the following alluvial soils, as mapped in the most recent Soil Survey of Montgomery County:

Bm - Bermudian silt loam
Bo - Bouldery alluvial soil

Bp - Bowmansville silt loam
Rt - Rowland silt loam

- d. Streams which are bordered by the following local alluvium soils, as identified in the most recent Soil Survey of Montgomery County, provided the local alluvium soil is connected to an alluvial soil listed above in section 180 1.B. 1.c, above:

BrA - Bownmansville silt loam
BrB - Bowmansville silt loam
RwA - Rowland silt loam
RwB - Rowland silt loam

- e. Lands at the margins of wetlands and ponds greater than 5,000 square feet in area.

2. The District will consist of two distinct zones designated as:

- a. Zone One: This zone will occupy a margin of land with a minimum width of 25 feet measured horizontally on a line perpendicular to the edge or centerline of the watercourse, as appropriate, and/or the edge of the wetland or pond.

- i Where slopes in excess of 25 percent are located within 25 feet of a municipally designated watercourse, Zone One shall extend the entire distance of this sloped area or 75 feet, whichever is less. Where the width of Zone One has been adjusted to a width of less than 75 feet, the width of Zone Two will be adjusted so that the total corridor width (Zone One and Zone Two) will be 75 feet maximum.

- b. Zone Two: This zone will begin at the outer edge of Zone One and occupy a minimum width of 50 feet in addition to Zone One. Where Zone One has been adjusted to a width greater than 25 feet the width of Zone Two will be adjusted so that the total corridor width (Zone One and Zone Two) will be 75 feet maximum.

- i Where the 100-year floodplain extends greater than 75 feet from the waterway, Zone One shall remain a minimum of 25 feet wide, and Zone Two shall extend from the outer edge of Zone One to the outer edge of the 100-year floodplain.

3. The width and applicable regulations of the Riparian Corridor Conservation District Overlay shall be as follows, consistent with the standards for Zone 1 and Zone 2 in 1801.B.2, above:

- a. For watercourses identified in Section 1801.B.1.a, b, c and d, above, both Zone 1 and Zone 2 shall apply.
 - b. For wetlands and ponds identified in Section 1801.B.1.e, herein, only Zone 1 shall apply.
4. The measurement of the Riparian Corridor Conservation Overlay District shall be as follows:
- a. For watercourses identified in Section 1801.B.1.a: A minimum of 75 feet from each defined edge of the watercourse at bank full flow, or shall equal the extent of the 100-year floodplain, whichever is greater.
 - b. For watercourses identified in Section 1801.B.1.b, c, and d: A minimum of 75 feet from the centerline of the watercourse, or shall equal the extent of the 100-year floodplain, whichever is greater.
 - c. For wetlands and ponds identified in Section 1801.B.1.e: A minimum of 25 feet from the edge of the wetland or pond. For wetlands at the edge of a pond, the measurement shall be made from the wetland edge.

SECTION 1802. USES PERMITTED IN THE RIPARIAN CORRIDOR CONSERVATION DISTRICT

The following uses are permitted either by right or as a conditional use in the Riparian Corridor Conservation District.

A. Zone One

- 1. Uses Permitted by Right. Open space uses that are primarily passive in character shall be permitted to extend into the area defined as Zone One, including:
 - a. Wildlife sanctuaries, nature preserves, forest preserves, fishing areas, passive areas of public and private parklands, and reforestation.
 - b. Streambank stabilization.
 - c. Driveways serving one single-family detached dwelling unit, provided the requirements of Section 1807, herein, are satisfied.
- 2. Uses Permitted by Conditional Use.
 - a. Corridor crossings by farm vehicles and livestock, recreational trails, roads, railroads, centralized sewer and/or water lines, and public utility transmission lines, provided that disturbance is offset by corridor improvements identified.
 - b. Sustained yield harvesting of trees when removal is consistent with a long-term forest management plan prepared by a professional forester.

B. Zone Two

1. Uses Permitted By Right. The following uses which are primarily passive in character, shall be permitted by right to extend into the area defined as Zone Two:
 - a. Open space uses including wildlife sanctuaries, nature preserves, forest preserves, passive areas of public and private parklands, and recreational trails conducted in compliance with methods prescribed in the Department of Environmental Protection's Erosion and Sediment Pollution Control Program Manual, 1990, as amended.
 - b. Reforestation when done in compliance with a forest management plan prepared by a professional forester.
 - c. No more than one half (½) the depth of any minimum required front, side, and/or rear yards on private lots. The result of this requirement is that one half of the minimum required yard depth shall act as a setback from the Zone 2 boundary, and the other half may extend into Zone 2 to complete the minimum required yard area. However, the portion of the setback within Zone 2 shall be subject to the regulations of Zone 2.
 - d. Agricultural uses existing at the time of adoption of this ordinance, so long as they are conducted in compliance with methods prescribed in the Department of Environmental Protection's Erosion and Sediment Pollution Control Program Manual, 1990, as amended.
 - e. Driveways serving one single-family detached dwelling unit, provided the requirements of Section 1807, herein, are satisfied.

2. Uses Permitted by Conditional Use.
 - a. New agricultural uses in compliance with methods prescribed in the Department of Environmental Protection's Erosion and Sediment Pollution Control Program Manual 1990, as amended.
 - b. Corridor crossings by farm vehicles and livestock, roads, railroads, centralized sewer and/or water lines, and public utility transmission lines provided that disturbance is, at a minimum, offset by corridor improvements.
 - c. Centralized sewer and/or water lines and public utility transmission lines running along the corridor, provided that any disturbance is, at a minimum, offset by corridor improvements. These lines shall be located as far from Zone One as practical.
 - d. Sustained yield harvesting of trees when removal is consistent with a long-term forest management plan prepared by a professional forester.
 - e. Passive use areas such as camps, campgrounds, picnic areas, and golf courses. Active recreation areas such as ballfields, playgrounds, and courts provided these uses are designed in a manner that will not permit concentrated flow.
 - f. Naturalized stormwater basins, provided the basin is located a minimum of

50 feet from the defined edge of identified watercourses.

SECTION 1803. USES SPECIFICALLY PROHIBITED IN THE RIPARIAN CORRIDOR DISTRICT

Any use or activity not authorized within Section 1802, herein, shall be prohibited within the Riparian Corridor Conservation District and the following activities and facilities are specifically prohibited:

- A. Storage of any hazardous or noxious materials, including conformance with Section 1606.G.
- B. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Montgomery County Conservation District.
- C. Roads, except where permitted as corridor crossings in compliance with Sections 1802.A.2.a, or 1802.B.2.b, herein.
- D. Motor or wheeled vehicle traffic in any area not designed to accommodate adequately the type and volume.
- E. Parking lots.
- F. Any type of permanent structure, except structures needed for a use permitted in Section 1802, herein.
- G. Subsurface sewage disposal areas.
- H. Sod farming.

SECTION 1804. NONCONFORMING STRUCTURES AND USES

Nonconforming structures and uses of land within the Riparian Corridor Conservation Overlay District shall be regulated under the provisions of Article XXI, Nonconforming Status, herein. The following additional regulations also shall apply:

- A. Existing nonconforming structures or uses within Zones One or Two that are not permitted under Section 1802, herein, may be continued but shall not have the existing building footprint or uses expanded or enlarged within or into Zones One or Two.
- B. Discontinued nonconforming uses may be resumed any time within one year from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption of use shall be permitted that is more detrimental to the Riparian

Corridor Conservation Overlay District, as measured against the intent and objectives under Section 1800, herein, than the existing or former nonconforming use.

- C. The one year time frame shall not apply to agricultural uses which are following prescribed Best Management Practices for crop rotation, as identified in an approved Conservation Management Plan.

SECTION 1805. BOUNDARY INTERPRETATION AND APPEALS PROCEDURE

- A. When an applicant disputes the Zone One and/or Two boundaries of the Riparian Corridor or the defined edge of a watercourse, surface water body, or wetland, the applicant shall submit evidence to the township that shows the applicant's proposed boundary, and provides justification for the proposed boundary change.
- B. The Township Engineer, and/or other advisors selected by the Board of Supervisors shall evaluate all material submitted and provide a written determination within 45 days to the Board of Supervisors, Township Planning Commission, and landowner or applicant.
- C. Any party aggrieved by any such determination or other decision or determination under this section may appeal to the Zoning Hearing Board under the provisions of Article XXIV, Zoning Hearing Board, of this ordinance. The party contesting the location of the district boundary shall have the burden of proof in case of any such appeal.

SECTION 1806. INSPECTION OF RIPARIAN CORRIDOR CONSERVATION OVERLAY DISTRICT

- A. Lands within or adjacent to an identified Riparian Corridor Conservation Overlay District will be inspected by the township's Zoning Officer when:
 - 1. A subdivision or land development plan is submitted.
 - 2. A building permit is requested.
 - 3. A change or resumption of nonconforming use is proposed.
- B. The district may also be inspected periodically by the Zoning Officer and/or other representatives designated by the Board of Supervisors for compliance with an approved restoration plan, excessive or potentially problematic erosion, hazardous trees, or at any time when the presence of an unauthorized activity or structure is brought to the attention of township officials.

SECTION 1807. MANAGEMENT OF THE RIPARIAN CORRIDOR CONSERVATION OVERLAY DISTRICT

- A. Corridor Management Plan. A corridor management plan shall be developed when required by the Upper Salford Township Subdivision and Land Development Ordinance, consistent with the requirements therein.
- B. Mitigation Measures. Uses permitted in Section 1802.A.2.a, and 1802.B.2.b and c that involve disturbance of vegetation within the riparian corridor shall be mitigated by one of the following measures:
1. Increasing the width of the corridor. The width of the riparian corridor, measured from the defined edge of the waterbody, is increased so that the average width of the corridor's full length is equal to that required by Section 1801.B.3.
 2. Increasing the effectiveness of the corridor. In existing degraded wooded areas or proposed new wooded areas, an area equal to twice the area of disturbance shall be planted with three distinct layers of vegetation: (1) canopy trees, such as oak, hickory, maple, gum, beech, sycamore, spruce, hemlock, pine, and fir, (2) shrubs that provide an understory, such as elderberry, viburnum, azalea, rhododendron, holly, laurel, and alders, and (3) herbaceous plants that serve as ground cover, including ferns, sorrel, trillium, violet, Virginia creeper, nettle, phlox, aster, and worts. All three layers shall be planted at a density sufficient to create a fully-functioning, naturalized riparian corridor.
 3. Converting to a more effective landscape. An area equal to three times the area of disturbance is converted to a more effective landscape. The following landscapes are listed in order of effectiveness, from most effective to least effective: Woodland, Meadow, Shrub, Old Field, Lawn, and Pasture.
- C. Restoration and Conversion of Landscapes.
1. Landscapes shall be restored by removing invasive vines, removing invasive trees, cleaning out trash, correcting soil erosion problems, planting appropriate plants, and properly maintaining all new plantings.
 2. Landscapes shall be converted to a more effective landscape by removing existing, incompatible vegetation, planting plants that are appropriate for the proposed landscape type and the site, and maintaining and protecting the plantings from invasive plants, deer, and other long-term problems.
- D. Vegetation Selection. To function properly, dominant vegetation proposed as part of a mitigation measure shall be selected from a list of plants most suited to the riparian

corridor. Plants not included on the lists may be permitted by the Township Board of Supervisors, in consultation with the township engineer, when evidence is provided from qualified sources certifying their suitability. The township may require species suitability to be verified by qualified experts in the Montgomery County Conservation District, Natural Resources Conservation Service, Pennsylvania Fish and Boat Commission, the U.S. Fish and Wildlife Service, or state and federal forest agencies.

1. In Zone One, dominant vegetation shall be composed of a variety of native riparian tree and shrub species and appropriate plantings necessary for streambank stabilization.
2. In Zone Two, dominant vegetation shall be composed of riparian trees and shrubs, with an emphasis on native species and appropriate plantings necessary to stabilize the soil.

Appendix S: Model Trail Easement Agreement and Commentary

DRAFT

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (“this Agreement”) dated as of _____ (the “Agreement Date”) is by and between _____ (“the undersigned Owner or Owners”) and _____ (the “Holder”).

Article I. Background; Grant of Easement

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the property described below (the “Property”):

Street Address:

Municipality:

County:

Parcel Identifier:

State: Pennsylvania

Acreage:

1.02 Trail Area; Trail Plan

A certain portion of the Property (the “Trail Area”) is the subject of this Agreement and is described in Exhibit “A.” The Trail Area is ____ (##) feet wide and is located on the Property as shown on a survey or other graphic depiction attached as Exhibit “B” (the “Trail Plan”).

1.03 Trail

A trail for use by the general public may be established in the Trail Area (the “Trail”).

1.04 Grant of Easement and Right-of-Way

By signing this Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder an exclusive easement and right-of-way over, under, and across the Trail Area in perpetuity, for the purpose and subject to the limitations set forth in Article II and the reserved rights of Owners set forth in Article III.

1.05 Purchase Price

The undersigned Owner or Owners acknowledge receipt of the sum of _____ in consideration of the grant of easement to Holder under this Agreement.

1.06 Liens and Subordination

The undersigned Owner or Owners warrant to Holder that the Trail Area is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Agreement as an exhibit the legally binding subordination of any mortgage, lien, or other encumbrance affecting the Trail Area as of the Agreement Date.

1.07 Existing Agreements

The undersigned Owner or Owners warrant to Holder that there are no easements or other servitudes affecting the Trail Area prior to the Agreement Date and running to the benefit of Persons that constitute legally binding servitudes prior in right to this Agreement.

1.08 Beneficiaries

Owners and Holder grant and convey to the Persons, if any, identified below (the "Beneficiaries") rights as indicated with respect to this Agreement.

(There are no Beneficiaries.)

Article II. Limitations

The grant of easement under this Agreement is subject to the limitations set forth in this Article.

2.01 Limitation on Activities and Uses

(a) Purpose

The Trail Area may be used only for non-commercial recreational, educational and open-space purposes.

(b) Use

Access to the Trail Area by the general public is subject to the following limitations:

- (i) The Trail may be used only for walking, horseback riding, cross-country skiing, nature study, and the like.
- (ii) Motorized vehicles are prohibited except in the case of emergency or in connection with the construction, maintenance, or patrol of the Trail Area or by persons confined to motor-driven wheelchairs.
- (iii) Use is limited to the hours between dawn and dusk.
- (iv) Smoking or lighting of fires is prohibited.
- (v) Consumption of alcoholic beverages is prohibited.
- (vi) Trapping or hunting is prohibited.
- (vii) Swimming is prohibited.
- (viii) Holder may impose additional reasonable limitations upon the time, place and manner of use.
- (ix) No fee may be charged for use of the Trail Area.

(c) Disturbance

Soil, rock, and vegetative resources may be removed, cut or otherwise disturbed only to the extent reasonably necessary to accommodate construction, maintenance and patrol of the Trail and maintenance of access to the Trail Area. When vegetative cover is removed, it must be restored as soon as reasonably feasible by replanting with grasses or native species of trees, shrubs, and plant materials.

(d) Construction

Prior to commencing initial construction of the Trail or relocation of more than 200 linear feet of the Trail within the Trail Area, Holder must:

- (i) Provide Owners with at least 30 days notice.
- (ii) Obtain legally binding waivers of mechanics liens from all Persons furnishing labor or materials in connection with construction.
- (iii) Obtain certificates evidencing liability insurance coverage with respect to Holder and all Persons entering the Property for the purpose of construction.
- (iv) Obtain, at Holder's cost and expense, all permits and approvals required for the construction.

2.02 Limitation on Improvements

Improvements within the Trail Area are limited to the following:

(a) Trail

- (i) The Trail, including steps and railings and other trail surface structures as well as bridges and culverts for traversing wet areas within the Trail Area.
- (ii) The Trail may not exceed ____ (##) feet in width.
- (iii) The Trail may be covered, if at all, by wood chips, gravel, or other porous surface, or paved or covered with other material as may be required by Applicable Law.

(b) Accessory Facilities

- (i) A reasonable number of benches, picnic tables, and wastebaskets *[and bicycle racks]*.
- (ii) Signs to mark the Trail and provide information regarding applicable time, place, and manner restrictions.
- (iii) Signs for interpretive purposes and to indicate the interest of Holder and Beneficiaries in the Trail Area.
- (iv) Fencing, gates and barriers to control access.

2.03 No Expense to Owners

Owners are not responsible for costs associated with construction and maintenance of improvements in the Trail Area except for improvements resulting from Owners exercising a reserved right. Holder must promptly pay as and when due all costs and expenses incurred in connection with construction and maintenance.

Article III. Reserved Rights of Owners

The easement granted to Holder under this Agreement is exclusive. This means that Owners have no rights to enter or use the Trail Area except to exercise rights accorded to the general public and except as provided in this Article. Owners reserve the following rights:

3.01 Owner Access

Owners may enter the Trail Area by foot at any time except when construction and maintenance activities could present a danger.

3.02 Mitigating Risk

Owners may cut trees or otherwise disturb resources only to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Trail Area; however, Owners do not assume any responsibility or liability to the general public for failing to do so.

3.03 Fencing

Owners may install fencing, at Owners' expense, along the perimeter of the Trail Area, not to exceed four (4) feet in height and constructed of post-and-rail or other open weave construction that preserves scenic views from the Trail. Owners must not impede access to or discourage use of the Trail.

3.04 Hunting

Owners may close public access to the Trail Area for public safety reasons from the Monday after Thanksgiving through the month of December so as to reasonably accommodate hunting by or under control of Owners within the Trail Area.

Article IV. Federal Tax Items

[If there is no donation or if the undersigned Owner or Owners will not be pursuing federal tax benefits for the donation, the content below the caption of this Article can be deleted and replaced with the following: "The undersigned Owner or Owners and Holder confirm that the grant to the Holder of the easement under this Agreement is not intended to be a qualified conservation contribution under the Internal Revenue Code of 1986, as amended through the applicable date of reference."]

4.01 Qualified Conservation Contribution

The easement granted under this Agreement has been donated in whole or in part to Holder by the undersigned Owner or Owners. It is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a qualified organization (as defined in §1.170A-14(c)(1) of the Regulations).

4.02 Definitions of Code and Regulations

"Code" means the Internal Revenue Code of 1986, as amended through the applicable date of reference. "Regulations" mean the provisions of C.F.R. §1.170A-14 as amended through the applicable date of reference.

4.03 Public Benefit

This easement is given for public outdoor recreation and education and is for the substantial and regular use of the general public or the community. This Agreement provides significant public benefit as defined in §1.170A-14(d)(2)(i) of the Regulations. Public policies and programs that illustrate and support the significant public benefit of this Agreement include:

- (i) The Open Space Plan of _____ Township, adopted in 200_, which _____.
- (ii) The ____ County Greenways Plan, adopted in 200_, which _____.
- (iii) The ___ Township Zoning Ordinance, adopted in 200_, which _____.

4.04 Mineral Interests

No Person has retained a qualified mineral interest in the Trail Area of a nature that would disqualify the Agreement for purposes of §1.170A-14(g)(4) of the Regulations.

4.05 Notice Required under Regulations

To the extent required for compliance with §1.170A-13(g)(4)(ii) of the Regulations, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests or public recreational purposes associated with the Trail Area.

4.06 Baseline Documentation

The undersigned Owner or Owners and Holder have signed for identification purposes the report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Trail Plan together with other pertinent information regarding the conservation and public recreational interests served by the Agreement, including photographs depicting existing conditions of the Trail Area as of the Agreement Date.

4.07 Trail Area Right

In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that the easement granted under this Agreement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair market value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that this easement as of the Agreement Date bears to the value of the Property as a whole as of the Agreement Date. Holder must use any funds received by application of this provision in a manner consistent with the recreational and conservation purposes of this Agreement.

4.08 Qualification under §2031(c) of the Code

To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, and only to the extent such activity is not otherwise prohibited or limited under this Agreement, Owners agree that commercial recreational uses are not permitted within the Trail Area.

Article V. Miscellaneous

5.01 Indemnity

Holder must indemnify and defend Owners against all Losses and Litigation Expenses resulting from property damage and/or personal injuries that occur or are alleged to occur as a result of Holder's installation or maintenance of the Trail or Trail Area, except to the extent caused by the negligent or wrongful acts or omissions of Owners. The word "Losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a Litigation Expense. The term "Litigation Expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Agreement including in each case, attorneys' fees, other professionals' fees, and disbursements.

5.02 Recreation Use of Land and Water Act

This Agreement is intended to be interpreted so as to convey to Owners and Holder all of the protections from liability provided by the Pennsylvania Recreation Use of Land and Water Act, 68 P.S. §477-1 et seq., as amended through the applicable date of reference, or any other Applicable Law that provides immunity or

limitation of liability for owners or possessors who make property available to the public for recreational purposes.

5.03 Amendment

Any amendment of this Agreement must be in writing, signed by Owners and Holder, and recorded in the Public Records.

5.04 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Agreement.

5.05 Assignment and Transfer

Neither Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Agreement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.

(a) By Holder

Holder may assign its rights and duties under this Agreement, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Agreement. Holder must notify Owners within 30 days prior to the assignment of the identity and address for notices of the Qualified Organization who has agreed to assume the obligations of the Holder under this Agreement.

(b) By Owners

This Agreement is a servitude running with the land binding upon the undersigned Owners and, upon recordation in the Public Records, all subsequent Owners of the Trail Area or any portion of the Trail Area are bound by its terms whether or not the Owners had actual notice of this Agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Agreement. This Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

5.06 Severability

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.

5.07 Entire Agreement

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Agreement. The terms of this Agreement supersede in full all statements and writings between Owners, Holder, and others pertaining to the transaction set forth in this Agreement.

5.08 Definitions of Capitalized Terms

This section contains definitions of capitalized terms used but not defined elsewhere in the Agreement.

- (i) "Applicable Law" means any federal, state, or local laws, statutes, codes, ordinances, standards, and regulations applicable to the Trail, the Trail Area, or this Agreement, as amended through the applicable date of reference.
- (ii) "Owners" means the undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Trail Area.
- (iii) "Person" means an individual, organization, trust, or other entity.
- (iv) "Public Records" means the public records of the Office for the Recording of Deeds in and for the county in which the Trail Area is located.
- (v) "Qualified Organization" means a governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified organization under C.F.R. §1.170A-14(c)(1) as amended through the applicable date of reference; and (d) is duly authorized to acquire and hold trail easements under Applicable Law.

5.09 Incorporation by Reference

The following items are incorporated into this Agreement by means of this reference:

- The legal description of the Trail Area attached as Exhibit "A"
- The Trail Plan attached as Exhibit "B"
- The baseline documentation, if any
- *[The mortgage subordination agreement attached as Exhibit C]*

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

Witness/Attest:

Owner's Name:

Owner's Name:

By: _____
Name of Holder:
Name of signatory:
Title of signatory:

Acceptance by Beneficiary:

[NAME OF BENEFICIARY]

By: _____
Name:
Title:

This document is based on the model *Trail Easement Agreement* (4/20/2006 ed.) provided by the Pennsylvania Land Trust Association.

This document should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It must be revised to reflect specific circumstances under the guidance of legal counsel.

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

Trail Easement Agreement & Commentary

a model document and guidance

Prepared by the
Pennsylvania Land Trust Association

with support from the

William Penn Foundation  W I L L I A M P E N N
F O U N D A T I O N

and the

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Conservation "Growing Greener" Program



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public beta version 4/20/2006

Introduction

The *Pennsylvania Trail Easement Agreement & Commentary* provides trail and conservation groups, government and landowners with a state-of-the-art easement agreement. It includes an expansive commentary covering alternative and optional agreement provisions and the reasoning behind it all. The model uses plain language and careful formatting to improve readability. Users can easily customize the agreement to handle a variety of potential trail types and uses.

The model best suits scenarios involving the establishment of a public trail through a narrow corridor. Where a trail is only a small part of a broader endeavor to protect many conservation values on a property, the PA Conservation Easement (available at <http://conserveland.org>) might be the better model.

(Since the law governing *trail easements* and the like is far more settled than that of *conservation easements*, the trail easement model does not need much of the language necessary for conservation easements.)

Shortness versus Perpetuity

We reviewed many easements in developing this model. Some were one or two pages long. While such shortness has allure, it comes at a high price. Matters fairly easy to agree on and memorialize in an easement can become quite difficult if left unaddressed. Landowners, easement holders and the public are all left vulnerable to uncertainty and unanswered questions – questions that likely will be answered by the legal system at considerable cost.

Consequently, we sought to identify the key issues that should be addressed in any trail easement. We then aimed for brevity in handling the issues. The result is a six-page base document (including signature page). If no tax deduction for donation is being sought, the base document can be shortened to five pages.

Comments Requested

The Pennsylvania Land Trust Association labels this version a *beta release*, because the model has not yet received broad public scrutiny.

While the model sets a standard of excellence in trail easement drafting, we expect that extensive public scrutiny and feedback will lead to a number of improvements.

We encourage you to suggest improvements for the next edition!

Please suggest cleaner language, optional and alternative provisions, and structural adjustments. We also encourage you to identify issues in need of further investigation.

Comments may be directed to Andy Loza at aloza@conserveland.org.

The Future

In addition to seeking comments in preparation for a next edition, the Pennsylvania Land Trust Association plans to develop additional guidance and language for incorporating public access options into the Pennsylvania Conservation Easement.

PALTA also plans to implement a web-based document assembly program at <http://conserveland.org>. Users will be able to automatically generate customized trail easements by answering a series of questions at the website. This will enable users to easily discard easement content they do not need, add optional content and choose alternative provisions as appropriate. Documents can be generated in Word, PDF and other formats. Users also will be able to save their settings and change their answers as they desire.

Acknowledgements

Financial support from the Pennsylvania Department of Conservation and Natural Resources Bureau of Recreation and Conservation and the William Penn Foundation makes this endeavor possible!

DRAFT COMMENTARY

to the Pennsylvania Land Trust Association's Model Trail Easement Agreement

General Instructions

- Users of the *Trail Easement Agreement* are encouraged to read through the commentary at least once. The commentary follows the same Article and Section structure as the easement to make cross-referencing easy. To address different situations, the commentary often suggests alternative language to that found in the model or suggests deleting sections altogether. The commentary also explains the purposes behind many provisions.
- The *Trail Easement Agreement* and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The *Trail Easement Agreement* must be revised to reflect the specific circumstances of the particular project under the guidance of legal counsel.
- Standard 9. Practice A. of the 2004 edition of *Land Trust Standards & Practices* published by the Land Trust Alliance (hereafter referred to in this commentary as S&P) calls for land trusts to obtain legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced in real estate law.
- In the following commentary, titles in bold preceded by numbers refer to sections of the same title in the model. Bullets preceding text indicate a comment. Text without bullets varies with the context, covering alternative or optional text to add as well as excerpts from other documents.
- **Disclaimer box.** Once a document based on the *Trail Easement Agreement* has been prepared or reviewed on behalf of the Holder by an attorney licensed to practice law in the applicable state, the box at the bottom of the signature page that begins “This document should not be construed or relied upon as legal advice...” may be deleted.
- **Other States.** Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.
- Check conserveland.org periodically for updates to the *Trail Easement Agreement & Commentary*.

Preliminary Matters

Margins

- Several counties (Montgomery and Chester, for example) require a minimum 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right and bottom margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5 inch by 11 inch paper. Many counties require type size not less than 10-point. The model has been formatted to conform to these requirements.

Header

- In the final version of a document prepared using the model as the base, it is good practice to remove the header “Revised through: [date].” In MS Word, click on *View*, then *Header and Footer*, delete the phrase and close.

Opening Recital

- **Purpose.** The purpose of the opening recital is to identify the parties to the Agreement and the effective date of the document.

Agreement Date

- The date can be added in hand writing at the time of signing.
- The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), substitute for “dated as of ___”: “signed _____ but delivered _____”. The date of delivery is the effective “Agreement Date”.

Undersigned Owner or Owners

- Insert names exactly as set forth in the deed by which the undersigned Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title. The customary practice is to recite these facts either in the Background section or at the end of the legal description attached as Exhibit “A”.
- All owners as of the Agreement Date must join in the Agreement to be effective under Applicable Law and to qualify as a Qualified Conservation Contribution under §1.170A-14(b)(1) of the Regulations.
- The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.
- If a Person other than an individual is granting the Agreement, a phrase identifying the type of entity and state in which the Person was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.
- The model has been constructed to use the term “Owners” rather than “Grantor” or “Grantors”. This term was chosen to avoid any confusion about whether specific provisions were intended to apply only to the Persons signing the document or to subsequent owners of the Property as well. If a provision is intended to apply only to the Person signing the Agreement, the phrase “the undersigned Owner or Owners” is used. In this limited case, some land trusts may prefer substituting the term Grantor or Grantors for the phrase “undersigned Owner or Owners” where this phrase is used in the model. In all other cases, the term “Owners” (always plural) is used. This arrangement of setting apart the undersigned Owner or Owners from all Owners present and future also has the practical advantage of not requiring conversion of plural to singular or vice versa throughout the document depending upon whether one or more than one persons signed the document.

Holder

- The full legal name of the Holder (including Inc. or Incorporated if part of the legal name) should be inserted here.
- A phrase identifying the type of entity and state in which the Holder was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania non-profit corporation.
- “Grantee” may be substituted for “Holder” but is not recommended for several reasons. First, the term “Holder” avoids any possible confusion in the future between the organization that signed the document and a subsequent transferee who becomes the “Holder” but was never the “Grantee” of the original document. The second reason is that the terms Owners and Holder are more distinctive and recognizable than Grantor and Grantee whose similarity in spelling can sometimes be confusing.

- Other parties to the document can be added here, if desired; however, the model has been constructed to name an additional Beneficiary (if any) at the end of Article I. It is not necessary for purposes of giving public notice of the content of the document to name additional Beneficiaries in the opening paragraph.

Article I. Background; Grant of Easement

- **Purpose.** The purposes of this Article are first to inform the reader of the factual information necessary to understand the subject matter of the document and the intentions of the parties in entering into a legally binding relationship, and second to grant and convey the easement and right-of-way to the Holder.
- **Articles and Sections.** The model has been structured in Articles and Sections rather than a list of paragraphs. There are several practical reasons for this. One reason is to encourage additional provisions to be clustered with similar provisions instead of adding them to the end where they may be missed in a quick review. Another reason is to avoid wherever possible cross-references to specific paragraphs. A common drafting error is to add or delete paragraphs and not check whether cross-references are still correct. This structure seeks to minimize the opportunities for that error to occur.
- **Whereas Clauses.** The content of Article I can be restated as a series of “Whereas” clauses; however, modern legal practice is to state the facts supporting the intentions of the parties in a “Background” section. The facts are then set out as simple declarative sentences rather than a series of “whereas” clauses conjoined with a series of “ands”.

1.01 Property

- **Street Address:** Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example: 100 acres more or less north side of ___Road west of the intersection of ___ Road and ___ Road.
- **Municipality:** Insert the city, township or borough in which the Property is located. This may or may not be the name of the town used for mailing address purposes.
- **County:** Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in both counties.
- **Parcel Identifier:** The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. *See* Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337).
- **Acreage:** Insert the number of acres comprising the Property.

1.02 Trail Area; Trail Plan

- **Description of Trail Area.** The Trail Area may require surveying if it is not feasible to establish it by reference to setbacks from existing survey points or natural features such as streams.
- **DCNR Funding.** If a grant from the Pennsylvania Department of Conservation and Natural Resources (DCNR) is used to acquire the trail easement, check with DCNR to determine whether the boundary of the Trail Area may be referenced using setback descriptions or whether a metes and bounds description will be required.
- **Stream.** If the easement extends a certain number of feet from a stream, drafters may want to note that the Trail Area shall move consistent with any movement of the stream.
- **Trail Plan.** This Section incorporates a separate graphic document (the “Trail Plan”) into the Agreement. Aerial photographs and topographical maps can be used to provide a graphic depiction of the Trail and Trail Area if there is no survey.

- **Plan Identification Information.** Since recorded versions of plans are sometimes reduced to the extent that not all the notes are legible, it is good practice to identify the plan with some specificity so that there is no question as to the plan that was intended as the Trail Plan. Example: “Attached as Exhibit “B” is a plan of the Trail Area prepared by ___ dated ___ entitled ___ plan number ___” or “Attached as Exhibit “B” is a plan of the Trail Area prepared by the Holder dated ___ based upon a survey prepared by ___ dated ___ entitled ___”. A full size copy of the plan is kept on file by the Holder.

1.03 Trail

- If the Trail Plan shows the location of the Trail, add: “The [*approximate*] location of the Trail within the Trail Area is shown on the Trail Plan.”

1.04 Grant of Easement and Right-of-Way

- **Purpose.** This Section describes the necessary conditions to create a legally binding conveyance of an interest in real property whether or not consideration is present.
- **Unconditional and Perpetual.** The grant to Holder must be both unconditional and perpetual to qualify as a charitable deduction under §1.170A-14(b)(2) of the Regulations. Conditional delivery is not sufficient; for example, if a signed document is delivered in escrow to a third party (a title company, for example) the document is not effective until released from escrow.
- **Recording.** Recording in the Public Records is necessary to make the covenants binding upon future owners who do not otherwise know about the terms of the Agreement but the grant is complete once the document is signed and unconditionally delivered. Standard 9. Practice I. of S&P requires that all land and easement transactions are legally recorded at the appropriate records office according to local and state law.
- **Consideration.** The phrase “intending to be legally bound” is a valid substitute for consideration (that means it makes a promise to make a gift as enforceable as other contracts) under the Uniform Written Obligations Act, 33 Pa. Stat. §6.
- **Grant and Convey.** The words “grant and convey” have a special meaning in real estate law. When an Owner grants and conveys that automatically means that the Owner warrants that he or she owns the property (or interest in the property) being conveyed in fee simple and has a right to convey the property.
- **Exclusive Easement and Right-of-Way.** The model Agreement is written as an “exclusive” easement that gives Holder alone the right to use and possess the Trail Area, even to the exclusion of the Owners. This is the approach that would be preferred by most Holders (and many Owners, too, to completely “divorce” themselves from maintenance and liability concerns). In Article III, the model provides for rights reserved by Owners. The commentary to Article III provides additional examples rights that Owners may wish to reserve.
- **Non-Exclusive.** Owners may prefer, instead, to grant Holder a “non-exclusive” easement and retain full rights of ownership and possession in the Trail Area but allow Holder to construct and manage the Trail. In this case, the word “exclusive” in §1.04 (“Grant of Easement and Right-of-Way) should be changed to “non-exclusive”; Article II should be retitled “Limitations on Holder”; Article III should be retitled “Limitations on Owners”; the sections listing Owner’s reserved rights in Article III should be deleted; and the following paragraph inserted after the caption of Article III:

The easement granted to Holder under this Agreement is non-exclusive. Owners agree to be bound by the following limitations:

Drafters would then list in Article III negotiated provisions limiting Owners’ rights, such as:

Owners may not enter the Trail Area when construction and maintenance activities could present a danger.

Owners may not install fencing that impairs scenic views from the Trail.

Owners may cut trees or otherwise disturb resources in the Trail Area only to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Trail Area.

Owners may not impede access to or discourage use of the Trail Area except for the following reasons:

- (1) for forestry activities on the Property, for not more than fourteen (14) days every five (5) years; and Owners must immediately correct any damage to the Trail and Trail Area resulting from the timber harvest.
- (2) for public safety reasons from the Monday after Thanksgiving through the month of December so as to reasonably accommodate hunting by or under control of Owners within the Trail Area.
- (3) if the public's use of the Trail Area materially interferes with Owners' quiet enjoyment of the Property on a frequent, continuous basis, and measures taken by Holder do not, in Owners' reasonable opinion, sufficiently abate the interference, Owners may, after two (2) weeks written notice to Holder, close the Trail Area for a period not to exceed two (2) weeks to enable Holder to take corrective action.

Holder may not construct or grant rights-of-way, easements of ingress or egress, driveways, roads, utility lines, or other easements into, on, over, under, or across the Trail Area *that would materially impair the recreational use of the Trail Area. [OR: without the prior written permission of Holder. Holder shall not unreasonably withhold or condition Holder's permission, provided that granting permission would not materially impair the recreational use of the Trail Area and is otherwise not inconsistent with the purposes of this Agreement.]*

1.05 Purchase Price

- Delete this section if the easement is donated in full.

1.06 Liens and Subordination

- **Code.** A qualified conservation contribution must be enforceable in perpetuity under §170(h)(5)(A) of the Code. Under Regulation §1.170A-14(g)(2) this requirement is satisfied in the case of mortgaged property (with respect to which the mortgagee has not subordinated its rights) only if the donor can demonstrate that the conservation purpose is protected in perpetuity without subordination of the mortgagee's rights.
- **Subordination of Liens.** Even if no charitable contribution is being claimed, Holder would want assurance that the trail easement could not be extinguished by foreclosure of a lien prior in right. Standard 9 Practice H of S&P provides that mortgages, liens, and other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values of the property must be discharged or properly subordinated to the easement.
- **Time.** Owners should be advised of this requirement early in the process. Satisfaction of this requirement frequently requires substantial time and effort.
- **Form.** PALTA intends to make available a model form of subordination on its website www.conserveland.org. No particular form is required by the Regulations.
- **S&P.** Standard 9. Practice H. of S&P provides that the land trust should investigate title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owners and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction.

1.07 Existing Agreements

- **Existing Agreements.** If there are existing agreements affecting the Trail Area, they can be referenced in this sub-section and further described in an attached exhibit and added to §5.09 ("Incorporation by Reference").

- Existing agreements are entitled to priority over the easement to be executed under Applicable Law.
- Organizations should obtain title information to determine what rights Persons have to disturb the Trail Area by exercise of rights under existing agreements. At a minimum, land trusts should request a copy of Owners' title policy and inquire whether Owners have granted any easements or other servitudes during their period of ownership.

1.08 Beneficiary

- **No Beneficiary.** The model Agreement is written as if no Beneficiary has been named at the time of execution. If a conservation organization or a state or local governmental entity is intended to be a Beneficiary, the statement in the model is to be deleted and a sections identifying each Beneficiary are to be added.
- **Acceptance.**
- **Adding a Beneficiary Later.** Should the parties want to name a Beneficiary in the future, all that is needed is a simple amendment identifying one of more Beneficiaries and specifying their rights.
- As shown in the text below, the rights given to a Beneficiary can be customized to the circumstance. Sometimes it will be desirable to give the Beneficiary many rights, sometimes one or two rights will be more appropriate.

(a) _____ Beneficiary

- Here is a generic Beneficiary provision that can be customized for many different situations:
 _____, a Qualified Organization (the "Land Trust/State/County/Township Beneficiary") is a Beneficiary of this Agreement. Owners and Holder grant and convey to the "Land Trust/State/County/Township Beneficiary") the following rights with respect to this Agreement: *[select all that apply]*
 - (i) The right to compel transfer of Holder's rights and duties under this Agreement to another Qualified Organization should Holder fail to make the Trail available for public recreation.
 - (ii) The right to exercise Holder's rights and duties under this Agreement should Holder fail to make the Trail available for public recreation.
 - (iii) The right of prior approval of any amendment of this Agreement.
 - (iv) The right of prior approval of any transfer of Holder's rights under this Agreement.
- If there is only one Beneficiary, the words "Land Trust, State, County, or Township" can be dropped and the entity can simply be called the "Beneficiary."
- The specific rights set forth in the Agreement supplement rather than replace the rights and remedies of state or local agencies under applicable programs and grant contracts. For example, if a grant contract requires prior approval by county of any amendment to the Agreement, then the land trust is contractually bound to seek county approval whether or not county has recorded an acceptance.

(b) Pennsylvania Department of Conservation and Natural Resources

- If DCNR has provided funding to acquire the easement in whole or in part, insert the following provision:

This easement was either acquired with, or donated as a match for, funds provided by the Pennsylvania Department of Conservation and Natural Resources under the [Environmental Stewardship and Watershed Protection Act, the act of December 15, 1999, P.L. 949, No. 68, as amended (27 Pa.C.S.A. §§ 6101 et seq.) OR Keystone Recreation, Park and Conservation Fund Act, the act of July 2, 1993, P.L. 359, No. 50 (32 P.S. §§ 2011 et seq.) OR other grant

legislation]. This easement is a conservation servitude over the property in perpetuity and as such is binding on all current and subsequent easement holders and their personal representatives, successors and assigns. The Department and its successors have the following rights with respect to this easement: a) the right to compel transfer of the easement holder's rights and duties to another entity, including a municipality, if the easement holder fails to uphold and enforce the provisions of the easement, b) the right of prior approval of any amendment of this easement, c) the right of prior approval of any transfer of the easement holder's rights or interests under this easement, and d) the right to exercise the easement holder's rights and duties under this easement if the easement holder fails to uphold and enforce the provisions of the easement.

- **Multiple State Departments.** A single easement could be used as a funding mechanism for several programs. For example, DCNR could fund a trail easement for recreational purposes, and the Pennsylvania Fish & Boat Commission could provide funds for fishing access. Each government agency would be a Beneficiary entitled to the rights specified for that Beneficiary.
- **County/Township Supplement.** Some County or Township funding programs require certain terms to be incorporated into each conservation or trail easement. If an exhibit is to be incorporated, add the following to §1.08 and add the County or Township Supplement to the list of exhibits incorporated into the Agreement under §5.09, ("Incorporation by Reference"):

Attached as Exhibit "___" (the "County/Township Supplement") is a rider to this Agreement containing certain provisions that must be incorporated into this Agreement as a condition of funding the County/Township contribution under the County/Township program. The terms and provisions of the County/Township Supplement supersede, to the extent of any inconsistency, the provisions of this Agreement.

- **Township as "Co-holder."** Act 153 of 1995, as amended by Act 4 of 2006, authorizes school districts, townships and counties to exempt certain municipally-eased properties from real estate millage increases. The Act also requires County assessors to take into consideration the diminution in fair market value of a conservation easement held by a municipality. The millage freeze in Act 153 applies to municipally-eased properties that provide "open space property benefits," which include without limitation "the protection of ... planned ... recreation ... sites; [and] ... the protection ... of scenic resources." Thus, whether or not the Township contributes acquisition funding for the trail easement, it may be desirable to appoint the Township as a Beneficiary for purposes of qualifying the Township as a "co-holder" under preferential tax programs which may reduce Owners' property taxes.
- If the Township agrees to be named as a Beneficiary for those purposes, add the following provision:

As a Beneficiary of this Agreement, the Township agrees to be a co-holder of the easement granted under this Agreement for purposes of qualifying this Agreement for any program under Applicable Law that, as of the applicable date of reference, provides preferential tax treatment for farmland, forestland, open space, or other property under conservation or trail easement. As of the Agreement Date, examples are Act 153 of 1995, Act 319 (sometimes referred to as "Clean and Green") (72 Pa. Stat. 5490.1 et seq.) and Act 515 (16 Pa. Stat. 11941), and the Preserved Farmland Tax Stabilization Act of 1994, P.L. 605, No. 91.

1.09 Administrative Agent

- **County or Township as Holder; Land Trust as Administrative Agent.** The approach taken by the model is that only one Person should be identified as Holder. Any number of governmental and non-governmental Qualified Organizations can be named as Beneficiaries but, ultimately, when a decision has to be made, the Holder must make the decision and take responsibility for the reasonableness of its decision. If a County or Township is not satisfied with a right of prior consultation and instead requires a veto power on review, then the County or Township (rather than the land trust) should be named as the Holder and, in that case, the land trust might be named as an Administrative Agent under the following provision which would be added as §1.08.

The Holder has appointed _____, a Qualified Organization (the “Administrative Agent”) as the agent of Holder for purposes of administering this Agreement. Owners and Holder acknowledge that the duty of Administrative Agent is to provide inspection and review services in the ordinary course; to communicate decisions of Holder with respect to items needing interpretation; and to perform such other Trail-related construction and maintenance services as are requested by Holder under the terms of a separate agreement between Holder and Administrative Agent.

Article II. Limitations

2.01 Limitation on Activities and Uses

- **Purpose.** The introductory language after the heading of Article II limits the broad grant of the exclusive easement and right-of-way to Holder. Sub-section (a) limits the purposes for which the Trail Area may be used. Sub-section (b) imposes time, place and manner restrictions on use of the Trail Area by the general public. Sub-section (c) limits Holder’s ability to disturb vegetation and ground. Sub-section (d) provides Owners with certain assurances relating to Holder’s construction of the Trail.
- **Non-Commercial.** The term “non-commercial” as applied to recreational uses in sub-section (a) is required to qualify the grant of the easement for exemption from estate taxes under §2031(c) of the Code.
- **Other Uses.** The parties may want to add bicycling, mountain biking, in-line skating, fishing or other activities to §2.01(b)(i). Conversely, they may want to delete a use listed in the model.
- **Snowmobiles.** The parties may want to allow other uses conditionally: “Snowmobiles may be permitted within the Trail Area only by mutual agreement of Holder and Owners.”
- **Disturbance of Resources.** The parties may also want to allow: “Seasonal piling of brush and other vegetation by the Holder as reasonably necessary to accommodate maintenance of the Trail Area.”

2.02 Limitation on Improvements

- **Existing Improvements.** If the Trail Area contains existing improvements, insert a sub-section entitled “Existing Improvements” and list the improvements, noting that they are further illustrated on the Trail Plan (and in the Baseline Documentation, if any). Include in the Agreement guidance on what additions/replacements may be made and which party is responsible for the existing improvements.
- **Trail.** To avoid misunderstandings, it is good practice to mark the Trail Area on the ground prior to the Agreement Date and to install permanent markers prior to construction of the Trail. If the Trail Area is wide and the Owners want to have a buffer area between the edge of the Trail Area and the Trail, language can be added as follows:

The Trail must be located at least ____ (##) feet from the Trail Area boundary, excepting where the Trail enters and exits the Property.

- The intention to connect the Trail to a larger trail system in the future can be added to this sub-section.
- **Surfacing Material.** If one purpose of the trail is to provide a wilderness experience, surfacing options should be limited. Consider adapting the following language from the Wisconsin Dept. of Natural Resources standard easement:

A primitive hiking trail is one that blends with the natural surroundings and follows the natural contours of the land. It is made of local natural materials, with native surface tread

(mineral, soil, grass, or rock). Asphalt, limestone, gravel or other imported, non-naturally occurring, non-site specific material is not acceptable tread material. Trail facilities such as bridges or boardwalks are for site protection only. The tread of a primitive trail should not exceed 24 inches wide.

- **Other Material.** Non-porous surfacing that may be required by “Applicable Law” would encompass the Americans with Disabilities Act.

Article III. Reserved Rights of Owners

Additional Provisions: The following content may be added to Article III as desired by the parties:

- **Rights-of-Way.** If Owners want to retain the right to construct a crossing through the Trail Area, this specific right can be reserved in Article III:

Owners may construct, develop or maintain one driveway, not to exceed ___ (##) feet in width, from the public right-of-way of ___ Street to the Property which crosses the Trail Area in a location mutually agreed upon by Owners and Holder. Owners must submit a plan to Holder for approval at least 60 days in advance of construction. Holder’s approval of plans must not be unreasonably withheld. Holder’s approval or objection must be made within thirty (30) days of receipt of the plans or the plans will be deemed approved.
- Owners can reserve the general right to grant easements or crossings subject to Holder’s determination that it does not harm the Trail Area:

Except as specifically permitted under this Agreement, no rights-of-way, easements of ingress or egress, driveways, roads, utility lines, or other easements shall be constructed, developed or maintained into, on, over, under, or across the Trail Area without the prior written permission of Holder. Holder shall not unreasonably withhold or condition Holder’s permission, provided that granting permission would not materially impair the recreational use [*or scenic values*] of the Trail Area and is otherwise not inconsistent with the purposes of this Agreement.
- **Agricultural and Forestry Access.** To the extent that Owners engage in agricultural and/or forestry use of the Property, drafters may want to add:

Holder will consult with Owners to make provisions for access for agricultural or forestry equipment across the Trail Area at such locations as Owners may reasonably request. Owners must immediately correct any damage to the Trail and Trail Area resulting from such access.
- **Forestry in Trail Area.** If the Trail Area is wide, Owners may want to retain the right to timber it. Consider adding the following provision to the Agreement:

Owners may close public access to the Trail Area for not more than fourteen (14) days every five (5) years for forestry activities. Owners must immediately correct any damage to the Trail and Trail Area resulting from timber harvest.
- If the Holder wants more control over the timber harvest, add the following before the clause noted above:

Owners may engage in forestry activities in accordance with a resource management plan approved by Holder and designed to foster and sustain healthy forest and healthy soil. Owners must submit a timber harvest plan to Holder for approval at least sixty (60) days in advance of timber harvest for financial profit or at a scale that alters the character of the woodland. Holder’s approval of plans must not be unreasonably withheld. Holder’s approval or objection must be made within thirty (30) days of receipt of a plan or the plan will be deemed approved.
- **Agriculture in Trail Area.** If the Trail Area is wide, Owners may want to retain the right to conduct agricultural activities there. Consider adding the following provision to the Agreement:

Owners may plant and harvest crops and engage in other agricultural activities in the Trail Area so long as it does not materially impair the Trail and occurs at least ____ feet from the Trail centerline; provided, however, that Holder is not responsible for any damage to such crops by exercise of Holder's rights under this Agreement.

- **Fencing.** Although the model provides the Owners the right to install fencing at their expense, in some situations it may be more equitable for Holder to construct a privacy fence at its expense.
- **Fence Height.** The four-foot height limitation is specified for example purposes. A taller or shorter fence may be more appropriate to a particular situation.

Article IV. Federal Tax Items

- **No Charitable Deduction.** As indicated in the model, if there is no donation or if the undersigned Owner or Owners will not be pursuing federal tax benefits for the donation, the content below the caption of this Article can be deleted and replaced with the following:

The undersigned Owner or Owners and Holder confirm that the grant to the Holder of the easement under this Agreement is not intended to be a qualified conservation contribution under the Internal Revenue Code of 1986, as amended through the applicable date of reference.

4.01 Qualified Charitable Contribution

- **Purpose.** All of the requirements for qualification as a qualified conservation contribution under the Code have been merged into this Section.
- **Mandatory.** All of the requirements *must* be satisfied in order to qualify for charitable deduction.
- **S&P.** Standard 10 of S&P provides that the land trust must work diligently to see that every charitable gift of a conservation easement meets federal and state tax law requirements. However, Standard 10 Practice C. clarifies that the land trust should not make assurances as to whether a particular easement will be deductible, what monetary value of the gift the Internal Revenue Service and/or state will accept, what the resulting tax benefits of the deduction will be, or whether the donor's appraisal is accurate.
- **Bargain Sale.** In the case of a bargain-sale of the easement, the donation has been made "in part."

4.02 Definitions of Code and Regulations

- **Definition.** The words "Code" and "Regulations" are defined in this Section and not with the other capitalized terms in Article V because these definitions are necessary only if a charitable deduction is being sought.

4.03 Public Benefit

- **Summary of Policy Statements as Exhibit.** If the public policy statements are lengthy, they may be attached to the Agreement as an exhibit rather than including this material in the body of the Agreement. If this approach is taken, add to the end of the "Public Benefit" paragraph:
Attached as Exhibit "____" is a summary of the public policy statements and other information supporting the public benefit of the easement granted under this Agreement.
- **PALTA Website.** PALTA intends to publish on its website (www.conserveland.org) examples of public policy statements adopted by various federal, state and local governmental bodies.
- **S&P.** Standard 8. Practice D. of S&P provides that the land trust should evaluate and clearly document the public benefit of each land and easement transaction and how the benefits are consistent with the mission of the organization. If the transaction involves public purchase or tax incentive programs, the land trust satisfies and federal, state or local requirements for public benefit. Standard 8. Practice C. provides that, for land and easement projects that may involve

federal or state tax incentives, the land trust should determine that the project meets the applicable federal or state requirements, especially the conservation purposes test of the Code and Regulations. Both of these Standards should be read, however, in conjunction with Standard 9. Practice B. which provides that the land trust should refrain from giving specific legal, financial and tax advice and should recommend in writing that each party to a land or easement transaction obtain independent legal advice.

4.04 Mineral Interests

- **Disqualification.** Rights to extract or remove minerals by surface mining will disqualify the donation for charitable contribution purposes unless the probability of extraction or removal is so remote as to be negligible.
- **Factors.** According to §1.170A-14(g)(4)(ii)(3) of the Regulations, the determination is a question of fact and is to be made on a case-by-case basis. Relevant factors to be considered in determining the probability include geological, geophysical or economic data showing the absence of mineral reserves in the Trail Area or the lack of commercial feasibility at the time of the contribution of surface mining the mineral interest.

4.05 Notice Required under Regulations

- This sub-section is important where the Agreement gives the Owners reserved rights that may negatively impact use of the Trail Area by the general public (e.g., timbering or excavation), or where the Trail Easement is written to be non-exclusive so that the Owner retains general rights of ownership and possession. The Code requires the Owner to notify Holder of the exercise of Owner's reserved rights that may harm the Trail Area's "conservation interests" (or, presumably, in the case of a deductible trail easement, the exercise of reserved rights that would harm the Trail Area's value for public recreational purposes). The *notice* required of Owner under this Section would not satisfy a provision that might be written into the Agreement requiring *review and approval* by Holder before any potentially harmful right could be exercised.

4.06 Baseline Documentation

- **Purpose.** The purpose of this sub-section is to incorporate the Baseline Documentation into the text of the Agreement even though it is not attached to the recorded documentation. Because it is not attached, it is important that the definitive baseline report be signed by the undersigned Owners and the Holder with a notation identifying the report as "the Baseline Documentation referred to in the Agreement between Owners and the Holder dated ____."
- **Necessity.** Baseline documentation is required for compliance with the Code and Regulations (see §1.170A-14(g)(5) of the Regulations) .
- **S&P.** Standard 2. Practice G. of S&P provides that land trusts should adopt by board resolution a written records policy that governs how the organization and transaction records are created, collected retained stored and disposed. Among the critical records covered by the policy are the baseline documentation reports for all conservation easements held by the land trust. Standard 9. Practice G. provides that pursuant to its records policy, the land trust must keep originals of all irreplaceable documents essential to the defense of each transaction in one location and copies in a separate location. Original documents should be protected from daily use and are secure from fire, floods and other damage. Baseline documentation should also include a report of the steps taken by the land trust to identify and document whether there are hazardous or toxic materials on or near the property. Land trusts are required to take these steps, as appropriate for the project, to conform to Standard 9. Practice C. of S&P. Standard 11 Practice B requires that for every easement, the land trust has a baseline documentation report that includes a baseline map prepared prior to closing and signed by the landowner at closing. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, a schedule for finalizing the full report and an acknowledgment of interim data that for donations meets Regulations are signed by the Owner at closing.

- **Obligation to Prepare.** Common practice is for the Holder to prepare the Baseline Documentation; however, under the Regulations it is the obligation of donor (the undersigned Owner or Owners) to make available to donee (the Holder) *prior to the time the donation is made*, documentation sufficient to establish the condition of the Trail Area as of the Agreement Date.
- **Items Included.** According to the Regulations, the documentation *may* include: (A) USGS maps, (B) map of the area drawn to scale showing existing improvements, vegetation and identification of flora and fauna, land use history (including present uses and recent past disturbances) and distinct natural features such as large trees and aquatic areas; (C) aerial photograph at an appropriate scale taken as close as possible to the Agreement Date; (D) on-site photographs taken at appropriate locations on the Property. The on-site photographs should be keyed to a location map of the Property and the Trail Area and dated and signed by the photographer. Other items could include documentation showing how the Trail fits into the municipal or county trail plan.

4.07 Trail Area Right

- **Application of “Proportionate Value” Rule.** The rule works like this. Assume a property has a value of 100 before an easement and a value of 80 after an easement. The easement has a value of 20 and therefore is worth 20% of the value of the entire property.

4.08 Qualification under §2031(c) of the Code

- **Purpose.** The purpose of this subsection is to assure that, for purposes of qualifying for favorable estate tax treatment under §2031(c) of the Code, the prohibition on commercial recreational use applies to the entirety of the Trail Area.

Article V. Miscellaneous

5.01 Indemnity

- **Purpose.** Unlike a typical conservation easement where the Holder does not have care, custody or control of the eased property, Holders of an easement granting the public a right of access across Owners’ property generally assume management responsibilities for the Trail Area (and this Agreement is drafted with that assumption). The Owners need to be protected from claims that are the responsibility of the Holder so that Holder (or its insurer) will defend those claims without the need for the Owners to furnish their own defense and incur Litigation Expenses.

5.02 Recreation Use of Land and Water Act

- The Recreation Use of Land and Water Act states that: "an owner of land who ... invites or permits without charge any person to use such property for recreational purposes does not thereby ... [a]ssume responsibility for or incur liability for any injury to persons or property caused by an act of omission of such persons." However, an owner may be open to liability "[f]or wilful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity" or "in any case where the owner of land charges [an admission price or fee to] the person or persons who enter or go on the land for the recreational use thereof". Pennsylvania Recreation Use of Land and Water Act, 68 P.S. §§ 477-4 and 477-6.
- When the trail at issue is a Rail Trail acquired under the Rails-to-Trails Act, the following limitation on liability also applies: "an owner or lessee who provides the public with land under this act shall not ... become liable for any injury to persons or property caused by an act or an act of omission of a person who goes on that land." However, an owner may be open to liability "if there is any charge made or usually made for entering or using the trail[.] Pennsylvania Rails to Trails Act, 32 P.S. § 11.
- If the subject trail is a Rail Trail acquired under the Rails-to-Trails Act, the caption of this Section could be replaced with “Pennsylvania Rails-to-Trails Act; Recreation Use of Land and Water Act” and the following language could replace that in the model:

This Agreement is intended to be interpreted so as to convey to Owners and Holder all of the protections from liability provided by the Pennsylvania Rails to Trails Act, 32 P.S. § 5611 et seq., and the Pennsylvania Recreation Use of Land and Water Act, 68 P.S. § 477-1 et seq., as amended through the applicable date of reference, or any other Applicable Law that provides immunity or limitation of liability for owners or possessors who make property available to the public for recreational purposes.

5.03 Amendment

- **Amendment.** An amendment ordinarily needs to be approved by the Board or other governance committee that approves acceptance of the easement. An amendment is signed with all of the formalities required of the original Agreement, is intended to be recorded in the Public Records, and permanently changes the terms of the Agreement. PALTA urges land trusts to formulate and adopt a policy on amendment. PALTA intends to publish on its website (www.conserveland.org) examples of amendment policies adopted by land trusts in Pennsylvania.
- **S&P.** Standard 11 Practice I. of S&P provides that the land trust has a written policy or procedure guiding amendment requests that: includes a prohibition against private inurement and impermissible private benefit; requires compliance with the land trust's conflict of interest policy; requires compliance with any funding requirements; addresses the role of the board; and contains a requirement that all amendments result in either a positive or not less than neutral conservation outcome and are consistent with the organization's mission.

5.04 Governing Law

- In case the undersigned Owner or a future Owner is an out-of-state resident, this provision makes it clear that only the laws of the Commonwealth of Pennsylvania apply. This avoids a dispute about whether the laws of another jurisdiction or the choice of law rules of the Commonwealth of Pennsylvania apply.

5.05 Assignment and Transfer

(a) By the Holder

- **Purpose.** The limitations on the Holder's ability to transfer its interest are required under §1.170A-14(g)(6)(1) of the Code.
- **Rights of Approval of Transferee.** The question often arises whether Owners should be given a right of prior approval over the identity of the proposed transferee Qualified Conservation Organization. The rationale in support of that argument is that the Owner selected a particular Holder anticipating a good working relationship with that Holder. If Holder can transfer at will to any Qualified Conservation Organization, the expectations of Owner regarding that good working relationship may not be met. The argument against that position is that it is inappropriate to bind the Holder to continue holding an easement that may not be consistent with its mission in the future. Alternatives can be negotiated that provide a mechanism for Owners to object to a particular transferee and suggest another Qualified Conservation Organization willing to accept the transfer of the Agreement.
- **S&P.** Standard 9. Practice L. of S&P provides that if the land trust transfers a conservation easement, the land trust must consider whether the new Holder can fulfill the long-term stewardship and enforcement responsibilities, ensures that the transaction does not result in a net loss of important conservation values and, for donated properties, ensures that the transfer is in keeping with the donor's intent.

(b) By Owners

- **Purpose.** Owners can freely transfer their interest in the Property; however, they can only transfer under and subject to the Agreement, whether or not specifically mentioned in the deed of transfer. This provision also sets forth the understanding of Owners and the Holder that the Agreement is

not just the agreement of the undersigned Persons but binds and benefits all Persons who succeed to their respective interests.

5.06 Severability

- **Purpose.** If the provisions of a document are dependent on each other, then if one fails they all fail. The provision set forth in this Section is intended to avoid application of that rule.

5.07 Entire Agreement

- The written text of the Agreement signed by Owners and the Holder is final and definitive. Whatever was proposed in previous drafts and said in previous negotiations is of no further consequence in interpreting the intentions of the parties.

5.08 Definitions of Capitalized Terms

- **Purpose.** The purpose of this Section is to define all capitalized terms used but not defined elsewhere in the Agreement.

5.09 Incorporation by Reference

- **Additions.** Add additional exhibits that have been incorporated into the text. Some possibilities are:

Exhibit “___” Public Policy Statements.

Exhibit “___” Review Requirements [where certain actions on the part of Owner or Holder need review or approval by the other party]

Exhibit “___” Mortgage Subordination

Exhibit “___” County/Township Supplement

Exhibit “___” Existing Agreements

Closing Matters

- **Closing:** The phrase “INTENDING TO BE LEGALLY BOUND” is especially important where there is no consideration being given for the donation because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania. The term “consideration” means something of value given in return for a promise.
- **Witness/Attest:** It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.
- **Signature lines.** Add as many signature lines as are necessary to accommodate the number of Owners and Beneficiaries who will be signing the Agreement. It is good practice to sign in black ink rather than blue ink so that signatures are legible on microfilm or microfiche.
- **Acknowledgment.** The date of the acknowledgment should not be earlier than the Agreement Date. *See* commentary to opening recitals of Agreement.
- **Exhibits.** Check that all exhibits referenced in the Agreement are attached before it is signed and recorded in the Public Records.

Disclaimer Required by IRS Rules of Practice

Any discussion of tax matters contained in this message is not intended or written to be used and cannot be used for the purpose of avoiding any penalties that may be imposed under Federal tax laws.

Appendix T: Model Water Quality Agreement and Commentary

WATER QUALITY IMPROVEMENT EASEMENT

THIS WATER QUALITY IMPROVEMENT EASEMENT (this "Easement") dated as of _____ (the "Easement Date") is by and between _____ (the "undersigned Owners") and _____ (the "Holder").

ARTICLE I. BACKGROUND

1.01 Property

The undersigned Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:

Municipality:

County:

Parcel Identifier:

1.02 Project

The undersigned Owners desire Holder to undertake a project (the "Project") to remediate effects of abandoned mine drainage to improve the quality of water passing through or discharging from the Property. The Project is more fully described in Exhibit "B". The facilities to be installed by Holder in connection with the Project are also described in Exhibit "B" (the "Facilities").

1.03 Plan

Attached as Exhibit "C" is a survey or other graphic depiction of the Property (the "Plan") showing the location of an area ("the Treatment Area") within which Holder intends to undertake the Project. The Plan may also show one or more of the following areas: an area (the "Temporary Construction Area") to be used as a staging area during construction of Facilities; an area (the "Access Corridor") to provide ingress and egress to and from the Treatment Area and the public right of way; and an area (the "Utility Corridor") to provide power or other utility services to service Facilities.

ARTICLE II. GRANT OF EASEMENTS

2.01 Grant of Easement: Treatment Area

The undersigned Owners grant to Holder an easement over the Treatment Area for the purpose of installation, construction and replacement (collectively, "Construction") of the Facilities; maintenance and repair of the Facilities, monitoring water quality, and other activities in furtherance of the goals of the Project. This easement may be exercised at any time and from time to time by Holder. Except as otherwise provided in this Easement with respect to notice prior to commencement of the Construction of the Facilities, no notice to Owners is required prior to entry onto the Property pursuant to the rights granted under this Article.

(a) **Access Corridor**

This grant of easement over the Treatment Area includes an easement for pedestrian (and, if reasonably necessary for Project activities, vehicular) access to and from the public right-of-way over the Access Corridor designated on the Plan (if any) or, if no Access Corridor is designated on the Plan, then over a path to be designated in a location reasonably satisfactory to Owners and Holder.

(b) **Educational Purposes**

Holder is permitted to invite other Persons, accompanied by an authorized representative of Holder, to enter the Property via the Access Corridor and view the Treatment Area and Facilities within the Treatment Area for scientific and educational purposes related to the Project. Holder is permitted to install signage identifying the Project and/or the interest of Holder and Beneficiaries with respect to the Project within the Treatment Area and/or Access Corridor.

2.02 Grant of Easement: Temporary Construction Area

If a Temporary Construction Area is designated on the Plan, the undersigned Owners grant to Holder an easement over the Temporary Construction Area for the purpose of parking vehicles, storage of materials and equipment and other staging activities related to Construction of Facilities permitted under this Article. Upon termination of use of the Temporary Construction Area, Holder must restore and replant the Temporary Construction Area as nearly as possible to its condition prior to entry.

2.03 Grant of Easement: Utility Corridor

If a Utility Corridor is designated on the Plan, the undersigned Owners grant to holder an easement over the Utility Corridor for the purpose of Construction of power lines or other utility facilities reasonably required in connection with the Project.

2.04 Term

The term of the easements granted in this Article is perpetual provided, however, that Holder may terminate Holder's rights to enter the Property under the grant of this Easement at any time following notice to Owners. Upon notice of termination, Owners and Holder must sign and record in the Public Records a release of this Easement and, upon such recordation, neither Owners nor Holder have any further rights or obligations under this Easement. Unless otherwise agreed in writing by Owners and Holder, Holder has no obligation to remove Facilities at the end of the term of this Easement.

2.05 Beneficiaries

Should Holder fail to complete the Project, the rights of Holder under this Easement may be exercised by Holder, any of the Persons identified below (collectively, the "Beneficiaries") and the respective employees, agents, contractors, successors and assigns of each of them.

- County in which the Property is located
- County conservation district in the county in which the Property is located
- Pennsylvania Department of Environmental Protection

ARTICLE III. OBLIGATIONS

3.01 No Interference

Owners must not interfere or allow any tenant or other person to interfere in any way with the Project or with the exercise of Holder's rights with respect to the easements granted under Article II. The undersigned Owners grant to Holder a right of inspection over the entire Property to determine compliance with the provisions of this Section.

(a) **Prohibited Activities**

Without limiting the breadth of the prohibition under this Section, listed below are examples of activities prohibited to the Owners unless the prior written approval of Holder is first obtained:

- (i) Planting or removing vegetation within the Treatment Area.
- (ii) Construction of any kind within the Treatment Area, Access Corridor, Temporary Construction Area or Utility Corridor, if any.

- (iii) Any activity on or about the Property that changes or redirects water resources within or flowing through the Treatment Area such as channelization of a stream or installation or expansion of a well or pond.

(b) Permitted Activities

The Owners are permitted to engage in the following activities:

- (i) Walking, bird watching and hunting.
- (ii) Planting and harvesting crops and other agricultural activities outside the Treatment Area; provided, however, that Holder is not responsible for any damage to such crops by exercise of Holder's rights under this Easement.

3.02 Construction

Holder agrees that, prior to commencement of Construction of the Facilities:

(a) Notice

Holder must notify Owners not less than 30-days prior to commencement of Construction of the Facilities.

(b) Waivers of Liens

Holder must obtain legally binding waivers of mechanics liens from all Persons furnishing labor or materials in connection with Construction of the Facilities.

(c) Insurance

Holder must obtain certificates evidencing liability insurance coverage with respect to Holder and all Persons entering the Property for the purpose of Construction of the Facilities.

(d) Permits

Holder must obtain, at Holder's cost and expense, all permits and approvals required for the Construction of the Facilities.

(e) Costs

Holder must promptly pay as and when due all costs and expenses incurred in connection with the Construction of the Facilities.

3.03 Indemnity

(a) Scope of Indemnity

Holder must indemnify and defend the Owners against all Losses and Litigation Expenses arising out of or relating to:

- (i) Any breach or violation of this Easement by Holder or other Beneficiary, as the case may be.
- (ii) Damage to property or personal injury (including death) occurring on or about the Property if and to the extent such damage results from the negligent or wrongful acts or omissions of Holder, any Beneficiary or any other Person entering the Property under the grant of easements set forth in Article II.

(b) Defined Terms

- (i) The term "Losses" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.
- (ii) The term "Litigation Expenses" means any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Easement including in each case, attorneys' fees, other professionals' fees and disbursements.

3.04 Title

The undersigned Owners represent and warrant to Holder that they are the sole owners in fee simple of the Property and that the Property is unencumbered by any mortgage or other lien securing the payment of money or, if it is, Owners have obtained and delivered to Holder prior to the Easement Date the subordination of any such mortgage or other lien to this Easement.

ARTICLE IV. MISCELLANEOUS

4.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Agreement must give the notice in writing and must use one of the following methods of delivery:

- (i) Personal delivery.
- (ii) Certified mail, return receipt requested and postage prepaid.
- (iii) Nationally recognized overnight courier, with all fees prepaid.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

4.02 Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Easement.

4.03 Successors and Assigns

Holder may not assign its rights under this Easement except to a non-profit organization or governmental entity that assumes the liabilities and obligations of Holder under this Easement. The rights of any Beneficiary of this Easement are not assignable. Subject to the preceding restrictions, this Easement is binding upon Owners, Holder and their respective successors and assigns.

4.04 Severability

If any provision of this Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Easement remain valid, binding and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Easement invalid, illegal or unenforceable in any respect.

4.05 Counterparts

This Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

4.06 Guides to Interpretation

(a) Captions

The descriptive headings of the articles, sections and subsections of this Easement are for convenience only and do not constitute a part of this Easement.

(b) Other Terms

- (i) The word "including" means "including but not limited to".
- (ii) The word "must" is obligatory; the word "may" is permissive and does not imply an obligation.
- (iii) The word "Owners" means the undersigned Owners and all Persons after them who hold any interest in all or any part of the Property.
- (iv) The word "Person" means individual, corporation, partnership, trust or other legally recognized entity.
- (v) The term "Public Records" means the office for the recording of deeds in and for the county in which the Property is located.

4.07 Entire Agreement

This is the entire agreement of Owners and Holder pertaining to the subject matter of this Easement. The terms of this Easement supersede in full all statements and writings between the Owners and Holder pertaining to the transaction set forth in this Agreement.

4.08 Incorporation by Reference

The following items are incorporated into this Agreement by means of this reference:

- The legal description of the Property attached as Exhibit "A"
- The description of the Project attached as Exhibit "B"
- The Plan attached as Exhibit "C"

4.09 Public Records

This Easement is intended to be recorded in the Public Records at the expense of Holder as a servitude running with the land identified as the Property. This Easement is binding upon Owners and their successors and assigns as owner of the Property whether or not such Owners had actual notice of the terms of this Easement.

based on model v. 7/15/2005

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Revised through: 7/15/2005

INTENDING TO BE LEGALLY BOUND, the undersigned Owners and Holder have signed and delivered this Easement as of the Easement Date.

Witness/Attest:

_____ Print Name: _____

_____ By: _____
Name:
Title:

This document is based on the model *Water Quality Improvement Easement* (7/15/05 edition) provided by the Pennsylvania Land Trust Association.

This model should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The document must be revised to reflect specific circumstances under the guidance of legal counsel.

Revised through: 7/15/2005

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

Water Quality Improvement Easement & Commentary

a model document and guidance
for securing long-term access to property
for the purpose of remediating
the effects of abandoned mine drainage

Prepared by the
Pennsylvania Land Trust Association

in cooperation with the
Eastern Pennsylvania Coalition for Abandoned Mine Reclamation
Enterprising Environmental Solutions, Inc.
PA Department of Conservation and Natural Resources
PA Department of Environmental Protection
Schuylkill Conservation District
Schuylkill Headwaters Association
Stell Environmental Enterprises, Inc.

and with support from the

William Penn Foundation



Easement development team

Patricia L. Pregmon, Esq., principal author

Andrew M. Loza, project manager



version 7/15/2005

COMMENTARY

to the Water Quality Improvement Easement

Using the Water Quality Improvement Easement

- The model *Water Quality Improvement Easement* and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The model must be revised to reflect the specific circumstances of the particular abandoned mine drainage remediation project under the guidance of legal counsel. Once a document based on this model has been prepared or reviewed on behalf of the Holder by an attorney licensed to practice law in the Commonwealth of Pennsylvania, the box at the bottom of the signature page that begins “This model should not be construed or relied upon as legal advice...” may be deleted.
- Users of the *Water Quality Improvement Easement* are encouraged to read through the commentary at least once. The commentary follows the same Article and Section structure as the Easement to make cross-referencing easy. To address different situations, the commentary may suggest alternative language to that found in the model or suggest deleting or adding sections. The commentary also explains the purposes behind many provisions.
- **Header:** In the final version of a document prepared using the *Water Quality Improvement Easement* as the base, it is good practice to remove the header “Revised through: [date].” In MS Word, click on *View*, then *Header and Footer*, delete the phrase and close.
- **Recording:** Several county recording offices require at least 3-inches at the top of the initial page for use by the recording office and at least 1-inch margins otherwise. Only 8.5 x 11 inch paper is accepted by many county recording offices. The *Water Quality Improvement Easement* has been formatted to comply with these requirements. Users are urged to consult local recording offices to inquire whether any additional requirements may apply in that county.
- **Updates:** Check www.conserveland.org periodically for updates to the *Water Quality Improvement Easement & Commentary*.

Opening Recital

- **Purpose.** The purpose of the opening recital is to identify the parties to the document and the effective date of the document.

Easement Date

- The date can be added in hand writing at the time of signing.
- The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), substitute for “dated as of ___”: “signed _____ but delivered _____”. The date of delivery is the effective “Easement Date”.

The Owners

- Insert names exactly as set forth in the deed by which the Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title. The

customary practice is to recite these facts either in the Background section or at the end of the legal description attached as Exhibit “A”.

- All owners as of the Easement Date must join in the Easement to be effective under applicable law.
- The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.
- If a person other than an individual is granting the Easement, a phrase identifying the type of entity and state in which the person was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.
- If only one Owner is signing the Easement, a convenient method to avoid changing plural to singular throughout the document is to substitute the phrase “(whether singular or plural, the “Owners”)” for the phrase “(the “Owners”))”.

Holder

- The full legal name of the Holder (including Inc. or Incorporated if part of the legal name) should be inserted here.
- A phrase identifying the type of entity and state in which the Holder was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania non-profit corporation.

I. BACKGROUND

- **Purpose.** The purposes of Article I “Background” are to inform the reader of the factual information necessary to understand the subject matter of the document and the intentions of the parties in entering into a legally binding relationship.
- **Articles and Sections.** The model has been structured in Articles and Sections rather than a list of paragraphs. There are several practical reasons for this. One reason is to encourage additional provisions to be clustered with similar provisions instead of adding them to the end where they may be missed in a quick review. Another reason is to avoid wherever possible cross-references to specific paragraphs. A common drafting error is to add or delete paragraphs and not check whether cross-references are still correct. This structure seeks to minimize the opportunities for that error to occur.

1.01 Property

- **Purpose.** The purpose of this Section is to identify the land that will be bound by the terms of the Easement.

Street Address: Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example: 100 acres more or less north side of ___ Road west of the intersection of ___ Road and ___ Road.

Municipality: Insert the city, township or borough in which the Property is located. This may or may not be the name of the town used for mailing address purposes.

County: Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in both counties.

Parcel Identifier: The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. *See* Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337). Some counties charge additional recording fees to note the tax parcel number and/or uniform parcel identifier number on the document presented for recording if not furnished in the document itself or the legal description attached as Exhibit “A”.

1.02 Project

- The purpose of this Section is to incorporate into the Easement a description of the particular water quality improvement project to be undertaken on the Property. The scope of Holder’s rights to enter the Property are as expansive as the definition of the “Project” so this definition should be as broad as possible with the details listed as being “included” in the Project. Care should be taken to include not only a description of the Facilities to be constructed or installed but also site work such as grading or contouring. Also be sure to include monitoring and other activities that may occur from time to time in the future. The term “Facilities” is intended to be expansive and include all buildings, structures and other changes to the Property included in the Project.

1.03 Plan

- The purpose of this Section is to incorporate into the Easement the plan depicting at least one, and up to four, areas that may be subject to easements under this document. The four areas are more fully described below. If the Plan is larger than 8.5 by 11 inches, a reduced copy may be attached to the Easement; however, in that case, it is good practice to identify the Plan specifically. For example:

A reduced copy of the Plan prepared by ___ dated ____ is attached as Exhibit “C”. Holder will keep a full size copy of the Plan on file at the principal office of Holder.

- **Treatment Area.** The area that will always be shown on the Plan is the Treatment Area within which the Project will be pursued over the term of the Easement.
- **Temporary Construction Area.** If a larger area is required during Construction activities for storage of equipment or materials or other staging purposes, the Plan must designate the area to be occupied for that purpose as the Temporary Construction Area.
- **Access Corridor.** If access to the Treatment Area is not available directly from a public right-of-way, the Plan may designate the location of an Access Corridor within which Holder may move personnel and equipment to and from the Treatment Area. In certain Projects, an Access Corridor may only be a path not formally located on the Plan. In that case, §2.01(a) provides for a location to be mutually agreed upon by the Owners and Holder.
- **Utility Corridor.** If the Project requires a source or power or other utility services to service Project Facilities, the Plan must also show the location of a Utility Corridor to be used for these purposes.

1.04 Access Fee

- A section labeled “1.04 Access Fee” is to be added to Article I whenever Owners receive consideration for the grant of the Easement. Language for the section is as follows:

In consideration of the grant of this Easement, Holder is to pay to Owners a fee (the “Access Fee”) in the amount of \$_____.

- Add a sentence describing the terms of payment such as one of these alternatives:
 - The Access Fee is due and payable in full on the Easement Date.

- The Access Fee is due payable as follows: ____% upon the Easement Date and ____% upon commencement of Construction of the Facilities on the Property.
- [Add to the end of the first sentence: “per year.”] The Access Fee is due and payable in advance on the Easement Date and thereafter on each anniversary of the Easement Date during the term of this Easement.

1.05 Environmental Good Samaritan Act

- If desired, a Section may be added to Article I to make clear that the Owners and/or the Holder are entitled to the limitations of liability afforded to qualified water pollution abatement projects under the Environmental Good Samaritan Act (27 Pa. C.S. §8101 *et seq.*) The purposes of the Environmental Good Samaritan Act are as follows:

[T]o encourage the improvement of land and water adversely affected by mining and oil and gas extraction, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of this Commonwealth and to eliminate or abate hazards to health and safety. The purpose of this chapter is to improve water quality and to control and eliminate water pollution resulting from mining or oil or gas extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution.¹

- For a description of the scope of the immunity available to Owners and Holder, see the Appendix attached to this Commentary.
- The following text may be incorporated into the Easement as §1.05 Environmental Good Samaritan Act, but the immunity provided by the Good Samaritan Act will apply if the requirements for eligibility are met whether or not any provision is included in the Easement:

This Project is intended to meet the requirements for immunity from liability accorded to water pollution abatement projects under the Pennsylvania Environmental Good Samaritan Act (27 Pa.C.S. §8101 *et seq*) (the “Good Samaritan Act”).

(a) Consideration to Owners

Owners confirm that Owners have not received and will not receive any fee or other consideration for the grant of this Easement or Owners’ participation in the Project.

- If the Owners receive a fee or other consideration for the grant of the Easement, omit §1.05(a). There will be no immunity available for Owners under the Good Samaritan Act. *See* §1.04 of this Commentary for additional section entitled “Access Fee”.

(b) Consideration to Holder

Holder confirms that Holder will provide the equipment, materials and services included in the Project Facilities at no cost to Owners.

- If the Holder receives payment above cost for the Construction of the Facilities, omit §1.05(b). There will be no immunity available to Holder under the Good Samaritan Act.
- If the Holder charges the Owner at cost for the Construction of the Facilities, §1.05(b) set forth above should be modified to substitute “at Holder’s cost” for “at no cost” to Owner. Immunity will still be available to Holder under the Good Samaritan Act.
- If neither Owners nor Holder have rights to immunity under the Good Samaritan Act, delete the entirety of §1.05.

(c) Department Approval

- (i) Holder has submitted to the Pennsylvania Department of Environmental Protection (“PADEP”) a

¹ 27 Pa. C.S. §8103

detailed written plan describing the Project which plan has been approved by PADEP as required by §8105 of the Good Samaritan Act.

- (ii) PADEP has given, or will give prior to commencement of the Project, public notice of the Project as required by §8105(b) of the Good Samaritan Act.
- (iii) The Project will be conducted under a general permit issued by PADEP which (i) encompasses all of the activities included in the Project; and (ii) was issued in place of any required stream encroachment, earth disturbance or national pollution discharge elimination system permits.
- The requirements set forth in §1.05(c)(i), (ii) and (iii) must be met for the Project to qualify for immunity under the Good Samaritan Act.

II. GRANT OF EASEMENTS

2.01 Grant of Easement: Treatment Area

- The purpose of this Section is to grant to Holder a permanent easement to enter the Property and exercise exclusive control over the Treatment Area to construct the Facilities and pursue the Project.

(a) Access Corridor

- The purpose of this Section is to grant the necessary rights of ingress and egress to pursue the Project within the Treatment Area. If the Treatment Area can be accessed directly from a public right-of-way, this subsection can be deleted.

(b) Educational Purposes

- The purpose of this Section is to expand access to the Treatment Area to educate the public and allow persons other than Holder to conduct water quality research.

2.02 Grant of Easement: Temporary Construction Area

- The purpose of this Section is to grant a temporary easement over a wider area of the Property during the construction of the Project.
- This Section can be deleted if no Temporary Construction Area is required for the Project.

2.03 Grant of Easement: Utility Corridor

- The purpose of this Section is to provide the right to connect the Treatment Area to sources of power or other utility services within the public right-of-way.
- This Section can be deleted if no Utility Corridor is required for the Project.
- This Section contemplates that the utility facilities servicing the Treatment Area would be connected directly to power sources within the public right-of-way and charges would be billed directly to Holder's account by the provider of the utility service. If the plan is to connect to existing power sources servicing other improvements on the Property, this Section would need to be expanded to provide for metering of power used by the Project and reimbursement to Owners for the reasonable cost of the power consumed by the Project.

2.04 Term

- There are two purposes for this Section. The first is to confirm that the easement over the Treatment Area continues for as long as Holder desires, even to perpetuity. The second purpose is to confirm that Holder has no obligation to continue the Project in perpetuity and, if the Project is abandoned, the Facilities stay in place unless Owners and Holder have otherwise agreed.

2.05 Beneficiaries

- The purpose of this Section is to identify other agencies (usually funding sources) that may have rights to enter the Property under the authority granted by this Easement. If the rights of a Beneficiary to enter the Property are limited to specific purposes, that limitation can be set forth in this Section. For example, if the Beneficiary is the County and Owners do not want the County to have the right to invite members of the general public onto the Property, add the following to §2.05: “The right of Beneficiary to enter the Property under the authority granted by this Easement is limited to the right of employees of Beneficiary to inspect the Treatment Area and monitor the progress of the Project.” Beneficiaries may, but need not, sign the document to evidence their acceptance of the terms of the Easement.

III. OBLIGATIONS

3.01 No Interference

- The purpose of this Section is to set the general rule that Owners must limit use of the Property (whether by an Owner or other persons, such as a tenant farmer, using the Property) to uses that are consistent with the rights of Holder under this Easement. Specific examples are set forth in (a) and (b) below.

(a) Prohibited Activities

- The list provided in the model is a not intended to be exhaustive – it is only intended to set forth particular examples of possible activities that are likely to interfere with the Project. The model provides for exceptions to these prohibitions on a case by case basis by prior written approval of Holder.
 - (i) Planting or removing vegetation within the Treatment Area.
 - The Treatment Area cannot be used for field crops or other agricultural activities. The success of the Project may be dependent upon maintenance of particular types of vegetation within the Treatment Area.
 - (ii) Construction of any kind within the Treatment Area, Access Corridor, Temporary Construction Area or Utility Corridor, if any.
 - Construction within the easement areas would ordinarily be inconsistent with the exercise of Holder’s rights; however, Owners and Holder may agree on certain exceptions such as fencing with gated access within the Access Corridor or Utility Corridor to permit those areas to be used as pasture. If an exception has been agreed upon prior to the Easement Date, it can be added to this subsection; otherwise, Holder can issue a written approval for the particular item.
 - (iii) Any activity on or about the Property that changes or redirects water resources within or flowing through the Treatment Area such as channelization of a stream or installation or expansion of a well or pond.
 - The success of the Project may be dependent upon the quantity of water passing through the Treatment Area. Activities of the Owners on the remainder of the Property that would interfere with this goal must be prohibited.

(b) Permitted Activities

- There are two purposes to this Section. The first is to describe the kinds of passive activities that may be engaged in by Owners without detriment to the Project. The second is to alert the Owners to the fact that they take the risk of planting crops within an area (such as an Access Corridor) that may be required from time to time for pedestrian or vehicular use in connection with the Project.
- Add additional permitted activities if appropriate.

3.02 Construction

- The purpose of this Section is to give the Owners some protection from the risks of permitting Construction of the Facilities on the Property.

(a) Notice

- The number of days notice can be shortened if desired by Owners and Holder.

(b) Waivers of Liens

- This is an important protection for Owners. Even if the Holder pays the general contractor in full for labor and materials provided to the Project, if the general contractor fails to pay a subcontractor, the interest of the Owners in the Property could still be at risk by the filing of a mechanics' lien.

(c) Insurance

- This provision assures the Owners that if persons entering the Property under the grant of this Easement are injured, insurance coverage will be available to pay those claims.

(d) Permits

- This provision assures the Owners that they will not be exposed to legal liability for violation of zoning, building and safety laws. This provision also places responsibility on the Holder to obtain appropriate permitting from PADEP for the Project including any applicable stream encroachment, earth disturbance or NPDES permits.

(e) Costs

- This provision assures the Owners that providers of labor and materials to the Project will be paid as and when due.

3.03 Indemnity

- This provision assures the Owners that Holder will be responsible to provide defense of certain claims arising from the Project. The first category of claims arise from the violation of the Easement by Holder or a Beneficiary – for example, claims arising from the failure of Holder to obtain proper permits and approvals or the failure of Holder to pay providers of labor and materials. The second category of indemnification arises from claims ordinarily covered by policies of commercial general liability insurance.

3.04 Title

- This provision assures the Holder that there is no holder of a mortgage or other lien who, upon a foreclosure or judicial sale of the Property, could acquire title to the Property free and clear of Holder's rights under this Easement. PALTA intends to make available a form of mortgage subordination that can be used for this purpose if a mortgage exists on the Property as of the Easement Date.

IV. MISCELLANEOUS

- The purpose of this Article is to group together a variety of provisions that either pertain to both Owners and the Holder or that pertain to the administration or interpretation of the Easement.

4.01 Notices

- The purpose of this Section is to provide a procedure for the giving of formal notices under the Easement.

(a) Form of Notices

- Electronic mail and telefax can be added as well if the Holder is confident these means of communication will be duly noted. The customary practice is to require that notices by these means be followed promptly by notice delivered by one of the methods listed above.

(b) Address for Notices

- A street address should be furnished as commercial couriers (such as FedEx or UPS) cannot deliver to P.O. Boxes.

4.02 Governing Law

- If one or more of the Owners, present or future, is an out-of-state resident, this provision makes it clear that only the laws of the Commonwealth of Pennsylvania apply. This avoids a dispute about whether the laws of another jurisdiction or the choice of law rules of the Commonwealth of Pennsylvania apply.

4.03 Successors and Assigns

- The purpose of this section is to set forth the rules governing the transferability of rights and duties under the Easement. Some Owners request prior notice and rights of approval as to the identity of the proposed transferee. Rights of prior notice may be given to Owners if the Holder desires to do so. That will give Owners the opportunity to contact the Holder for additional information and, perhaps, suggest other choices without unduly restricting Holder's ability to transfer the Easement should the need arise. If rights of prior notice are given, add the following to the end of §4.03: "Holder must notify Owners within 30-days prior to the assignment of the identity and address for notices of the organization to which Holder intends to transfer its rights under this Easement."

4.04 Severability

- If the provisions of a document are dependent on each other, then if one fails they all fail. The provision set forth in this section is intended to avoid application of that rule – if one provision fails because it is no longer legal or enforceable under applicable law the others remain in full force.

4.05 Counterparts

- There are several purposes for this provision. First, it makes clear that more than one counterpart of the Easement can be signed. Second, it allows the Owners and Holder to exchange signature pages signed separately rather than circulate original documents back and forth to collect necessary signatures.

4.06 Guides to Interpretation

- The provisions of this section are intended to assist future readers of the document to interpret it correctly.

(a) Captions

- This provision is self-explanatory; however, drafters need to be aware of the consequences of falling afoul of this provision. The drafter cannot rely on a caption to convey meanings that are not in the text itself.

(b) Other Terms

- These words and phrases are defined so as to avoid repetition in the document.

4.07 Entire Agreement

- The written text of the Easement signed by Owners and the Holder is final and definitive. Whatever was proposed in previous drafts and said in previous negotiations is of no further consequence in interpreting the intentions of the parties.

4.08 Incorporation by Reference

- The provision serves several purposes (1) it avoids needless repetition of phrases; and (2) it serves as a handy list to check which Exhibits need to be attached to the document.

4.09 Public Records

- This provision reinforces the understanding of the parties that anyone who owns this Property at any time during the term of this Easement is bound by its terms whether or not the owner received a copy of the Easement before acquiring the Property. The fact that it is recorded in the Public Records is sufficient notice of its terms.

Closing

- The phrase “INTENDING TO BE LEGALLY BOUND” is especially important to be added to documents where there is no consideration being given for the grant of the Easement because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania.

Witness/Attest

- It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.

Signature lines

- Add as many signature lines as are necessary to accommodate the number of Owners who will be signing the Easement. Signatures in black ink are preferred for recording purposes as they are more legible on microfilms.

APPENDIX

to the Commentary to the Water Quality Improvement Easement

- **Owners' Immunity**

If the requirements for eligibility under the Good Samaritan Act are met:

- (1) Owners are immune from liability for any injury or damage suffered by the person implementing the Project while the person is within the Project work area.²
- (2) Owners are immune from liability for any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of a person implementing the Project which occurs during the implementation of the Project.³
- (3) Owners are immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a Project.⁴
- (4) Owners are not deemed to assume legal responsibility for or incur liability for any pollution resulting from a Project.⁵
- (5) Owners are not subject to a citizen suit filed pursuant to §601 of the Clean Streams Law for pollution resulting from a Project.⁶
- (6) Owners are immune from liability for the operation, maintenance or repair of the Project Facilities constructed or installed during the Project unless an Owner negligently damages or destroys the Project Facilities or denies access to those persons who operate, maintain or repair the Project Facilities.⁷

- **Holder's Immunity**

The Good Samaritan Act provides immunity to any person who provides equipment, materials or services at no cost or at cost for a water pollution abatement project (including Holder) as follows:

- (1) The person is immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the Facilities constructed or installed during the Project.⁸
- (2) The person is immune from liability for any pollution emanating from the Facilities constructed or installed during the Project unless the person [sic] affects an area that is hydrologically connected to the Project work area and causes increased pollution by activities which are unrelated to the implementation of the Project.⁹
- (3) The person is not deemed to assume legal responsibility for or incur liability for the operation, maintenance and repair of the Facilities constructed or installed during the Project.¹⁰

² 27 Pa. C.S. §8106(a)(1)

³ 27 Pa. C.S. §8106(a)(2)

⁴ 27 Pa. C.S. §8106(a)(3)

⁵ 27 Pa. C.S. §8106(a)(4)

⁶ 27 Pa. C.S. §8106(a)(5)

⁷ 27 Pa. C.S. §8106(a)(6)

⁸ 27 Pa. C.S. §8107(a)(1)

⁹ 27 Pa. C.S. §8107(a)(2)

¹⁰ 27 Pa. C.S. §8107(a)(3)

(4) The person is not subject to a citizen suit under §601 of the Clean Streams Law for pollution emanating from the Facilities constructed or installed during the Project.¹¹

- **Exceptions to Owners' Immunity**

No immunity is granted to Owners if Owners charge an access fee or require other consideration before allowing access to the land for the purpose of implementing the Project.¹²

Even if Owners have received no consideration, the scope of Owners' immunity under the Good Samaritan Act *excludes* (and the Owners remain legally responsible for):

- (1) Injury or damage resulting from an Owner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.¹³
- (2) The unlawful activities of an Owner.¹⁴
- (3) Damage to adjacent landowners or downstream riparian landowners which results from the Project where written notice or public notice of the proposed Project was not provided.¹⁵

- **Exceptions to Holder's Immunity**

Persons (including Holder) who provide equipment, materials or services for consideration above cost are not entitled to any immunity under the Good Samaritan Act.¹⁶

The scope of immunity under the Good Samaritan Act for persons who provide equipment, materials or services at no cost or at cost for a Project *excludes* (and the person remains responsible for):

- (1) Injury or damage resulting from the person's acts or omissions which are reckless or constitute gross negligence or willful misconduct.¹⁷
- (2) The unlawful activities of that person.¹⁸
- (3) Damages to adjacent landowners or downstream riparian landowners which result from a Project where written notice or public notice of the proposed Project was not provided.¹⁹

¹¹ 27 Pa. C.S. §8107(a)(4)

¹² 27 Pa. C.S. §8106(c)(2)

¹³ 27 Pa. C.S. §8106(c)(1)

¹⁴ 27 Pa. C.S. §8106(c)(3)

¹⁵ 27 Pa. C.S. §8106(c)(4)

¹⁶ 27 Pa. C.S. §8107(a)

¹⁷ 27 Pa. C.S. §8107(b)(1)(i)

¹⁸ 27 Pa. C.S. §8107(b)(1)(ii)

¹⁹ 27 Pa. C.S. §8107(b)(1)(iii).

Appendix U: Sample Greenway Coordinator Position Descriptions

CUMBERLAND COUNTY

Greenway and Open Space Coordinator
Position Description

Exempt

OVERALL OBJECTIVE OF JOB:

To preserve open spaces and protect natural resources by coordinating the development of the Greenway Project and to expand the Open Space plan within Cumberland County.

ESSENTIAL FUNCTIONS OF THE JOB:

1. Oversees the development of the County's Greenway Plan.
2. Coordinates the development and implementation of a County Pilot Greenway Project in conjunction with the County Planning Commission.
3. Coordinates the County's comprehensive land use plan in conjunction with the County Planning Commission.
4. Works with municipalities to facilitate the development of local plans for the Greenway Project and Open Space Plan.
5. Promote the Open Space and Greenway Projects through newsletters/press releases and through presentations to organizations throughout the County.
6. Works with consultants and other technical professionals as needed through all phases of the projects.
7. Continuously searches for grant monies and writes grant proposals.
8. Works with other County agencies to coordinate project efforts.

OTHER DUTIES OF JOB:

1. Attends meetings, training and seminars as required.
2. Performs other duties as required of the position.

SUPERVISION RECEIVED:

Receives direction from the County Planning Commission.

SUPERVISION GIVEN:

None

WORKING CONDITIONS:

1. Works indoors in adequate work space with adequate temperatures, ventilation and lighting.
2. Works with average indoor exposure to noise and stress, but subject to frequent disruptions.
3. Normal indoor exposure to dust/dirt.

4. Subject to working outdoors at work sites and being exposed to the natural elements.
5. Travels to work sites or other locations as required.

PHYSICAL/MENTAL CONDITIONS:

1. Must be able to sit, stand, walk and drive intermittently throughout the workday, with occasional kneeling, twisting, stooping, bending, climbing necessary to carry out work duties.
2. Dexterity requirements range from simple to coordinated movements of fingers/hands; feet/legs; torso necessary to carry out duties of job.
3. Sedentary work, with occasional lifting/carrying of objects with a maximum weight of ten pounds.
4. Must demonstrate emotional stability.
5. Must be able to move frequently throughout the workday.
6. Must be able to pay close attention to details and concentrate on work.
7. Must be capable of walking and hiking on uneven terrain and unprepared surfaces including steep inclines.

QUALIFICATIONS:

A. EDUCATION/TRAINING:

Bachelor's Degree in Public Administration/Regional Planning/ Geography or related field.

B. WORK EXPERIENCE:

3-5 years experience working in management, supervisory and experience with project management or any equivalent combination of experience and/or education/training.

KNOWLEDGE, SKILLS AND ABILITIES REQUIRED:

1. Must be able to speak and understand the English language in an understandable manner in order to carry out essential functions of job.
2. Must possess effective written and oral communication skills.
3. Must possess initiative and problem solving skills.
4. Must possess ability to function independently, have flexibility and personal integrity and the ability to work effectively with several levels of governmental officials, outside governmental agencies, consultants, staff and the general public.
5. Must possess the technical knowledge of operating personal computers and other office equipment.

Position Description _____

- 6. Must possess the ability to make independent decisions when circumstances warrant such action.
- 7. Must possess overall knowledge of principles and practices of project management and public relations.
- 8. Must possess a thorough knowledge of land management methods and techniques, as well as federal, state and local requirements regarding same.
- 9. Must possess knowledge of community agencies and the ability to work effectively with them.
- 10. Must possess knowledge of geography, natural resources and funding programs involving area projects.
- 11. Must possess the ability to instruct others of land management policies, laws, techniques and programs.
- 12. Must possess the ability to prepare budgets and direct and control expenditures within the program.
- 13. Must be able to maintain integrity of confidential information.
- 14. Must possess a valid Pennsylvania Driver's license and a willingness to travel within the County as needed.

I HAVE READ THE ABOVE POSITION DESCRIPTION AND FULLY UNDERSTAND THE REQUIREMENTS SET FORTH THEREIN. I HEREBY ACCEPT THE POSITION AND AGREE TO ABIDE BY THE REQUIREMENTS AND DUTIES SET FORTH. I WILL PERFORM ALL DUTIES AND RESPONSIBILITIES TO THE BEST OF MY ABILITY.

(Signature of Employee)

(Date)

(Signature of Supervisor)

(Date)

In compliance with the Americans With Disabilities Act, the Employer will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective employees and incumbents to discuss potential accommodations with the Employer.

**PIKE COUNTY
POSITION DESCRIPTION**

Department: Pike County Office of Community Planning
Position Title: Community & Natural Resource Planner
Reports to: Pike County Planning Commission

Update: April 2005

PURPOSE OF POSITION

The purpose of this position is to provide leadership for the county planning office in the development and implementation of open space, greenways and recreation planning and land preservation initiatives throughout the county and to provide technical and planning assistance for Pike County municipalities in the implementation of similar initiatives. The position will provide coordination of natural resource programs as they relate to the County Open Space, Greenways, and Recreation Plan, the natural resource planning initiatives identified in the County's Comprehensive Plan, and local resource planning programs. The position will also assist in efforts to implement the County Comprehensive Plan as it relates to sustainable development practices and integration of natural resource planning with sound land use and community revitalization efforts.

ESSENTIAL POSITION FUNCTIONS

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Coordinates the development and implementation of the County's Open Space Plan and Program; assists in establishing program priorities and in developing and interpreting program policies; administers program activities and maintains communication with county and municipal officials as well as other interested parties.

Serves as county staff liaison to the Pike County Open Space Advisory Board (once established), providing staff reports and recommendations on program policies and priorities.

Develops appropriate administrative procedures that are consistent with the objectives of the county's Open Space Program and the County Comprehensive Plan; serves as the program's liaison to municipalities and other interested parties.

Provides technical and planning assistance to municipalities in the administration, planning and development of open space programs; promotes and supports multi-municipal/regional open space planning efforts; ensures that open space plans are consistent with the county program.

Makes recommendations to municipal boards and councils regarding updates and amendments to local ordinances as they relate to open space programs and sustainable development.

Reviews land development and subdivision plans for Pike County municipalities as they relate to county, municipal and regional natural resource planning and sustainable development efforts. Coordinates reviews with the County Conservation District when applicable.

Performs comprehensive planning activities related to the County's Comprehensive Plan. Primarily providing technical assistance to local municipalities in implementing the goals of the County's Comprehensive Plan and strengthening community planning and implementation efforts of local municipalities as per the DCED LUPTAP program guidelines.

Works with the Pike County Commissioners to seek funding for implementation and development of the Pike County Park.

Investigates and pursues public and private funding opportunities to implement open space preservation activities.

Establishes and maintains a cooperative working relationship with local, regional, state and federal government, volunteer agencies, and other interested parties concerned with open space, recreation and park issues and sustainable development within the region.

Attends meetings of municipal planning commissions; provides technical assistance and guidance in planning related issues; fields questions and provides information as required.

Attends meetings, conferences, seminars, workshops and training classes to stay apprised of regional, state and other information which might provide opportunities for expanding local initiatives and/or coordinating local initiatives with other efforts. Applies this updated/current information to daily work activities and projects; provides feedback to other planning staff, Planning Commission and County Commissioners; and ensures county coordination/compliance with broader regional and state initiatives.

Establishes and maintains a comprehensive, high profile public and municipal outreach program aimed at highlighting the benefits of initiatives and techniques which can be used to preserve open space and to encourage sustainable development. Assists municipalities with local outreach initiatives. Implements outreach through various avenues (media, annual report, website, workshops, public presentations, etc.).

Prepares tables, graphics and charts using business software programs and completes various geographic information system (GIS) projects as needed; maintains and updates various county and municipal GIS layers related to natural resource planning efforts at both the county and local municipal level for the planning office.

Assembles data and/or conducts studies specifically related to open space conservation, land preservation, recreation issues, or related land use planning as required. Receives, reviews, analyzes and makes recommendations on a variety of reports and documents including open space plans and maps, legislative changes, funding source information, policy amendments and technical reports.

Prepares, writes, and completes a variety of correspondence, reports and recommendations including application and plan recommendations, quarterly reports, program presentation, financial summaries and press releases.

Assists with supervision of interns and/or county staff who support the objectives of this position.

ADDITIONAL FUNCTIONS

Performs other related duties as identified by Pike County Planning Commission in conjunction with the County Commissioners. These duties may include such tasks as: responding to requests from the public on natural resource planning and studies and performing administrative duties as needed.

MINIMUM QUALIFICATIONS, TRAINING AND EXPERIENCE

Bachelor's Degree in community, rural, regional, or natural resource planning, or a related field; supplemented by five (5) years of previous experience and/or training involving land use or natural resource planning or a similar field; or any equivalent combination of education, training, and experience which provides the requisite knowledge, skills, and abilities for this position. A working knowledge of Geographic Information Systems (GIS) would be helpful for carrying out the tasks related to this position; however, this training and experience is not required. Must possess and maintain a valid Pennsylvania driver's license.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES TO PERFORM ESSENTIAL JOB FUNCTIONS

Data Utilization: Requires the ability to evaluate, audit, deduce, and/or assess data using established criteria. Includes exercising discretion in determining actual or probable consequences and in referencing such evaluation to identify and select alternatives.

Human Interaction: Requires the ability to apply principles of persuasion and/or influence over others in a leadership capacity.

Equipment, Machinery, Tools, and Materials Utilization: Requires the ability to operate, maneuver and/or control the actions of equipment, machinery, tools and/or materials used in performing essential functions. This includes but is not limited to computers, keyboards, printers, copy machines, projectors and the like. Knowledge of computer word processing, spreadsheet, database and GIS software in use of computers.

Verbal Aptitude: Requires the ability to utilize consulting and advisory data and information, as well as reference, descriptive and/or design data and information as applicable.

Mathematical Aptitude: Requires the ability to perform addition, subtraction, multiplication and division; ability to calculate decimals and percentages; may include ability to perform mathematical operations with fractions; may include ability to compute discount, interest, profit and loss, ratio and proportion; may include ability to calculate surface areas, volumes, weights and measures; may include ability to interpret inferential statistical reports and ability to interpret formulation and equation data or apply algebraic and trigonometric formulas.

Functional Reasoning: Requires the ability to apply principles of logical or scientific thinking to implement both intellectual and practical relationships. Involves responsibility for consideration and analysis of complex organizational problems of major functions.

Situational Reasoning: Requires the ability to exercise judgment, decisiveness and creativity in situations involving the evaluation of information against sensory, judgmental, or subjective criteria, as opposed to that which is clearly measurable or verifiable.

Physical Ability: Tasks require the ability to exert moderate physical effort in sedentary to light work. Tasks may involve some lifting, carrying, pushing, and/or pulling of objects and materials of light weight (10 to 15 pounds) and/or the ability to stoop, kneel, crouch and crawl. Job tasks involve the ability to coordinate eyes, hands, feet and limbs in performing skilled movements such as rapid keyboard use. Tasks may involve extended periods of time at a keyboard or work station. Tasks may occasionally involve walking or hiking on uneven terrain and unprepared surfaces including steep inclines.

Sensory Requirements: Some tasks require the ability to perceive and discriminate colors or shades of colors, depth, textures, sounds, odors, and visual cues or signals. Tasks require the ability to communicate orally.

Environmental Factors: Essential functions are regularly performed without exposure to adverse environmental conditions.

I HAVE READ THE ABOVE POSITION DESCRIPTION AND FULLY UNDERSTAND THE REQUIREMENTS SET FORTH THEREIN. I HEREBY ACCEPT THE POSITION AND AGREE TO ABIDE BY THE REQUIREMENTS AND DUTIES SET FORTH. I WILL PERFORM ALL DUTIES AND RESPONSIBILITIES TO THE BEST OF MY ABILITY.

(Signature of Employee)

(Date)

(Signature of Supervisor)

(Date)

Pike County is an Equal Opportunity Employer. In compliance with the American's with Disabilities Act, the County will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective employees and incumbents to discuss potential accommodations with the employer.

Appendix V: Sample Mandatory Fee-In-Lieu Dedication Ordinance

OFFICIAL
NORTH HUNTINGDON TOWNSHIP
PROPOSED ORDINANCE NO. 2 OF 2002.
ORDINANCE NUMBER 1051

AN ORDINANCE OF NORTH HUNTINGDON TOWNSHIP, WESTMORELAND COUNTY, PENNSYLVANIA, AMENDING ORDINANCE #1011, SUBDIVISION AND LAND DEVELOPMENT ORDINANCE, BY ADDING THERETO AS PART ARTICLE 5, SECTION 504 OPEN SPACE AND RECREATION LAND; REPEALING THE CURRENT PROVISIONS UNDER THE AFOREMENTIONED SECTION.

WHEREAS The Township of North Huntingdon, on March 15, 2000, has adopted a Comprehensive Plan, entitled "Our Collective Vision for the Future"; and

WHEREAS Chapter 10 of the adopted Comprehensive Plan, entitled Community Facilities: Parks and Recreation, cited the need to provide for the recreational needs created by new residential developments within the Township; and

WHEREAS The Township of North Huntingdon, on August 16, 2000, has adopted a Subdivision and Land Development Ordinance containing provisions encouraging the dedication of Open Space and Recreation Land and Environmentally Sensitive Areas; and

WHEREAS The Township of North Huntingdon, has concurrently adopted a Parks, Recreation, and Open Space Plan which makes recommendations for future development of recreational facilities, funding for those facilities, and the amount and type of recreation needed for Township residents; and

WHEREAS The Township of North Huntingdon desires to protect its natural resources, provide for the recreational needs of its residents, and implement the goals and directives of the Comprehensive Parks, Open Space, and Recreation Plan.

NOW, THEREFORE BE IT ORDAINED AND ENACTED that the North Huntingdon Township Subdivision and Land Development Ordinance, Article 5, Section 504 is repealed in its entirety and the following substituted therefor:

504 IMPACT REGULATIONS, MANDATORY LAND DEDICATION REQUIREMENTS AND FEE IN LIEU THEREOF

504.1 The following definitions shall apply for purposes of this section:

- A. Active Recreation: Baseball/Softball fields, tennis courts, basketball courts, play grounds, and other similar facilities which offer the ability to play an active sport and constructed in conformance with national standards including those of the National Recreation and Parks Administration.

- B. Multi-Family – Dwellings units other than single family, including but not limited to duplex, mobile homes in mobile home parks, condominium or group unit development, and high and low rise apartment buildings as defined in the Zoning Ordinance.
- C. Recreation Capital Improvements Program: A capital improvements program used to guide the allocation of land to be developed or funds received in lieu of mandatory land dedication, said plan being included in the Comprehensive Parks, Recreation, and Open Space Plan, as amended from time to time by the Township.
- D. Recreation Service Area: The service radius of existing or proposed Township parks and recreation facilities as defined by National Recreation and Parks Administration Standards as outlined in Section 504.18 of this ordinance.
- E. Single Family Dwelling Unit: Single family dwelling units as defined in the Zoning Ordinance.

504.2 The provisions and requirements of this section shall apply to all FINAL LAND DEVELOPMENTS and FINAL SUBDIVISIONS which would, upon build-out, result in the creation of three (3) or more dwelling units.

504.3 The DEVELOPER shall dedicate land to be used for purposes of recreation and open space at a per unit amount for multifamily units as specified in Section 504.17 of this ordinance, which may be amended in the future by resolution of the Township Board of Commissioners.

504.4 The DEVELOPER shall dedicate land to be used for purposes of recreation and open space at a per unit amount for single family units as specified in 504.17 of this ordinance.

504.5 Land offered for dedication shall meet the following criteria:

- A. The land shall be physically and legally accessible to all residents of the proposed DEVELOPMENT. The land may be an integrated part of the DEVELOPMENT; within the recreation service area of the DEVELOPMENT. The land, with the approval of the Board of Commissioners, may be land provided for use by all residents of the Township. Said land shall be centrally located and dedicated for the purpose of a community center or similar centralized recreational function as recommended by the Comprehensive Parks, Recreation, and Open Space Plan.
- B. No more than 25% of the land offered for dedication shall be located within the ENVIRONMENTALLY SENSITIVE OVERLAY.
- C. No more than 50% of the land offered for dedication may possess more than 5% slope.
- D. At least 50% of land offered for dedication shall be developed as active recreation with at least two types of active recreational opportunities offered. Additional facilities may be required by the Board of Commissioners. The Board shall apply national standards including those of the National Recreation and Parks Administration to determine the needs of the assumed population of new developments and shall require corresponding facilities accordingly.
- E. All playing fields and associated structures shall be set back at least 30 feet from all property lines.

- F. A trail system, if accepted by the Township Board of Commissioners, may substitute for one of the required active recreation types.
 - G. Land offered for dedication shall, where possible, be situated such that the parcel abuts adjacent open space and recreational facilities thus creating an integrated network of open space, trails, and recreational areas.
 - H. Land offered for dedication shall possess at least 100 feet of FRONTAGE along a PUBLIC STREET.
 - I. The minimum total acreage of contiguous tracts of land to be offered shall be equal to the minimum lot size, per the Zoning Ordinance, in the District in which the PLAN is located.
- 504.6 The Township incorporates all rights granted in Section 705(f) of the Municipalities Planning Code regarding the maintenance of common open space including the right of the Township to maintain property which the owner of homeowners' association fails to maintain and to file liens against all properties having an interest in said association.
- 504.7 The dedication of land to the Township shall be a general warranty deed. In lieu thereof, the Township Board of Commissioners, at its discretion, may require the creation of a homeowners' association or similar entity charged with the maintenance of the facilities. The Board of Commissioners may also grant the DEVELOPER permission to retain ownership. In all cases, ownership by any entity other than the Township, shall require deed restrictions requiring the maintenance of the approved facilities on the SITE. The Township shall be a party to an agreement providing for the enforcement of the aforesaid restrictions.
- 504.8 The DEVELOPER may pay a fee in lieu of land dedication at a per unit amount for multifamily units as specified in Section 504.17 of this ordinance.
- 504.9 The DEVELOPER may pay a fee in lieu of land dedication at a per unit amount for single family units as specified in Section 504.17 of this ordinance.
- 504.10 The fee in lieu paid by the DEVELOPER shall be offered in the form of cash, bond, cashier's or certified check, or held in an escrow account payable upon FINAL APPROVAL of a PLAN. Payment of said funds shall be a condition of FINAL APPROVAL of the PLAN and its release for recordation. In lieu of payment as a condition of FINAL APPROVAL, the DEVELOPER may elect to place a note on the PLAN which states that the issuance of a building permit for each LOT or dwelling unit is conditioned upon the payment of the fee in lieu amount specified in this ordinance at the time of FINAL APPROVAL.
- 504.11 All such fees collected shall, upon receipt by the Township, be deposited in an interest-bearing account, clearly identifying the specific recreation facilities for which the fee was received. Interest earned on such accounts shall become funds of that account. Funds from such accounts shall be expended only in properly allocable portions of the cost incurred

to construct the specific recreation facilities for which the funds were collected.

- 504.12 Upon request of any person who paid any fee under this subsection, the Township shall refund such fee, plus interest accumulated thereon from the date of payment, if the Township had failed to utilize the fee paid for the purposes set forth in this section within three years from the date such fee was paid.
- 504.13 Use of Fees Collected. The Township shall use fees collected within the recreation service area from which funds were collected for the purpose of purchasing land or constructing or purchasing any equipment, structures, courts, fields or other recreational facilities. All improvements or purchases shall be associated with facilities accessible to the residents of the DEVELOPMENT. Fees collected may also be used for facilities accessible and designed for use by all residents of the Township. Said facilities shall be centrally located and dedicated for the purpose of a community center or similar centralized recreational function as recommended by the Comprehensive Parks, Recreation, and Open Space Plan.
- 504.14 The allocation of all fees collected shall be based upon recommendations of the Comprehensive Parks, Recreation, and Open Space Plan as well as the Recreation Capital Improvements Program.
- 504.15 The DEVELOPER may offer, in lieu of both land dedication requirements and associated fees in lieu thereof, to pay for 75% of the required fee to be deposited in an interest bearing account for the purpose of repairing or upgrading existing equipment noted in the Comprehensive Parks, Recreation, and Open Space Plan as in need of improvement. Said funds may only be used for equipment repair and upgrades in public parks in the recreational planning area in which the associated PLAN is proposed. The decision of accepting the offer of such funds rests solely with the Board of Commissioners based on current needs and recommendations from the Comprehensive Parks, Recreation, and Open Space Plan as well as the Recreation Capital Improvements Program.
- 504.16 Exemptions. The following are exempt from the mandatory land dedication requirements of this section:
- A. Group Residence and Group Care Facilities as defined in the Zoning Ordinance.
- 504.17 Calculation of Mandatory Land Dedication and Fee in Lieu Thereof:
- A. Land dedication required by single family dwelling units shall be .026 acres per dwelling unit.
 - B. Land dedication required by multi-family dwelling units shall be .020 acres per dwelling unit.
 - C. Fee in lieu of land required by single family dwelling units shall be calculated as follows: $\$11,540$ (estimated fair market value per acre) \times .026 acres per unit + $\$200$ per unit (assessed for improvements to public park lands) = $\$500$ (fee per unit)

D. Fee in lieu of land required by multi-family dwelling units shall be calculated as follows: \$11,540 (estimated fair market value per acre) x .020 acres per unit + \$200 per unit (assessed for improvements to public park lands)= \$430 (fee per unit)

504.18 Recreation Service Areas. Chart 504-1 shall define the radius of existing and proposed parks and recreation facilities based on their size and usage. Indian Lake Park shall be categorized as a special activity per the said chart with a service area radius of three (3) miles.

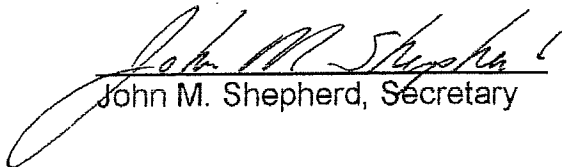
Chart 504-1

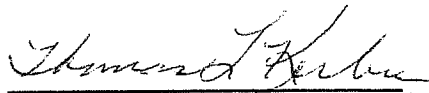
Park Classification	Definition	Facilities	Min. Size acres	Service Area Radius mile	Acreage Req't per 1,000 Pop. acres
Neighborhood	Walk to park; intense recreational activities; 100% developed	playfields, playgrounds, tot lots, multi-purpose hardcourts, recreation center, picnicking	0.25-5	0.5	2.0
Community	Drive to park; intense recreational activities; max. 80% developed	same as neighborhood plus swimming pool, lit playfields and single-use hardcourts, multipurpose building, community center	20	3	2.0
Metropolitan	Drive to park; primarily resource based activities with some intense recreational activities; max. 40% developed	water resource-oriented, unlit playfields, playgrounds, picnicking, hiking/biking/walking trails, nature center, amphitheater, group camping, swimming beaches, boating areas	100	12	5.0
Regional	Drive to park; natural areas with some resource based activities; max 20% developed	water resource-oriented, conservation areas (flood control/management), beaches, nature study, group camping, rustic areas, bridal trails, picnicking	250	30	20.0
Preserve	lands dedicated to the preservation of natural resources and wildlife management	hunting areas and general open space	250	25	NA
Special Activity	specialized recreational facilities	arboreta, historical sites, sports complexes, golf courses and trails	NA	NA	NA

DULY ORDAINED AND ENACTED at a regular meeting of the Board of Commissioners of the Township of North Huntingdon, County of Westmoreland, Commonwealth of Pennsylvania, a full quorum being present this 20th day of February, 2002.

Attest:

BOARD OF COMMISSIONERS
TOWNSHIP OF NORTH HUNTINGDON


John M. Shepherd, Secretary

By 
Thomas L. Kerber, President

(SEAL)

Appendix W: Sample Resource Protection Ordinance

Pocopson Township

Final Draft – Resource Protection Amendments

January 11, 2006

Zoning Ordinance

Amend §250-6 to delete the following existing definitions:

“DBH,” “Net Tract Area,” “Seasonal High Water Table Soils,” “Wetland,” and “Woodland.”

Amend §250-6 to add the following new definitions:

CLEARCUTTING – The removal of all trees greater than twelve (12) inches dbh on a site, or any portion thereof greater than one-half (0.5) acre in contiguous area, during a single timber harvesting operation or within a three (3) year period.

DIAMETER AT BREAST HEIGHT (DBH) – The diameter of a tree trunk, measured at four and one-half (4.5) feet from the ground surface at the point of the highest elevation in contact with the trunk of such tree.

EXCEPTIONAL NATURAL AREA – Any area identified as Exceptional Natural Area on the Pocopson Township Exceptional Natural Areas Inventory.

EXCEPTIONAL NATURAL AREAS INVENTORY – The Exceptional Natural Areas Inventory indicates the locations and extent of all areas deemed by the Township to comprise Exceptional Natural Areas and shall be considered an addendum to the Zoning Map of Pocopson Township. The Exceptional Natural Areas Inventory is incorporated by reference into this Chapter and made a part hereof.

FOREST CANOPY – The aerial cover formed by the crowns of trees greater than fifty (50) feet in height.

FOREST CANOPY TREES – The individual trees which collectively form the forest canopy.

FOREST INTERIOR HABITAT (FIH) – Forest Interior Habitat is that portion of a forest or woodland which lies beyond most of the influences which degrade a forest from the outside - influences such as light, wind, noise, and non-native species. Forest Interior Habitat provides the best habitat for certain rare and sensitive species and can be referred to as the ‘deep’ woods or the ‘heart of the forest.’ Forest Interior Habitat is defined as any area meeting the definition of Woodland which is located more than 300 feet from the outermost drip line of all trees along the edge of the subject woodland area. Generalized mapping of Forest Interior Habitat is indicated on the Pocopson Township “Woodland Classification Map,” adopted by the Board of Supervisors as an addendum to the Zoning Map of Pocopson Township.

GREENWAY CORRIDORS MAP – The Greenway Corridors Map is a map indicating the locations of all Greenway Corridors and shall be considered an addendum to the Zoning Map of Pocopson Township. The Greenway Corridors Map is incorporated by reference into this Chapter and made a part hereof.

HEDGEROW. – A hedgerow is a linear plant community dominated by trees and/or shrubs. Hedgerows often occur along roads, fence lines, property lines, or between fields, and may occur naturally or be specially planted (e.g. as a windbreak). Hedgerows are considered woodlands and regulated as such.

HERITAGE TREE – Any tree greater than 30 inches dbh shall be considered a Heritage Tree regardless of species, except that any tree of the species specified below shall be considered a Heritage Tree where greater than 24 inches dbh.

Tree, Botanical Name	Common Name
Aesculus hippocastanum	Common Horsechestnut
Betula pendula	White Birch
Carya cordiformis	Bitternut Hickory
Carya glabra	Pignut Hickory
Carya ovata	Shagbark Hickory
Carya tomentosa	Mockernut Hickory
Juglans cinerea	Butternut Walnut
Liquidambar styraciflua	Sweetgum
Quercus montana	Chestnut Oak
Quercus prinoides	Chinquapin Oak

In the context of a subdivision or land development review or in consideration of any application for approval of special exception variance, or conditional use, and upon the recommendation of a qualified forester or equivalent professional, the Township may designate as additional Heritage Trees any tree or other plant selected as uniquely representative of a class or group in terms of size, shape, form, age, historical importance, scenic qualities, visual prominence or other characteristics. Trees or other plants determined to be dead or diseased or in any manner constituting a safety hazard shall not be considered Heritage Trees.

HIGHER VALUE SPECIES – Any tree(s) of the following species where greater than or equal to twelve inches (12”) diameter at breast height (dbh):

Tree, Botanical Name	Common Name
Acer saccharium	Sugar Maple
Carya cordiformis	Bitternut Hickory
Carya glabra	Pignut Hickory
Carya ovata	Shagbark Hickory
Carya tomentosa	Mockernut Hickory
Fraxinus americana	White Ash
Juglans nigra	Eastern Black Walnut
Quercus alba	White Oak

Quercus bicolor	Swamp White Oak
Quercus coccinea	Scarlet Oak
Quercus montana	Chestnut Oak
Quercus palustris	Pin Oak
Quercus rubra	Northern Red Oak
Quercus velutina	Black Oak

LAND DISTURBANCE – Any activity which exposes soils, alters topography, and/or alters vegetation, except for the removal of hazardous or alien vegetation. Customary agricultural practices such as tilling, plowing, mowing, and harvesting are excluded from the definition of land disturbance.

NET TRACT AREA – The net area of any lot or tract for purposes of density calculation and determination of compliance with certain area and bulk criteria, measured in acres. The Net Tract Area shall be determined by subtracting the following from the surveyed gross area of the tract:

- A. All lands within existing rights-of-way or easements for public or private streets or other access ways;
- B. All lands within existing or proposed rights-of-way or easements for pipelines, or electrical transmission lines for 125 KVA or greater;
- C. Any lands within any other easements to the extent that such easements clearly limit development of the tract or restrict the use of land for density calculation purposes.
- D. Ninety percent (90%) of any acreage comprising one or more of the following:
 - 1. Flood plain or alluvial soils as established by the provisions of the Flood Plain Conservation District (Article VI of this Chapter);
 - 2. Very Steep Slopes as defined herein except that for any tract of fifteen (15) acres or less and involving three or fewer dwellings, USGS topography may be used where the Township Engineer agrees that, based on USGS topography, no slopes exceed twenty (20) percent;
 - 3. Wetlands as defined herein.
- E. Fifty percent (50%) of the any acreage comprising Seasonal High Water Table Soils as defined herein.
- F. For purposes of density calculation only, an additional five percent (5%) of the gross tract acreage shall be excluded in order to provide for future infrastructure needs;

OLDFIELD – An area undergoing natural succession characterized by the presence of herbs, shrubs, and small trees (seedlings) whose branches do not form a complete or nearly complete aerial canopy.

PNDI – Pennsylvania Natural Diversity Inventory.

POCOPSON TOWNSHIP BOTANICAL SURVEY – A selective survey or inventory of vegetation and/or wildlife habitat conducted on behalf of Pocopson Township. Where adopted by the Board of Supervisors, such survey shall be considered an addendum incorporated by reference into this Chapter and made a part hereof.

RARE SPECIES SITES – Sites which have been identified on the Pennsylvania Natural Diversity Inventory (PNDI), the Chester County Natural Areas Inventory, or any Pocopson Township Botanical Survey, as possessing floral or faunal species of concern or sites in which federally and or state recognized rare, threatened or endangered species of flora and/or fauna are present. The land area regulated as a Rare Species Site shall be as mapped in the pertinent inventory or survey. Mapping as indicated in any Pocopson Township Botanical Survey or Exceptional Natural Areas Inventory shall take precedence where differing from any other map source.

RIPARIAN BUFFER – A riparian buffer is an area of trees and other vegetation adjacent to a watercourse that forms a transition area between the aquatic and terrestrial environment. The riparian buffer is designed to intercept runoff from upland sources for the purpose of mitigating the effects of nutrients, sediment, organic matter, pesticides or other pollutants prior to entry into surface waters. The riparian buffer shall be divided into two Zones:

- A. **Zone One: Inner Riparian Buffer** - This zone shall begin at each edge of any identified wetland or watercourse and shall occupy a margin of land on each side, each with a minimum width of fifteen (15) feet from any wetland or twenty-five (25) feet from any watercourse, whichever is greater. The width of such margin shall be measured horizontally on a line perpendicular to the applicable edge of the wetland or, in the case of a watercourse, to the nearest edge of the water at bankful flow. Where very steep slopes (+20%) are located within and extend beyond such margin, Zone One shall extend to include the entirety of the very steep slopes up to a maximum dimension of one hundred (100) feet from the subject watercourse or seventy five (75) feet from the subject wetland, whichever is greater.
- B. **Zone Two: Outer Riparian Buffer** - Zone Two begins at the outer edge and on each side of any area delineated within Zone One and occupies any additional area, if any, within one hundred (100) feet of the nearest edge of any watercourse or seventy five (75) feet from the nearest edge of any wetland, whichever is greater and measured as for Zone One.

SEASONAL HIGH WATER TABLE SOILS – Any soil inventoried or described as hydric, as a soil with hydric inclusions, or as a soil with a seasonally high water table in the *Soil Survey of Chester and Delaware Counties, Pennsylvania*, or other information provided by the U.S. Natural Resources Conservation Service (NRCS). Where such soils are regulated as wetland(s), the more restrictive regulation shall apply. In Pocopson Township, Seasonal High Water Table Soils shall include, but are not limited to:

Calvert Silt Loam (CaB2)
Chester Very Stony Silt Loam (CgC)

Chewacla Silt Loam (Ch)
Glenville Silt Loam (GnA, GnB, GnB2, GnC2)
Wehadkee Silt Loam (We)
Worsham Silt Loam (WoA, WoB, WoB2)

Where site conditions indicate that the location of Seasonal High Water Table Soils differ from locations indicated by the NRCS, the burden shall be upon the Applicant to verify such location(s) to the satisfaction of the Board of Supervisors, otherwise the NRCS information shall be presumed to be accurate. Where the Applicant requests reclassification of Seasonal High Water Table Soils or adjustment of their location, such request shall be supported by documentation submitted by a Certified Soil Scientist or other similarly qualified professional.

SELECTIVE CUTTING – The felling of certain, but not all trees, in an area for the purpose of removing dead, diseased, damaged, mature, or marketable timber or for improving the quality of a tree stand.

STEEP SLOPE – Those areas of land where the grade is ten (10) percent or greater. Steep slopes are divided into two categories:

- A. Moderately Steep Slopes are those areas of land where the grade is ten (10) percent to twenty (20) percent.
- B. Very Steep Slopes are those areas of land where the grade is greater than twenty (20) percent.

Slopes shall be measured as the change in elevation over the horizontal distance between consecutive contour lines and expressed as a percent. For the purpose of application of these regulations, slope shall be measured over three (3) or more two (2) foot contour intervals (six [6] cumulative vertical feet of slope). All slope measurements shall be based on contour intervals determined by detailed topographical survey using aerial photogrammetry or actual field survey and shall be signed and sealed by a registered surveyor or engineer licensed to practice in the Commonwealth of Pennsylvania.

STEEP SLOPE MARGIN – Any area not otherwise regulated as steep slope and located within twenty-five (25) feet upslope of any area regulated as steep slope, measured perpendicularly to the contour of the land. Areas measured laterally or downslope of steep slope areas shall not be regulated as steep slope margin.

TIMBER HARVESTING OPERATION – The uprooting or removal for any purpose of more than four (4) trees of Higher Value Species or six trees total of six (6) inches or greater dbh, per acre, from any area identified as woodland on the Woodland Classification Map, whether accomplished in a single operation or in more than one operation over three or fewer years. The removal of any Heritage Tree, regardless of number or location, shall be considered a Timber Harvesting Operation. The removal of trees pursuant to an approved subdivision or land development plan, landscape plan or open space management plan, the removal of dead or diseased trees, or non-native invasive species, and the cutting of trees as part of a Christmas tree

farming operation shall not be considered Timber Harvesting Operations. Forestry, as defined by the Pennsylvania Municipalities Planning Code, as amended, shall be considered a Timber Harvesting Operation. All Timber Harvesting Operations shall comply with the provisions set forth in § 250-87.

TIMBER HARVESTING PLAN – A plan submitted in conformance with the provisions set forth in Subsection 250-87. which describes, by means of text and maps, proposed actions involving the removal of trees from a tract of land. Such plan shall have been prepared by a professional with demonstrable expertise in forest management, and shall document measures to be taken to: protect water quality; minimize impacts from skid trails and logging roads, land areas, and the tree removal process; and ensure site restoration.

WATERCOURSE – A watercourse is a channel or conveyance of surface water having defined bed and banks, with perennial or intermittent flow. The definition of watercourse shall exclude facilities constructed solely for stormwater management.

WETLAND OR WETLANDS – Wetlands are those areas inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, ponds, lakes, and similar areas. Wetlands shall include any area so delineated by the National Wetlands Inventory of the U.S. Fish and Wildlife Service and all lands regulated as wetlands by the Pennsylvania Department of Environmental Protection or the U.S. Army Corps of Engineers. In the event there is a conflict between the definitions of these agencies, the more restrictive definition shall apply.

WOODLAND – A tree mass or plant community covering an area of one-quarter acre or more, in which tree species are dominant or co-dominant and the branches of the trees form a complete, or nearly complete aerial canopy. The extent of any woodland plant community or any part thereof shall be measured from the outermost drip line of all the trees in such plant community. Woodland shall include any area where timber has been harvested within the previous three years and/or woodland disturbance has occurred within the previous three years which would have met the definition of woodland prior to timbering or disturbance. Woodlands do not include orchards or old fields.

WOODLAND CLASSIFICATION MAP – The Woodland Classification Map is a map indicating the locations of all woodlands classified as Class I, Class II or Class III Woodlands, and also indicating the locations of areas identified as Forest Interior Habitat. Where specific application of the definition of Forest Interior Habitat results in variation from mapping as indicated on the Woodland Classification Map, application of said definition shall supercede. The Woodland Classification Map shall be considered an addendum to the Zoning Map of Pocopson Township and is incorporated by reference into this Chapter and made a part hereof.

WOODLAND DISTURBANCE.

- A. Any activity which alters the existing structure of a woodland or hedgerow. Alterations include the cutting or removal of canopy trees, subcanopy trees, understory shrubs and

- vines, woody and herbaceous woodland floor species as well as the removal of humus or duff from the ground;
- B. Any activity which constitutes a land disturbance (exposes soils, alters topography) within a woodland or hedgerow;
- C. Woodland disturbance does not include the following:
1. Removal of vegetation which constitutes hazardous condition(s); nor
 2. Selective cutting or removal of invasive alien trees, shrubs, vines or herbaceous species including; Rosa multiflora (Multiflora Rose), Eleagnus umbellata (Autumn Olive), Lonicera japonica (Japanese Honeysuckle), Celastrus orbiculatus (Oriental Bittersweet), Acer platanoides (Norway Maple), Pueriria lobata (Kudzu) and Polygonum perfoliatum (Mile-a-Minute Weed).
- D. Where woodland disturbance is regulated as a Timber Harvesting Operation, such operation shall not be separately regulated as woodland disturbance.

Amend §250-87 to replace the existing text in its entirety with the following:

§250-87. Conservation of Natural Resources

A. Purpose

The following natural resource conservation standards are established to protect the public health, safety, and welfare by minimizing adverse environmental impacts. These standards are intended to meet the following purposes.

1. Define and delineate selected natural resources within the Township and establish resource conservation standards to assist the Township in reducing the impact proposed uses will have on the environment.
2. Conserve valuable natural resources within the Township in accordance with the *Pocopson Township Comprehensive Plan* (2001) and the *Pocopson Township Parks, Recreation, and Open Space Plan* (1993).
4. Conserve and protect natural resources within the Township and the Kennett Area Region in accordance with the following policies of the *Kennett Area Region Comprehensive Plan* (2000), as amended.
 - a. Preserve and protect areas which are naturally unsuitable for development or which provide valuable wildlife habitat including stream valleys, riparian zones, steep slopes, floodplains, woodlands, wetlands, and seasonal high water table soils.

- b. Continue to preserve sensitive natural areas and wildlife habitats from development by strengthening natural resource conservation standards contained in each municipality's zoning and subdivision and land development ordinance.
- c. Protect regional watersheds and the quality of groundwater and streams within the Region and pursue measures to maintain and, where possible, improve water quality.

B. General Applicability of Conservation Standards

1. In the event that the provisions of this Section and any other provisions of the Township Code are in conflict, the more restrictive provisions shall apply.
2. In the event that two or more natural resource areas identified in this Section occur on the same lot or tract, disturbance limitations shall be measured separately. Where such resource areas overlap, the most restrictive standard (the least amount of permitted alteration, regrading, clearing, or building) shall apply to the area of overlap.
3. It shall be a violation of this Chapter to regrade, fill, pipe, divert, channel, build upon, or otherwise alter or disturb a natural resource protected by this Section prior to the submission, review, and approval of any applicable application for zoning or building permit(s), conditional use or special exception approval, zoning variance, or subdivision or land development plan(s).
4. Limitations to the disturbance of resources shall apply before, during, and after construction on a site.
5. Disturbance limitations, established as a maximum percentage of permitted disturbance, shall be applied concurrently as a percentage of each applicable resource area to the extent that it is present on the entirety of any tract or any lot AND as a percentage of the area within each discrete resource area measuring one acre or more. A discrete resource area is the entirety of any single contiguous area comprising any one resource regulated by the provisions of this Section. Any area of resource overlap shall be measured as part of the contiguous resource area with the most restrictive disturbance limitation.
6. Disturbance limitations shall be applied based on the occurrence of identified resource areas at the time of adoption of this Section. Disturbance permitted over time in multiple applications on the same lot or tract shall be measured against the same overall limitations established at the time of the first application.
7. Information submitted to demonstrate compliance with this Section shall be verified as correct by the Township Engineer or other qualified professional as determined by the Township.

8. Regulations and disturbance limits for each specific resource area set forth below shall be complied with as applicable. The following summary table is provided as an overview of disturbance limitations. In certain cases as provided herein, exceptions or modifications may apply.

<i>Resource Area</i>	<i>Maximum Disturbance</i>
Floodplain Conservation District	0 %
Very Steep Slopes	10 %
Moderately Steep Slopes	25 %
Steep Slope Margins	25 %
Wetlands	0 %
Zone One – Inner Riparian Buffer	0 %
Zone Two – Outer Riparian Buffer	15 %
Seasonal High Water Table Soils	20 %
Heritage Trees	0 %
Rare Species Sites	0 %
Exceptional Natural Areas	10 %
Forest Interior Habitat	10 %
Class I Woodlands located on Very Steep Slopes	5%
Class I Woodlands outside Very Steep Slopes	15 %
Class II Woodlands	15 %
Class III Woodlands in Greenway Corridors	15 %
Class III Woodlands outside Greenway Corridors	25 %

C. Floodplain Conservation

Areas identified as being within the boundaries of the Floodplain Conservation District shall not be regraded, filled, built upon, channeled, or otherwise altered or disturbed except in conformance with Article VI of this Chapter.

D. Steep Slope Conservation

1. Steep slope areas shall be preserved in their natural state whenever possible. Where construction of roads, buildings, driveways, or infrastructure cannot be avoided, disturbance shall be kept to the minimum necessary and, in no case, shall it exceed the following permitted disturbance limits:
 - a. Moderately Steep Slopes - No more than twenty-five (25) percent of moderately steep slopes shall be regraded, cleared, built upon, or otherwise altered or disturbed.

- b. Steep Slope Margins - No more than twenty-five (25) percent of steep slope margins shall be regraded, cleared, built upon, or otherwise altered or disturbed.
- c. Very Steep Slopes - No more than ten (10) percent of very steep slopes shall be regraded, cleared, built upon, or otherwise altered or disturbed. In addition, disturbance permitted on very steep slopes shall be limited to the following activities:
 - 1) Timber harvesting, when conducted in compliance with the required timber harvesting plan. Clearcutting or grubbing of trees is prohibited on very steep slopes.
 - 2) Grading for the minimum portion of a driveway necessary for access to the principal use and sewer, water, and other utility lines when it can be demonstrated to the satisfaction of the Township that no other routing is practicable, but excluding sewage disposal systems.
 - 3) Hiking and riding trail(s) of minimum adequate width(s), where developed so as to minimize potential erosion, follow existing topographic contours to the greatest degree practicable, and where using unpaved surfaces to the maximum practicable extent.
- 2. All permitted buildings or structures shall be constructed in such a manner as to provide for the least alteration necessary of the existing grade, vegetation, and natural soils condition.
- 3. A grading plan shall be provided identifying the existing contours of the site, proposed finished grades, and the proposed location of all buildings and structures. Locations for all stockpiled earth, stone, and other materials shall be shown on the plan and shall not be located within the drip line of any trees intended to remain post permitted disturbance.
- 4. Excessive cut and fill shall be avoided. New roads and improvements to existing roads should be designed within the existing contours of the land to the extent possible and strive for compatibility with the character of rural roads.
- 5. Finished slopes of permitted cut and fill shall not exceed thirty-three (33) percent slope unless the applicant can demonstrate the method by which steeper slopes will be stabilized and maintained adequately.
- 6. Any stockpile(s) of earth intended to be stored for more than twenty-one (21) days shall be seeded or otherwise stabilized to the satisfaction of the Township Engineer . Any disturbed areas of Very Steep Slope and any cut and fill resulting

in slopes of greater than twenty (20) percent shall be protected with an erosion control blanket.

7. Any disturbance of land shall be in compliance with the erosion and sedimentation control standards of Chapter 190, Subdivision and Land Development, and PA DEP Title 25, Chapter 102.
 - a. An erosion and sedimentation control plan and soil stabilization plan shall be submitted consistent with the requirements of Chapter 190, Subdivision and Land Development.
 - b. The plan shall demonstrate how soil will be protected from erosion during construction and how soil will be stabilized upon the completion of construction.
8. Where the following information has not been previously submitted as part of a subdivision or land development plan application, such information shall be submitted to the Township with building permit, conditional use, special exception, or zoning applications, when applicable:
 - a. The adequacy of access to the site for emergency vehicles shall be subject to review by the fire marshal or his designee. The necessary information shall be submitted by the applicant to the fire marshal or his designee for his review.
 - b. Grading plan and Erosion and Sedimentation Control Plans.

E. Wetlands Conservation

1. Wetlands shall not be regraded, filled, piped, diverted, channeled, built upon, or otherwise altered or disturbed, including for purposes of access or utility crossings, except where all applicable permits have been obtained and copy thereof submitted to the Township.
2. Any applicant proposing a use, activity, or improvement which would entail the regrading or placement of fill in wetlands shall provide the Township with proof that the Pennsylvania Department of Environmental Protection (Bureau of Dams and Waterway Safety and Bureau of Water Quality Management) and the U.S. Army Corps of Engineers have been contacted to determine the applicability of state and federal wetland regulations. Any applicant contacted by the Pennsylvania Department of Environmental Protection or the U.S. Army Corps of Engineers in regard to wetlands also shall concurrently provide to the Township a copy of such correspondence.
3. Where permitted subject to applicable regulation and as otherwise provided herein, sewers or other liquid transport pipelines shall only be permitted to cross

wetlands on the minimum traversal distance and where every precaution shall be taken to prevent leaks (including x-ray of steel welds) and to prevent any possible draining of the wetland (e.g., water flowing through or along any pipe or trench).

4. Where wetland disturbance is permitted subject to applicable regulation on any lot or tract, no more than ten (10) percent nor more than one (1) acre of any wetland area, whichever is less, shall be disturbed for any purpose. To the maximum extent feasible, any disturbance to or loss of natural wetlands shall be compensated with created wetland areas at the rate of three times the lost or disturbed wetland area. Created wetlands shall be hydrologically fed with stormwater discharged from an approved stormwater management facility and may be located at a site approved by the Township for remediation, whether on or off the property that contains the subject wetland. Where and to the extent applicable, in lieu of wetland creation, loss of natural wetlands may be compensated by permanent conservation of other existing wetlands or by restoration of former wetlands (e.g., through removal of tilefields or other drainage facilities) by means satisfactory to the Township.
5. Where required to comply with state or federal regulation, any applicant also shall provide the Township with a full wetland delineation report conducted by a qualified wetland biologist, soil scientist, or environmental professional of demonstrated qualifications, subject to the following:
 - b. Where there is any question as to the accuracy of the wetland delineation report, the Township may hire a qualified consultant to review the delineation and recommend revisions at the applicant's expense.
 - c. Such a professional shall certify that the methods used correctly reflect the currently accepted technical concepts, including identification and analysis of wetland vegetation, hydric soils, and hydrologic indicators. Methods used in the delineation report shall be acceptable to the Township Engineer or other qualified consultant hired by the Township.
 - d. The wetland report submitted to the Township shall include a determination of whether wetlands are present on the site and a full delineation, area measurement (in square feet), and description of any wetlands determined to be present.

F. Watercourse & Riparian Buffer Protection Standards

1. Zone One – Inner Riparian Buffer – With the exception of those uses or activities listed below, no land disturbance shall be permitted within the Zone One Riparian Buffer:
 - a. Regulated activities permitted by the Commonwealth (i.e. permitted stream or wetland crossing).

- b. Provision for trail and trail access where approved by the Township with minimum disturbance to existing woodland vegetation;
 - c. Selective removal of hazardous or invasive alien vegetative species; or
 - d. Vegetation management in accordance with an approved landscape plan or open space management plan.
2. Zone Two – Outer Riparian Buffer - Except for the following activities, no more than fifteen (15) percent of a Zone Two Riparian Buffer shall be regraded, filled, built upon, or otherwise altered or disturbed:
- a. Activities permitted in the Zone One Riparian Buffer.
 - b. Timber harvesting, when conducted in compliance with a timber harvesting plan approved by the Township. Clear-cutting of timber shall not be permitted within the riparian buffer.

G. Conservation of Seasonal High Water Table Soils

1. With the exception of those uses or activities listed below, and where not otherwise regulated more restrictively under the provisions of this Chapter, no more than twenty (20) percent of any Seasonal High Water Table Soil shall be regraded, filled, built upon, or otherwise altered or disturbed:
 - a. Regulated activities permitted by the Commonwealth (i.e. permitted stream or wetland crossing);
 - b. Provision for trails;
 - c. Selective removal of hazardous or invasive alien vegetative species; or
 - d. Vegetation management in accordance with an approved landscape plan or open space management plan.
2. Notwithstanding the twenty (20) percent disturbance limitation set forth above, the following regulations shall apply to Seasonal High Water Table Soils:
 - a. No structures for human use or habitation or for regular animal occupancy shall be constructed in any area of soil where the seasonal high water table is within one (1) foot of the surface;
 - b. No subsurface sewage system shall be constructed within any area of Seasonal High Water Table Soil.

- c. No roadway shall cross any area of Seasonal High Water Table Soil except where providing necessary access which clearly is otherwise impracticable and only where drainage, adequate base preparation, and special paving approved by the Township Engineer shall be provided.

H. Heritage Trees

1. No Heritage Trees, shall be removed from any lot or tract except where Applicant demonstrates to the satisfaction of the Township that such removal is essential to eliminate hazardous condition(s). In consideration of any need for tree removal, the Township may engage the services of an arborist, reasonable costs therefore to be borne by the Applicant.
2. To the minimum extent necessary to permit retention of Heritage Trees while providing for lawful use, modification to otherwise applicable area and bulk requirements may be approved in the following situations:
 - a. Where approved by the Board of Supervisors as part of any applicable subdivision or land development application, or
 - b. Where approved by the Zoning Officer upon approval of any applicable building permit, and
 - c. Provided that no applicable yard area setback shall be reduced more than fifty (50) percent, except where approved as a variance by the Zoning Hearing Board.
3. Where any applicant for building, zoning, subdivision or land development approval establishes conservation restrictions acceptable to the Township which shall result in the conservation of Heritage Trees, all such Heritage Trees to be retained shall be credited toward any tree replacement required under § 250-87.H.8 below, at the ratio of four trees credited for each Heritage Tree retained.

I. Rare Species Sites

1. With the exception of selective removal of hazardous or invasive alien vegetative species, no Rare Species Site shall be regraded, filled, built upon, or otherwise altered or disturbed.
2. A buffer area with a minimum dimension of twenty-five (25) feet shall be provided around the entire perimeter of any Rare Species Site within which no land disturbance shall be permitted.
3. To the minimum extent necessary to avoid disturbance to Rare Species Site(s) or to provide for required buffer(s), while providing for lawful use, modification to

otherwise applicable area and bulk requirements may be approved in the following situations:

- a. Where approved by the Board of Supervisors as part of any applicable subdivision or land development application, or
- b. Where approved by the Zoning Officer upon approval of any applicable building permit, and
- c. Provided that no applicable yard area setback shall be reduced more than fifty (50) percent, except where approved as a variance by the Zoning Hearing Board.

J. Exceptional Natural Areas

1. With the exception of those uses or activities listed below, and where not otherwise regulated more restrictively under the provisions of this Chapter, no more than ten (10) percent of any Exceptional Natural Area, where not otherwise classified as woodland, shall be regraded, filled, built upon, or otherwise altered or disturbed:
 - a. Regulated activities permitted by the Commonwealth (i.e. permitted stream or wetland crossing);
 - b. Provision for trails;
 - c. Selective removal of hazardous or invasive alien vegetative species; or
 - d. Vegetation management in accordance with an approved landscape plan or open space management plan.
2. Exceptional Natural Areas which are classified as Woodland on the Woodland Classification Map, shall be regulated as provided in § 250-87.K, without further limitation under this subsection.

K. Woodlands and Hedgerows

1. Disturbance Limitations for Woodlands and Hedgerows

Notwithstanding the provisions of this Section, selective harvesting of timber shall be permitted where undertaken in compliance with the provisions set forth in § 250-87.H.13 below. Clearcutting of any woodland area shall be prohibited except to the minimum extent necessary to permit the implementation of an approved land development or building permit in conformance with this section. Except for an approved timber harvesting operation, all woodland disturbance shall be subject to the following total disturbance limitations:

- a. Permitted woodland disturbance on any lot or tract shall not exceed five (5) percent of any area designated Class I Woodland on the Pocopson Township Woodland Classification Map, where such woodland is coextensive with any area of Very Steep Slope.
 - b. Except where § 250-87.K.1.a applies, permitted woodland disturbance on any lot or tract shall not exceed fifteen (15) percent of any area designated Class I or Class II Woodland on the Pocopson Township Woodland Classification Map, nor any woodland within a designated Greenway Corridor.
 - c. Outside of areas designated as Greenway Corridors, permitted woodland disturbance on any lot or tract shall not exceed twenty-five (25) percent of any Class III Woodland.
 - d. Permitted woodland disturbance on any lot or tract shall not exceed ten (10) percent of any area designated as Forest Interior Habitat on the Pocopson Township Woodland Classification Map.
 - e. Disturbance limitations shall be measured based on the extent of the subject woodland classification at the time of first submission of applicable application(s) after the adoption of this Section and shall be indicated on applicable plan(s). The extent of any area of woodland disturbance shall be measured to include the entire area within the drip line of any tree where any part of the area within the drip line of said tree is subject to woodland disturbance. Any disturbance limitation shall run with the land, once established. Subsequent applications shall be subject to the initial determination of disturbance limitations, regardless of intervening disturbance which may have occurred. If, at any time within three years prior to an applicable application, there had existed a greater extent of woodland, such greater area shall be utilized to calculate the extent of woodland disturbance and the limitations set forth herein.
2. Woodland Replacement.
- a. Where permitted, any woodland disturbance exceeding any of the following standards shall require provision for vegetation replacement as set forth in § 250-87.H.8 below. Each of the following standards shall be applied independently and the corresponding replacement requirements shall be cumulative.
 - 1) Any woodland disturbance in any of the following areas:
 - (a) Any area designated as Class I or Class II Woodland on the Pocopson Township Woodland Classification Map;

- (b) Any area designated as a Greenway Corridor;
 - (c) Any area within the drip line of any Heritage Tree;
 - (d) Any area within any Riparian Buffer.
 - 2) Woodland disturbance in excess of 10,000 square feet of existing area of Class III woodland or hedgerow(s) for each principal use permitted on any lot or tract. As an example, where two principal uses are permitted, woodland disturbance may involve up to 20,000 square feet (10,000 X 2) before replacement is required, except as otherwise provided herein.
- 3. In determining where necessary woodland disturbance shall occur in the context of any subdivision or land development, Applicant shall consider the following:
 - a. The location(s) and benefit of conservation of healthy mature woodland stands;
 - b. The impacts, in terms of functions and values to wildlife, of separating, dividing and/or encroaching on wildlife travel corridors and/or extensive habitat areas. Such impacts must be explicitly assessed in any area designated as one or more of the following:
 - 1) Greenway Corridor;
 - 2) Forest Interior Habitat;
 - 3) Rare Species Site(s);
 - 4) Exceptional Natural Areas;
 - 5) Riparian Buffers;
 - 6) Class I or Class II woodlands.
- 4. In areas of permitted woodland disturbance and areas adjacent to permitted woodland disturbance, remaining trees shall be protected from damage. The following procedures shall be utilized during construction in order to protect remaining trees:
 - a. Where existing trees are to remain, no change in existing grade shall be permitted within the drip line of the trees. Appropriate fencing 4 feet in height shall be placed at the drip line of trees to remain, wherever adjacent to proposed construction. Such fencing shall be maintained in place throughout the duration of construction activity. Roots shall not be cut within the drip line of any trees to remain.
 - b. Trees within 25 feet of a building, or bordering entrances or exits to building sites, shall be protected by a temporary barrier to be maintained in place throughout the duration of construction activity.

- c. No boards or other material shall be nailed or otherwise attached to trees during construction.
- d. Construction materials, equipment, soil and/or debris shall not be stored nor disposed of within the drip lines of trees to remain.
- e. Tree trunks, limbs, and exposed roots damaged during construction shall be protected from further damage by being treated immediately in accordance with accepted professional landscape procedures.

5. Calculation of Required Vegetation Replacement.

Where woodland disturbance exceeds any of the standards set forth in § 250-87.H.3 above, applied independently and cumulatively, replacement plantings shall be installed in accordance with the standards set forth below. A sample list of acceptable replacement plantings is found in § 250-87.N.

- a. Required Replacement Trees shall be determined using the calculation set forth below which results in the greatest number of replacement trees:

- 1) Replacement Tree Calculation Based on Area of Woodland Disturbance. At a minimum, for each five hundred (500) square feet of woodland disturbance area, or fraction thereof, in excess of the applicable standard set forth in § 250-87.H.3 and regardless of the character and sizes of the disturbed vegetation, one tree at least 2-2½” caliper shall be planted.
- 2) Replacement Tree Calculation Based on Specific Tree Removal. Regardless of any disturbance allowances, for each tree greater than 12” dbh to be removed, required replacement trees also shall be calculated in accordance with the following schedule. For purposes of this section, it shall be assumed that any tree greater than 12” dbh shall be removed if located within twenty-five (25) feet of any proposed land disturbance:

For each tree to be removed, at the following sizes, dbh:	Minimum number & caliper of replacement trees:
One, 12” to 18” dbh	Two 2-2½” caliper
One, 18” to 24” dbh	Three 2-2½” caliper
One, 24” to 36” dbh	Four 2-2½” caliper
One, greater than 36” dbh	Six 2-2½” caliper

- b. Required Replacement Shrubs. At a minimum, for each one hundred (100) square feet of woodland disturbance area, or fraction thereof, in excess of the applicable standard set forth in § 250-87.H.3 and regardless

- of the character and sizes of the disturbed vegetation, one shrub at least 24-30" in height shall be planted in addition to any required tree replacement. Shrubs planted in accordance with this requirement may be of restoration quality and not necessarily landscaping quality.
- c. Required replacement plantings shall be in addition to any required street trees or any other landscape material required under applicable provisions of this Chapter or Chapter 250, Zoning.
 - d. Where approved by the Township as a condition of any building, zoning, subdivision or land development approval or as a condition of grant of modification under § 250-87.J.3, required replacement trees may be substituted for greater numbers of trees of smaller caliper than otherwise required or by vegetation other than trees (e.g., for purposes of reforestation).
 - e. Where approved by the Township as a condition of any building, zoning, subdivision or land development approval or as a condition of grant of modification under § 250-87.J.3, some or all of the required replacement plantings may be installed at a site other than that subject to required replacement planting.
 - f. In lieu of actual installation of replacement plantings, the Township may permit any applicant to place the equivalent cash value, as agreed upon by the Township and the applicant, for some or all of the required replacement plantings into a special fund established for that purpose. Such fund shall be utilized at the discretion of the Township for the purchase and installation of plantings elsewhere in the Township. Installation of such plantings on private lands shall be dependent upon the establishment of conservation easement(s) or other restriction(s) acceptable to the Township that will reasonably guarantee the permanent protection of such plantings. Where the provisions of this Section are otherwise applicable, any grant of approval of modifications requested pursuant to § 250-87.J.3 also may be conditioned upon the placement of equivalent cash value for otherwise required replacement plantings into such a fund.
 - g. The locations, selected species, and sizes of all replacement plantings, along with a planting schedule tied to the timing and/or phasing of the development, shall be indicated on the Final Subdivision/Land Development Plan(s) or building permit application, as applicable.
6. Required replacement vegetation and their measurement shall conform to the standards of the publications "American or U.S.A. Standard for Nursery Stock," ANSI or U.S.A.S. Z60.1 of the American Association of Nurserymen, as amended. All plant material used on the site shall have been grown so as to have

a high likelihood of survival on the site (e.g., grown specifically for planting in the applicable USDA hardiness zone) and shall be nursery grown, unless it is determined by the Township that the transplanting of trees partially fulfills the requirements of this section.

7. Species of replacement plantings selected and planting locations shall reflect careful site evaluation and in particular the following considerations:
 - a. Existing and proposed site conditions and their suitability for the plant materials, based upon the site's geology, hydrology, soils, and microclimate.
 - b. Specific functional and design objectives of the plantings, which may include but not necessarily be limited to: replacement of woodland area removed, enhancement of existing woodland or oldfield area(s), reforestation of riparian buffer areas, mitigation of new woodland edge conditions as a result of land disturbance, provision for landscape buffer, visual screening, noise abatement, energy conservation, wildlife habitats, and aesthetic values.
 - c. Maintenance considerations such as hardiness, resistance to insects and disease, longevity, and availability.
 - d. Because of the many benefits of native plants (ease of maintenance, longevity, wildlife habitat, etc.), the use of nursery-grown free-fruiting native trees and shrubs is strongly encouraged. Species selection should reflect species diversity characteristic of the native deciduous woodland.
8. All replacement plantings shall be guaranteed and maintained in a healthy and/or sound condition for at least twenty-four (24) months or shall be replaced. In addition, the Applicant may be required to escrow sufficient additional funds for the maintenance and/or replacement of the proposed vegetation during the 24 month replacement period and to provide for the removal and replacement of vegetation damaged during construction, based upon the recommendation of the Township Engineer.
9. All applicants shall include, as part of preliminary and final plan submission, where applicable, a plan for the long-term management of any woodland area not subject to woodland disturbance and any area selected for introduction of replacement plantings in accordance with this Section. Such plan shall include a statement of woodland management objectives and shall demonstrate to the satisfaction of the Board of Supervisors the feasibility of intended management practices, aiming to ensure the success of stated objectives, including the viability of introduced plantings, deterrence of invasive species, and means to minimize any future woodland disturbance. Applicants are strongly encouraged to seek woodland management assistance from a qualified professional.

10. Timber Harvesting Operations

- a. Any timber harvesting operation shall be undertaken in accordance with a Timber Harvesting Plan approved by the Township. All Timber Harvesting Plans shall be submitted to the Township for review for compliance with the standards for timber harvesting operations set forth herein not less than forty-five (45) days prior to commencement of the timber harvesting operation. Within thirty (30) days of submission to the Township, a Timber Harvesting Plan shall be approved, denied, or approved subject to reasonable conditions and the Applicant so notified in writing.
- b. Any Timber Harvesting Plan submitted to the Township for review and approval shall be consistent with the Timber Harvesting Guidelines of the Pennsylvania Forestry Association, as applicable, and shall include a plan or plans indicating the following information:
 - 1) Site location and boundaries of both the entirety of the property upon which the timber harvesting operation shall occur and the specific area proposed for timber harvesting;
 - 2) Significant natural features on the property including steep slopes, wetlands, Riparian Buffer zones, Heritage Trees, Rare Species Sites, and Exceptional Natural Areas.
 - 3) Identification of the classification of the woodland or woodland(s) where the timber harvesting operation is proposed to occur, as indicated on the Pocopson Township *Woodland Classification Map*;
 - 4) Identification of areas of forest interior habitat where timber harvesting is proposed to occur;
 - 5) Identification of Greenway Corridors where timber harvesting is proposed to occur, as indicated on the Pocopson Township *Greenway Corridors Plan*.
 - 6) The general location of the proposed operation in relation to municipal and state highways and any proposed accesses to those highways;
 - 7) Design, construction, maintenance, and retirement of the access system, including haul roads, skid roads, skid trails, and landings;

- 8) Design, construction, and maintenance of water control measures and structures such as culverts, broad-based dips, filter strips, and water bars; and,
 - 9) Design, construction, and maintenance of proposed stream and wetland crossings.
- c. Any permits required by any other agency under any applicable regulation shall be the responsibility of the landowner or timber harvesting operator as applicable. Copy of all required permits shall be submitted to Pocopson Township at least twenty (20) days prior to commencement of the timber harvesting operation.
- d. The following management practices shall apply to all timber harvesting operations:
- 1) Felling and skidding of trees shall be undertaken in a manner which minimizes damage to trees or other vegetation not intended to be harvested (e.g., successive limbing up the tree rather than felling in its entirety).
 - 2) Felling or skidding across any public thoroughfare is prohibited without the express written consent of the Township or Penn DOT, whichever is responsible for the maintenance of said thoroughfare.
 - 3) No timber loads weighing more than 60,000 pounds shall be permitted on Township roads. The applicant shall review with the Township Roadmaster the condition of any Township road that will be used to transport log loads or that may otherwise be impacted by the timbering operation. The Township shall require the posting of a bond or other approved security of no less than \$50,000 to cover any damage to Township roads.
 - 4) No tops or slash shall be left within twenty-five (25) feet of any public thoroughfare or private roadway.
 - 5) Litter resulting from a timber harvesting operation shall be removed from the site or otherwise dealt with as approved by the Township (e.g., chipped and recycled on-site).
 - 6) The operation shall not cause harm to the environment or any other property.
- e. No timber harvesting operation shall be permitted within any Zone One Riparian Buffer or any Rare Species Site, nor within twenty-five (25) feet of any Rare Species Site. No clear-cutting of timber shall be

permitted within any Zone Two Riparian Buffer or any Exceptional Natural Area.

- f. In all woodlands, a minimum percentage of the forest canopy trees shall remain in good condition after the completion of any timber harvesting operation, as set forth in the table below. Remaining forest canopy trees shall be well distributed throughout the area subject to the timber harvesting operation.

Woodland Class	Percentage Forest Canopy Trees to Remain by location		
	<u>Zone One Riparian Buffer</u>	<u>Zone Two Riparian Buffer</u>	<u>All Other</u>
Class III	100	60	30
Class II	100	70	40
Class I	100	80	50
Forest Interior Habitat	100	90	60

- g. At least fifty (50) percent of the required remaining forest canopy trees, as provided above, shall be comprised of Higher Value Species. Where the number of trees comprising Higher Value Species that exist prior to the approval of any timber harvesting operation, is less than the number which would be required to comply with this provision, no Higher Value Species may be harvested.
- h. Township representative(s) shall be permitted access to the site of any timber harvesting operation before, during, or after active timber harvesting to review, inspect and ascertain compliance with the provisions set forth herein.
- i. Upon determination that a timber harvesting operation is in violation of these regulations, each day where any violation occurs shall constitute a separate violation subject to the provisions of this Chapter.

L. Greenway Corridor Conservation

- 1. Use Regulations. Within any designated greenway corridor a building may be erected, altered, or used, and a lot may be used as provided in the underlying base zoning district, except that all uses within a greenway corridor shall be subject to conditional use approval.

2. Area and Bulk Regulations. Within any designated greenway corridor, and subject to conditional use approval, the area and bulk regulations of the underlying base zoning district shall apply.
3. Special Criteria for Development within Greenway Corridors. Except as otherwise noted herein, the following special criteria are applicable within any designated greenway corridor to any new principal use and to the expansion, alteration, modification, or reconstruction of any existing use or structure for which a building permit is required:
 - a. Under any development option, on properties subject to subdivision or land development, building locations shall be selected outside of designated Greenway Corridors where feasible and, where not feasible, shall be located as near to the edge of the designated corridor as practicable, in order to conserve the largest possible breadth and extent of the greenway corridor.
 - b. The conventional development option shall not be utilized except where approved as a conditional use upon determination by the Board of Supervisors that no other development option is practicable.
 - c. Open space resulting from subdivision shall be located so as to maximize the degree to which lands within designated greenway corridors shall be so preserved.
 - d. Where applicable under any development option, the Board of Supervisors may grant conditional use approval subject to modification of any otherwise applicable area, bulk or design standard, where such modification is deemed as promoting the conservation of any designated greenway corridor.
 - e. Where applicable and where not undertaken voluntarily by the affected landowner(s), as condition(s) of conditional use approval, the Board of Supervisors may require establishment of formal conservation easements and/or public trail easements, in order to permanently secure the benefits of the greenway corridor subject to application.
4. Woodlands, riparian buffers and identified natural areas or Exceptional Natural Area within designated Greenway Corridors shall be preserved to the greatest extent feasible. Where feasible, more than one type of habitat area on a single tract shall be preserved in order to promote maintenance of habitat diversity.
5. In the context of an application for approval of a conditional use, subdivision or land development plan, special exception, variance, or building permit, the Township may require reforestation within designated Greenway Corridors. A

landscape plan shall accompany the application and adequately illustrate proposed reforestation plans, including a list of native trees and shrubs to be provided, and defining the long-term management provisions. All plantings shall be established prior to final occupancy permit approval.

6. Alteration of natural ridgelines within any designated greenway corridor through grading or earthmoving shall be avoided or, if not feasible, shall be minimized to the greatest extent feasible.

M. Application of Natural Resource Conservation Standards

1. Plan Information and Delineation of Protected Resources

To ensure compliance with the natural resource conservation standards of this Section, the following information shall be submitted by the Applicant when applying for a zoning or building permit, conditional use or special exception approval, zoning variance, or subdivision and land development approval where land disturbance is contemplated. In those cases where only a limited amount of the site will be subject to disturbance, the Zoning Officer may determine the area of land required to be shown on the plan such that information submitted will adequately demonstrate compliance with the natural resource conservation standards of this Section. Where less than the entire site is to be shown on the plan, the application shall be accompanied by a written explanation from the applicant as to why it is not necessary to include the entire site with the plan information.

- a. A site plan which identifies the limits of all natural resources on the site, including areas of woodlands or other vegetation to be preserved, and the proposed use of the site including any existing or proposed structures.
- b. The limits of all encroachments and disturbances necessary to establish the proposed use on the site, including a grading plan showing existing and proposed contours.
- c. Calculations indicating the area of the site comprising each of any regulated natural resources and the area of each of such natural resources that would be disturbed or encroached upon. The calculations shall be shown on submitted plan sheet(s).

2. Continued Protection of Identified Natural Resources

To ensure the continued protection of identified natural resources, the following requirements shall apply:

- a. **Protected Resource Areas On Individual Lots**

- 1) For resource areas protected under the terms of this section located on individual lots, restrictions meeting Township specifications shall be placed in deeds for each site or lot that has resource protection areas within its boundaries.
- 2) Deeds shall clearly state that the maintenance responsibility lies with the individual property owner. The restrictions shall provide for the continuance of the resource protection areas in accordance with the provisions of this Chapter.
- 3) Other mechanisms for ensuring the continued protection of identified resources, such as conservation easements, may also be considered and used if approved by the Township.

b. Protected Resource Areas Held In Common

- 1) For resource protected areas held in common, the provisions of § 250-98 (Open Space Standards) and § 250-99 (Homeowners Associations) shall apply.
- 2) Conservation restrictions acceptable to the Township shall be placed on any natural area to be held in common.
- 3) The party or organization responsible for the maintenance of any natural area(s) shall be clearly identified in applicable deed(s). The restrictions shall provide for the continuance of the resource protected areas in accordance with the provisions of this Chapter.

c. Changes to Approved Plans

All applicable plans and deeds shall include the following wording: “Any structures, infrastructure, utilities, sewage disposal systems, or other proposed land disturbance indicated on the approved final plan shall only occur at the locations shown on the plan. Changes to such locations shall be subject to additional review and re-approval in accordance with the provisions of § 250-87 Chapter 250, Zoning, of the Pocopson Township Code.”

3. Modifications to Natural Resource Conservation Standards

- a. For any use or activity subject to Subdivision or Land Development review, as part of applicable Plan Submission, modification(s) may be requested to the provisions of this § 250-87. Requested modification(s) may be granted at the discretion of the Board of Supervisors pursuant to the provisions of Chapter 190, Subdivision and Land Development.

- b. For any use or activity not subject to Subdivision or Land Development review, but where the use or activity is subject to application for approval of a Conditional Use, Special Exception, or Zoning Variance, modification(s) to the provisions of this § 250-87 may be requested as part of such application.
- c. For any use or activity not otherwise subject to permit or approval as provided in subsections a or b above, modification(s) to the provisions of this § 250-87 may be requested in the form of an application for grant of a Special Exception by the Zoning Hearing Board. Such applications shall be submitted to the Township Planning Commission for review and comment prior to formal Special Exception application to the Zoning Hearing Board.
- d. In consideration of approval of any request for modification(s) under this § 250-87, it shall be determined that the specific nature of the lawful use or activity, existing site conditions, and/or safety considerations warrant such modification(s), and that the resource protection purposes of this §250-87 shall be adhered to, to the maximum extent practicable.

N. Suggested Plant List

The following list includes species acceptable for woodland replacement plantings. Examples of species appropriate for use where screening or buffering is desirable or required are indicated with an asterisk (*). Appropriate species for street tree plantings are indicated by the notation “ST.” Specific species selection and planting locations shall reflect careful site evaluation as further set forth herein.

Tree, Botanical Name	Common Name
<i>Evergreen Trees</i>	
Eastern redcedar*	Juniperus virginiana
Canadian Hemlock	Tsuga canadensis
Red (Eastern or Yellow) spruce*	Picea rubens
Norway spruce*	Picea abies
Eastern White Pine*	Pinus strobes
 <i>Shade Trees</i>	
Red maple, ST	Acer rubrum
Sugar maple, ST	Acer saccharum
White ash, ST	Fraxinus americana
Green ash, ST	Fraxinus pennsylvanica
Sycamore	Platanus occidentalis
White oak, ST	Quercus alba
Northern red oak, ST	Quercus rubra
Tulip poplar	Liriodendron tulipifera
Scarlet oak, ST	Quercus coccinea
Pin oak, ST	Quercus palustris
Shagbark hickory	Carya ovata

American basswood
 American beech
 Black cherry
 London plane tree

Tilia americana
 Fagus grandifolia
 Prunus serotina
 Platanus acerifolia

Small Trees and Shrubs

Rhododendron
 Black chokecherry
 Shadbush/Serviceberry*
 Redbud
 Flowering dogwood*
 Winterberry
 Washington hawthorn*
 New Jersey tea
 Sourwood
 Ironwood
 Arrowwood
 Black Haw
 Maple Leaf viburnum
 Mountain laurel
 Highbush blueberry
 Lowbush blueberry
 Common juniper

Rhododendron sp.
 Aronia melanocarpa,
 Amelanchier canadensis
 Cercis canadensis
 Cornus florida white
 Ilex verticulata
 Crataegus phaemopyrum
 Ceonothus americanus
 Oxydendrum arboreum
 Ostrya virginiana
 Viburnum dentatum
 Viburnum prunifolium
 Viburnum acerifolium
 Kalmia latifolia
 Vaccinium corybosum
 Vaccinium vacillans
 Juniperus communis

Subdivision/Land Development Ordinance

Amend § 190-23 and § 190-24 to read as follows:

§ 190-23. Existing Resources and Site Analysis Plan

- A. An Existing Resources and Site Analysis Plan consisting of one or more maps shall be prepared for all subdivisions or land developments to provide the developer or landowner and the Township with a comprehensive analysis of existing conditions, both on the subject property and within 250-500 feet of the property boundaries, as specifically provided below. Minor Subdivisions, Conservation Subdivisions meeting the requirements of Article III of the Chapter 250, Zoning, or subdivisions for the purposes of establishing transferable development rights only, may be exempted from providing some information as provided below.

- B. Submission requirements hereunder shall be reduced for Conservation Subdivisions with an average lot size of 20 acres or restricted to no more than two residential dwellings, and subdivisions required to establish transferable development rights where no more than two residential dwellings or development rights shall be retained on the subject property. In such instances, Applicants shall be required to submit paper copies of required plans only, and at a scale of 1 inch equals 100 feet. The only information required shall be as follows, and shall only be required for the subject property:

- (1) The accurate depiction of all Class I and II agricultural soils and any Seasonal High Water Table Soils;
 - (2) Any information required to determine the net tract area, as provided in Chapter 250, Zoning;
 - (3) The information set forth in Subsection E(3) (Map 3);
 - (4) The most accurate topographic information electronically available at a reasonable cost;
 - (5) The depiction of the location of any Exceptional Natural Area as identified in the Exceptional Natural Areas Inventory;
 - (6) The indication of location, type and size of any Heritage Tree(s),
 - (7) The depiction of any Rare Species Site(s);
 - (8) The indication of any area(s) located within Greenway Corridors as identified on the Greenway Corridors Map; and
 - (9) The extent and differentiation of woodland classifications, including forest interior habitat, as indicated on the Woodland Classification Map.
- C. All other Conservation Subdivisions and subdivisions required for transfers of development rights shall be required to submit all of the data layers required for Maps 1 and 3 in paper form at a scale of 1 inch equals 50 feet. Indication of conditions beyond the boundaries or the subject property, as otherwise required herein, may be described on the basis of published reports or data, aerial photographs or computer accessible data. The landowner or equitable owner should consult with the Planning Commission and Township Engineer before preparing such maps or a subdivision plan to determine what level of assistance may be provided by the Township and what the critical mapping and subdivision issues will be. The most accurate topography electronically available may be used to prepare Map 1 and used in Map 3. However, where public improvements such as streets or road improvements are required or where significant cuts and fill may be involved to implement a Conservation Subdivision, the Planning Commission or Township Engineer may require the developer or landowner to comply with standard provisions for mapping topography for Map 1, as set forth below.
- D. Minor subdivisions involving two acres or less shall only be required to provide the information set forth in Subsection E(1)(c) and (f) (Map 1) and the information set forth in Subsection E(3) (Map 3) and, where information otherwise is required beyond the boundaries of the subject property, only for the first 250 feet. Where field surveys or orthographically corrected aerial photography are not reasonably available, USGS topography may be used for minor subdivisions.
- E. Except as provided above for Minor Subdivisions, Conservation Subdivisions and subdivisions for transfer of development rights, as noted above, the Existing Resources and Site Analysis Plan shall consist of all of the Maps as set forth below. Required

information shall be submitted to the Township on paper and Mylar copies at a scale of one inch equals 50 feet and on computer disks in an AutoCAD or ArcInfo GIS format or other format compatible with the systems used by the Township and its Engineer. Electronic submissions shall separate data layers for each of the site features required. To the extent reasonably feasible, required information shall be submitted at the time of Sketch Plan submission and shall, in all cases, be required for Preliminary and Final Plan submission. The Township shall review the Existing Resources and Site Analysis Plan to assess its accuracy and thoroughness.

- (1) Map 1 shall consist of:
 - (a) Topography, the contour lines of which shall be at two-foot intervals, determined by photogrammetry with clear differentiation of all Very Steep Slopes (>20%), Moderately Steep Slopes (10-20%) and Steep Slope Margins, as defined in Chapter 250, Zoning. Topography for major subdivisions shall be prepared by a professional land surveyor or professional engineer from an actual field survey of the site or from orthographically corrected aerial photography and shall be coordinated with official U.S.G.S. benchmarks. Datum to which contour elevations refer shall be noted.
 - (b) The location and extent of ponds, watercourses, natural drainage swales, one-hundred-year floodplains and wetlands as defined in Chapter 250, Zoning, shall be clearly delineated for the subject property and within 250 feet of the property boundaries. Wetlands identified in the field by soil testing, the presence of hydrophytic plants, or observation of standing water or other indicators shall be included for major subdivisions and land developments. Copy of any required Wetland Delineation Report shall be submitted to the Township to accompany submission of Map 1.
 - (c) The location, delineation, and classification of all woodlands, including forest interior habitat, as indicated on the Woodland Classification Map.
 - (d) The location and delineation of any areas located within greenway corridors, as indicated on the Greenway Corridors Map.
 - (e) The location, delineation, and identification of any Exceptional Natural Area as identified in the Exceptional Natural Areas Inventory, any Rare Species Site(s) as defined in Chapter 250, Zoning, where found on the subject property or within 250 feet of the property boundaries.
 - (f) Ridge lines and watershed boundaries shall be identified.
 - (g) All visually significant landscapes as identified on the Scenic Resources map of the Pocopson Township Open Space, Recreation, and Environmental Resources Plan or delineated for the state designated Lower Brandywine Scenic River Corridors (including along Pocopson Creek). This information shall be supplemented with a viewshed analysis showing the location and extent of views into the property from public roads and from adjoining public or private non-profit owned recreational or open space properties.

- (h) Locations of all historic districts and historic and archaeological resources on the tract or the abutting tracts as identified in the Pocopson Township open space study referenced above, the National Register of Historic Places, or any published study available at the Township.
 - (i) Geologic formations and large rock outcrops on the subject property, based on available published information or data obtained by the applicant in field surveys.
- (2) Map 2 shall consist of:
- (a) Topography at two-foot intervals determined by photogrammetry and prepared in the manner noted above, but without slope differentiation.
 - (b) Vegetative cover conditions on the property according to general cover type including any cultivated land, permanent grassland/meadow, old field, hedgerow, wetland, free-standing trees greater than twelve inches diameter at breast height, woodland areas delineated on the Woodland Classification Map, and Heritage Trees, as defined in Chapter 250, Zoning, whether free-standing or within a woodland, hedgerow or other tree mass. Each area identified shall be described regarding plant community composition, and general conditions, including delineation of any area where a timber harvesting operation has occurred within three years prior to the subject subdivision or land development application. For each stand of woodland and hedgerow, average tree size (dbh) shall also be noted along with actual canopy extent and any other pertinent information. Actual canopy extent also shall be indicated for each Heritage Tree.
 - (c) Soil series, types and phase, as mapped by the U.S. Department of Agriculture, Natural Resources Conservation Service in the Soil Survey for Chester and Delaware Counties, Pennsylvania - 1963, and accompanying data tabulated for each soil. With the exceptions of properties proposed for transfer of development rights or for Conservation Subdivision, a soils map shall be overlain with geological delineations and the results of a fracture trace analysis of all fractures on the property (prepared by a registered geologist or hydrogeologist). The following soil types shall be specifically identified:
 - [1] Alluvial and colluvial (e.g. Worsham) soils.
 - [2] Seasonal High Water Table Soils including specific delineation of hydric soils and soils with hydric inclusions.
 - [3] Soils with percolation rates within four feet of the surface of 1.2 to 2 inches per hour and those with rates in excess of 2 inches per hour.
 - [4] All Class I and II agricultural soils.
- (3) Map 3 shall include the following:
- (a) Topography as provided with Map 2.

- (b) Calculations of area and delineation of all features subject to reduction of Net Tract Area as defined in § 250-16 of Chapter 250, Zoning.
- (c) The location and dimensions of all existing streets, roads, buildings, stormwater management facilities, utilities and other man-made improvements on the subject property or within 500 feet of the property boundaries, and sewage systems, wells, and spring houses providing drinking water on the property or within 150 feet of the property.
- (d) The locations and extent of any wetland mitigation facilities, created wetlands including source of hydrology, and tilefields or other facilities used to drain former wetlands.
- (e) The locations of trails and bikeways on the property and on abutting properties that have been in public use (pedestrian, equestrian, bicycle, etc.) or have been approved or dedicated and those proposed trails and bikeways shown on the Pocopson Township Trail and Bikeway System map, including those corridors within which the exact location of the trail or bikeway has not yet been determined.
- (f) All easements and other encumbrances of property which are or have been filed of record with the Recorder of Deeds of Chester County shall be shown on the plan.

§ 190-24. Conservation Plan.

- A. A Conservation Plan is required to accompany the preliminary and final subdivision or development plans and shall be clearly and legibly drawn to the same scale as that of the preliminary and final plans.
- B. The Conservation Plan shall show, within the total tract boundaries of the property being subdivided or developed, the information required below:
 - (1) Contour lines at vertical intervals of not more than two feet.
 - (2) Location and elevation to which contour elevations refer; where reasonably practicable, datum used shall be a known, established bench mark.
 - (3) All existing watercourses, flood hazard areas as identified by alluvial soils and the Federal Flood Insurance Map.
 - (4) Locations of all soil classifications.
 - (5) Location and results of soil percolation tests for all areas to be used for on-site percolation of sewage (e.g. septic drain fields or spray irrigation areas) or recharge facilities and detention basins.
 - (6) Location and type of all temporary and permanent storm water runoff and erosion and sedimentation control measures, including all stormwater storage and reuse and recharge facilities, temporary and, when necessary, permanent detention and

retention facilities, grassed drainage swales, diversion terraces, check dams or other velocity controls, and storm drains and inlets. Proposed timing for construction of these facilities and making them operational (recharge and storage and reuse facilities should generally not be used until soil is fully stabilized), details of all facilities, together with summaries of their temporary and permanent capacities and calculations of volumes and flows and other information to support the adequacy of the facilities and such other information as may be required by the Stormwater Management Ordinance and this Chapter.

- (7) Notations indicating all trees or portions of tree masses proposed to be cleared as part of the proposed subdivision or development plan, together with reasons for such clearing; all proposed alterations of the natural grade, whether by cut or by fill, exceeding two feet, together with reasons for such alteration; compliance with all applicable erosion and sedimentation control and stormwater management standards.
- (8) Locations of all areas exceeding 20% slope, based on the contour plans prepared pursuant to § 190-23.E(1), above, with information sufficient to establish that the plan complies with §§ 250-86 and 250-87 of Chapter 250, Zoning.
- (9) Location of all existing trails on the property especially those linking to trails on neighboring properties or to the Township's Trail and Bikeway System and trails and bikeways shown on the Township's Trail and Bikeway System Map that exist or are proposed in the area of the property.
- (10) Written instructions to all contractors and diagrams indicating how existing trees will be protected during the period of construction of roads or houses, along with a notation that damage, destruction, or felling of a tree slated for protection shall require replacement with a tree of similar size or such number of trees as are required to equal the circumference of the affected tree.
- (11) In the case of a major subdivision or a land development of two acres or more or where the Township Engineer determines that the potential for wastewater, wells, and stormwater conflicts is great, the results of a fracture trace analysis of the subject property and adjoining properties within 100 feet of the property prepared by a registered geohydrologist or comparable expert in surface-groundwater interactions shall be presented and related to the location of stormwater management facilities and drainageways, wetlands and percolation test pits. Fracture trace analysis shall be used in the design of stormwater management facilities in order to prevent the pollution of groundwater and to facilitate the recharge of clean stormwater to the groundwater, and to indicate that sufficient groundwater will be available to supply the development. The applicant's methodology of analysis, and the findings, shall be subject to the review and approval of the Township Engineer.
- (12) Historic buildings or sites, natural areas, woodlands, or features of importance identified in the Pocopson Township Open Space, Recreation and Environmental Resources Plan, the Chester County Historic Sites Survey, the National Register

of Historic Places, or such plans as the Township may adopt to identify and prioritize such resources and areas.

- (13) A sequence of construction shall be provided on all plans that describes the timing and relationship between the implementation and maintenance of sediment controls, including permanent and temporary stabilization measures and the various stages or phases of earth disturbance and construction. The sequence of construction shall, at a minimum, include the following activities:
- (a) Clearing and grubbing of all those areas where erosion and sedimentation controls are to be installed;
 - (b) Construction of erosion and sedimentation controls, including diversion terraces, check dams, stormwater management basin(s);
 - (c) Remaining clearing and grubbing for streets and other improvements;
 - (d) Construction of trails;
 - (e) Rough and fine grading for the road(s) and commercial driveway(s);
 - (f) Construction of dwellings and other buildings;
 - (g) Installation of stormwater storage and reuse facilities, recharge tanks and recharge beds and reuse and recharge distribution systems;
 - (h) Rough and fine grading for the remainder of the site;
 - (i) Utility installation and whether storm drains will be used or blocked until after completion of construction and methods to prevent discharges to recharge facilities or any sediment contamination of recharge facilities until the site is stabilized;
 - (j) Construction of road and commercial driveway base and wearing courses;
 - (k) Final grading or stabilization;
 - (l) Removal of any temporary detention facilities and removal of sediment from all permanent stormwater management facilities; and
 - (m) Street tree planting.
 - (n) Replacement tree and shrub planting as required pursuant to § 250-87 of Chapter 250, Zoning.
 - (o) Any required wetland mitigation.

Appendix X: Sample Steep Slope Conservation Overlay District

Steep Slope Ordinance Upper Salford Township, Montgomery County

ARTICLE XVII SS STEEP SLOPE CONSERVATION OVERLAY DISTRICT

SECTION 1700.PURPOSES

In expansion of the Declaration of Legislative Intent found in Article 1, Section 101 of this Ordinance, and the Statement of Community Development Objectives found in Article I, Section 102 of this Ordinance, the purpose of this Article, among others, is as follows:

- A. Preserve the natural character and aesthetic value of mountains and hillsides.
- B. Guard against property damage and personal injury, and minimize the potential for erosion, soil failure, stream siltation, and contamination of surface waters caused by the misuse of steep slope areas.
- C. Encourage innovative residential development by allowing the flexibility necessary to maximize conservation of steep slopes and produce unique, environmentally sensitive projects.
- D. Conserve existing woodlands for air and water quality benefits, to provide habitat for wildlife, and to maintain the ecological balance among the natural systems on steep slope areas.

SECTION 1701.DEFINITION AND ESTABLISHMENT OF STEEP SLOPE CONSERVATION OVERLAY DISTRICT

The Steep Slope Conservation Overlay District is established as all those areas of the township with a slope of 15 percent or more, referred to as "steep slopes" or "steep slope areas." This district may be referred to as the "Steep Slope District."

- A. Applicants shall show the boundaries of Steep Slope Areas on all subdivision and land development plans, based on an on-site survey prepared by a Registered Professional Engineer or Surveyor.
- B. The Steep Slope Areas to be shown on all subdivision and land development plans shall be further divided into the following 4 categories when measured over 3 or more contour lines at 2 foot intervals:
 - 1. Slopes of at least 15 percent but less than 20 percent.
 - 2. Slopes of at least 20 percent but less than 25 percent.

- 3. Slopes of at least 25 percent but less than 30 percent.
 - 4. Slopes of 30 percent or more.
- C. The Township shall exempt manmade slopes from the provisions of this Article if it is determined that alteration, regrading, clearing, or construction upon such slopes will not be injurious to the health, safety, and welfare of township residents. It shall be the burden of the applicant to demonstrate that the slopes were manmade.

SECTION 1702.OVERLAY CONCEPT

The Steep Slope Conservation District shall be an overlay on all zoning districts and shall function in accordance with the following:

- A. For any lot or portion thereof lying within the Steep Slope Conservation District, the regulations of the overlay district shall take precedence over the regulations of the underlying district.
- B. Should the underlying zoning of any lot or any part thereof which is located in the Steep Slope Conservation District be changed through any legislative or judicial action, such change shall have no effect on the overlying Steep Slope Conservation District unless such change was included as part of the original application.
- C. All uses, activities and development occurring within the Steep Slope Conservation District shall be undertaken only in strict compliance with the provisions of this Article, with all federal and state laws, and with all other applicable Township codes and ordinances.

SECTION 1703.GENERAL REGULATIONS

In all zoning districts, for those portions of a lot having steep slope areas, as defined in Section 1701, herein, the following standards shall apply for all proposed uses:

- A. Disturbance Limits. Based upon steep slope category, the following disturbance limits shall be the maximum area of such slopes that may be regraded and/or stripped of vegetation:

Steep Slope Category	Disturbance Limit
Slopes at least 15% but less than 20%	30%
Slopes at least 20% but less than 25%	20%
Slopes at least 25% but less than 30%	10%
Slopes 30% or greater	5%

- 1. Non-residential lots within the REC Recreational District shall be permitted to disturb a maximum of 30 percent of steep slope areas within each steep slope category, provided

it is the minimum disturbance necessary to allow a permitted use.

- B. Grading or earthmoving on all steep slope areas shall not result in earth cuts or fills whose highest vertical dimensions exceed 10 feet, except where no reasonable alternatives exist for construction of public roads, drainage structures, and other public improvements, in which case such vertical dimensions shall not exceed 20 feet. Finished slopes of all cuts and fills shall not exceed three to one (3: 1), unless the applicant can demonstrate that steeper slopes can be stabilized and maintained adequately. The landscape shall be preserved in its natural state insofar as practicable.

SECTION 1704.DEVELOPMENT REGULATIONS

The requirements of the following zoning districts shall be modified on all land containing steep slopes, as defined in Section 1701, herein, as designated below:

- A. Each parcel of land located in the R-2, R-1.5, R-1, R-30, IN, REC, or CB zoning district, having a steep slope ratio of 15 percent or more and proposed for residential use shall be subdivided consistent with one of the following requirements (Option 1, Option 2, or Option 3):
 - 1. Option 1 - Conservation Subdivision. In order to encourage preservation of the steep slopes, and other significant natural features, the applicant's proposed design shall be consistent with the standards for conservation subdivision within the underlying zoning district and shall locate the steep slopes within the required greenway land, considering the greenway delineation standards within the Upper Salford Township Subdivision and Land Development Ordinance.
 - 2. Option 2 - Density Transfer for Creation of Conservation Area (CA). A density credit may be provided for all steep slopes areas, as defined in Section 1 70 1, designated as permanently protected conservation areas. The density credit may be transferred only to the remaining tract area by providing a reduction in the required minimum lot size of the underlying district, consistent with the following requirements:
 - a. Establishment of Conservation Area. Land designated for a conservation area shall be deed restricted from development and the removal of vegetation and preserved via an ownership option listed in Section 2208 or located on individual lots provided the conservation area does not count toward meeting the minimum lot size requirement and an easement is dedicated to the township, subject to the approval of the Township Solicitor.
 - b. Minimum Conservation Area. Designated conservation area land shall preserve steep slopes, based upon steep slope category, consistent with the following standards:

Steep Slope Category	Minimum Area Preserved within Designated Conservation Area
Slopes at least 15% but less than 20%	50%
Slopes at least 20% but less than 25%	75%
Slopes at least 25% but less than 30%	100%
Slopes 30% or greater	100%

- c. **Additional Conservation Area Lands.** Additional portions of the site may be included within the designated conservation area, including but not limited to wetlands, floodplains, alluvial soils, woodlands or portions of the parcel made inaccessible due to the creation of a conservation area. All additional lands designated as part of the conservation area shall be made contiguous to a steep slope area.
- d. **Conservation Area Acreage.** When the total acreage of conservation area exceeds 50 percent of the gross tract acreage, the underlying district's dimensional standards for conservation subdivision shall be utilized. In addition, the development shall meet the conservation subdivision design standards of Section 2207.
- e. **Reduction of Minimum Lot Area.** The creation of conservation area permits a reduction in the minimum lot area, allowing the tract's base density to be achieved. The maximum number of permitted dwelling units on the tract, designation of eligible receiving areas, and the new dimensional requirements shall be determined in accordance with the following:
 - i. **Yield Plan.** The maximum number of dwelling units to be permitted on the tract shall be based upon the standards for rural subdivision within the underlying zoning district, as demonstrated by an actual yield plan. The yield plan must be prepared as a layout plan in accordance with the standards of the township's subdivision and land development ordinance, containing proposed lots, streets, rights-of-way, and other pertinent features. The yield plan must identify the site's primary and secondary resources, as identified as part of the natural features plan, and demonstrate that the primary resources could be successfully absorbed in the development without disturbance, by allocating this area to proposed single-family dwelling lots which conform to the standards for rural subdivisions. The number of units shown on the yield plan will be the maximum number of units that may be permitted in the eligible receiving areas.
 - ii. **Eligible Receiving Areas.** Eligible receiving areas shall not include those portions of the tract within the ultimate right-of-way, or are limited from development by some other provision of this Ordinance.

- iii. The minimum lot size, dimensional and impervious standards for the eligible receiving area shall be consistent with the following standards based on the underlying zoning district, except as permitted by Section 1704.A.2.d:
Dimensional and Impervious Standards

Zoning District	R-2 and REC	R-1.5	R-1	R-30
Minimum Lot Size	40,000 square feet	30,000 square feet	20,000 square feet	15,000 square feet
Minimum Lot Width	175 feet	135 feet	135 feet	100 feet
Front Yard Setback	60 feet	50 feet	50 feet	50 feet
Rear Yard Setback	60 feet	50 feet	50 feet	50 feet
Side Yard Setback	30 feet (75 foot aggregate)	25 feet (60 foot aggregate)	25 feet (60 foot aggregate)	15 feet (50 foot aggregate)
Maximum Impervious	15 percent	25 percent	25 percent	25 percent

3. Option 3 - As a conditional use, each lot hereinafter created by subdivision having a steep slope ratio of 15 percent or greater shall increase the required minimum lot size and adjust the maximum impervious surface limit consistent with the following requirements:

Minimum Lot Size (square feet)

District	Steep Slope Ratio	
	15% to 50%	51% or more
R-2 and REC	120,000	160,000
R-1.5	90,000	120,000
R-1	60,000	80,000
R-30	45,000	60,000

Maximum Impervious Ground Cover (per lot)

	Steep Slope Ratio

District	15% to 50%	51% or more
R-2, R-1.5, R-1, and REC	10%	8%
R-30	15%	12%

- B. Tracts hereinafter subdivided for residential use in the NMR zoning district or non-residential use in the R-30, IN, REC, CB, LLI, or LI zoning district, having a steep slope ratio of 15 percent or more shall locate the steep slopes within the required greenway land or green area for the underlying district, considering, where applicable, the greenway delineation standards within the Upper Salford Township Subdivision and Land Development Ordinance.

SECTION 1705.CONDITIONAL USE APPLICATION

Applications for conditional uses shall comply with the procedures in Article XXII of this ordinance and provide the following information and documentation.

- A. A plan by a Registered Professional Engineer or Surveyor which accurately locates the proposed use with respect to the Steep Slope District boundaries and existing development within 200 feet of the proposed use, together with all pertinent information describing the parcel, and a topographical survey with contour elevations at no greater than 5-foot intervals.
- B. A plan of proposed development or use of the site, conforming to the preliminary plan requirements of the subdivision and land development ordinance, with contours shown at 2-foot intervals, where feasible, throughout the steep slope areas proposed for development or use. Contours shall be accurately drawn from on-site survey or aerial photographic sources.
- C. Proposed modifications to the existing topography and vegetative cover, as well as the means of accommodating stormwater runoff.
- D. Documentation of any additional engineering and/or conservation techniques designed to alleviate environmental problems created by the proposed activities.
- E. Specifications of building materials and construction including filling, grading, materials storage, water supply, and sewage disposal facilities.
- F. An erosion and sediment control plan in compliance with the erosion and sediment control practices set forth in the Erosion and Sediment Pollution Control Program Manual of the Department of Environmental Protection, 1990, and any subsequent amendments thereto.
- G. The location of all trees having a diameter of 8 inches or more dbh.

SECTION 1706.CONDITIONAL USE STANDARDS AND CRITERIA

In considering a conditional use application, the Board of Supervisors shall consider the following:

- A. Relationship of the proposed use to the objectives set forth in Section 1700.
- B. Adverse effects on abutting properties.
- C. The need for a woodland management plan on wooded steep slope areas.
- D. Evidence that:
 - 1. Alternative placements on non-steep slope areas were carefully evaluated for structures, including buildings, retaining walls, swimming pools, roads, access driveways, parking facilities and other development, and can be shown to be inappropriate or infeasible to the satisfaction of the Board of Supervisors.
 - 2. Proposed buildings and structures are of sound engineering design and that footings are designed to extend to stable soil and/or rock.
 - 3. Proposed roads, drives and parking areas are designed so that land clearing and/or grading will not cause accelerated erosion. Both vertical and horizontal alignment of such facilities shall be so designed that hazardous conditions are not created.
 - 4. Surface run-off of water will not create unstable conditions, including erosion, and that appropriate stormwater management facilities will be constructed as necessary.
 - 5. Proposed non-agricultural displacement of soil shall be for cause consistent with the intent of this ordinance and shall be executed in the manner that will not cause erosion or other unstable conditions. The applicant shall provide an erosion and sediment control plan and supporting evidence.
 - 6. Proposed on-lot sewage disposal facilities shall be properly designed and constructed in conformity with applicable regulations.

SECTION 1707.LIMIT OF MUNICIPAL LIABILITY

The granting of a use and occupancy permit or the approval of a subdivision or land development plan on or near the Steep Slope Conservation District shall not constitute a representation, guarantee or warranty of any kind by the township or any official or employee thereof regarding the practicability or safety of the proposed use and shall create no liability upon the Township, its officials, or its employees.

Protections provided by this ordinance are for regulatory purposes and based on minimum engineering studies. The ordinance does not imply that areas outside the District are free from adverse effects of erosion and sedimentation.

