

Beaver County Greenways and Trails Plan Connecting Beaver County's People and Natural Assets through Greenways and Trails



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This project was financed in part by: a grant from the Keystone Recreation, Park and Conservation Fund under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation; a grant from the Community Development Program of Beaver County and funds from the County of Beaver



Top Left: Covered Bridge in Brush Creek Park

Top Right: Old Economy Village

Bottom Left: View of Beaver River from Big Rock Park in New Brighton Borough

Bottom Right: Commissioners Joe Spanik and Charlie Camp and others exploring trail opportunities in Bradys Run Park

RESOLUTION NO. 110807-15

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF BEAVER IN THE COMMONWEALTH OF PENNSYLVANIA, APPROVING AND ADOPTING THE BEAVER COUNTY GREENWAYS AND TRAILS PLAN AS AN AMENDMENT TO THE BEAVER COUNTY COMPREHENSIVE PLAN;

WHEREAS, the Beaver County Greenways and Trails Plan (Project) was completed in accordance with the Grant Agreement between the County of Beaver and the Commonwealth of Pennsylvania, Department of Conversation and Natural Resources Grant Agreement No. BRC-TAG-9-16 (Grant Agreement);

WHEREAS, all project expenditures have been made/have been approved for payment and were in accordance with the Grant Agreement;

WHEREAS, the Greenways and Trails Plan and related materials are acceptable to the County of Beaver; and

WHEREAS, the Greenways and Trails Plan will be used to guide future recreation, park, open space, and conservation acquisition, development, operations and maintenance.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Beaver, a fourth class county under the laws of the Commonwealth of Pennsylvania, AND IT IS HEREBY RESOLVED:

1. That, pursuant to the recommendation of Frank Mancini, Jr., the Beaver County Greenways and Trails Plan, dated October 15, 2007, and attached hereto, is hereby approved and adopted as an Amendment to the Beaver County Comprehensive Plan, a copy of which is attached hereto and by reference and made a part hereof.

2. That the Board of Commissioners, for and on behalf of the County of

Beaver, is hereby authorized to execute one duplicate counterparts of said Agreement and the Chief Clerk of the County of Beaver is hereby directed to attest the due execution thereof and to affix the Seal of the County of Beaver thereto.

3. That, following the proper execution, attestation and ensealing of said duplicate counterparts of said Agreement, the Chief Clerk of the County of Beaver is hereby directed to cause delivery of the same to be made as follows: The original to the Controller of the County of Beaver.

Adopted this 8th day of November, 2007.

BOARD OF COMMISSIONERS
COUNTY OF BEAVER

(SEAL)

ATTEST:

Macey Patton
Chief Clerk

Joe Spanik
Joe Spanik, Chairman

Dan Donatella
Dan Donatella

Approved As To Legal Form:

AM Carter
County Solicitor's Office

Charles A. Camp
Charles A. Camp

Beaver County Greenways and Trails Plan

Connecting Beaver County's People and Natural Assets through Greenways and Trails

Project No. BRC-TAG-9-16

October 15, 2007

The following individuals were essential to the successful development of this Greenways and Trails Plan for Beaver County. They are commended for their participation, input, and great interest in shaping the future of greenways and trails in Beaver County.

The Beaver County Commissioners

Commissioner Joe Spanik, Chairman
Commissioner Dan Donatella
Commissioner Charles A. Camp

Beaver County Planning Commission

Mr. Frank Mancini, Jr., Director
Mr. Joseph C. West, Manager of Planning
Mr. Rick Packer, Transportation Planner
Mr. Bill Evans, Associate Planner
Ms. Sandra Bursey, Planning Assistant
Ms. Sue Jamery, Clerk

Project Study Committee

Mr. Carl DeChellis	Beaver County Housing Authority
Mr. Marlin Erin	Beaver County Recreation Advisory Board
Ms. Kathryn Johnston	Beaver River Rails to Trails
Mr. Tom King	Beaver County Recreation & Tourism Department
Mr. Pat Geho	Beaver County Chamber of Commerce
Ms. Suzanne Modrak	Community Development Program of Beaver County
Mr. Larry Morley	New Brighton Borough
Mr. Ed Piroli	Redevelopment Authority of Beaver County
Ms. Laura Rubino	Beaver County Corporation for Economic Development
Ms. Lisa Troiani	Community Development Program of Beaver County
Mr. John Walliser	Pennsylvania Environmental Council
Ms. Marty Warchol	Beaver County Conservation District
Mr. Harry Wolf	Beaver County Agricultural Land Preservation Board
Mr. Dan Woodske	Beaver Initiative for Growth
Ms. Sandy Wright	Greene Township
Mr. Joe Zagorski	Beaver County Planning Commission

Pennsylvania Department of Conservation and Natural Resources

Ms. Diane Kripas	Recreation and Park Supervisor
Mr. Mike Eschenmann	Recreation and Park Advisor
Ms. Kathy Frankel	Southwest Region Recreation and Park Supervisor

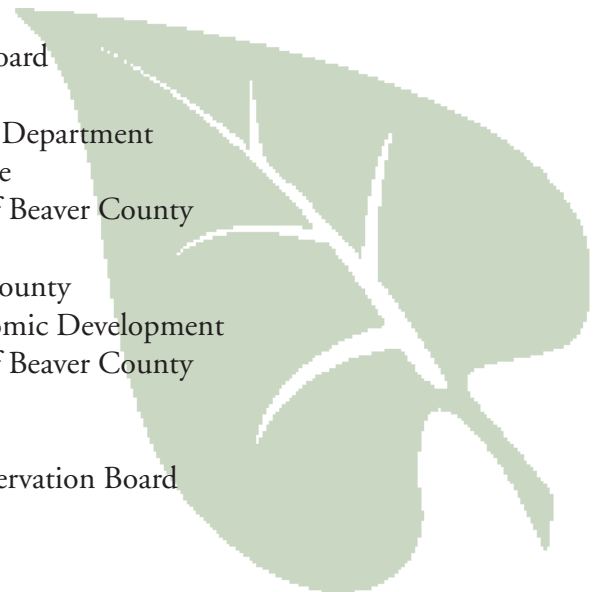


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Chapter 1: Introduction



1. Introduction

Beaver County's topography presents both opportunities and challenges. The County motto, "Divided by its Rivers; United by its People," acknowledges the role that landscape plays in the County's identity. Its 434 square miles are intersected by broad rivers, steep hills, and deep ravines. This Greenway Plan transforms that difficult terrain into an asset, by weaving it into a County-wide greenway network, linking people and the places where they live, work, and play.

WHAT ARE GREENWAYS?

"Greenways" are described in many ways and serve many functions. The report, *"Pennsylvania Greenways – An Action Plan for Creating Connections,"* contains the following definition:

A greenway is a corridor of open space. Greenways vary greatly in scale; from narrow ribbons of green that run through urban, suburban, and rural areas; to wider corridors that incorporate diverse natural, cultural, and scenic features. They can incorporate both public and private property, and can be land- or water-based. They may follow old railways, canals, or ridge tops, or they may follow stream corridors, shorelines, or wetlands, and include water trails for non-motorized craft. Some greenways are recreational corridors or scenic byways that may accommodate motorized and non-motorized vehicles. Others function almost exclusively for environmental protection and are not designed for human passage.

Many people think of greenways as primarily recreational, like hiking, biking, and water trails (sometimes called "blueways"). For them, greenways are places where they can actively experience the outdoors. Other people see greenways as serving a chiefly conservation role. To them, greenways protect or restore important environmental assets like forests, wetlands, and stream banks, and the plants and animals that live there. This greenways and trails plan adopts all these objectives.

WHY DEVELOP A GREENWAYS AND TRAILS PLAN FOR BEAVER COUNTY?

The Need for Greenways and Trails

The development of a Greenways and Trails Plan for Beaver County is consistent with National, State, and County objectives. In 1987, the movement to establish greenways was given a significant boost when the President's Commission on American Outdoors recommended that an interconnected greenways network be established throughout the nation. Many states, including the Commonwealth of Pennsylvania, took up the task of promoting greenways. In a 1998 executive order, the Governor appointed the Department of Conservation and Natural Resources (DCNR), the Department of Environmental Protection (DEP), and the Department of Transportation (PennDOT) to oversee the Commonwealth's greenways program, with assistance from the PA Greenways Partnership Commission.

The Commission published an Action Plan in 2001 that established a strategy for creating a comprehensive, statewide greenway network by the year 2020.¹ Relying on survey results that found "93% of those surveyed supported providing additional greenways in their communities,"² the Action Plan concluded that development of greenways is strongly supported in the Commonwealth.

Moreover, creation of a greenways and trails plan is consistent with the goals established in Beaver County's 1999 Comprehensive Plan, "Horizons: Planning for the 21st Century." One stated goal of the Plan is to "maintain and improve the quality of life and environment for residents of Beaver County through the provision of parkland and recreational facilities." This would be achieved by undertaking measures that promote five policy objectives:

- 1) Provide and maintain high quality facilities to meet the recreation needs of Beaver County residents.

- 2) Promote the creation of open space and preservation of natural areas in the County.
- 3) Promote the development of waterways and waterfront districts for recreational purposes, particularly along the Beaver and Ohio Rivers.
- 4) Provide for improved planning and funding of county-wide parks and recreation facilities.
- 5) Develop a trail system throughout Beaver County.

These policies were based directly on the responses of Beaver County residents to a county-wide survey. Eighty (80) percent of those responding said that development of walking/biking trails, as a means to enhance quality of life, was a priority. Over 70 percent indicated that they wanted more access to unstructured recreational opportunities such as hiking, fishing, bicycling, and picnicking. And about 80 percent wanted to see the development of local waterways and waterfronts for recreational use.

Finally, the County's recently completed Recreation and Park Plan³ established the following goal that led to the development of this Plan:

"To identify, designate, protect, and develop a countywide system of greenways, trails, and natural open spaces now and most crucially in the wake of new development pressures, in collaboration with local governments and private land trusts."

Therefore, assembling a network of greenways and trails in Beaver County responds to well-documented needs and wishes of County residents and implements the goals and objectives established in prior plans.

Benefits of Greenways

Wherever greenways are established, surrounding municipalities experience a number of benefits, depending on the type and location of the corridor. *Pennsylvania Greenways – An Action Plan for Creating Connections* lists eleven potential benefits that may result from greenway development:

- Protection of Natural Resources
- Protection of Water Resources
- Stewardship of Pennsylvania's Rural and Farmland Legacy
- Conservation of Historic and Cultural Resources
- Conservation of Scenic Resources

- Fostering of Public Recreation, Health, and Fitness
- Creation of Educational Opportunities
- Support of Economic Prosperity
- Promotion of Sustainable Development and Sound Land Use
- Provision of Alternative Transportation
- Building Partnerships

An example of this would be greenway corridors established to preserve contiguous forest or open space protect habitat for wildlife, and in certain instances, habitat for threatened or endangered species. Greenways along rivers, streams, lakes, and reservoirs may have multiple advantages such as habitat protection, flood control, and drinking water protection. Corridors linking areas of farmland and open space help to preserve the rural landscape and way of life. Many of these benefits are interrelated and work together to bolster quality of life in the region. For example, providing transportation alternatives leads to better health and fitness. Similarly, conserving historic and cultural resources supports economic prosperity by attracting visitors from inside and outside the County.

Greenways differ in their location and function, but overall, a greenway will protect natural, cultural, and scenic resources, provide recreational benefits, enhance natural beauty and quality of life in neighborhoods and communities, and stimulate economic development opportunities."

- Pennsylvania Greenway Partnership Commission

Beaver County's Special Issues and Concerns

In this section, the plan focuses on several issues that have particular relevance to the development of a greenway network in Beaver County.

➤ Conserving Beaver County's Diminishing Natural Resources

As in much of Southwestern Pennsylvania, Beaver County's abundant natural resources fueled the industrial revolution. Peaceful river valleys were transformed into bustling industrial, transportation, and residential corridors. However, due to the terrain, development outside the river valleys was more difficult. Large areas of forest and steeply sloped river banks remained relatively undeveloped. As a result, Beaver County is characterized by its densely developed river towns nestled below green, more sparsely-settled hill towns.



View of Beaver Falls from Grandview Cemetery

This development pattern is important for several reasons. The area in and around Raccoon Creek State Park contains a large, unfragmented remnant of Ohio Valley forest. Stretching over parts of northern Washington County and four townships in southwestern Beaver County, it has been identified as an Important Bird Area (IBA) by the Pennsylvania Audubon Society. The IBA was designated because of its diversity of breeding and migrating birds and high quality riparian forest. The County is also home to more than 20 biological diversity areas designated by the Western Pennsylvania Conservancy. These areas provide habitat for endangered or threatened species.

These natural assets are not merely important for wildlife. They provide both active and passive recreational opportunities for both County residents and visitors. The State and County Parks provide excellent opportunities for hiking,

biking, and outdoor activities. Raccoon Creek, from Washington County to the Ohio River, has been established as a seasonal water trail for canoers and kayakers. Several State game lands and the Pennsylvania Fish & Boat Commission's facility at Hereford Manor Lake provide excellent opportunities for sportsmen. Anglers come to fish in Beaver County's exceptional and high quality trout streams. Birders from all over the Region travel to observe the many species that inhabit the IBA. The Beaver County Conservation District Environmental Education Center also provides opportunities for wildlife viewing and education.

The recent trend towards suburbanization in Beaver County is threatening the viability of many natural areas. While parks and conservation lands protect some of these valuable resources, many remain on private land. The rate of new housing and commercial development is accelerating in several areas. While growth is desirable for many reasons, greenways can help preserve some of the most valuable natural assets and channel development to less ecologically sensitive areas.

➤ Preserving the County's Rural and Agricultural Heritage

According to the 2002 U.S. Census of Agriculture, Beaver County has 645 farms with 62,801 acres of land used for agriculture. While farming has been declining gradually in Beaver County over the last few decades, farms still dominate the landscape in some areas, particularly the northeast corner of the County.

Under the Pennsylvania Agricultural Security Act,⁴ the legislature allowed for the creation of Agricultural Security Areas of 250 acres or more of farmland used to produce crops, livestock, or livestock products. Participation in the program is voluntary. Some of its benefits include protection from local ordinances that unreasonably restrict farming operations. In 2005, farms in twelve Beaver County municipalities were registered as Agricultural Security Areas with the Agricultural Land Preservation Board. In addition, farms registered under this program are eligible for inclusion under the Pennsylvania Agricultural Conservation Easement Purchase Program. This program permits government

entities to purchase the development rights on quality farmland, thereby ensuring that the land remains undeveloped, while allowing it to remain in productive agricultural use. As of 2005, the Beaver County Agricultural Land Preservation Board reported that thirteen (13) farms totaling 1,462 acres were subject to agricultural conservation easements.

Farms, particularly those with conservation easements, help preserve open space and rural landscapes. Many residents in Beaver County value the quality of life and scenic value that agriculture fosters in their communities. Greenways can help preserve the rural landscape by including prime farming areas within conservation corridors. In such areas, municipalities may wish to create incentives for residential development that conserves open space, or the County may wish to focus investment under the easement purchase program.



Lake Forest Gardens Tree Farm in Fombell

➤ Helping to Rebuild Economic Prosperity in the County

Beaver County, like most of Western Pennsylvania, experienced a severe economic downturn in the 1980's with the collapse of the steel industry. Today, the population is still declining and the County is continuing to recover economically. In addition to job creation, workforce development, and infrastructure improvements; greenway and trail development can be a component of a County's economic development program.

The economic benefits of greenway development are well-documented.

The Allegheny Trail Alliance conducted a user survey of their trail system, including 100 of the 150 continuous miles of the Great Allegheny Passage, between Pittsburgh, PA and Cumberland MD, as well as the Montour Trail near Pittsburgh International Airport. Their study, the 2002 User Survey for the Pennsylvania Allegheny Trail Alliance, asked information on trail use, distances traveled, spending in local communities, and spending on bikes and equipment. Highlights of the survey results include:

- 59% of trail users made some type of small item purchase; such as food, clothing, and gas; at businesses in local trail-related communities.
- The average person spent \$8.84 per trip on small purchases.
- Per-trip spending varied at different trailheads surveyed, ranging from \$2.87 per person at the Montour Trail to \$15.61 at the Confluence trailhead of the Great Allegheny Passage.
- Spending varied substantially with distances traveled, ranging from \$4.03 per person per trip for those traveling less than 10 miles (one way) to a trailhead; to \$15.44 per person per trip for those traveling more than 60 miles.
- 13.3% of trail users stayed overnight during their trail visit, and the average number of nights stayed among those users was 2.4 nights.

In 2002, York County also published a study of the Heritage Rail Trail, which had been in operation for three years. The study, Heritage Rail Trail County Park 2001 User Survey and Economic Impact Analysis, concluded that trail users were having a measurable, positive impact on the York County economy. Specifically, the report stated:

- In terms of economic impact, 72% of the respondents indicated they had purchased "hard goods" in the past year in conjunction with their use of the trail. The majority of

these purchases were bicycles and bike supplies that resulted in an average purchase amount of \$367.12. While these types of purchases are not annually recurring, even with the most conservative usage estimate they amount to millions of dollars in sales.

- Even more significant is the purchase of “soft goods” (water, soda, candy, ice cream, lunches, etc.). 65.6% of the respondents indicated that they purchased these types of items on their most recent trip to the trail.

The average purchase amount per person was \$8.33. Considering that the average user makes several trips to the trail on an annual basis, at the minimum these types of purchases are contributing several hundred thousand dollars to the York County economy. And, these types of purchases are recurring year after year.

Only 15% of the respondents indicated that they did not make a purchase in conjunction with their use of the trail.

To cater to the needs of recreational users, new service businesses such as bike shops, canoe & kayak rentals, restaurants, campsites, and bed and breakfasts often spring up around recreational greenways. These new businesses bring new jobs and additional tax dollars to the host municipalities.

Another study done in the Western Pennsylvania region, the Economic Impact of Ghost Town Trail in the Indiana and Cambria Counties Region (completed in October 1996), returned similar results with a trail user survey and infrared counters spaced at trail entrances. When the results of the user survey were assumed to represent all trail users, the study concluded that:

- Average daily local purchases for Ghost Town Trail users was \$4.33 per day for Indiana or Cambria County residents, and \$9.28 for non-residents. Typical purchases included food, transportation, and other items.
- The total economic impact, when multiplied

by the estimated 66,253 people that used the trail during 1996, was approximately \$362,000 -- \$221,000 from residents' expenditures and \$140,000 from non-residents' expenditures. Over 77% of trail users were residents of either Indiana or Cambria County.



Pit Stop Restaurant, Bridgewater

According to DCNR, tourism is the second largest industry in the Commonwealth and nearly one-fifth of Pennsylvania's tourists travel to enjoy its outdoor amenities. A recent Pennsylvania study noted that in 2002, recreational tourism accounted for 459,000 jobs statewide, an increase of 100,000 from 1998.⁵ In addition, the report noted that “there is also evidence to demonstrate that communities with recreational greenways have witnessed significant increases in real estate values.”

Moreover, greenways can encourage new residents to settle in an area. Young people and families are attracted to places that provide opportunities for easy access to outdoor recreation. Greenway trails provide such accessibility since they connect population centers to parks and other natural amenities.

- Fostering Recreation and Fitness Opportunities for County Residents

In connection with Beaver County's 1999 Comprehensive Plan, “Horizons: Planning for the 21st Century,” a survey was distributed to Beaver County residents that asked a series of questions about recreation and open space needs.

Eighty (80) percent of those responding said that development of walking/biking trails, as a means to enhance quality of life, was a priority. Over 70 percent indicated that they wanted more access to unstructured recreational opportunities such as hiking, fishing, bicycling, and picnicking. And about 80 percent wanted to see the development of local waterways and waterfronts for recreational use. These responses demonstrate a strong need for more recreation and fitness opportunities in Beaver County.

According to U.S. Census data, the population of Beaver County in 2000 was slightly over 180,000 with approximately 70% living in family households. The data also shows that the County's population is aging. The number of residents over age 65 increased by 6.0 percent from 1990 to 2000, while the under 18 population and the 18-64 age group both declined, by 5.4 percent and 3.8 percent respectively.

Greenways provide families and seniors with recreational and fitness opportunities including walking, biking, paddling, and wildlife viewing. Outdoor opportunities for seniors are particularly important because staying active promotes good health and quality of life. Proximity to trails and other recreational facilities can help all residents combat obesity and associated illnesses like diabetes. According to an October 2005 Newsweek article⁶, researchers have concluded that people living in walkable communities had the lowest rates of diabetes, hypertension, heart disease, and stroke. The article also noted that “every aspect of our lifestyles—what we eat, whether we smoke, how much we exercise—is shaped by our surroundings. ... [A]s many communities are now discovering, people surrounded by walkways and bike paths tend to use them.”



Fitness Trail at Green Valley Park

Goals & Objectives of the Greenway Plan

Recognizing Beaver County's specific needs, this Plan has established the following goals and objectives. The greenways and trails network will be designed to:

- Establish conservation corridors that preserve and link high-priority habitats, sensitive environmental features, rural landscapes, and protected open space;
- Build an interconnected network of diverse recreational trails connecting population centers to State and County parks, State gamelands and other significant recreational areas/amenities that promote active life styles, and provide alternate means of transportation between the County's major destinations; and
- Ensure that greenways and trails development works hand in hand with other economic development initiatives in Beaver County to foster growth, attract new business, and bring and retain young people by providing a high quality of life.

HOW IS A COUNTY GREENWAY PLAN DEVELOPED?

1) **The Three Step Process** - Greenway planning uses a three-step process. This process answers three basic questions:

- **Where are we now?** This is the inventory phase. In this phase, we gather information about the natural and cultural assets of the County that may form the building blocks of conservation or recreation corridors. For example, we obtain information about important habitat areas warranting protection, as well as abandoned rail corridors that could be converted to recreational trails.
- **Where do we want to be?** In this phase, we develop the “vision”. Specifically, the plan synthesizes the information gathered during the inventory phase into a proposed network of greenways and trails linking important destinations throughout the County.
- **How do we get there?** This step provides information about how the plan can be implemented. It includes concrete tools such as a recommended management structure, prioritized trail and greenway segments, and potential funding sources.

“A plan specifies actions that must be carried out to successfully complete the greenway vision. No matter what its form, a good plan provides you, your community, and others with a comprehensive understanding of all the issues, recommendations, and strategies involved.”

*-The Conservation Fund
“Greenways: A Guide to Planning,
Design, and Development”*

2) **Public Participation** - The Plan is further informed through an intensive public participation process that draws on the knowledge and expertise of local residents and officials – the people who know Beaver County best. This process obtains public input in the following ways:

- **Study Committee Meetings** - A Study Committee was assembled to meet on a regular basis and help steer the planning process. Members included municipal officials, local business owners, and representatives from County government and non profits having expertise in areas such as planning, economic development, recreation and tourism, and conservation. The Study Committee reviewed and commented on all aspects of the plan as it took shape. The minutes of Study Committee meetings are included in Appendix A.
- **Public Meetings** – Four meetings were held to obtain feedback from the general public. The first meeting was held at Center High School in October 2005, to introduce the planning process and solicit information about significant County destinations, natural areas worth conserving and potential trail

opportunities. Three additional meetings were held. At these sessions, the draft Greenways and Trails Plan was presented and the public was asked to comment on the recommendations. Significant comments were addressed in the Final Plan. Minutes of all public meetings are attached to this Plan in Appendix B.

- **Key Person Interviews** - Twenty people were interviewed to obtain detailed information about greenway and trail opportunities. The Study Committee developed a contact list, including officials from local recreation associations, local business owners, members and staff of environmental organizations, and planning directors from neighboring counties. The transcripts of these interviews are included in Appendix C.
- **Focus Groups** – In addition, a focus group was assembled to brainstorm ideas about particular aspects of the plan. This focus group brought together residents interested in cycling. At the meeting, participants discussed opportunities for the creation of several types of trails, including shared use paths, bike lanes, and designated on-road bike routes. The group focused on creating connections between key destinations both within and outside Beaver County (such as the Montour Trail).

- 3) **Adoption into the County Comprehensive Plan** - Once finalized and approved by the County Commissioners, this greenway and trails plan will be adopted as part of the County Comprehensive Plan.

Chapter 11:
Inventory of Beaver
County's Resources



11. Inventory of Beaver County's Resources

NATURAL RESOURCES

Natural and Priority Habitat Areas

The area comprising Raccoon Creek Valley and State Park have been designated by the Audubon Society as Pennsylvania Important Bird Area #13. The IBA covers approximately 108,337 acres in northern Washington and southern Beaver Counties, within the Ohio River drainage basin. The main watershed carrying surface water from the IBA is Traverse Creek. Traverse Creek flows into Raccoon Creek, which is a tributary of the Ohio River.

This IBA is located in eight municipalities, including Green Township, Raccoon Township, Potter Township, Hanover Township, Independence Township, Shippensburg Borough, Hookstown Borough, and Frankfort Springs Borough.

The IBA was selected because it is home to a diversity of breeding and migrating birds. At least one-hundred and eighty-nine species of birds have been recorded at Raccoon Creek State Park. Seven species of birds breed within the Raccoon Creek watershed and are listed on the U.S. Fish and Wildlife Service's *Bird Species of Conservation Concern* (2002). Thirty-three (33) species of warblers have been observed there mostly during migration. In addition, the IBA is significant because it contains a remnant of Ohio Valley forest. It encompasses a large block of woodlands in a fragmented landscape that includes extensive river bottom habitat.¹¹ The IBA contains the Raccoon Creek Valley Landscape Conservation Area, which includes natural communities classified as biodiversity areas, as designated by the Western Pennsylvania Conservancy (discussed below). The IBA is depicted on Map 1, Priority Habitat Areas.

There are no Important Mammal Areas in Beaver County.

In 1993, the Western Pennsylvania Conservancy

inventoried natural areas in Beaver County and classified important habitats into several categories including Dedicated Areas, Biological Diversity Areas, and Landscape Conservation Areas.¹² Dedicated Areas are areas of land managed for the purpose of habitat protection. Two Dedicated Areas exist in Beaver County: the Raccoon Creek State Park Wildflower Reserve and the Ohio River Islands National Wildlife Refuge.

A natural area is designated as a Biological Diversity Area (BDAs) if it meets one of three classifications: 1) it provides habitat for a species of special concern (e.g. a threatened or endangered plant or animal); 2) it comprises an area supporting a high diversity of plant and/or animal species; or 3) it provides the best example of a particular type of natural community (e.g. wetlands).

By contrast, Landscape Conservation Areas (LCAs) are generally larger areas that host a variety of habitats and landscape features meriting conservation. The Natural Heritage Inventory defines an LCA as a "large contiguous area that is important because of its size, open space and habitats, and although including a variety of land uses, has not been heavily disturbed and thus retains much of its natural character". For example, an LCA may be a watershed that includes forest interspersed with some agriculture, residences, and recreational amenities, but that remains intact as a woodland habitat. The Natural Heritage Inventory ranked BDAs, LCAs and other natural areas as "exceptional," "high," or "notable" according to their level of importance.

As part of the "Natural Infrastructure Project for Southwestern Pennsylvania," the data supporting the designation of BDAs and LCAs for Beaver County was reviewed and refined.

The Western Pennsylvania Conservancy assisted in assessing the BDAs' sensitivity to development. As a result, the Natural Infrastructure Project developed "Integrated Biological Diversity Areas" that reclassified

the BDAs as “prime,” “good” and “other” according to a weighted scoring process. Landscape Conservation Areas were included but not ranked.

Because the Natural Infrastructure Project contains the most up-to-date assessment of significant habitat areas in Beaver County, this greenways and trails plan incorporates the BDA and LCA classifications used in the Natural Infrastructure Project.¹³ They are depicted on Map 1, Priority Habitat Areas.

Beaver County has approximately 20 “prime” or “good” BDAs. The four habitats designated as “prime” value are the Darlington Natural Area BDA, Georgetown Island BDA, Phyllis Island BDA, and Ohioview Peninsula BDA. The Darlington Natural Area BDA in Darlington Township and Big Beaver Borough protects the best example of a mature deciduous forest in the County.

The other three are unique riverbank habitats within, and along, the Ohio River protecting species of special concern. “Good” quality BDAs include the Lower Raccoon Creek BDA in Potter Township, the Little Beaver Creek Floodplain BDA in Ohioville Borough, and the Cooney Hollow BDA in Economy Borough.

Three primary LCAs are also situated in the County. Raccoon Creek Valley LCA, in the southwestern corner of the County, surrounds and includes the State Park and creek of the same name. The area supports several plant species of special concern and a variety of natural features and communities. This LCA encompasses the Raccoon Creek State Park Wildflower Reserve, as well as the Raccoon Creek Floodplain and School Road Slopes BDAs.

Bradys Run LCA, in the region surrounding and including the County Park of the same name, is a forested area supporting a number of natural communities. It encompasses two BDAs: North Branch Valley and South Branch Valley.

The North Fork Little Beaver Creek LCA is located in the northwestern corner of the County. It encompasses five BDAs and consists of forests and wetlands that are home to a state endangered plant and an animal species of special concern. Finally, portions of two other LCAs extend into Beaver County.

These portions are the Slippery Rock Creek Gorge LCA, in the far northeastern corner and Big and Little Sewickley Creek LCA, in the southeastern corner of the County.

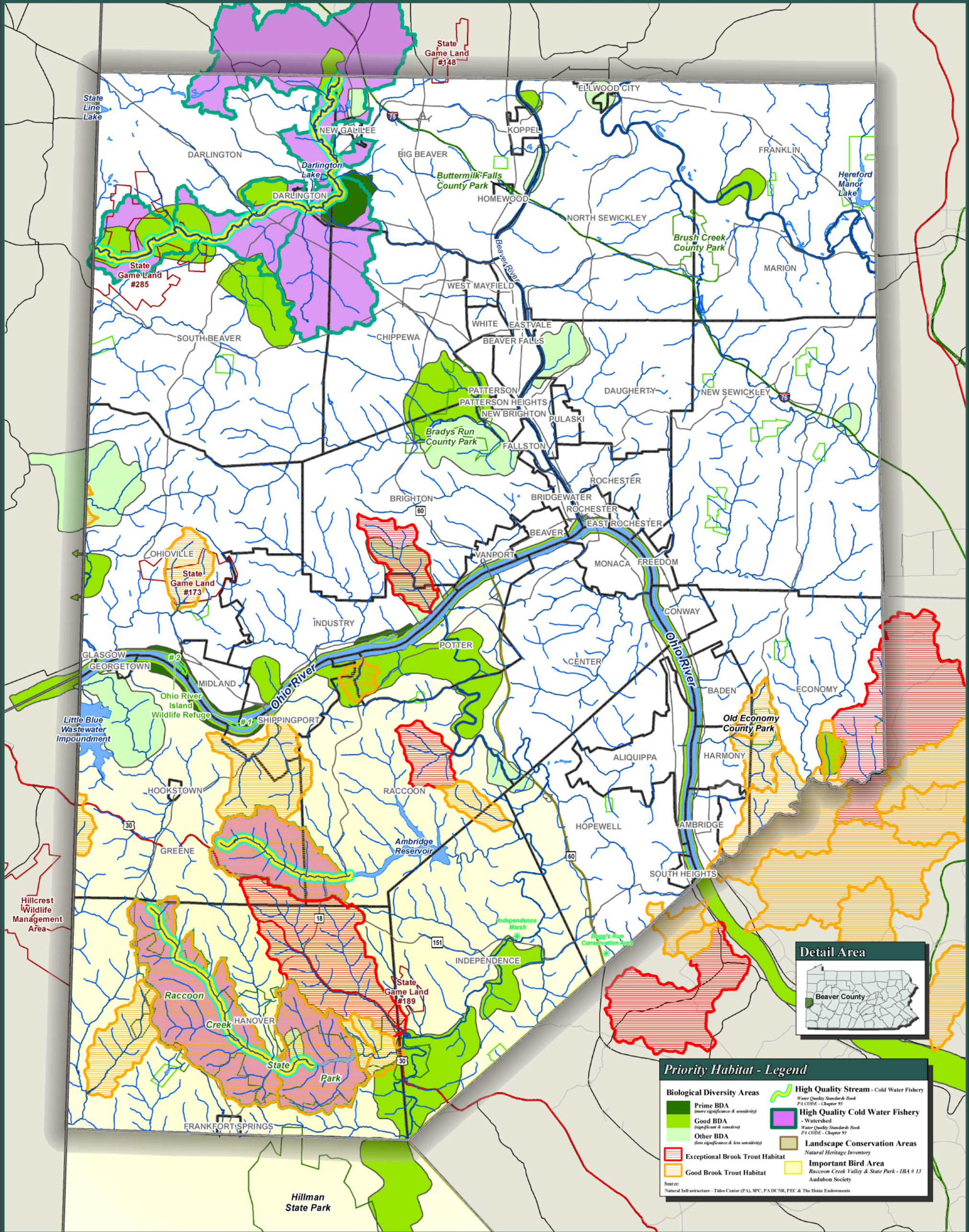
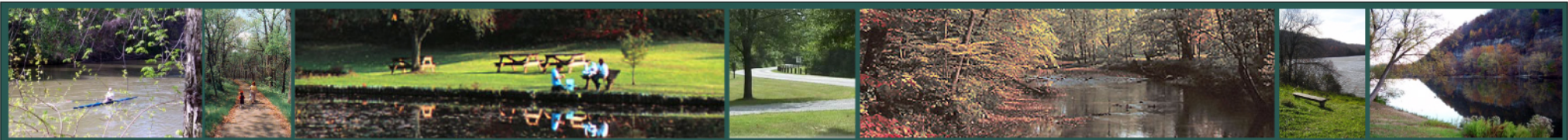


Connoquenessing Creek

As noted earlier, Beaver County also is also home to a number of watersheds that support cold water game fish such as trout. Four watersheds are classified as exceptional quality and several others as good quality trout streams. They are found in predominantly forested areas that keep water temperatures cool. These streams are important both as habitat and as recreational assets.

Forests and Woodlands

Beaver County still contains areas of relatively unfragmented forest, particularly in the southwestern and northwestern corners of the County. (See discussion of natural areas and priority habitats above). Other areas of notable woodlands include the forested banks and hillsides bordering the upper Beaver River (north of Beaver Falls) and the area surrounding Big Sewickley Creek in Economy Borough. Forested areas are depicted on Map 2, Sensitive Environmental Features.



Priority Habitat - Legend

Prime BDA (more significance & sensitivity)	High Quality Cold Water Fishery - Watershed (Water Quality Standards Book PA CODE - Chapter 93)
Good BDA (significant & sensitive)	Exceptional Brook Trout Habitat
Other BDA (less significance & less sensitivity)	Good Brook Trout Habitat
Landscape Conservation Areas (Natural Heritage Inventory)	Important Bird Area (Raccoon Creek Valley & State Park - IBA # 13 Audubon Society)

Source: Natural Infrastructure - Tides Center (PA), SPC, PA DCNR, PEC & The Heinz Endowments



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LEGEND

County Boundary	Interstate	State Park
Municipality	US Highway	County Park
Lake/Reservoir	State Route	Game Land
River/Creek/Stream	Open Space	

Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County Planning Commission
 Western Pennsylvania Conservancy

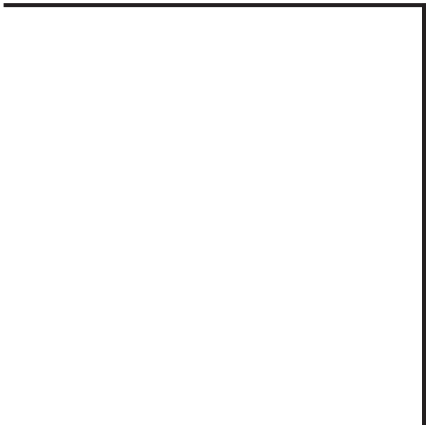
Projection: State Plane - NAD 1983
 Pennsylvania South, Feet



Map 1 - Priority Habitat Areas

Beaver County
 Greenways & Trails





Water Resources

Beaver County is divided roughly into thirds by its rivers. The Ohio River enters from Allegheny County to the south, travels northwest to the center of the County, and then turns west towards Ohio. The Beaver River flows south from Lawrence County and empties into the Ohio River. Historically, these river valleys were the centers of development in Beaver County, where industry and population centers were established. However, due to the steep topography, some stretches of these riverbanks remain forested and relatively unspoiled.



Beaver River from Grandview Cemetery

Beaver County is also traversed by over 878 miles of streams in 97 watersheds.⁷ These tributaries wind through the hilly terrain. Three streams – Service Creek, Traverse Creek, and North Fork Little Beaver Creek – are designated by the Department of Environmental Protection as High Quality Cold Water Fisheries.⁸ Four watersheds involving over 8,740 acres are designated as exceptional quality trout habitats, with another 21,900 acres of watershed denoted as good quality trout habitat.⁹ These streams are depicted on Map 1, Priority Habitat Areas.

Beaver County's rivers and streams are bordered by many miles of floodplains. Major floodplain areas exist adjacent to the Ohio and Beaver rivers, as well as Brush, Connoquenessing, Raccoon, and North Fork Little Beaver Creeks. Numerous smaller floodplains line the banks of meandering stream valleys. The location of Beaver County's floodplains is shown on Map 2, Sensitive Environmental Features.

Beaver County has nearly 8,000 acres of wetlands. These are divided among three classifications: Lake

Edge (1,970 acres), Marsh Edge (2,170 acres), and River Edge (3,830 acres). Significant wetland areas can be found bordering the Ohio and Beaver Rivers; Raccoon, Connoquenessing and North Fork Little Beaver Creeks; and Raccoon Lake and the Ambridge Reservoir. Numerous areas of isolated marsh edge wetlands are found throughout the County.¹⁰ Perhaps the best known wetland area is the Beaver County Conservation District Environmental Education Center, a constructed wetland bordering Raccoon Creek. Wetlands are shown on Map 2, Sensitive Environmental Features.

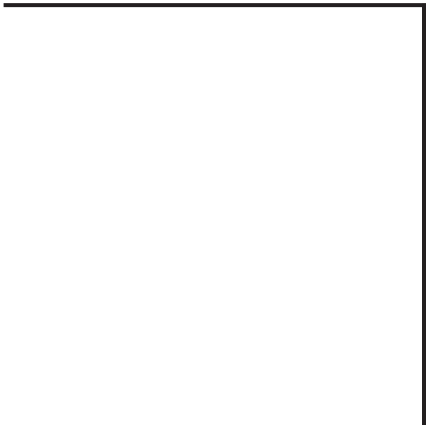


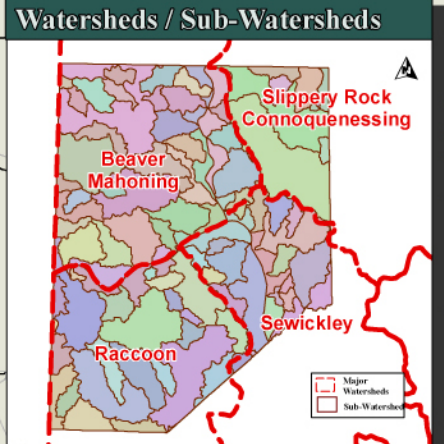
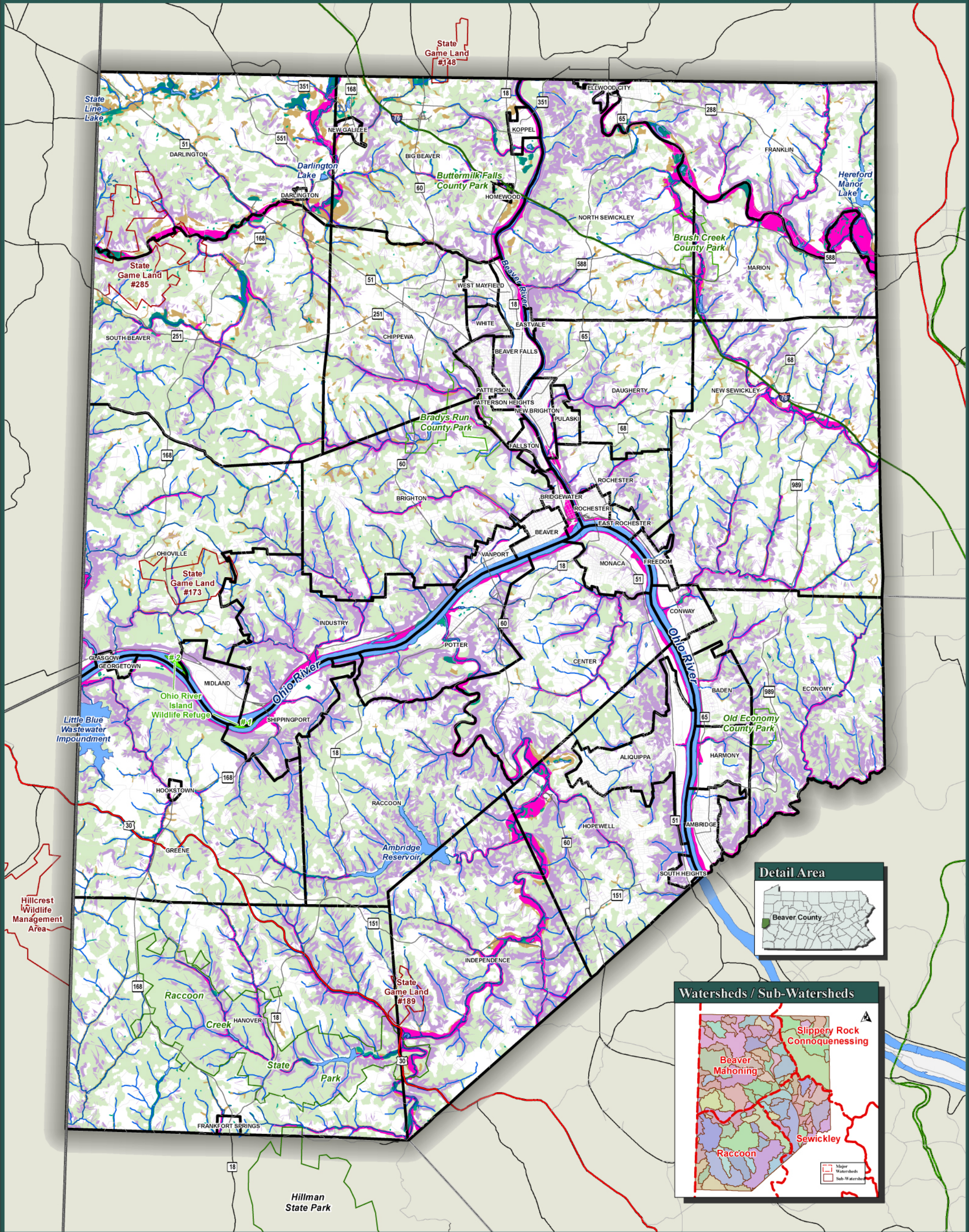
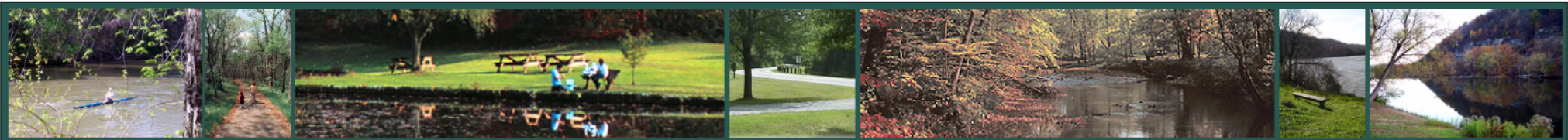
Ambridge Reservoir

There are no natural lakes in Beaver County. Ambridge Reservoir, Hereford Manor Lake, Raccoon Lake, and Bradys Run Lake are dammed. The Ambridge Reservoir is owned by the Ambridge Water Authority and public access is not permitted to it. The other three lakes provide recreational opportunities such as fishing, boating, and swimming. The large water body called Little Blue Wastewater Impoundment is actually a sludge pond for the power plant in Shippingport Borough. Several smaller ponds dot the landscape throughout the County.

Public and Other Protected Open Space

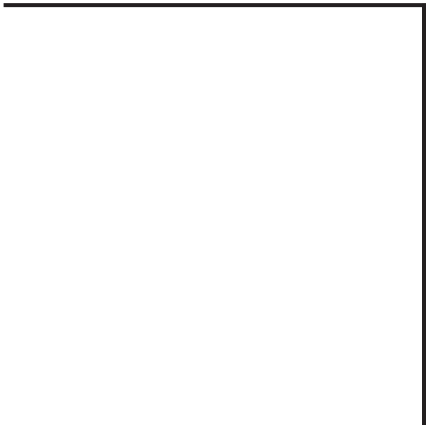
Raccoon Creek State Park, the County's only state park facility, is located in the Southwest corner of the County in Hanover and Raccoon Townships. It protects 7,572 acres including the 314-acre Wildflower Reserve. The reserve contains over 500 species of plants. While the park has recreational facilities for boating, swimming, picnicking, and camping; much of the land remains undeveloped.





<p>BEAVER COUNTY PLANNING COMMISSION Beaver County Courthouse 416 Third Street Beaver, Pa. 15009 Phone: (724) 736-5700 Fax: (724) 775-8915</p>	<p>LEGEND</p> <ul style="list-style-type: none"> County Boundary Municipality Lake/Reservoir River/Creek/Stream Interstate US Highway State Route Local Road 	<p>Environmental Features</p> <ul style="list-style-type: none"> 100 Year Floodplain Wetlands Hydric Soils Steep Slopes (>25%) Forested Areas 	<p>Map Sources: Southwestern Pennsylvania Commission (SPC) PASDA (Pennsylvania Spatial Data Access) Beaver County Western Pennsylvania Conservancy</p> <p>Projection: State Plane - NAD 1983 Pennsylvania South, Feet</p>	<p>© 2007 Pashek Associates, LLC</p>
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Entrance to Brush Creek Park

Beaver County also maintains four County Parks. The largest, Bradys Run Park, is located in Brighton and Chippewa Townships. The park covers almost 2,000 acres and includes Bradys Run Lake. Old Economy Park is a 400-acre recreational facility located in Economy Borough. Brush Creek Park is also 400 acres in size and gets its name from the picturesque stream that meanders through it. Located in North Sewickley and Marion Townships, it contains a small lake for fishing and the only covered bridge in the County. Finally, tiny Buttermilk Falls Park in Homewood Borough features a 40-foot sandstone formation and waterfall. The area was formerly used as a quarry.

The Beaver County Conservation District Environmental Education Center is an 18-acre constructed wetland area that was built to mitigate loss of wetlands resulting from construction of the Pittsburgh International Airport. It contains two shallow pools where herons can frequently be spotted fishing. There is an Environmental Center offering tours and educational programs, as well as a walking trail that circles the marsh. The Education Center houses the offices of the Beaver County Conservation District. The conservation district is responsible for the day-to-day operations of the center.



Wetland at County Conservation District

In addition, the Pennsylvania Fish & Boat Commission maintains Hereford Manor Lake in Franklin Township. The facility consists of two dammed lakes constructed on the site of a former strip mine. The lakes provide fishing and boating opportunities, as well as habitat for waterfowl.

Other protected lands include four State game lands and several tracts that are privately held by sportsmen's associations. The Hollow Oak Land Trust also owns the Boggs Run Conservation Area, a tract of open space in northern Allegheny and southern Beaver County. Located north of the Beaver Valley Expressway, this parcel protects sixty acres of wetlands and woodlands, only a small portion of which is in Beaver County. Public and other protected open space is shown on Map 3, Recreation Resources and Opportunities.

Farmland

While agriculture has been gradually declining in Beaver County over the last few decades, farms still dominate the landscape in some areas, particularly the northeast corner of the County. Farms, while not completely undeveloped, still provide important expanses of open space that serve as habitat for certain species. The rural landscape and way of life is cherished by many Beaver County residents.

According to the 2002 U.S. Census of Agriculture, Beaver County has 645 farms with 62,801 acres of land used for agriculture. Forty-two thousand (42,000) acres of land are classified as having prime agricultural soils. Farms in twelve Beaver County municipalities, covering 36,500 acres, are registered as Agricultural Security Areas with the Beaver County Agricultural Land Preservation Board.¹⁴ Moreover,

thirteen (13) farms, totaling 1,462 acres, are subject to agricultural conservation easements.¹⁵ Generally, Farms with easements are dispersed throughout the County and often are not connected to other areas of protected land or resources warranting protection.

Soils and Geological Features

Beaver County has several types of soils that are relevant for greenway planning. Hydric soils are defined as “a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation.”¹⁶ Hydric soils include but are broader than wetland soils. Beaver County has approximately 11,561 acres of hydric soils. Their location is depicted on Map 2, Sensitive Environmental Features. In addition, as described above, the County also has 42,000 acres classified as prime agricultural soils. These soils are defined by the U.S. Department of Agriculture as being best suited to producing food, feed, fiber, or other crops.

The County’s unique geologic features include its steep river and stream banks, particularly those along the Beaver River, the Western segment of the Ohio River, and along the lower portion of Little Beaver Creek, near its mouth at the Ohio River. In addition, Big Knob, in New Sewickley Township, is the highest point in the County at 1,383 feet.

Steep Slopes (25% or greater)

Like most of Western Pennsylvania, Beaver County has rolling topography that has been carved out by its rivers and numerous streams. As a result, much of the land bordering streams and rivers is steeply sloped. Twenty-seven percent (27%) of the County’s land area has a 25% or greater slope.¹⁷ These areas are depicted on Map 2, Sensitive Environmental Features.

Ridge Tops and Scenic View Sheds

There are no mountain ranges in Beaver County and therefore, no ridge lines. However, the steep river banks and rolling terrain provide some scenic vistas that are noteworthy. They include:

- o The Upper Beaver River Valley from Grandview Cemetery in Big Beaver Borough

and from Fox Run Golf Course in North Sewickley Township

- o The confluence of the Beaver and Ohio Rivers from Wagner Road in Center Township
- o The Ohio River from East Rochester
- o The Ambridge Reservoir from the Service Creek Cemetery
- o Raccoon Creek Road in Raccoon Township



View Across Beaver River

CULTURAL RESOURCES

Transportation and Utility Corridors

- o Canals

There are two known canals that formerly operated in parts of Beaver County. The first, the Beaver & Erie Division of the Pennsylvania Canal, followed the Beaver River north from its mouth at the Ohio River, into Lawrence County, and north to Erie. The canal operated from 1844 to 1871.¹⁸ Remnants of the canal bed can still be seen in New Brighton along the eastern bank of the Beaver River.

The Sandy & Beaver Canal extended from the Ohio River in Glasgow, PA along the Little Beaver Creek to Bolivar, Ohio. It was begun in 1834 and completed in 1848. The canal only operated successfully for four years, when a reservoir dam was breached, causing extensive damage.¹⁹ Only a few miles of the canal were located in Beaver County. However, this canal route provides a possible trail route that would connect to the Little Beaver Creek Greenway Trail in Ohio. This

trail is part of a larger network, called the Great Ohio Lake-to-River Greenway. Ohioville Borough owns several acres along the right bank of the Creek where a former canal lock was located. It has plans to develop a community park and boat launch there.

- o Abandoned rail & trolley lines

Beaver County has several stretches of abandoned or discontinued rail and trolley lines that may be suitable for trail development. Few are intact and most are privately owned. Further study will be required to determine the current status of ownership and feasibility of trail development. The Southwestern Pennsylvania Commission has data identifying several abandoned corridors as depicted on Map 3, Recreational Resources and Opportunities.

The Beaver Valley Railroad Company operated a line from Bridgewater to Vanport. It connected the Pennsylvania Railroad line with the Pennsylvania & Lake Erie line. The track operated through Beaver on 5th Street until 1969. It terminated near the present day Agway in Bridgewater. Today, not much of the track remains. The rails through Beaver were removed in 1969.²⁰

The Beaver Valley Traction line was a trolley that connected Beaver Falls, Pennsylvania with Steubenville, Ohio. Also called the Steubenville, East Liverpool, and Beaver Valley Railroad, this line passed through Beaver Borough, and then traveled along the right bank²¹ of the Ohio River through Vanport and Midland, to East Liverpool and beyond. While much of the former grade in Beaver and Beaver Falls has been paved over, it is still visible in several places on the north side of Route 68. The right-of-way has long since reverted to private ownership and is no longer wholly intact.

Two rail corridors follow the course of Little Beaver Creek, which has been designated a Wild and Scenic River. The first, now abandoned, is the Smith's Ferry Branch, from Glasgow in Beaver County, to Negley, Ohio, along the left bank of Little Beaver Creek. Efforts to build a trail along the Smith's Ferry Branch have been hampered by

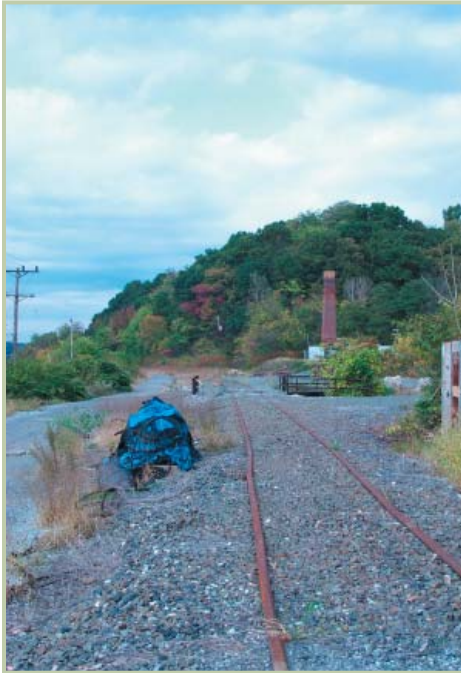
the purchase of a significant stretch of the right-of-way in Ohio by an uncooperative landowner. Trail groups in Ohio continue to negotiate as well as develop alternative trail routes.²² If successful, this would create a scenic connection to the Little Beaver Creek Greenway Trail, part of the proposed Great Ohio Lake-to-River Greenway.²³

Another railroad line roughly follows the North Fork of Little Beaver Creek from Negley, Ohio to Darlington. This branch of the Youngstown & Southern line is still active; however, the brick factory in Darlington recently closed and the line may soon be abandoned.²⁴



Inactive Tracks in Darlington Borough

A segment of the Pennsylvania Railroad ran from Rochester through New Brighton above the current active railroad corridor. The remains of this right-of-way are intact and sit west of Route 65. In Rochester, the tracks peter out at present day Junction Road. A parallel spur extends up into Rochester Township and terminates at an industrial park adjacent to a residential neighborhood. The right-of-way appears to be owned by a railroad holding company. An added advantage of this corridor is its proximity to the Beaver County YMCA, which is located adjacent to Route 65, between Rochester and New Brighton.



Inactive rail line in Rochester Borough

Another segment of abandoned rail line stretches along the former Cumberland and Chester Railroad from Shippingport to the West Virginia border. Most of this corridor is currently owned by the power company and is approximately 5 miles in length. In their multi-municipal comprehensive plan, Greene, Raccoon, Independence, and Potter Townships proposed developing this corridor as a recreational shared use trail.

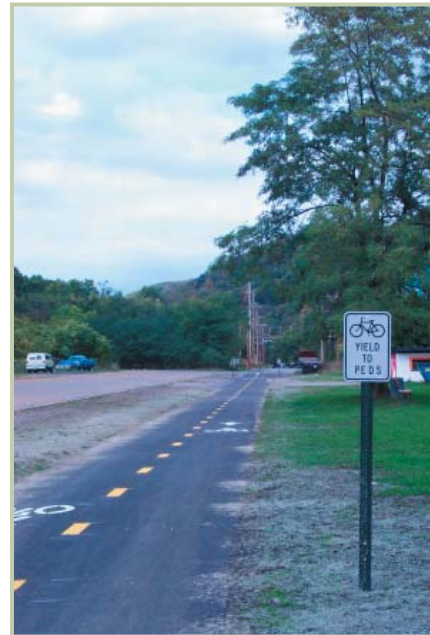
A former railroad spur connecting Koppel Borough to Ellwood City also has trail development potential. This spur includes a railroad bridge crossing the Beaver River. The bridge was recently acquired by Big Beaver Borough. This segment could connect the Beaver River Trail from Beaver Falls (once completed) with the proposed Pittsburgh to Harmony Railroad trail at Ellwood City.

The Crows Run railroad was operated by the North Shore Railroad and Ohio River Junction Railroad companies. It extended about 5 miles up Crows Run from Conway Borough to New Sewickley Township, terminating not far from present day Route 989. Plans to extend the rail line to Butler were never realized. There are plans

to construct a highway through this corridor.²⁵ Finally, another abandoned railroad right-of-way exists along Thompson's Run in North Sewickley Township. This corridor terminates near a quarry off Route 65, not far from Brush Creek Park.²⁶

- o Bikeways

The County's first shared use trail, the Beaver River Trail, has been partially completed. Recently opened, Phase I converted an old Pittsburgh & Lake Erie spur line, between 11th and 23rd streets in Beaver Falls, to a multi-use trail for biking and walking. Phase II will continue north past Geneva College. Eventually, the trail is planned to extend north into Lawrence County. There are also plans to connect the trail to Bradys Run County Park by using abandoned road beds in Patterson Heights.²⁷



Beaver River Rail Trail, Beaver Falls

State Bike Route A is a PennDOT designated on-road bikeway stretching north-to-south through Western Pennsylvania, from the West Virginia line to Presque Isle State Park in Erie. Bike Route A is 180 miles in length. It enters the County in South Heights, on Route 51, and travels through Aliquippa, Hopewell, Center, and Monaca before crossing the Ohio River into Rochester.

The bike route then continues north to New Brighton, crosses the Beaver River into Beaver

Falls, and then recrosses the river at Eastvale. Bike Route A leaves Beaver County at Ellwood City and continues north through Lawrence County.



Bike Route A Marker, New Brighton

These bikeways are shown on Map 3, Recreational Resources and Opportunities.

o Walking/hiking paths

Major walking/hiking trails are depicted on Map 3, Recreational Resources and Opportunities. Raccoon Creek State Park has 44 miles of hiking trails, and an additional 16 miles of bridle trails suitable for equestrians, hikers, backpackers, and cross-country skiers. It also has 17 miles of bike trails.

In addition, the North Country Trail crosses through the northwestern corner of the County. This trail, officially known as the North Country National Scenic Trail, will span 4,000 miles from New York to North Dakota when completed. It will link 150 parks and forests across seven States. Approximately 180 miles of the trail will cross Pennsylvania, 20 of them in Beaver County. To date, only 3 miles of the trail have been completed in the County through State game lands 285. The rest of the trail follows local roads and rights-of-way. The North Country trail is intended to be a foot path only.²⁸



North Country Trail

Other walking and hiking venues in the County include all the County Parks, State game lands, Hereford Manor Lake, Rochester Riverfront Park, Big Rock Park, and the Beaver County Conservation District Environmental Education Center. There are also fitness walking trails at Green Valley Park in New Sewickley, Koppel Environmental & Fitness Area in Koppel Borough, the Greene Township Walking Trail, and Two Mile Run Walking Trail in Brighton Township.

o Highway bike lanes - A bike lane is a portion of the roadway that is designated by striping, signing, and pavement markings for the preferential or exclusive use of bicyclists.

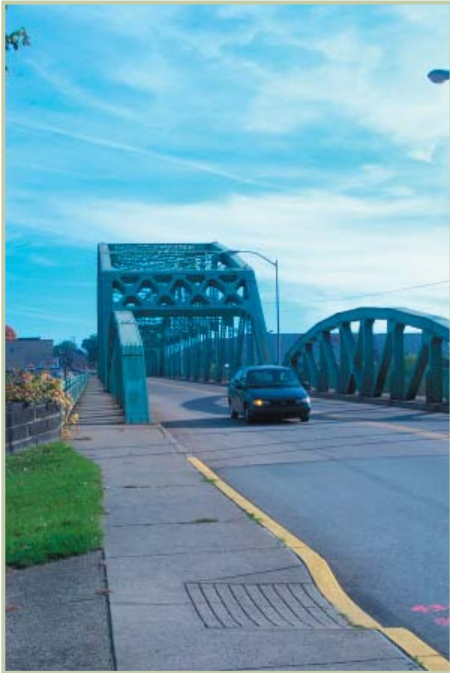
Beaver County has no official highway bike lanes. However, PennDOT has widened shoulders in conjunction with road improvements, along Route 51, between Fallston Borough and Chippewa Township, and along Brodhead Road in Center and Hopewell Townships. These shoulders are used frequently by cyclists.²⁹

o Pedestrian walkways

Several bridges in Beaver County have pedestrian walkways, providing links between several river towns. Bridges currently having pedestrian walkways are:

- 7th Street Bridge connecting Beaver Falls with New Brighton
- 9th Street Bridge, connecting Monaca and

- Rochester Borough
- Ambridge-Aliquippa Bridge
- East Rochester / Monaca Bridge
- Eastvale Bridge, connecting Eastvale Borough to Beaver Falls
- Rochester Bridge connecting Rochester Borough to Bridgewater
- Shippingport Bridge connecting Shippingport Borough to Industry Borough



Bridge from Bridgewater to Rochester

In addition, the planned Veterans Memorial Bridge, connecting Bridgewater Borough with Rochester Township, will provide for a shared-use path on the southern side of the bridge. The path provides a connection between the east and west sides of the Beaver River.

- o Park and ride lots

Park and ride facilities are present in the Borough of Ambridge at 11th Street, 131 Pleasant Drive in Center Township (at the Beaver Valley Expressway), and 200 West Washington Street in Rochester Borough.

- o Bus and train terminals

Public transportation in Beaver County consists of several bus routes operated by the Beaver

County Transit Authority (BCTA). There are two terminals that serve commuters: the BCTA Transportation Center in Rochester Borough and the Expressway Travel Center off Route 60 in Center Township.

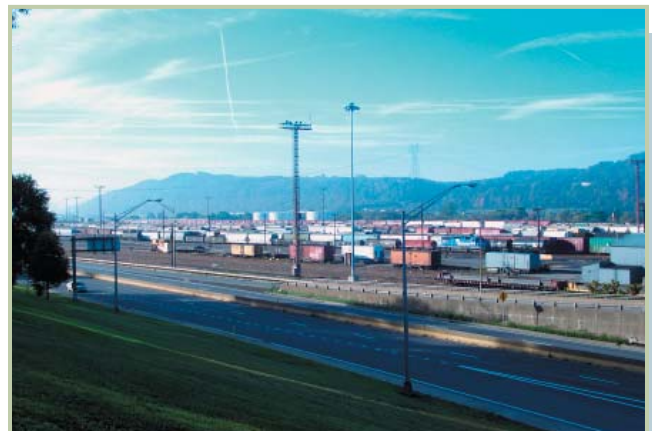
There are no public train terminals in Beaver County.

- o Active rail lines and rail yards

While some transportation corridors in Beaver County may provide greenway and trail opportunities, certain ones provide significant obstacles that this plan cannot overlook. Active rail lines border both sides of the Ohio and Beaver Rivers, making development of riverfront trails a challenge, if not impossible in some places.

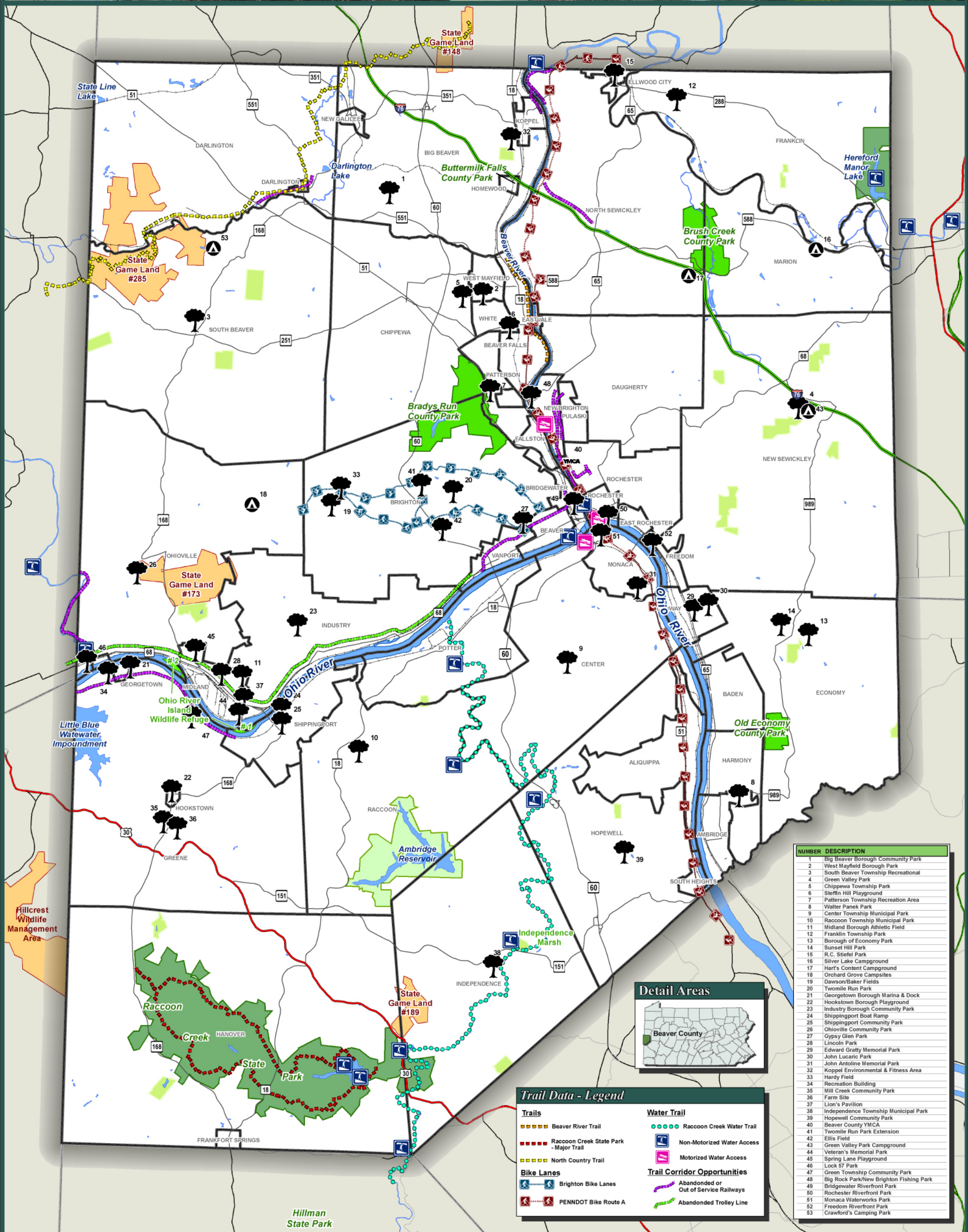
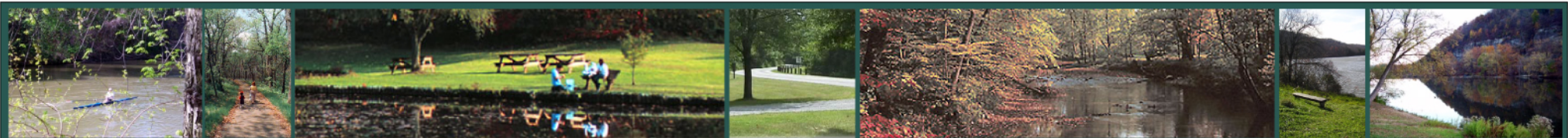
The right bank of the Ohio River from Ambridge to Rochester is particularly active as trains travel to and from the Conway Rail Yard. This is a major switching facility that used to be the largest rail yard of the Pennsylvania Railroad Company. Today it is operated by Norfolk Southern.

An active CSX rail line borders the opposite side of the Ohio River, from South Heights through Aliquippa and Monaca, to the power plant facilities in Shippingport Borough.



Norfolk Southern Rail Yards

In addition, much of the Beaver River is inaccessible due to the topography and the presence of active rail lines along both banks. This is true on the right bank north of Bridgewater and on the left bank north of New Brighton.



NUMBER	DESCRIPTION
1	Big Beaver Borough Community Park
2	West Mayfield Borough Park
3	South Beaver Township Recreational
4	Green Valley Park
5	Chippewa Township Park
6	Steffin Hill Playground
7	Patterson Township Recreation Area
8	Walter Panek Park
9	Center Township Municipal Park
10	Raccoon Township Municipal Park
11	Midland Borough Athletic Field
12	Franklin Township Park
13	Borough of Economy Park
14	Sunset Hill Park
15	R.C. Stiefel Park
16	Silver Lake Campground
17	Hart's Content Campground
18	Orchard Grove Campsites
19	Dawson/Baker Fields
20	Twomile Run Park
21	Georgetown Borough Marina & Dock
22	Hookstown Borough Playground
23	Industry Borough Community Park
24	Shippingport Boat Ramp
25	Shippingport Community Park
26	Ohioville Community Park
27	Gypsy Glen Park
28	Lincoln Park
29	Edward Gratty Memorial Park
30	John Lucaric Park
31	John Antoline Memorial Park
32	Koppel Environmental & Fitness Area
33	Hardy Field
34	Recreation Building
35	Mill Creek Community Park
36	Farm Site
37	Lion's Pavilion
38	Independence Township Municipal Park
39	Hopewell Community Park
40	Beaver County YMCA
41	Twomile Run Park Extension
42	Ellis Field
43	Green Valley Park Campground
44	Veteran's Memorial Park
45	Spring Lane Playground
46	Lock 57 Park
47	Green Township Community Park
48	Big Rock Park/New Brighton Fishing Park
49	Bridgewater Riverfront Park
50	Rochester Riverfront Park
51	Monaca Waterworks Park
52	Freedom Riverfront Park
53	Crawford's Camping Park



Trail Data - Legend

Beaver River Trail	Raccoon Creek Water Trail
Raccoon Creek State Park - Major Trail	Non-Motorized Water Access
North Country Trail	Motorized Water Access
Brighton Bike Lanes	Trail Corridor Opportunities - Abandoned or Out of Service Railways
PENNDOT Bike Route A	Abandoned Trolley Line

LEGEND

County Boundary	Interstate	State Park & Recreation Land
Municipality	US Highway	County Park
Lake/Reservoir	State Route	Reservoir Land
River/Creek/Stream	Campground	Game Land
Railroad	Community Park	Private Recreation Land

Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County
 Western Pennsylvania Conservancy

Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

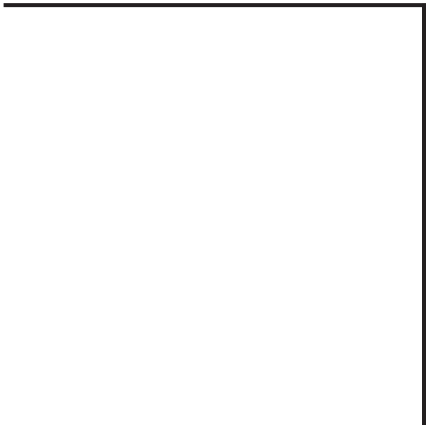


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Map 3 - Recreation Resources & Opportunities

Beaver County
Greenways & Trails





Recreation Facilities

The Beaver County Comprehensive Recreation and Parks Plan - 2003, provides an extensive inventory and analysis of recreation facilities and opportunities in Beaver County. This plan can be viewed at www.co.beaver.pa.us/Planning/Reports. The following facilities have been identified because of their potential interface with greenways and trails in the County.

- o Public Recreation Facilities

Beaver County has numerous public recreation facilities, which can be located by referring to Map 3, Recreational Resources and Opportunities. They include:

- Raccoon Creek State Park (swimming, fishing, boating, hiking, camping, mountain biking, environmental education, wildlife viewing, wildflower reserve)
- Bradys Run County Park (baseball/softball, horse arena, swimming, boating, fishing, basketball, indoor recreation facility with ice rink, tennis courts, and walking track)
- Brush Creek County Park (picnicking, horse trails, tennis, basketball, softball, soccer, fishing)
- Old Economy County Park (swimming pool, tennis, softball, sledding, horse trails, walking, & jogging)
- Buttermilk Falls Park (hiking, wildlife viewing)
- Hereford Manor Lake (fishing, boating, hunting, horseback riding, hiking, wildlife viewing)
- State Gamelands 148, 173, 189, and 285 (hiking, hunting)



Bradys Run Park Swimming Area, Brighton Twp.

- o Private Recreation Facilities

The Beaver Valley YMCA is located off Route 65 in Rochester Township. It provides facilities for swimming and indoor recreation. The Y has 10,700 members and the largest senior program (“Silver Sneakers”) in America.³⁰

- o Community and neighborhood parks

Nearly every municipality has park or recreation facilities. Such facilities are depicted on Map 3, Recreation Resources and Opportunities. They include:



Rochester Borough Riverfront Park

- Big Rock Park, New Brighton
- Bridgewater Riverfront Park, Bridgewater
- Green Valley Park, New Sewickley Township
- Independence Township Community Park, Independence
- Monaca Waterworks Park, Monaca
- Rochester Riverfront Park, Rochester Borough
- Walter Panek Park, Ambridge

In addition, several municipalities have plans to construct new park facilities including:

- Beaver Borough Riverfront Park
- Bridgewater Crossing Park
- Lock 54 Park, Ohioville Borough

- o Campgrounds

There are several private campground facilities in Beaver County. They include:

- Silver Lake Campground, Marion Township
- Hart's Content Campground, North Sewickley Township
- Orchard Grove Campsites, Ohioville Borough
- Green Valley Park Campground, New Sewickley Township
- Crawford's Camping Park, South Beaver

Camping facilities are also available in Raccoon Creek State Park. Campgrounds are identified on Map 3, Recreational Resources and Opportunities.

- o Water trail and waterfront access areas

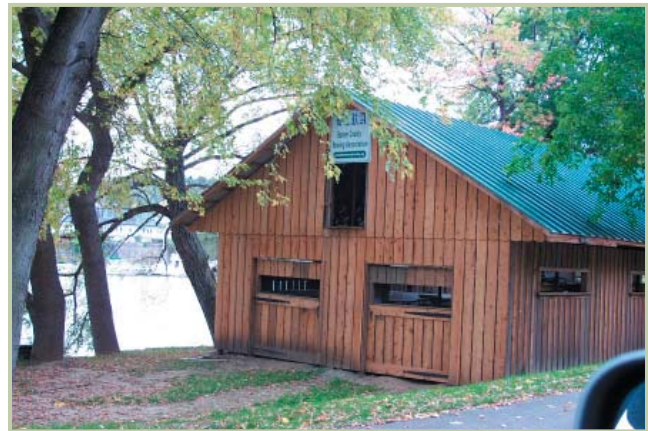
The Raccoon Creek Water Trail is the only existing water trail in Beaver County, although it has not been formally designated by the Pennsylvania Fish & Boat Commission. It was developed by a group of canoeing enthusiasts, called "Canoe Raccoon Creek," in cooperation with the Beaver County Conservation District.³¹

The trail begins at the first put-in point in Murdocksville, at the Washington County border, and extends for more than 24 miles to the confluence of the creek with the Ohio River. Four other access points have been established at intervals along the creek. The water trail is seasonal since water levels are only high enough from roughly March through June.

Other canoeing and kayaking access points not associated with a water trail exist in Raccoon Creek State Park and at Hereford Manor Lake.

There are also public boat launch facilities in Monaca, Rochester, and New Brighton. These facilities are used for motor boats as well as non-motorized craft. New Brighton recently built a fishing park that is popular with local anglers.

In addition, Ohioville Borough is in the process of establishing a new park along Little Beaver Creek that will have canoe access and a handicapped accessible fishing pier.³² Public canoe access and boat launch sites are identified on Map 3, Recreation Resources and Opportunities.



Beaver Valley Rowing Association, Rochester

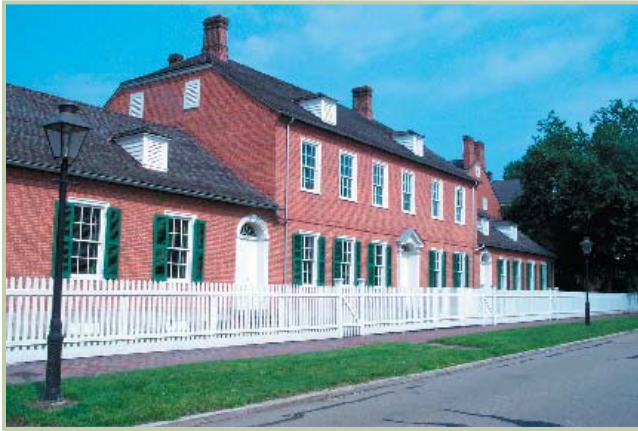
Another boating resource includes the Beaver County Rowing Association Boathouse in Rochester's Riverfront Park. The Association offers bi-weekly "Learn to Row" programs in summer and fall. Members row on the Beaver River below the dams, and on the Beaver side of the Ohio River to the Vanport Bridge.³³

Cultural and Historic Sites

- o Historic Resources

Beaver County played a large role in the history of frontier settlement and later in the industrial revolution. Consequently, the County is peppered with historic sites. An inventory of such sites, completed in 1998 for the Community Development Program of Beaver County, catalogued 296 cultural and historic resources in Beaver County.³⁴

For purposes of the Countywide Greenway Plan, we have identified only the 19 historic resources that have been listed in the National Register of Historic Places, as shown on Map 4, Historic and Cultural Resources.



Old Economy Village, Ambridge

They include:

- Old Economy Village, Ambridge
- Vicary House, Freedom
- Fort McIntosh, Beaver
- B.F. Jones Memorial Library, Aliquippa
- The historic districts of Ambridge, Beaver, and Bridgewater

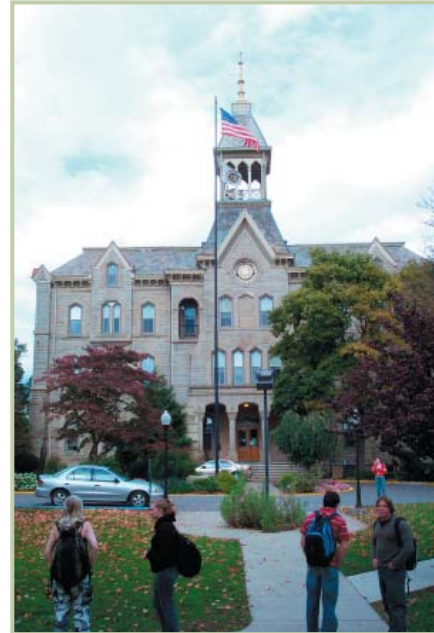
o Cultural Sites

Cultural sites were divided into several categories including schools, sports venues, museums, and fine arts centers. These cultural destinations are depicted on Map 4, Historic and Cultural Resources.

Fifty-two public school locations were inventoried and mapped in the County's fifteen school districts. Some locations include two or more school facilities on a single campus. Schools include 31 elementary schools, 14 middle/intermediate/junior high schools, and 14 high schools. One school district does not have junior high or high school facilities.

In addition, 16 private/parochial schools were included. Beaver County also has 3 colleges with campus facilities. They are:

- Community College of Beaver County, Center Township
- Penn State Beaver, Center Township
- Geneva College, Beaver Falls



Geneva College, Beaver Falls

Some of the other cultural destinations inventoried include:

- Beaver Area Historical Museum, Beaver Borough
- Air Heritage Museum, Chippewa Township
- Saint Nicholas Chapel, Brighton Township
- Lincoln Park Performing Arts Center, Midland
- Hookstown Fairgrounds, Greene Township
- Big Knob Fairgrounds, New Sewickley Township



Beaver Area Historical Museum

Population Centers and Destinations:

o Municipalities

Beaver County has 53 incorporated municipalities: 2 cities, 29 boroughs, and 22 townships. Additionally, a portion of Ellwood City Borough lies within Beaver County.



Rivertowns Marker, New Brighton Borough

The following table lists the ten largest municipalities in terms of total population.³⁵

Table 2-1. Ten Largest Municipalities (Population)

Municipality	2000 Population
Hopewell Township	13,254
City of Aliquippa	11,734
Center Township	11,492
City of Beaver Falls	9,920
Economy Borough	9,363
Brighton Township	8,024
Ambridge Borough	7,769
New Sewickley Township	7,076
Chippewa Township	7,021
New Brighton Borough	6,641

Population density was also looked at in determining where the highest concentrations of Beaver County residents are located. Density is significant because a larger number of residents may be served by a trail passing through a small, densely-settled municipality, than through a bigger one where the population is dispersed over a large geographic area. The following table lists the municipalities with highest density.³⁶

Table 2-2. Ten Most-Densely Populated Municipalities

Municipality	Total Population (2000)	Residents/Square Mile
Rochester Borough	4,014	6,861.5
New Brighton Borough	6,641	6,450.1
Ambridge Borough	7,769	5,232.8
Beaver Borough	4,775	5,119.3
City of Beaver Falls	9,920	4,681.6
Eastvale Borough	293	3,424.8
Darlington Borough	299	3,217.7
Monaca Borough	6,286	3,004.0
Freedom Borough	1,763	2,984.4
City of Aliquippa	11,734	2,867.7

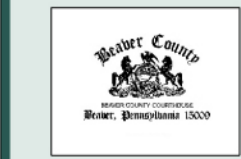
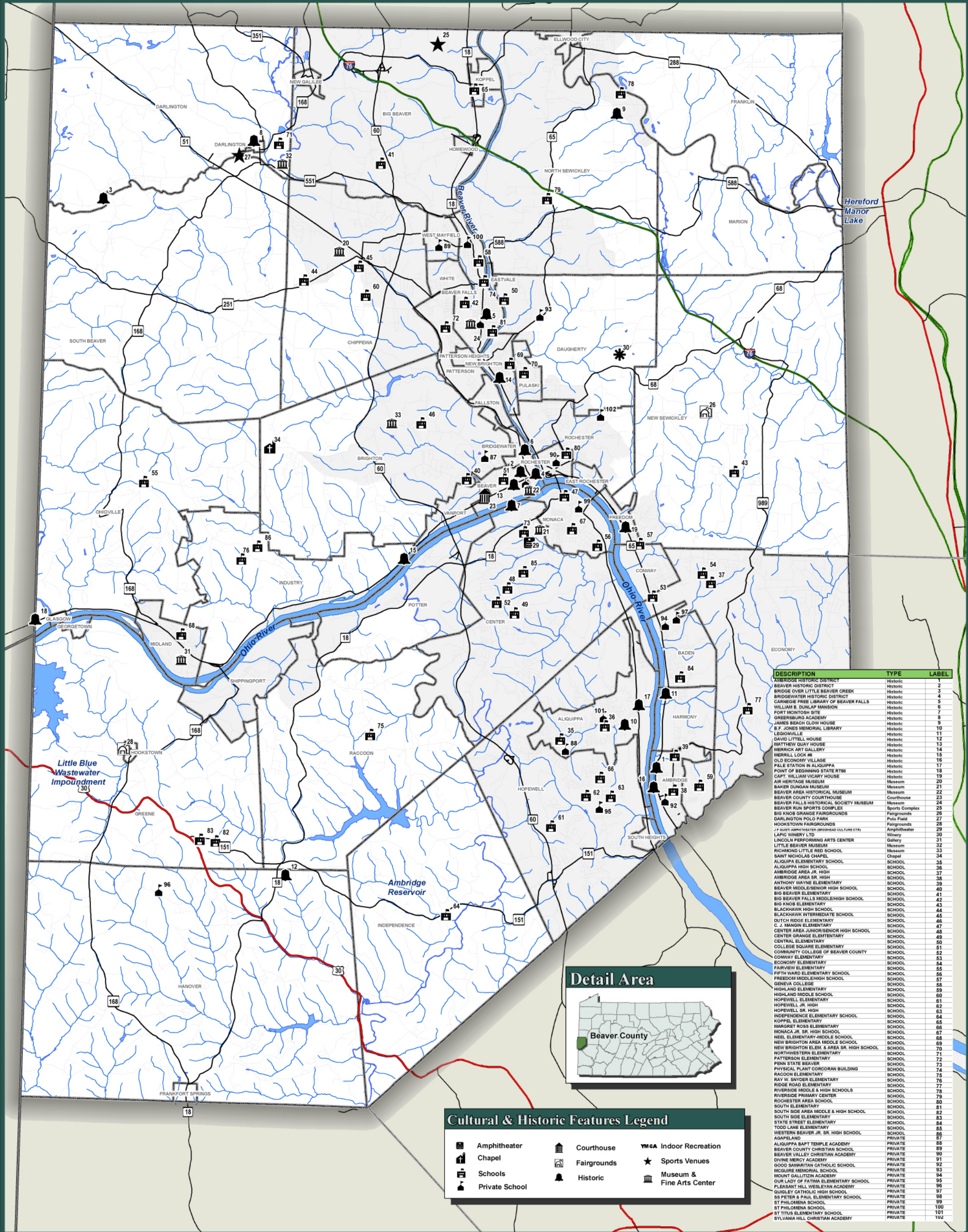
Beaver County’s population density by municipality is depicted on Map 5, Population Density.

- o Commercial centers

Several Beaver County municipalities have town centers or commercial areas that provide important services such as lodging, dining, and shopping. Many correspond to the river towns that grew up around the steel mills. However, new commercial areas are being established in townships, as the population is shifting from the urban centers to more suburban communities.



Seventh Avenue, Beaver Falls



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LEGEND

- County Boundary
- Urban Areas
- Municipality
- Lake/Reservoir
- River/Creek/Stream
- PennDOT Roads
- Interstate
- US Highway
- State Route

Cultural & Historic Features Legend

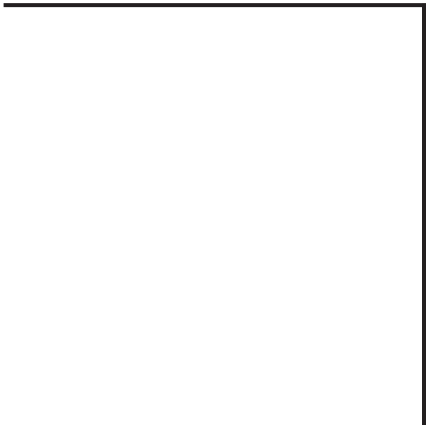
- Amphitheater
- Chapel
- Schools
- Private School
- Courthouse
- Fairgrounds
- Historic
- YMCA Indoor Recreation
- Sports Venues
- Museum & Fine Arts Center

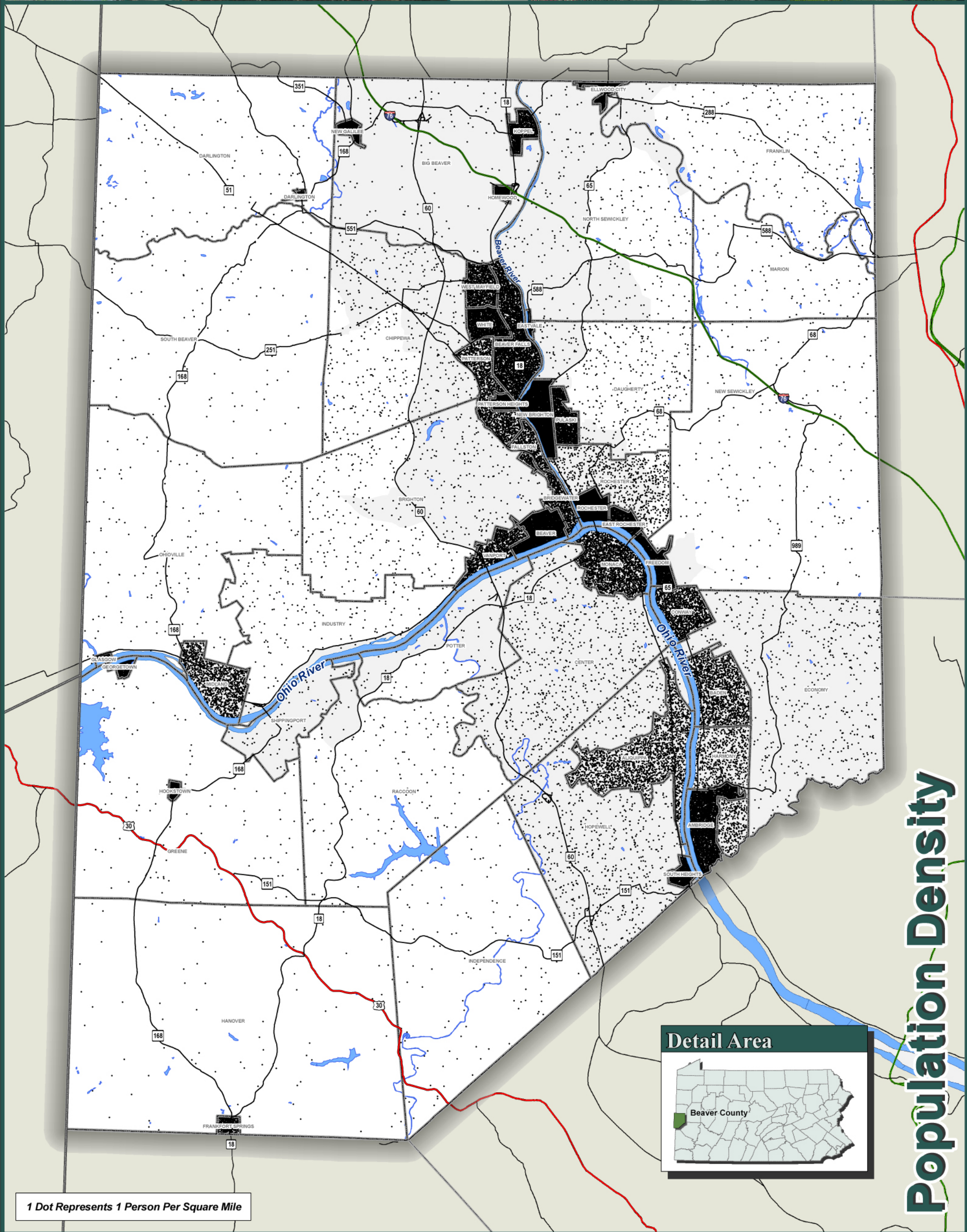
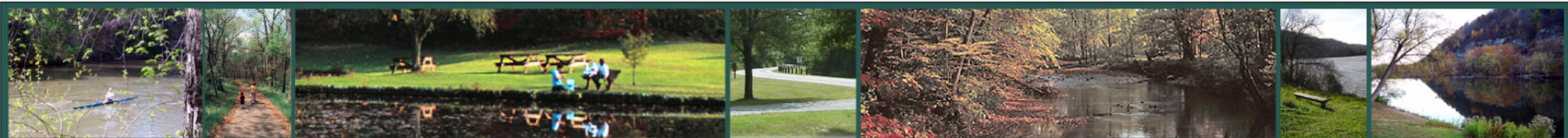
Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County
 Western Pennsylvania Conservancy

Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

0 1 2 Miles

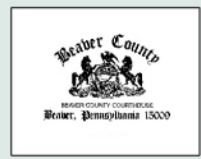






Population Density

1 Dot Represents 1 Person Per Square Mile

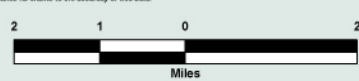


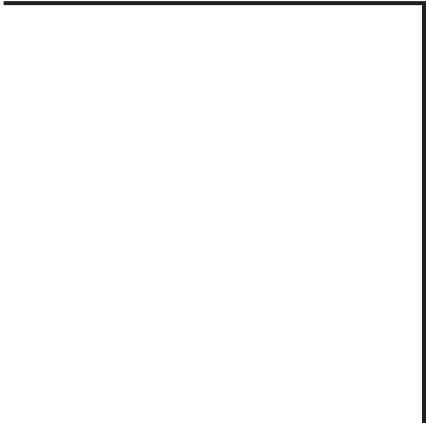
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LEGEND	County Boundary	PennDOT Roads
	Urban Areas	Interstate
	Municipality	US Highway
	Lake/Reservoir	State Route
	River/Creek/Stream	

Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County Planning Commission
* Pashek Associates makes no claims to the accuracy of this data.

Projection: State Plane - NAD 1983
 Pennsylvania South, Feet





Those municipalities having well-defined commercial areas include:

- Ambridge Borough
- Beaver Borough
- City of Beaver Falls
- Bridgewater Borough
- Center Township
- Chippewa Township
- Hopewell Township
- Midland Borough
- Monaca Borough
- New Brighton Borough
- Rochester Borough

Active Industrial Facilities and Parks

Beaver County's economy is still largely manufacturing-based. There are major industrial plants along the riverfronts in several municipalities, including the Nova Chemical, BASF Chemical, and Horsehead Industries facilities in Potter Township; Beaver Valley Nuclear Facility and Bruce Mansfield Power Plant in Shippingport Borough; and the Valvoline and Cronimet Metal Recycling facilities in Rochester. Some of the larger industrial parks³⁷ in Beaver County are:

- Aliquippa Industrial Park / former LTV site, Aliquippa (1,500 acres)
- Westgate Business Park, Big Beaver Borough (223 acres)
- Hopewell Business & Industrial Park, Hopewell (150 acres)
- Port Ambridge Industrial Park, Ambridge (100 acres)
- Buncher Tri-County Commerce Park, New Sewickley (90 acres)
- Ambridge Reg. Mfg. & Dist. Center, Harmony Township (85 acres)
- Moor Industrial Park, Monaca (7.5 acres)

Brownfields/Abandoned Industrial Sites

Beaver County has numerous brownfield and abandoned industrial properties. Many are situated along the riverfronts. Some of the larger brownfield or underutilized sites are:

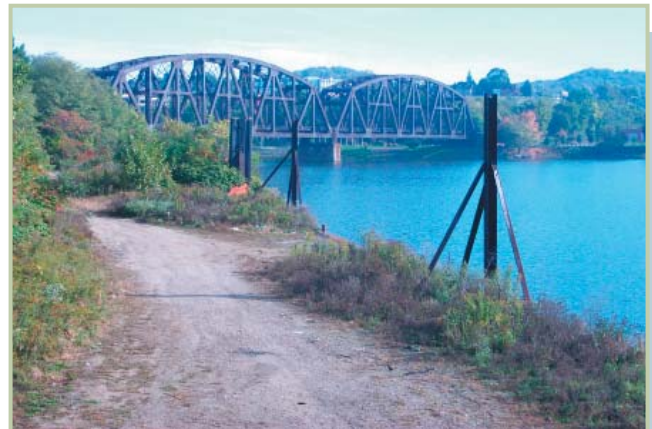
- Former LTV Steel Plant Site, Aliquippa
- Labate Brick Factory, Darlington

- Former Babcock & Wilcox Plants, Beaver Falls
- Former Hydril site, Rochester Township

Future Development Areas

Reinvestment in Beaver County's abandoned and underutilized sites is ongoing. Several projects are planned or underway. They include:

- Riverfront redevelopment – a coordinated study of riverfront improvements on public lands in eight communities surrounding the confluence of the Beaver and Ohio Rivers³⁸
- The Northern Ambridge Redevelopment Project – mixed-use redevelopment of a brownfield site in downtown Ambridge
- Bridgewater Crossing – a planned mixed-use redevelopment of vacant land along the Ohio River at its confluence with the Beaver River
- Midland Industrial Park – redevelopment of the former LTV Specialty Steel Co. site in Midland Borough



Confluence of Ohio and Beaver Rivers

(Footnotes)

- 1 Pennsylvania Greenways Partnership Commission and the Greenways Partnership Advisory Committee, *Pennsylvania Greenways – An Action Plan for Creating Connections* (June 2001).
- 2 *Pennsylvania Greenways – An Action Plan for Creating Connections*, p. 11.
- 3 *Beaver County Comprehensive Recreation and Park Plan* (February 2003).
- 4 Public Law 128, Act 43 of 1981, as amended.
- 5 Pennsylvania Greenways Partnership Commission, *Benefits of Greenways: A Pennsylvania Study* (June 2002).
- 6 Newsweek, “Designing Heart Healthy Communities,” *Health for Life* (October 3, 2005).
- 7 DCNR website, www.dcnr.pa.us/wlhabitat/appendices.htm.
- 8 25 Pennsylvania Code Chapter 93.
- 9 *Natural Infrastructure Project for Southwestern Pennsylvania, Vol. 2: NI Atlas* (2005), pp. 98 – 99. The Natural Infrastructure Project is a project of the Tides Center and a partnership among the Southwestern Pennsylvania Commission, PA Department of Conservation & Natural Resources, The Heinz Endowments, and the Pennsylvania Environmental Council.
- 10 *Natural Infrastructure Project, Vol. 2: NI Atlas*, pp. 36 - 37.
- 11 PA Audubon Society, *Pennsylvania Important Bird Area #13, Raccoon Creek Valley and State Park, Phase I Conservation Plan* (Draft April 9, 2004).
- 12 *Western Pennsylvania Conservancy, Beaver County Natural Heritage Inventory* (May 1993).
- 13 *Natural Infrastructure Project, vol. 2: NI Atlas*, pp. 96-97.
- 14 *Beaver County’s Agricultural Land Preservation Board website*, www.co.beaver.pa.us/Planning/alpb.htm.
- 15 Joe Petrella, *Beaver County Agricultural Land Preservation Board*.
- 16 US Department of Agriculture (USDA) Soil Conservation Service (SCS) 1985, as amended by the National Technical Committee for Hydric Soils (NTCHS) in December 1986.
- 17 *Natural Infrastructure Project, Vol. 2: NI Atlas*, p. 14.
- 18 American Canal Society, *Canal Index*.
- 19 Wendy J. Adkins, *Sandy & Beaver* (1997), www.geocities.com/Heartland/Prairie/6687/sandy.htm?200512.
- 20 Interview with Wayne Cole, Little Beaver Historical Society (October 31, 2005). Mr. Cole is the author of several books on railroad history in the Region including “*Rails of Dreams*” (2003), “*Beaver Valley Railroad Company*” (2004) and “*Ghost Rails (1850-1980), Volume I*” (2005).
- 21 When used in this document, “right bank” and “left bank” denote the sides of a creek or river as determined when facing the direction of the water flow.
- 22 Interview with Dorothy Betz, Chairman of the Board, Columbiana County Parks District (September 12, 2005).
- 23 According to Mr. Cole, there is also an abandoned railroad right-of-way along the Ohio border on the right bank of Little Beaver Creek that led to a coal tipple. It is only about 4 miles long.
- 24 Interview with Wayne Cole.
- 25 Interview with Wayne Cole.
- 26 Interview with Wayne Cole.
- 27 Discussions with Todd Stevenson and Kathryn Johnston, Beaver River Rails-to-trails Group.
- 28 Interviews with Keith Klos and Richard Lutz, North Country Trail Association. (August 26, 2005).
- 29 Interview with Marlin Erin, Snitgers Bike Shop.
- 30 Interview with Bill Parise, President & CEO, Beaver County YMCA.
- 31 Interview with Jeff Lloyd, Canoe Raccoon Creek (August 31, 2005).
- 32 Interview with John Szatkiewicz, Ohioville Borough Council (November 15, 2005).
- 33 Interview with Charlie Neville, President, Beaver County Rowing Association (August 25, 2005).
- 34 *Inventory and Assessment of Historic and Heritage Sites, Beaver County, Pennsylvania*, Christine Davis Consultants, Inc. (May 1998).
- 35 *Beaver County Government Directory* (13th ed.) (2005) (based on 2000 U.S. Census data).
- 36 U.S. Census Bureau, *Census 2000 Summary File 1*.
- 37 “*Horizons: Planning for the 21st Century, A Comprehensive Plan for Beaver County*, p. LU-4 (December 1999).
- 38 *Bridging the Confluence: Communities Building a Shared Vision for Riverfront Redevelopment*, Beaver County Corporation for Economic Development and Beaver Initiative for Growth (2005).

Chapter III:
Assembling the Network



111. Assembling the Network

In this section, all data gathered during the inventory phase of the planning process is analyzed and assembled into a connective network of greenways and trails. The network is comprised of two types of corridors:

- **Conservation Greenways** are corridors whose primary function is preservation of sensitive environmental features and habitats like wetlands, steep slopes, floodplains, high quality streams, and high value habitats identified by the Beaver County Natural Heritage Inventory and the Natural Infrastructure Project. Conservation corridors are linear tracts of essentially undeveloped open space that integrate many of the natural resources inventoried in Section II above. While some low-impact activity is acceptable in these corridors, intense development is not recommended. For example, hiking or wildlife viewing would be compatible uses, but mountain biking use would be discouraged in conservation greenways.
- **Recreation & Transportation Greenways (Trails)** are corridors where trail development is recommended. These greenways connect population centers and points of interest in Beaver County. They bring people into contact with the outdoors and engender an appreciation of the natural world. These trails also provide alternative, environmentally-friendly transportation options for commuters and visitors. The plan proposes four types of recreation and transportation corridors: 1) shared use paths; 2) on-road bike lanes or share-the-road opportunities; 3) foot paths/ pedestrian only connections; and 4) water trails or blueways.

In some cases, these trails overlay or intersect conservation corridors. To avoid conflicts, impacts from recreational uses will have to be managed. For example, a biking trail along a river or stream corridor may be appropriate where care is taken to avoid degradation of steep slopes, wetlands, and other sensitive features.

Building the framework of the Beaver County greenway network began with laying out the conservation greenways. These corridors follow the natural systems and contours of the land – such as significant river and stream corridors and high value wildlife habitats. Overlaying this backdrop, the plan adopts a “hubs and spokes” structure for its recreation and transportation greenways.

The hubs, sometimes also called “nodes,” are the significant destination points – cities and boroughs, historic and cultural sites, and important parks and recreational areas. The spokes, or corridors, provide the links between them. Finally, because rivers, streams, habitats, and other natural assets do not terminate at the County’s boundaries, the greenways continue beyond Beaver County linking nearby parks, population centers, and other assets in neighboring counties.

A multi-level analysis using evaluation criteria was established to evaluate which natural and recreational resources are of Countywide significance and eligible for inclusion in the County Greenways and Trails network.

CONSERVATION GREENWAYS

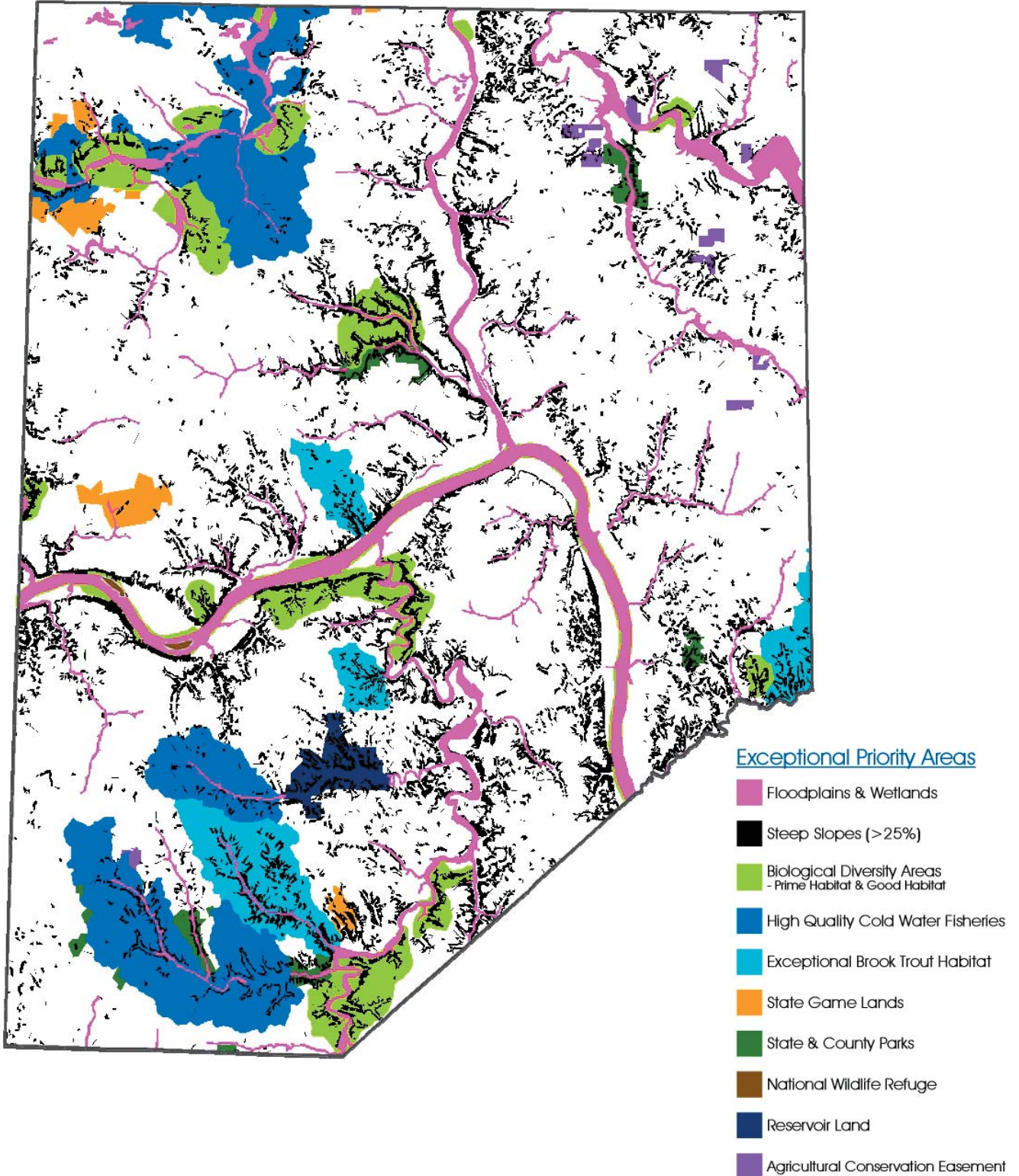
1) **Conservation Greenways** were established using a multi-tiered analysis. First, all eligible resources were identified. Then, in step 2, they were ranked in importance by using the value system set forth in Table 3.1:

Table 3.1. Conservation Greenways Criteria

TYPE OF RESOURCE	VALUE	
	Exceptional	High
Environmentally Sensitive Areas:		
100-Year Floodplains	X	
Wetlands	X	
Steep Slopes > 25% and > 1 acre	X	
Hydric Soils > 1 acre		X
Habitat Areas:		
Biological Diversity Areas ¹ :		
- Prime Habitat	X	
- Good Habitat	X	
- Other Habitat		X
Landscape Conservation Areas ²		X
Important Bird Area ³		X
High Quality Cold Water Fisheries ⁴	X	
Exceptional Brook Trout Habitat ⁵	X	
Good Brook Trout Habitat ⁶		X
Protected Lands		
State Gamelands	X	
State Park	X	
County Parks	X	
National Wildlife Refuge	X	
Other Managed Natural Areas ⁷		X
Reservoir Lands	X	
Farmland with Conservation Easements	X	

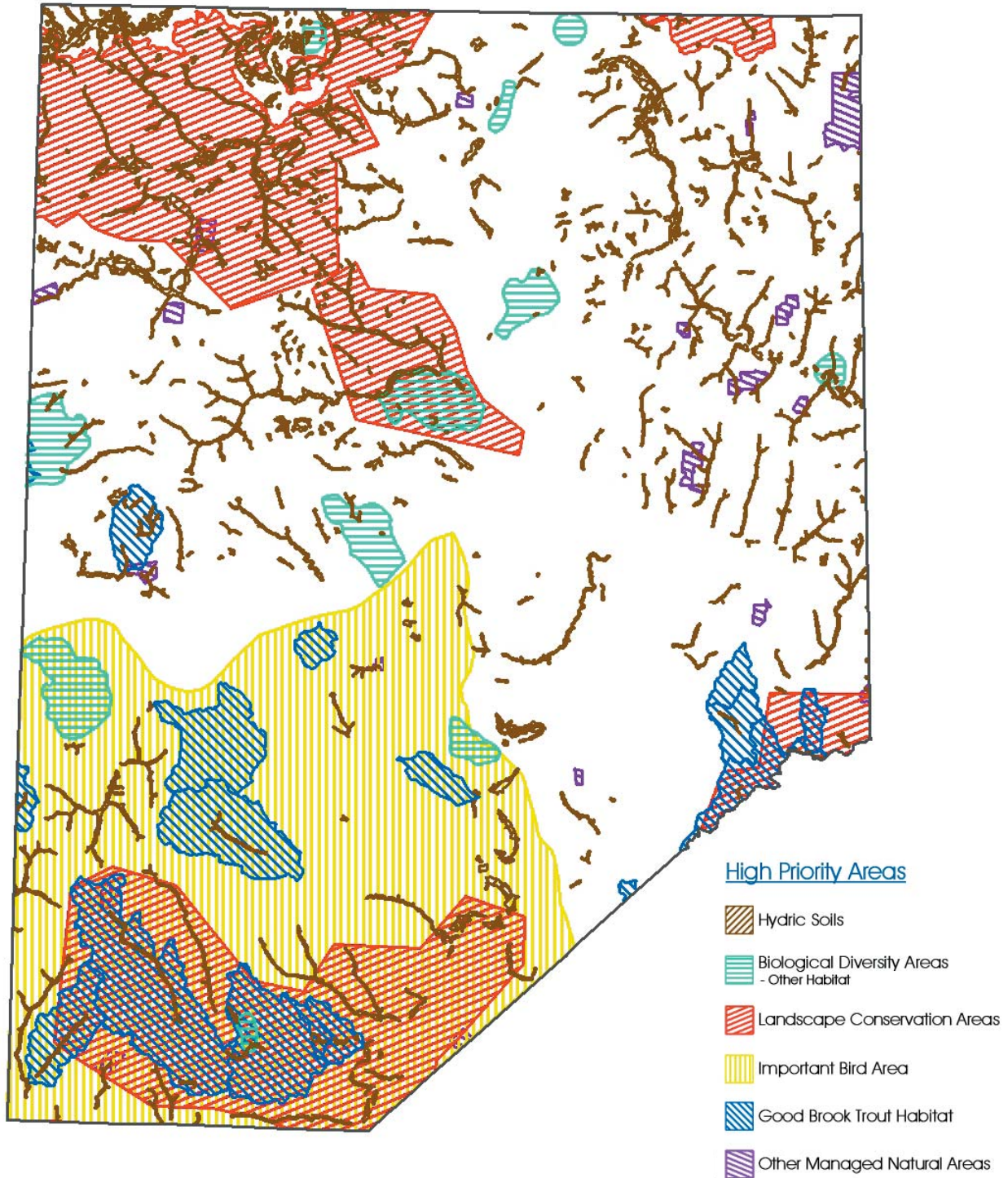
Exceptional Value Conservation Areas

To create a network of conservation corridors, the resource areas listed above were mapped and shaded according to their priority. Exceptional value areas were viewed as “drivers” of the conservation corridors. They were mapped and are illustrated on the following map:



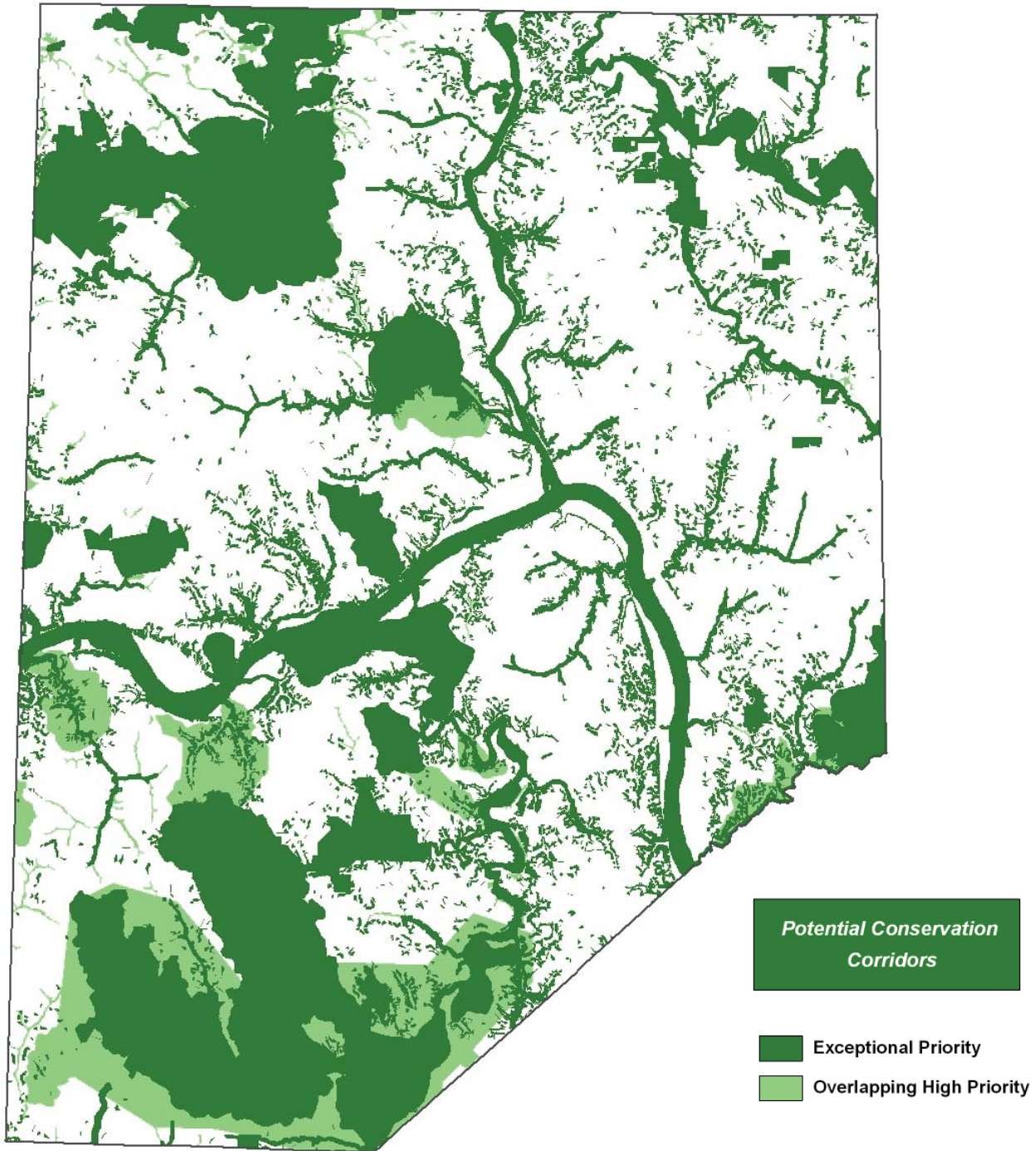
High Value Conservation Area

Each high value resource area was then plotted on a map using a different type of shading. This allowed us to see where certain areas met more than one resource criterion.



Conservation Greenway Network

Where two or more high value resource areas overlapped, they were determined to have exceptional conservation value. Therefore, these areas were added to the map of exceptional value resource areas. Collectively, the exceptional value resource areas and the overlapping high value resource areas were designated as “potential conservation corridors.”



The next tier of the process involved linking the potential conservation corridors together into a cohesive network. Because a County Greenways Plan seeks to include resources of County-wide significance, not every potential conservation corridor is encompassed within the network. Conservation greenways were selected by choosing those areas designated on the potential conservation corridors map that formed substantial corridors of interconnected exceptional and overlapping high priority resources.

Length (rivers and major streams), width (watersheds and BDAs), and connectivity (linkages between several resources areas) were all factored into the analysis. Small pockets of steeply sloped terrain, minor tributaries, and other isolated resources were eliminated. However, these smaller resource areas are still of conservation value. While not part of the County Greenway network, they should be protected at the local level through use of conservation tools such as stream buffers, steep slope ordinances, and the like. The proposed County Conservation Greenway network is depicted on Map 6.

The County Conservation Greenway network includes the greenways described below. Numbers in parentheses correspond to the numbers indicated on the map.

- Ohio River Valley Greenway (#1) – this greenway corridor encompasses the Ohio River, in Beaver County, as well as some adjacent resource areas. It includes the adjacent floodplain, steeply sloped riverbanks, and wetlands. In addition, this greenway includes several biological diversity areas – the Ohio River BDA, Ohioview Peninsula BDA, Midland Ravine BDA, and Georgetown and Phillis Islands BDAs – as well as the trout habitat surrounding Peggs Run. While much of the river corridor has been developed, portions remain undisturbed and provide important habitat. Therefore, efforts should be made to preserve undisturbed areas and to encourage streambank restoration wherever feasible. Because the Ohio River flows into and out of the County, the Plan recommends that the greenway extend into Allegheny County, where the Ohio originates, as well as downstream into Ohio and West Virginia.

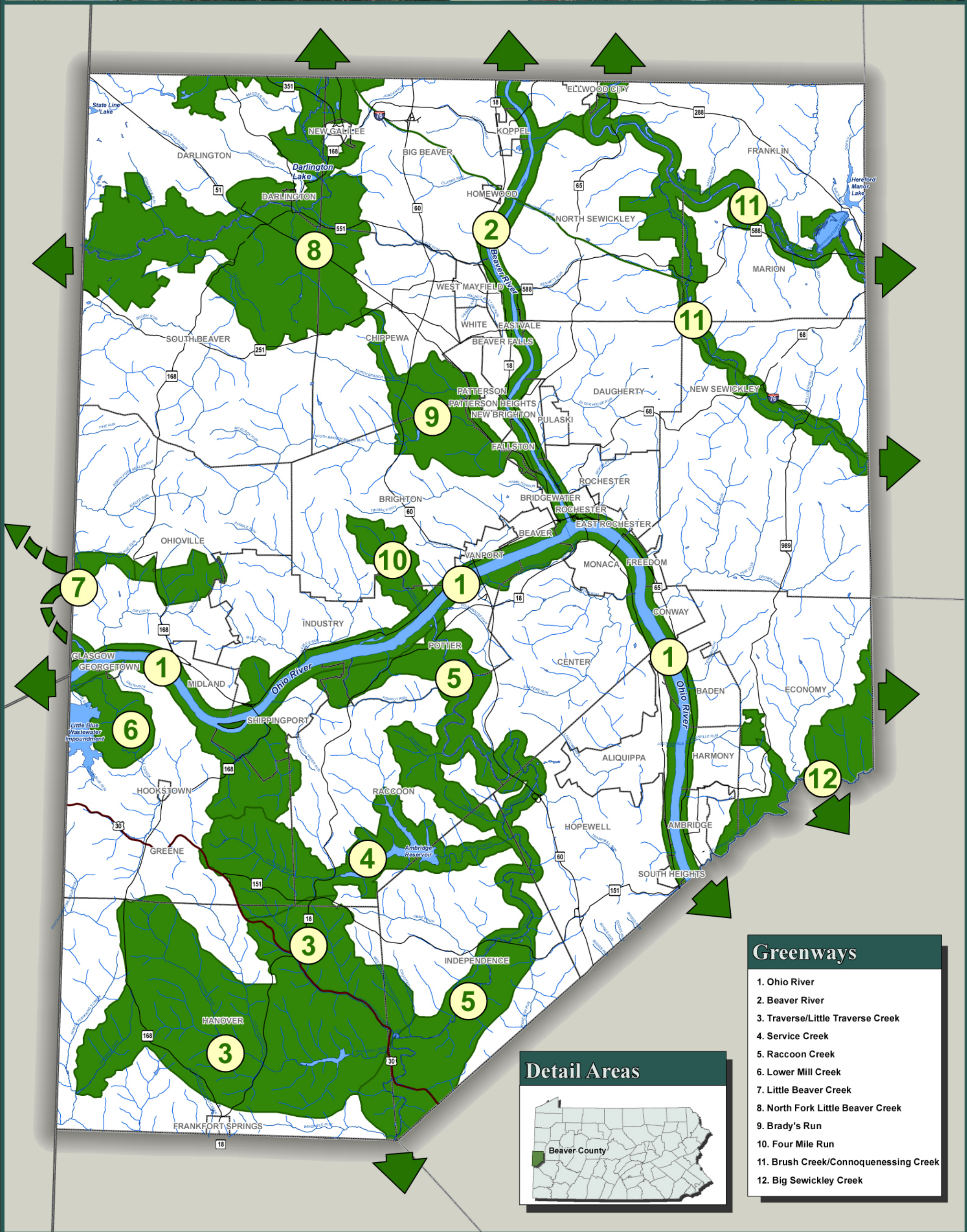
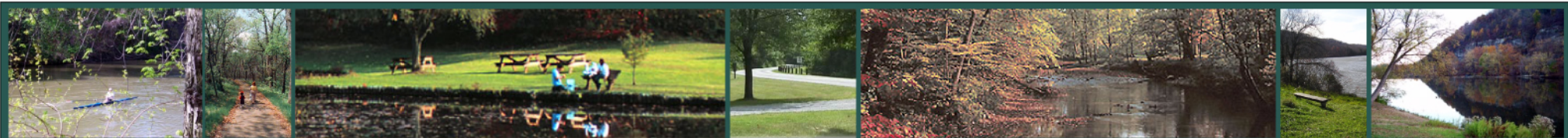
The Ohio River Valley Greenway is approximately 12,900 acres in size and is located in the following municipalities: Aliquippa, Ambridge, Baden, Beaver, Bridgewater, Center, Conway, East

Rochester, Economy, Freedom, Georgetown, Glasgow, Greene, Harmony, Hopewell, Industry, Midland, Monaca, Ohioville, Potter, Raccoon, Rochester, Shippingport, South Heights, and Vanport. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- Beaver River Valley Greenway (#2) – this corridor would stretch from the river’s confluence with the Ohio north to the border of Lawrence County and beyond. It also includes a small spur along an unnamed tributary east of the Beaver River, creating a connection to the Brush Creek/ Connoquenessing Creek Greenway (see # 11, below). Like the Ohio, this corridor has areas of floodplain, steep slopes, and wetlands. Despite dense development along some riverbanks, others, particularly above Beaver Falls, remain relatively undisturbed and thickly forested. This corridor includes the Beaver River Confluence Slope BDA.

The Beaver River Valley Greenway is approximately 3,900 acres in size and is located in the following municipalities: Beaver Falls, Big Beaver, Bridgewater, Daugherty, Eastvale, Fallston, Koppel, New Brighton, North Sewickley, Patterson, Patterson Heights, Rochester Township, and Rochester Borough. As noted earlier, the Pennsylvania Environmental Council is in the process of completing a rivers conservation plan for this area.

- Traverse/Little Traverse Watershed Greenway (#3) – In the southwest corner of the County, this greenway corridor takes in the watersheds of both Traverse Creek and Little Traverse Creek. Little Traverse Creek is classified as an exceptional brook trout habitat. Traverse Creek has been designated as both a high-quality, cold water fishery under the State’s Water Quality Standards and as good brook trout habitat. Both streams lie within the Raccoon Creek Valley and State Park Important Bird Area, a significant habitat for breeding and migrating birds. The corridor also encompasses portions of the Raccoon Creek Valley Landscape Conservation Area. Moreover, this greenway contains substantial areas of floodplain, wetlands, and steep slopes.



- ### Greenways
1. Ohio River
 2. Beaver River
 3. Traverse/Little Traverse Creek
 4. Service Creek
 5. Raccoon Creek
 6. Lower Mill Creek
 7. Little Beaver Creek
 8. North Fork Little Beaver Creek
 9. Brady's Run
 10. Four Mile Run
 11. Brush Creek/Connoquenessing Creek
 12. Big Sewickley Creek



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LEGEND

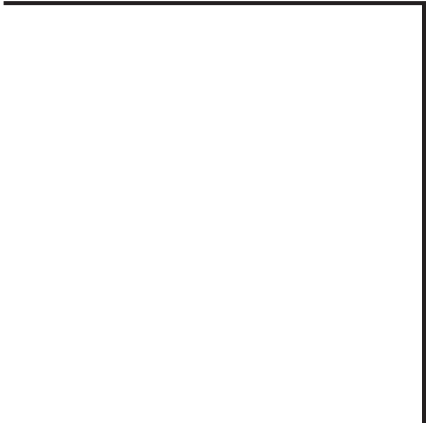
County Boundary	PennDOT Roads
Municipality	Interstate
Lake/Reservoir	US Highway
River/Creek/Stream	State Route

Map Sources:
Southwestern Pennsylvania Commission (SPC)
PASDA (Pennsylvania Spatial Data Access)
Beaver County
Western Pennsylvania Conservancy

Projection: State Plane - NAD 1983
Pennsylvania South, Feet

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The Traverse/Little Traverse Watershed Greenway is approximately 18,300 acres in size and is located in the following municipalities: Greene, Hanover, Independence, and Raccoon. 7,500 acres are located in Raccoon Creek State Park.

There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- Service Creek Watershed Greenway (#4)
– Beginning just north of Little Traverse Creek, the Service Creek Watershed Greenway stretches along the Upper Service Creek watershed, through the Ambridge Reservoir lands, and along Service Creek to its confluence with Raccoon Creek. This greenway will protect a high-quality cold water fishery, good brook trout habitat, drinking water quality in the reservoir, as well as floodplains, wetlands, and steep slopes. Because the corridor also lies within the Raccoon Creek Valley and State Park IBA, it would conserve habitat for breeding and migrating birds.

The Service Creek Watershed Greenway is approximately 6,200 acres in size and is located in the following municipalities: Greene, Hanover, Independence, and Raccoon. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- Raccoon Creek Valley Greenway (#5) – this greenway corridor would extend the full length of Raccoon Creek, from its confluence with the Ohio River, to the border of Washington County and beyond. The greenway contains a large number of valuable resources. The creek has extensive floodplains and wetlands, including the Beaver County Conservation District Environmental Education Center, along its course. Four BDAs – Raccoon Creek Floodplain BDA, School Road Slopes BDA, Creek Bend Slopes BDA, and Lower Raccoon Creek BDA – as well as three brook trout habitat areas fall within this greenway corridor. The greenway also forms an integral part of the Raccoon Creek Valley and State Park IBA.

The Raccoon Creek Valley Greenway is approximately 13,000 acres in size and is located in the following municipalities: Center, Hanover, Hopewell, Independence, Potter, Raccoon, and Shippingport. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- Lower Mill Creek Greenway (#6) – this corridor surrounds the lower portion of Mill Creek, a tributary to the Ohio near the West Virginia border. The greenway remains heavily forested. It includes the Mill Creek BDA and is located within the IBA discussed above.

The Lower Mill Creek Greenway is approximately 1,700 acres in size and is located in the following municipalities: Georgetown and Greene. There has not been a rivers conservation plan prepared for this area.

- Little Beaver Creek Greenway (#7) – Little Beaver Creek has been designated as a wild and scenic river and forms a link in the Great Ohio Lake-to-River Greenway. The stream winds its way through a pristine landscape of sheer cliffs and dense forest. While much of it lies in Ohio, two segments cross into Beaver County, where it empties in the Ohio River. The greenway corridor includes not only floodplains and steep slopes, but also a high value habitat area, the Little Beaver Creek Floodplain BDA. The greenway also connects to State Gameland #173 along a small stream named Island Run.

The Little Beaver Creek Greenway is approximately 1,800 acres in size and is located in the following municipalities: Glasgow, Industry, and Ohioville. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- North Fork Little Beaver Creek Greenway (#8) – In the northwestern corner of the County, this greenway contains the most extensive wetlands and hydric soils in the County. It encompasses the watershed of the North Fork of Little Beaver Creek. In addition to its classification as a high

quality, cold water fishery, this watershed also includes six high value habitat areas – Darlington Natural Area BDA, County Line Wetlands BDA, Darlington Road Wetlands BDA, Lower North Fork Little Beaver Creek BDA, Painter Run Wetlands BDA, and State Game Lands 285 Wetlands BDA. The greenway also includes portions of the North Fork Little Beaver Creek Landscape Conservation Area.

The North Fork Little Beaver Creek Greenway is approximately 15,400 acres in size and is located in the following municipalities: Big Beaver, Chippewa, Darlington Township, Darlington Borough, New Galilee, and South Beaver. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- Bradys Run Greenway (#9) – Surrounding and including Bradys Run Park, this greenway covers the lower stretches of both the North Branch and South Branch of Bradys Run, as well as Bradys Run itself. It includes the high value North Branch Valley BDA and a portion of the Bradys Run Landscape Conservation Area. Floodplains and steep slopes are also present in this corridor. A small spur along an unnamed tributary of the North Branch connects this greenway and the North Fork Little Beaver Creek Greenway (see #8, above).

The Bradys Run Greenway is approximately 4,200 acres in size and is located in the following municipalities: Bridgewater, Brighton, Chippewa, Fallston, Patterson, and Patterson Heights. There has not been a rivers conservation plan prepared for this area.

- Four Mile Run Greenway (#10) – A tributary to the Ohio River, the Four Mile Run watershed has been classified as an exceptional brook trout habitat. The Four Mile Run Valley BDA is also located there. The corridor is also characterized by steep slopes and thick forest. The Four Mile Run Greenway is approximately 1,400 acres in size and is located in Brighton and Industry. There has not been a rivers conservation plan prepared for this area.

- Brush Creek/Connoquenessing Creek Greenway (#11) – This conservation greenway is situated in the northeast corner of the County. Brush Creek extends from Butler County through Brush Creek County Park, before joining Connoquenessing Creek. The Connoquenessing also enter the County from Butler County, traveling northeast into Lawrence County, where it joins the Beaver River. These corridors have extensive stretches of floodplains, as well as pockets of wetlands and hydric soils. The greenway encompasses the Camp Kon-o-kwee Floodplain BDA, as well as several tracts of agricultural land protected by conservation easements.

The Brush Creek/Connoquenessing Creek Greenway is approximately 7,100 acres in size and is located in the following municipalities: Ellwood City, Franklin, Marion, New Sewickley, and North Sewickley. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

- Big Sewickley Creek Greenway (#12) – This greenway is located in the southeastern corner of the County. Big Sewickley Creek forms the border between Beaver and Allegheny County before it flows into the Ohio River. The stream corridor lies within floodplains and steeply sloped terrain. The Cooney Hollow BDA and exceptional and good brook trout habitat fall within this greenway corridor. The greenway includes a connection to Old Economy County Park.

The Big Sewickley Creek Greenway is approximately 3,200 acres in size and is located in Economy and Harmony. There has not been a rivers conservation plan prepared for this area. The County / affected municipalities may want to consider completing a plan for this area.

Conservation Greenway Prioritization

Finally, the conservation corridors were prioritized. This was done by assigning a point total to each conservation greenway corridor based on the number of exceptional value and high value resources located within them. Exceptional value resources were assessed three (3) points and high value resources were assessed one (1) point. Multiple occurrences of exceptional and high value resources were calculated cumulatively. The tabulations are shown in the table below:

Table 3.2. Conservation Corridor Ranking Analysis

Conservation Corridor		Floodplains	Wetlands	Steep Slopes	Biological Diversity Area (Prime and Good)	High Qual. Coldwater Fishery	Excep Brook Trout	State Game Lands	State & County Parks	National Wildlife Refuge	Ag. Cons Easement	Reservoir	Hydric	BDA - Other	Good Brook Trout	Landscape Conservation Area	Important Bird Area	Total
1	Ohio River	3	3	3	9					3					1		1	23
2	Beaver River	3	3	3	3							1	2					15
3	Traverse/Little Traverse Creek	3	3	3		3	3	3	3		3		1	1	5	1	1	33
4	Service Creek	3	3	3		3					3	1		1			1	18
5	Raccoon Creek	3	3	3	9		3						1	1	2		1	26
6	Lower Mill Creek	3	3	3										1			1	11
7	Little Beaver Creek	3		3	3													9
8	North Fork Little Beaver	3	3	3	18	3		3					1	1		1		36
9	Brady's Run	3	3	3	3				3				1	1		1		18
10	Four Mile Run			3			3						1	1				8
11	Brush/Connoquenessing Creeks	3	3	3	3				3		24		1	2				42
12	Big Sewickley Creek	3		3	3		3						1		2	1		16

Based on this analysis, the Plan determined that the conservation greenway corridors should be prioritized in three tiers. Corridors with large numbers of exceptional and high value resources attained the highest scores, and therefore, actions should be taken to preserve them before corridors with fewer resources. Under this prioritization ranking, those corridors with a score exceeding 25 points are top priority, while those having a score from 16 to 25 are in the second tier. The third tier consists of conservation corridors that have a score of 15 or less.

Table 3.3. Conservation Corridors by Priority

Conservation Corridor		Total	Priority
11	Brush/Connoquenessing Creeks	42	1
8	North Fork Little Beaver	36	1
3	Traverse/Little Traverse Creeks	33	1
5	Raccoon Creek	26	1
1	Ohio River	23	2
4	Service Creek	18	2
9	Brady's Run	18	2
12	Big Sewickley Creek	16	2
2	Beaver River	15	3
6	Lower Mill Creek	11	3
7	Little Beaver Creek	9	3
10	Four Mile Run	8	3

This prioritization is put forward as a guide for the County to help direct its efforts towards establishing greenways. It can help the County identify places where it may want to invest in conservation land or where it may focus discussions with municipal officials on adopting conservation zoning and other tools. However, if opportunities for conservation arise in corridors not listed as highest priority, the County should not hesitate to seize them. While the plan can assess resource value, it cannot predict other variables such as where land may become available or when landowners may wish to establish conservation easements. Therefore, prioritization is just one tool in the overall plan.

RECREATION & TRANSPORTATION GREENWAYS

2) Recreation & Transportation Greenways and Trails

The system of recreation and transportation greenways and trails was established as a network of hubs and spokes. First, a comprehensive list of all “destination points” in the County was developed through discussion with the Beaver County Greenways and Trails Study Committee, interviews with key persons, and comments from participants at the public meetings.

Hubs

The next step involved narrowing this list to a subset of places that function as regional destination points or “hubs”. Hubs are the regional recreation centers, such as State Parks, State game lands, County Parks, and County conservation lands. They are also the County’s population centers. In selecting municipalities that qualified as hubs, the analysis focused more on population density than overall population. Linking areas of concentrated population means that the network has the potential to serve the greatest number of County residents. Municipal hubs were also expected to provide a concentration of amenities that serve trail users, such as restaurants, lodgings, parks, points of interest, and “Main Street” retail. In short, the hubs are the anchors of the recreational greenways.

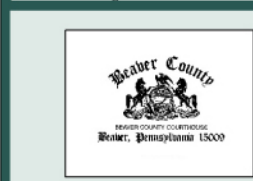
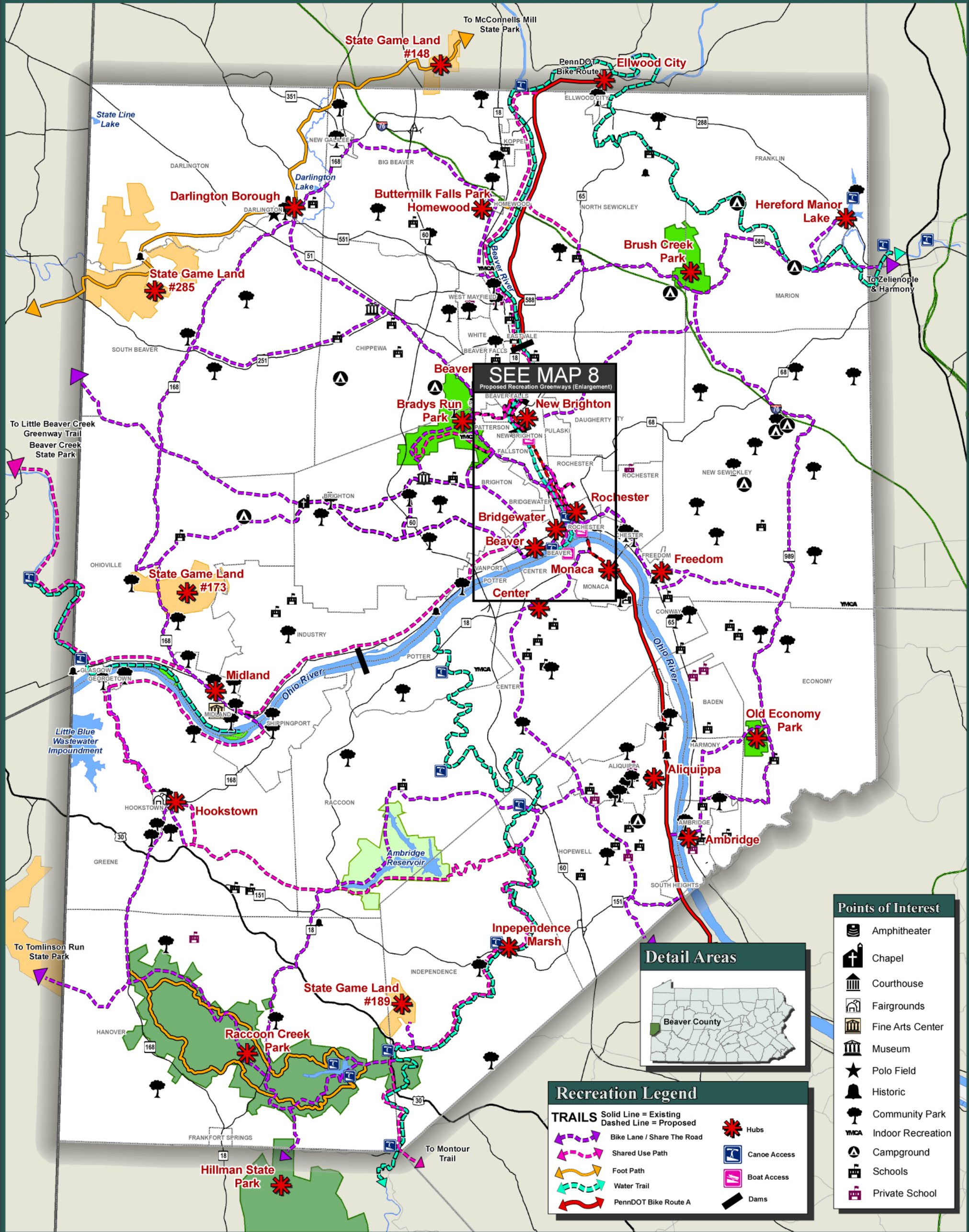
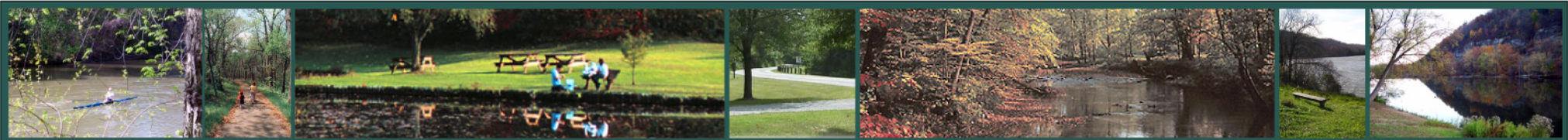
By applying the criteria above, the following hubs were designated in Beaver County:

Recreation Hubs

- Raccoon Creek State Park
- State Game Lands 173, 189, 285 and 148 (straddling Beaver & Lawrence Counties)
- Hereford Manor Lake
- Bradys Run County Park
- Brush Creek County Park
- Old Economy County Park
- Buttermilk Falls County Park
- Beaver County Conservation District Environmental Education Center

Municipal Hubs

- City of Aliquippa
- Ambridge Borough
- Beaver Borough
- City of Beaver Falls
- Bridgewater Borough
- Center Township
- Darlington Borough
- Freedom Borough
- Homewood Borough
- Hookstown Borough
- Midland Borough
- Monaca Borough
- New Brighton Borough
- Rochester Borough



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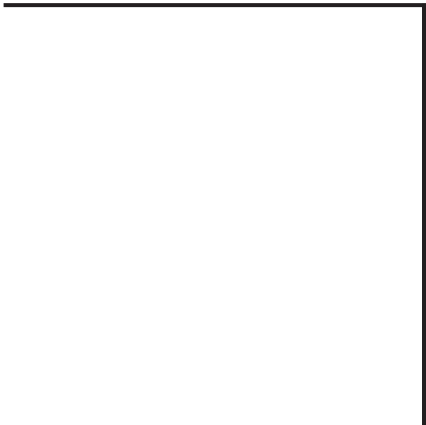
County Boundary	PennDOT Roads	State Park
Municipality	Interstate	County Park
Lake/Reservoir	US Highway	Reservoir
River/Stream	State Route	Game Land

Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County
 Western Pennsylvania Conservancy

Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

Scale: 0 to 2 Miles





In addition, because greenways and trails do not terminate at County borders, a few key hubs and trail connections were identified in adjacent Counties:

- Beaver Creek Greenway & Trail (Columbiana County, Ohio)
- Beaver Creek State Park (Columbiana County, Ohio)
- McConnell's Mill State Park (Lawrence County)
- Montour Trail (Allegheny County)
- Ellwood City (Lawrence County)
- Hillman State Park (Washington County)
- Tomlinson Run State Park (West Virginia)
- Zelenople & Harmony (Butler County)

Spokes

Once the hubs were identified, the “spokes” or trail connections between them were devised using one or more of the following cultural or natural features:

- Existing or planned walking, biking, or multi-use trails
- Abandoned rail or trolley lines
- Abandoned roadways
- Former canal routes
- Stream & river valleys
- Road corridors
- Streams and rivers suitable for water trail connections

Off-road shared use paths were proposed where feasible. However, bike lanes on existing roadways or share-the-road opportunities were also included in the network to create trail linkages through urban areas or through townships where long stretches of grade separated trails were not practicable.

Finally, points of interest were identified. In general, points of interest include historic sites, cultural sites, community parks, schools and colleges, camping areas, and other destination points identified through the public participation process. These facilities were plotted over the network of hubs and spokes. Those that fell within a hub or within one-half mile of a hub or a recreational trail corridor were designated as points of interest. The resulting recreation corridor network is depicted in Map 7 - Proposed Recreation Greenways.

The proposed network of recreation and transportation corridors includes the trails described below. Because

this is a County-wide plan, trail routes are described in general terms. The next step toward trail development will require detailed trail feasibility studies that would assess precise alignments, property ownership, obstacles and recommended solutions, and estimated costs. For purposes of this discussion, “existing” means the facility has previously been developed for the intended use; “planned” means the facility has been recommended in a previous planning effort; and “proposed” means this facility is a recommendation of this plan.

Segment numbers correspond to the numbers indicated on Map 7A - Shared Use Paths & Hiking Trails.

Shared-Use Paths

- 1 - The Raccoon and Service Creeks Trail (#A, proposed) - length 35 miles:** This would be an extensive shared use path through primarily undeveloped woodlands and farmlands. To accommodate multiple uses, the plan recommends that this trail be dual tread, consisting of a crushed limestone path for pedestrians and bikers, with a parallel dirt track for equestrians.

The trail would begin near Route 30, in Greene Township, just south of Hookstown and proceed east through the corridor formed by Upper Service Creek, the lower portion of the Ambridge Reservoir property and Service Creek, to its junction with Raccoon Creek. The trail would then follow the creek southwest through Hopewell and Independence Townships. It would pass within one half mile of the Beaver County Conservation District Environmental Education Center, Independence Township Park, and Independence Elementary School before reaching Raccoon Creek State Park. At this point the trail would leave the stream corridor to avoid conflicts with the State Park Wildflower Reserve. It may be possible to create a shared-use path in the park along the opposite side of Route 30 and rejoin Raccoon Creek corridor just south of the park. From there, the trail would continue to the confluence of Potato Garden Run where it would turn southeast through Findlay Township, in Allegheny County, to connect to the Montour Trail. This connection was proposed in the Findlay Township Comprehensive Parks, Recreation, and Open Space Plan.

This proposed shared use path could be a major destination point in Beaver County drawing recreational users from a wide geographical area. As proposed, it would include nearly 24 miles of grade separated trail in Beaver County with minimal road crossings. Connecting Raccoon Creek State Park, already a significant recreational destination in the Region, to the Montour Trail has the potential to bring tourists from as far away as Washington D.C. into Beaver County. Users of the shared use path would have access to an excellent trail network, camping facilities, as well as boating, fishing, and swimming opportunities in the park.

Moreover, this shared use path forms part of a 35-mile loop in the County by using proposed road connections along Route 30 to Hookstown, Route 168 to the western edge of Raccoon Creek State Park, and park roads through the State park back to Raccoon Creek. Alternatively, a shorter loop of 24 miles can be made by cutting across Route 18 from the shared-use path to Raccoon Creek State Park. In addition, a connection from the trail in Raccoon Creek State Park to Hillman State Park, in Washington County, is proposed using Cain Road and a short stretch of new trail crossing Wingfield Run.

2 - The Georgetown Rail Trail (#B, proposed)

- **length 8.5 miles:** In their multi-municipal comprehensive plan, Greene, Raccoon, Independence, and Potter Townships proposed developing this corridor as a recreational shared use trail. It would follow the corridor of the former Cumberland and Chester Railroad that extended from West Virginia to Shippingport.

The proposed network includes only that stretch between Georgetown and Shippingport Boroughs because the rail corridor in West Virginia continues to be an active line.

The trail would be a shared use path suitable for pedestrians and bicycles. From Georgetown, the trail would leave the railroad right-of-way and proceed south along Mill Creek to connect to the Raccoon and Service Creeks trail at Hookstown. Altogether, this shared use path would encompass more than 8.5 miles. Several points of interest

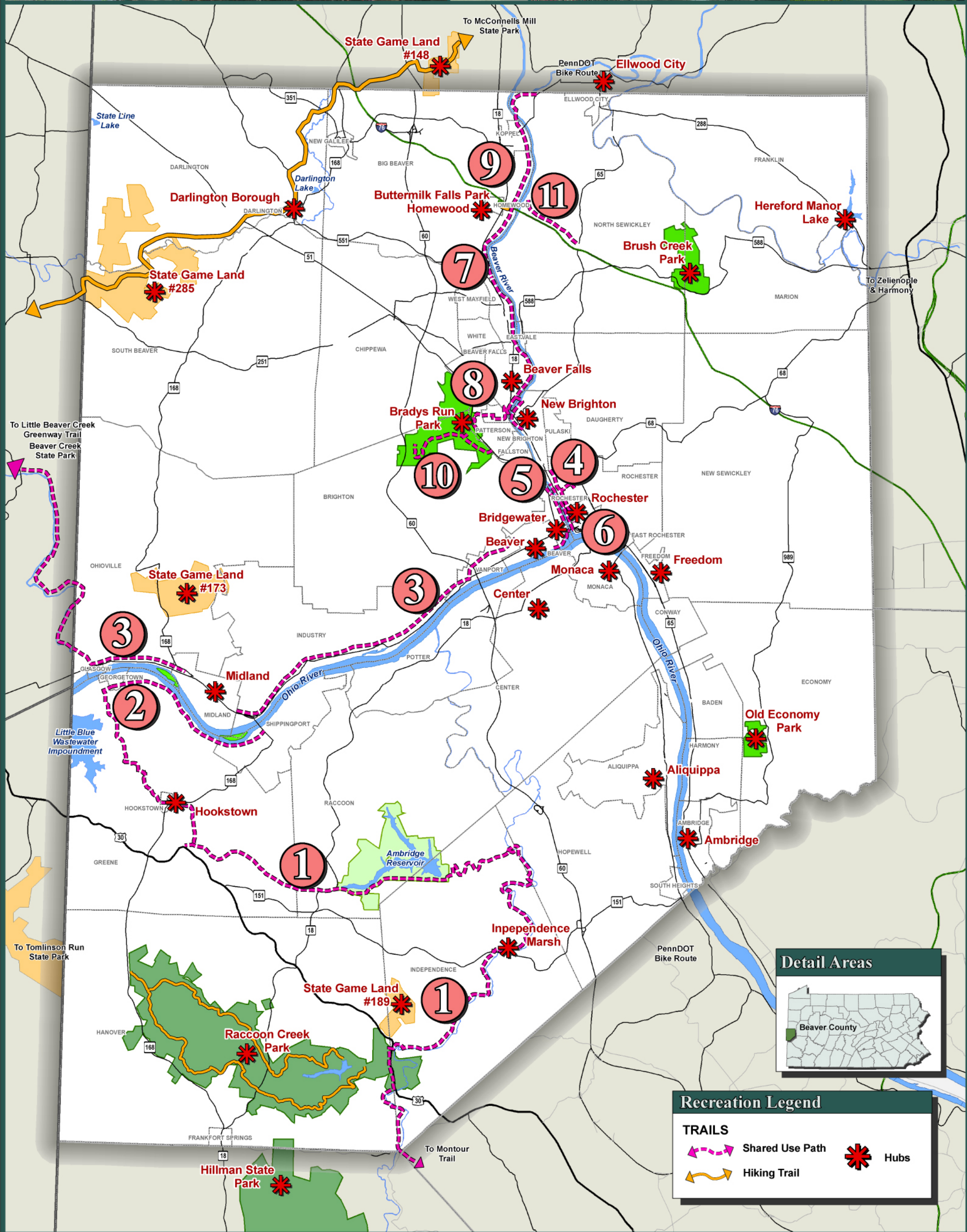
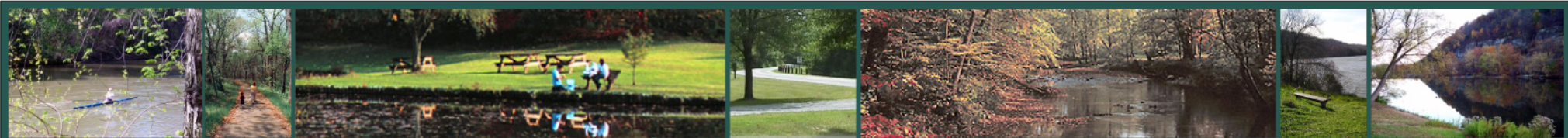
along the way include Georgetown Borough Marina, Greene Township Community Park, and Shippingport Community Park. Because this trail would pass close to the Shippingport power plant, facilities security concerns must be taken into account.

3. The Beaver to Ohio Trail (#C, proposed) -

length 11.5 miles: This 11.5-mile trail would follow the bed of the former Beaver Valley Electric line which is still visible above Route 68 in many areas from Beaver Borough through Vanport, Industry and Midland to the Ohio border. Portions of the trail, such as the stretch through Midland Borough, would have to use public streets since the trolley bed is no longer visible. Before reaching the Ohio border, the trail would turn northwest along the Little Beaver Creek and link to Beaver Creek State Park and the Little Beaver Creek Greenway Trail in Ohio, a segment of the Great Ohio Lake-to-River Greenway. The trail would follow the abandoned rail bed of the Smith's Ferry Branch, from Glasgow in Beaver County, for more than 8.5 miles to Beaver Creek State Park and on to Negley, Ohio along the left bank of Little Beaver Creek.

While this trail presents another opportunity to create an economic catalyst for Beaver County, it is not without challenges. Operation of the trolley line was discontinued long ago and the right-of-way has reverted to private ownership. Therefore, establishing a trail would require negotiations with numerous private landowners. A bridge that previously crossed Four Mile Run has been dismantled. Moreover, efforts to extend Ohio's Little Beaver Creek Greenway trail south toward Beaver County have been hampered by the purchase of a significant stretch of the Smith's Ferry Branch right-of-way by an uncooperative landowner. While negotiations with the landowner continue, the group there is looking at alternatives including the former Sandy Creek Canal bed. Several locks from the canal are still visible in Ohioville Borough on the right bank of Little Beaver Creek.

Despite these hurdles, this greenway plan includes the trail in the proposed network because of its significant potential to connect the heart of Beaver



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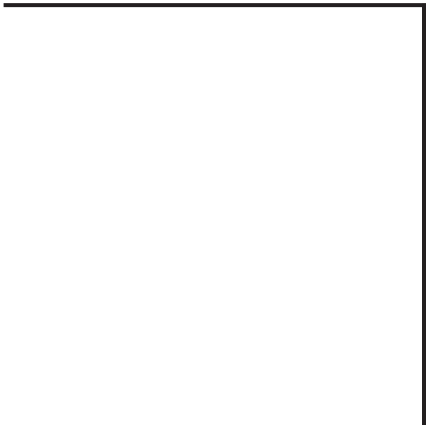
LEGEND	County Boundary	PennDOT Roads	State Park
	Municipality	Interstate	County Park
	Lake/Reservoir	US Highway	Reservoir
	River/Stream	State Route	Game Land

Map Sources:
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 PASDA (Pennsylvania Spatial Data Access)
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Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

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County with a major regional greenway and trail system in Ohio. In addition, the proposed trail would pass by several points of interest including the Beaver County Courthouse in Beaver, Beaver Middle and Senior High Schools, the historic Lock #6 in Industry, the Lincoln Park Center for the Performing Arts in Midland, and the Lock 54 Park in Ohioville Borough.

- 4. The Confluence Connector (#D, planned & proposed) - length 1.5 miles:** This trail would link the municipalities on either side of the Beaver River at its confluence with the Ohio River. While primarily a shared use path, it would require a few detours onto public streets.

The trail would begin in Beaver Borough in the area now proposed as a riverfront park. The trail would pass beneath the railroad bridge to the open area at the confluence of the Ohio and Beaver Rivers that is proposed for redevelopment as Bridgewater Crossing. It would then have to cross the active rail line at a gated, signalized crossing onto Wolfe Lane in Bridgewater. A spur through the Wolfe Lane Connector trail (existing) would take the trail back into Beaver Borough.

In Bridgewater, the trail would proceed past the marina on Market Street to Bridge Street. Trail users wishing to connect to Rochester could use the existing pedestrian lanes on either side to the Rochester Bridge. Alternatively, they could continue through Bridgewater's Riverfront Park and along Riverside Drive all the way to the planned Veteran's Memorial Bridge in Fallston. The segment through the park and connecting to the bridge is currently in the planning phase. At the Veterans Memorial Bridge, trail users could cross over the Beaver River, to Rochester Township, to connect to other trails and the Beaver County YMCA. Alternatively, they could use Route 51 North and proceed to Bradys Run Park.

Completion of this connector is a high priority for the Greenways and Trails Plan Study Committee. When asked to designate their three highest priorities for the County, Committee members gave this trail the most votes. While comprising only slightly more than 1.5 miles of shared use

path, it would link several population centers, as well as important recreational and cultural assets including Fort McIntosh, the Beaver Area Historical Museum, the Beaver & Bridgewater Historic Districts, the Beaver County YMCA, and the planned Bridgewater Crossing development.

- 5. Rochester to Beaver Falls Connector (#E, proposed) - length 2.5 miles:** This trail would also incorporate some shared use and some share the road components. A shared use path would follow a segment of inactive railway that runs nearly 1.5 miles, from Rochester to New Brighton, above and parallel to Route 65. In Rochester, the remains of this right-of-way begin along Junction Road, close to the Frontier Falls miniature golf park. It passes by a quarry and through a wooded stretch of land above and behind the Beaver County YMCA. The plan recommends that a connection should be constructed down the embankment to provide access from the trail to the YMCA and to the Veterans Memorial Bridge. A signalized crossing at Route 65 is planned that would provide safe pedestrian and bicycle access to the bridge.

The Rochester to Beaver Falls Connector would continue past the YMCA on the inactive railbed into New Brighton where it terminates at 5th Avenue. At this point, the trail would take 3rd Avenue to Route 65, where it would cross the highway at a newly signalized intersection, and proceed along 19th Street to 2nd Avenue. The trail would follow 2nd Avenue, with a connection to New Brighton's Fishing Park, just below the Townsend Dam. It would then proceed along 2nd Avenue and through the tunnel underpass at 11th Street into Big Rock Park.

After passing through Big Rock Park, the trail would become a shared use path again, following the remnants of the old Beaver River Canal, adjacent to the Beaver River for nearly one mile. The canal bed is wide in most locations although it narrows substantially as it approaches the former location of the Tenth Street Bridge. The plan recommends that the trail gradually ascend the embankment to the level of the railroad right-of-way and then cross the Beaver River to Beaver Falls on a pedestrian/bicycle bridge that would be

constructed using the remaining piers from the Tenth Street Bridge. The new bridge would create a valuable connection to the Beaver River Rail Trail that originates in Beaver Falls. It would also provide scenic vistas over the Beaver River and the municipalities of New Brighton and Beaver Falls.

6. **Spur to Rochester Riverfront Park (#F1, proposed) - length 1.18 miles:** The plan also proposes that a ramp be constructed, from the bicycle and pedestrian lane on the Veterans Memorial Bridge, to a new shared use path along the eastern bank of the Beaver River. This trail would follow the riverbank south for slightly more than 1 mile, providing an important trail link to Rochester Riverfront Park. Presently, the Park is only accessible by car due to barriers created by the topography, highways, and active rail lines.

The Rochester to Beaver Falls Connector would connect three of the top five most densely populated municipalities in Beaver County: Rochester (1), New Brighton (2) and Beaver Falls (5). It would also link important recreational amenities such as the Beaver County YMCA, Rochester Riverfront Park, Big Rock Park, New Brighton's Fishing Park, and the Beaver River Rail Trail (see below). An added advantage of the trail would be that it passes within one half mile or less of all Rochester and New Brighton Area Schools.

7. **The Beaver River Rail Trail (#G, planned & existing) - length 9.7 miles:** The Beaver River Rail Trail has been in the planning stages since 1998. Phase I of the trail, completed in 2005, follows an old Pittsburgh & Lake Erie rail spur from 11th to 23rd Streets in Beaver Falls. The trail is approximately 4,840 feet in length and provides recreational access to residents in the adjacent neighborhood. Phase II will take the trail north from approximately 28th Street across property owned by Geneva College. This phase would extend the trail for an additional 3,871 feet. Future phases are proposed that would take the trail approximately 8 miles further north parallel to the Beaver River into Lawrence County. This Greenways and Trails Plan proposes that the trail cross the Beaver River using an abandoned rail bridge above Koppel Borough. This bridge is currently owned by Big Beaver Borough. Access from the trail to the bridge will present challenges

since the trail would have to cross active rail lines.

8. **Spur to Bradys Run (#G1, proposed) - length 2.17 miles:** A proposed connection from the Beaver River Rail Trail to Bradys Run Park has been incorporated into the plan. This connection, suggested by the Beaver River Rail-to-Trails Association, would take trail users up and over Patterson Heights using a combination of approximately 2 miles of public streets and abandoned roadways. From the 11th Street terminus of the Rail Trail, cyclists would use a combination of city streets to cross over Route 18 and under the existing rail line to Bridge Street. From Bridge Street, the trail would use Hillside Avenue, an abandoned road that gradually climbs from Beaver Falls to Patterson Heights. The trail would then cross through Patterson Heights, using public streets, and descend to Bradys Run Park using another abandoned right-of-way that originates behind the condominiums at the end of 5th Street. It would cross Route 51 at the main park entrance where trail users could pick up the Bradys Run Loop Trail (see below).

9. **Pedestrian Connection to Buttermilk Falls (#G2, proposed) - length 0.25 miles:** Another spur from the Beaver River Rail Trail would connect the trail with Buttermilk Falls County Park via a steep pedestrian trail that would parallel Clark Run. The trail would be constructed along a former roadbed that was once used to connect the quarry to the river below.

The Beaver River Rail Trail, once completed, will provide access to several points of interest including the Carnegie Free Library of Beaver Falls, the Beaver Falls Historical Society Museum, Buttermilk Falls County Park, Geneva College, and several nearby public schools.

10. **Bradys Run Loop Trail (#H, proposed) - length 8 miles:** This trail would create an eight-mile recreational loop within Bradys Run Park suitable for walkers, runners, cyclists, and cross-country skiers. The loop

would incorporate both a shared use path, as well as existing park roads. The trail would begin near the intersection of Route 51 and Wildwood Road using an abandoned park road. It would follow this road behind the ice rink and the horse rink west toward the Lake. The trail would then turn south on the hillside above the lake and continue to the junction of Bradys Run Road. Turning north, it would follow the road briefly and then branch off using an existing gravel road as a shared use path along the western shore of the lake. At the beach area, the plan would propose extending this shared use path past the lodge to join the existing walking and bike path in the park. The loop would be completed by rejoining the park's road system near the horse rink.

This loop trail has the potential of becoming a significant recreational destination in Beaver County. It would provide eight miles of nearly continuous off-road trail within easy access of many of Beaver County's population centers. Connections from Beaver, Bridgewater, and Rochester would be made using the Confluence Connector Trail (described above) to Route 51. Trail users from Beaver Falls, Patterson, and Patterson Heights could access the loop via the spur from the Beaver River Rail Trail (described above). In addition, the plan proposes that the loop be connected to the Brighton Township bike lanes via Park Road and Wildwood Road.

- 11. Thompson's Run Rail Trail (proposed)**
- **length 1.6 miles:** The Beaver County Greenways and Trails network would incorporate a shared use path along an abandoned railroad right-of-way paralleling Thompson's Run in North Sewickley. This 1.6-mile trail would begin at a quarry just west of Route 65 and descend towards Belton Road, which forms part of State Bike Route A. This shared use path would form part of a link between State Bike Route A and Brush Creek State Park.

Hiking / Pedestrian Trails

The Beaver County Greenways and Trails Plan also incorporates several existing, planned, and proposed walking trails. They are:

- Raccoon Creek State Park's network of hiking trails (existing)
- The North Country Trail connecting State Game Land 285, Darlington Borough, State Game Land 148 and McConnells Mill State Park (part existing, part planned)
- Walking trail from Beaver River Rail Trail to Buttermilk Falls County Park (proposed)
- Pedestrian connection from Rochester Township along an inactive railroad spur down to the Rochester to Beaver Falls Connector, providing pedestrian access to the trail and the Beaver County YMCA (proposed)

Water Trails

Finally, the Beaver County Greenways and Trails network proposes the development of several water trails or "blueways." Water trails are recreational corridors that travel between specific points on water bodies such as streams and rivers. They generally have two or more access points spaced no more than ten miles apart.

Water trails are officially designated by the PA Fish & Boat Commission (www.fish.state.pa.us/watertrails). Once designated, they become part of the Pennsylvania Water Trails System. Designated trails receive mapping assistance, have access to the Pennsylvania Water Trails logo, and are listed in the Paddle PA publication.

The water trails included in the proposed Beaver County Greenways and Trails network are shown on Map 7B - Water Trails. Segment numbers correspond to the numbers indicated on the map.

- 1. Raccoon Creek Water Trail (existing) - length 27.9 miles:** This canoeing/kayaking trail was developed by a group of canoeing enthusiasts, called "Canoe Raccoon Creek," in cooperation with the Beaver County Conservation District. The trail begins at the first put-in point in Murdocksville, at the Washington County border, and extends for more than 24 miles to the confluence of the creek with the Ohio River. Four other access points have been established: at Route 30 adjacent to Raccoon Creek State Park;

Route 151 near the Beaver County Conservation District Environmental Education Center; Green Garden Road across from Green Garden Plaza; and Raccoon Creek Road south of Route 18. This water trail is seasonal since water levels are only high enough for canoes/kayaks in Spring and early Summer. This trail is not an officially designated State water trail.

2. **Little Beaver Creek and Ohio River Water Trail (proposed) - length 9 miles:** This nearly 9-mile long water trail would begin on Little Beaver Creek, in Ohio, at a put-in point at Grimm's Bridge. The trail would follow the creek downstream to the planned Lock 57 Park in Ohioville Borough where boat access will be developed. From the Park, the trail will continue to the Ohio River and follow the river upstream to the Ohio River Islands National Wildlife Refuge. In Pennsylvania, the refuge includes two protected islands, Phillis and Georgetown Islands. These islands are undeveloped and support a variety of bird life. From there, paddlers would have to return to one of the two access points at Lock 57 Park or Grimm's Bridge. Like Raccoon Creek, Little Beaver Creek is only canoeable in the Spring and early Summer.
3. **Connoquenessing Creek Water Trail (proposed) - length 18 miles:** This scenic creek, crossing the northeast corner of the County, presents another opportunity for an 18-mile seasonal water trail. Access to the creek is being planned in Harmony, Butler County. Boats can also be put in at the former Rock Point Park, in Lawrence County, where the creek empties into the Beaver River. The Wild Waterways Conservancy recently purchased the land at the confluence of the Connoquenessing Creek and Beaver River. There are currently no public access points along Connoquenessing Creek in Beaver County. A feasibility study should be conducted to determine if there are possible locations that could be developed as additional access sites.
4. **Beaver River Water Trail (proposed) - length 13 miles:** This water trail would extend the entire length of the Beaver River in the County stretching 13 miles from Lawrence County to the Ohio River. Trail users could put into the river, at one of three access points, just north of the County border.

The upper stretch of the river between Lawrence

County and Beaver Falls is remote and scenic, surrounded by steep, forested riverbanks. There are currently no public access points on this segment of the river. The central portion of the river trail would pass through old rivertowns, and trail users would be required to portage their boats around three dams at Eastvale, Beaver Falls, and New Brighton.

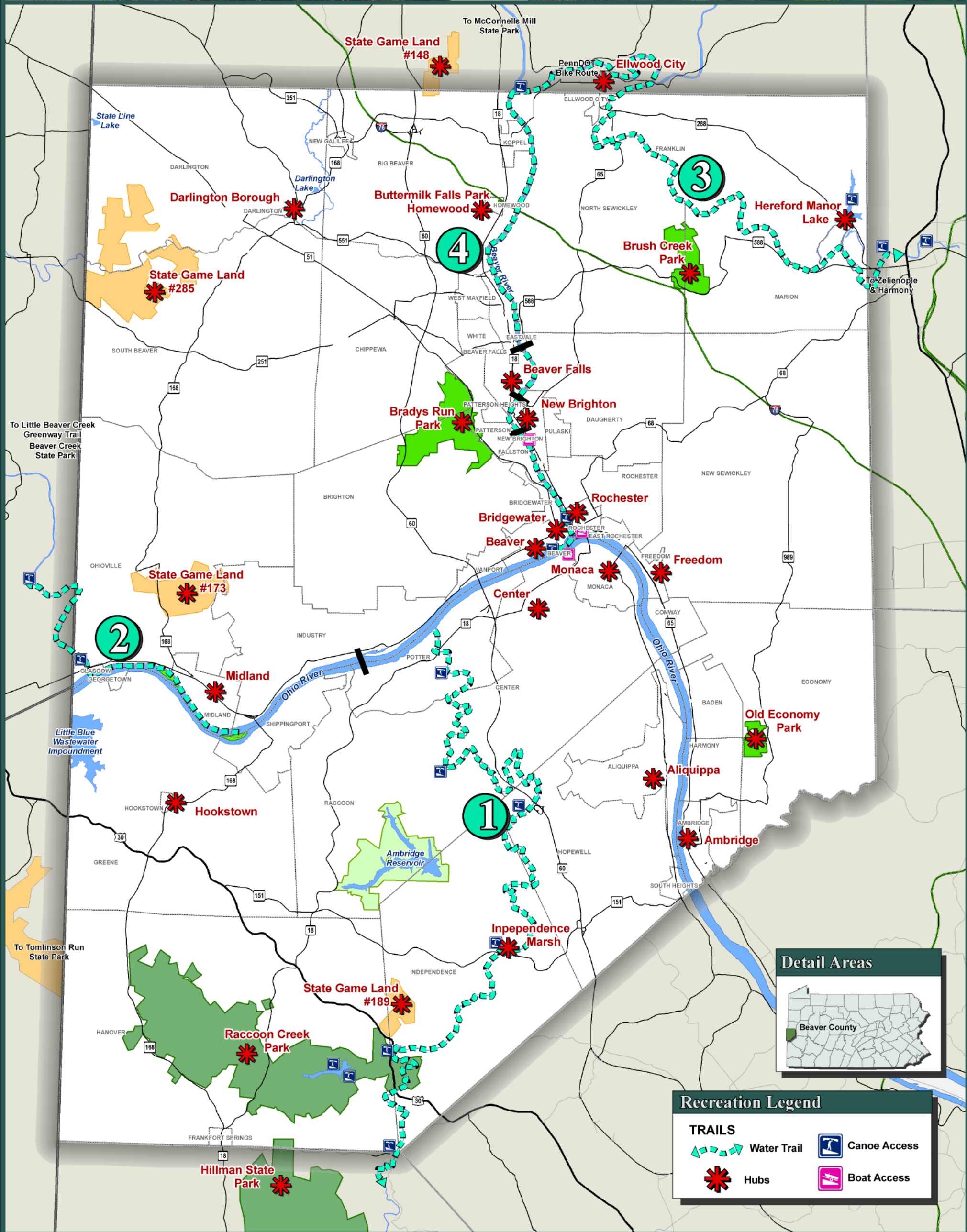
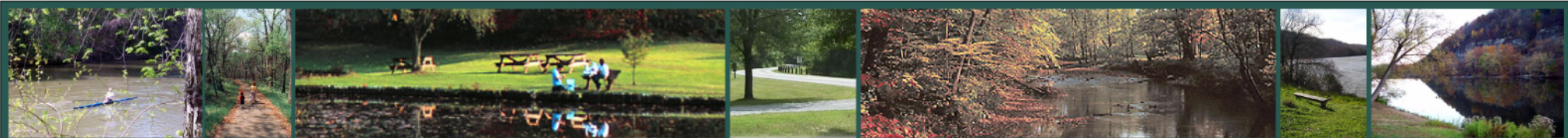
A feasibility study is needed to determine where appropriate access and portage locations should be situated. In New Brighton, access to the water trail would be via the boat ramp, at the recently completed Fishing Park, just below the Townsend Dam.

The lower stretch of the trail would continue downstream, past Rochester Township to Rochester Riverfront Park, where another boat access ramp exists and the Beaver County Rowing Association maintains its boathouse. From Rochester, the trail would continue to Bridgewater Crossing, where a boat dock will permit boaters to embark and disembark, and to the planned Beaver Riverfront Park, where a boat ramp has been incorporated in the design.

In addition, boaters could put in at the Monaca boat launch across the Ohio River. This is the only proposed water trail in the Plan that could be used in its entirety year round.

The Pennsylvania Environmental Council is conducting a River Conservation Study for the Beaver River in both Beaver and Lawrence Counties.

The Pennsylvania Fish and Boat Commission's Boating Facility Program can provide funding for the planning, acquisition, development, expansion, and rehabilitation of public boating facilities located on the waters of the Commonwealth. As Beaver County begins implementing water trails in the County, we recommend the County apply for funding assistance from this program. For more information visit the Pennsylvania Fish and Boat Commission website at www.fish.state.pa.us.



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	County Boundary		Interstate		State Park
	Municipality		US Highway		County Park
	Lake/Reservoir		State Route		Reservoir
	River/Stream		Dams		Game Land

Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County
 Western Pennsylvania Conservancy

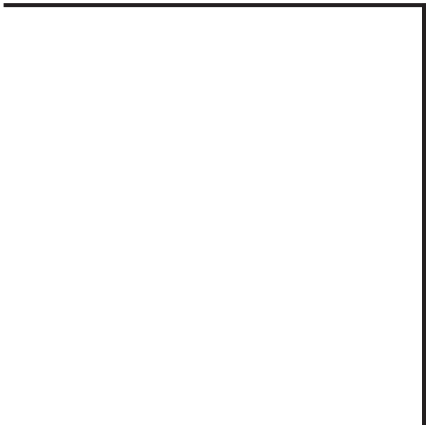
Projection: State Plane - NAD 1983
 Pennsylvania South, Feet



Map 7B - Water Trails

Beaver County
 Greenways & Trails





Bike Lanes/Share the Road

Because Beaver County has many miles of scenic roads, the Greenways and Trails Plan proposes connecting many of the system's hubs, using 181 miles of public rights-of-way, either as designated bike lanes or share-the-road bike routes. These routes function as both transportation corridors, connecting communities and resources with each other, and they provide on-road bicycling recreation opportunities.

Designated bike lanes require that a portion of the road be set aside and marked for exclusive use by cyclists. They are appropriate where the right-of-way is wide enough to accommodate lanes for both vehicular and bike traffic or where heavy traffic makes separation of lanes advisable. Share-the-road bike routes can be used where roads are narrower or where traffic patterns are such that bicycles and motor vehicles can share the right-of-way safely. Signage alerts drivers that they must share the right-of-way with cyclists.

The following on-road corridors are proposed as recreational trail connections between the hubs (designated in bold type):

Southwest Sector of the County:

Segment numbers correspond to the numbers indicated on Map 7C - Share the Road Bike Routes - Southwest Sector.

1. Route 168 between **Hookstown** and **Raccoon Creek State Park**
2. Georgetown Road between **Hookstown** and **Georgetown** (Georgetown Rail Trail)
3. Park Road from **Raccoon Creek State Park** to Route 151 to **Beaver County Conservation District Environmental Education Center**
4. Route 151 and Independence Road from **Beaver County Conservation District Environmental Education Center** to Green Garden Road east to **Aliquippa**
5. Green Garden Road west from **Aliquippa** to Service Church Road past Ambridge Reservoir and south along Route 18 through **Raccoon Creek State Park** to **Hillman State Park** (Washington County)
6. Old Brodhead and Brodhead Roads from **Monaca** through **Center Township, Aliquippa** and

Hopewell Township to Route 151 and South Heights (State Bike Route A)

Northwest Sector

Segment numbers correspond to the numbers indicated on Map 7C - Share the Road Bike Routes - Northwest Sector.

1. Route 168 connecting **Midland, State Game Land 173** and **Darlington Borough**
2. Tuscarawas Road from **State Game Land 173** through Ohioville Borough and Brighton Township to **Beaver Borough**
3. Dutch Ridge Road from **Beaver Borough** through Brighton Township to Lisbon Road through Ohioville and on to **Beaver Creek State Park** in Ohio
4. Route 51 from **Bridgewater Borough** to **Bradys Run Park**, then on to Chippewa where the trail would use less-trafficked Darlington and Old Darlington Roads to **Darlington Borough**
5. Route 251 between Route 51 in **Chippewa** and Route 168 in **South Beaver**
6. Route 168 from **Darlington Borough** through New Galilee to Route 351, Foxwood Road and Midvale Road to **Homewood Borough**
7. Norwood Road from **Homewood Borough** to Route 18 into **Beaver Falls** connecting to the Beaver River Rail Trail in the vicinity of 39th Street.

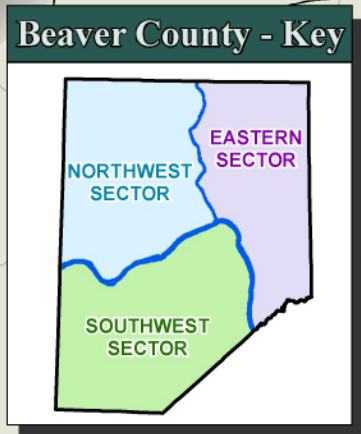
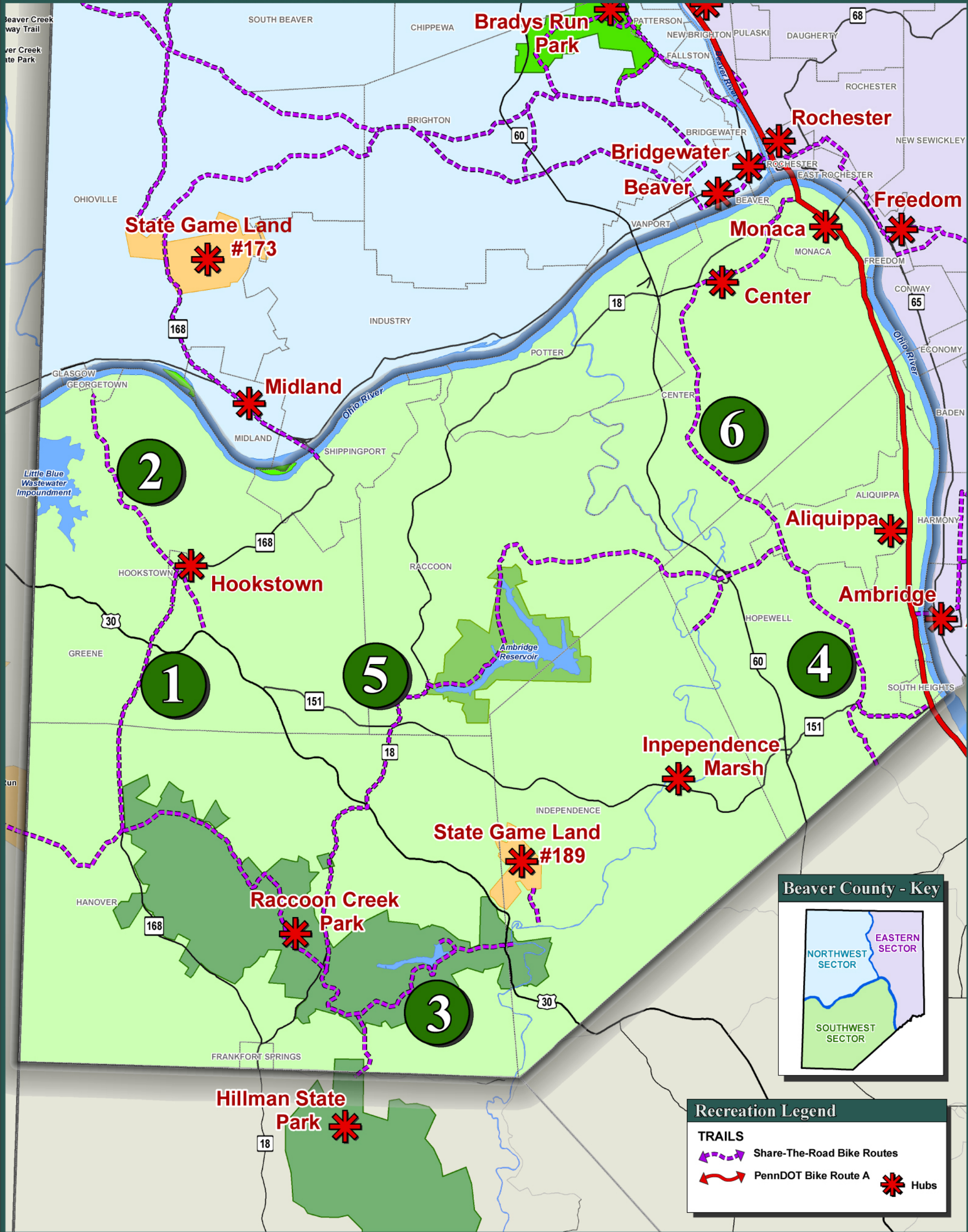
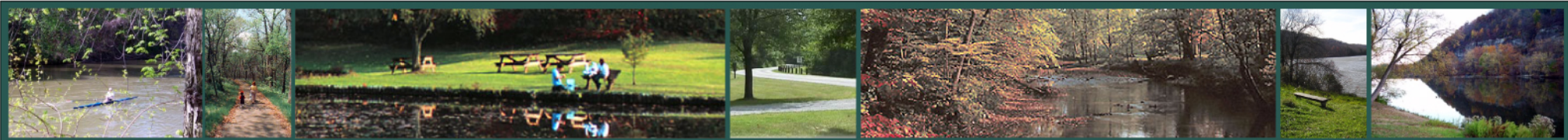
Eastern Sector

Segment numbers correspond to the numbers indicated on Map 7C - Share the Road Bike Routes - Eastern Sector.

1. From State Bike Route A in **Aliquippa**, across the Woodlawn Bridge to **Ambridge**
2. In **Ambridge**, 11th Street to Duss Avenue, then 24th Street and Ridge Road (Route 989) through Harmony and Economy Borough to **Old Economy Park**
3. Alternatively, from **Ambridge** along Duss Avenue to Legionville Hollow Road, using an abandoned entrance to the lower end of **Old Economy Park**
4. Route 989 from **Old Economy Park** through Economy Borough and New Sewickley Township to Brush Creek Road to **Brush Creek County Park**

5. From Route 989 west on Freedom Crider Road to 9th Street to **Freedom Borough**
6. From **Freedom Borough** along 4th Street to 5th Street to Maple and Adams to **Rochester Borough**
7. From **New Brighton** on Blockhouse Run Road and Wises Grove Road to Brush Creek Road to **Brush Creek County Park**
8. From State Bike Route A along Route 588 to **Brush Creek County Park** to **Zelienople** and **Harmony** in Butler County (with a spur on Route 288 to **Hereford Manor Lake**)

We recommend Beaver County institute a system by which they meet quarterly with the PennDOT representatives to ensure the County's vision for bike lanes and shared roadways are incorporated into PennDOT's plans for road improvements along State rights-of-ways in Beaver County.



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LEGEND

County Boundary	PennDOT Roads	State Park
Municipality	Interstate	County Park
Lake/Reservoir	US Highway	Reservoir
River/Stream	State Route	Game Land

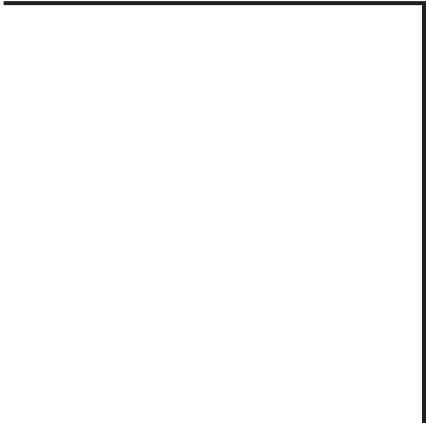
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 Western Pennsylvania Conservancy

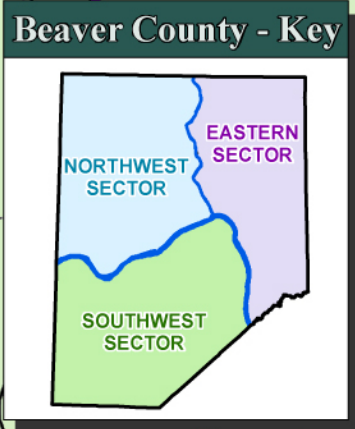
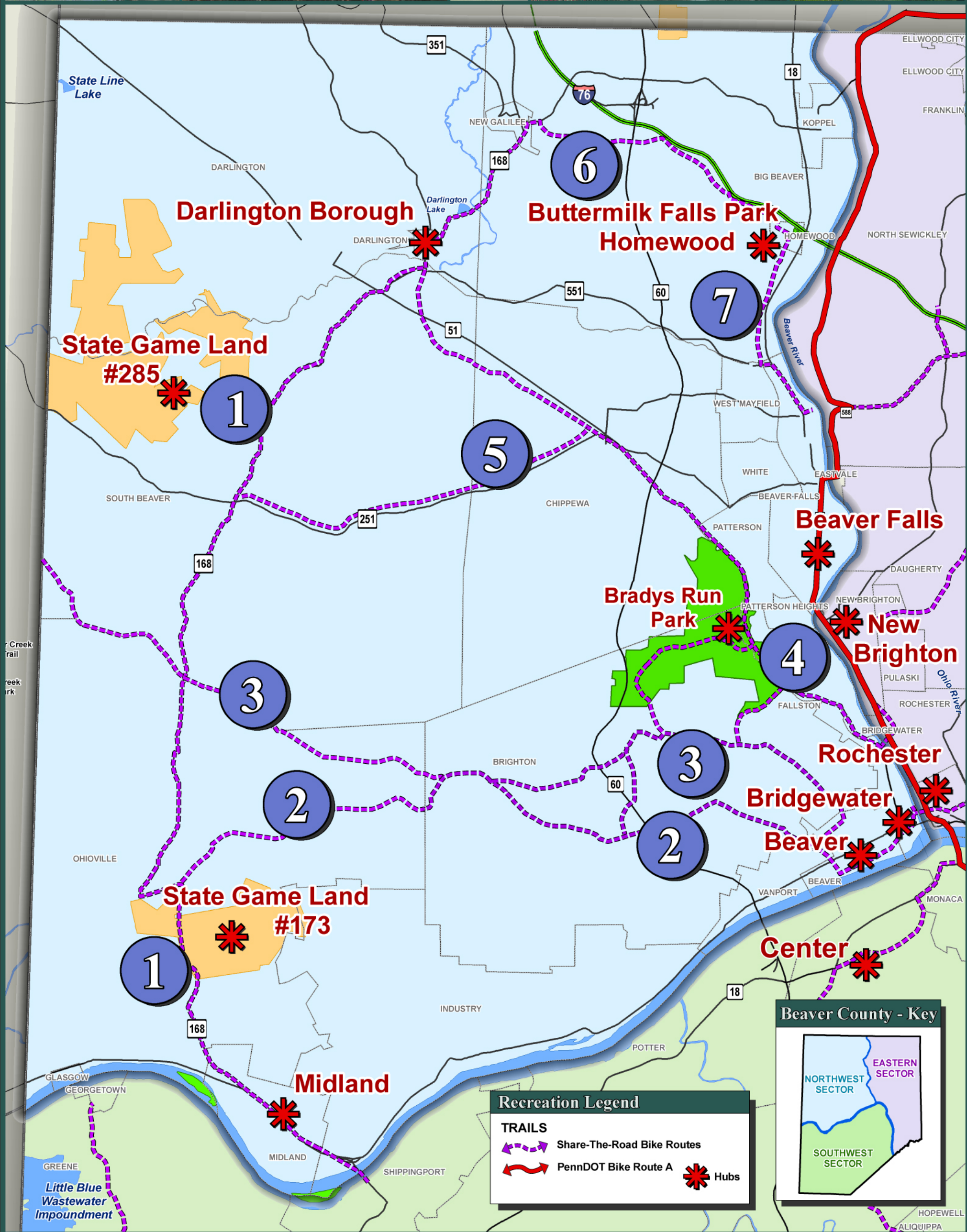
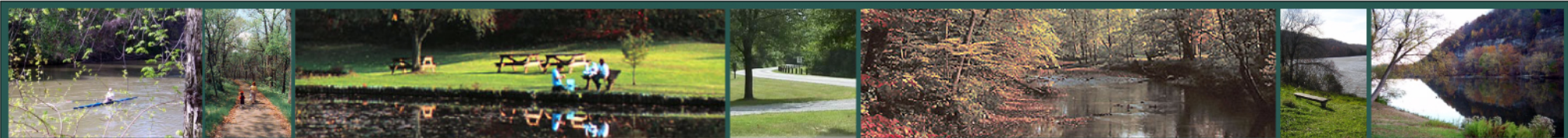
Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

Map 7C - Share-The-Road Bike Routes - Southwest Sector

Beaver County
 Greenways & Trails







Recreation Legend

TRAILS

- Share-The-Road Bike Routes (dashed purple line)
- PennDOT Bike Route A (solid red line)
- Hubs (red asterisk symbol)

LEGEND

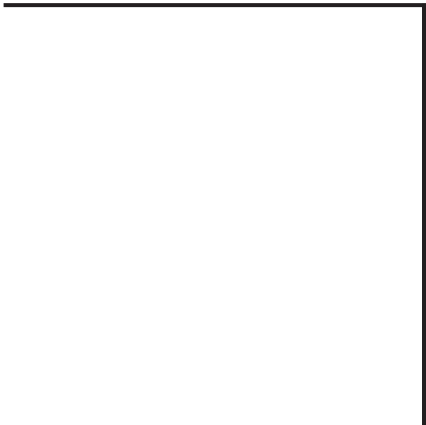
- County Boundary
- Municipality
- Lake/Reservoir
- River/Stream
- PennDOT Roads
 - Interstate
 - US Highway
 - State Route
- State Park
- County Park
- Reservoir
- Game Land

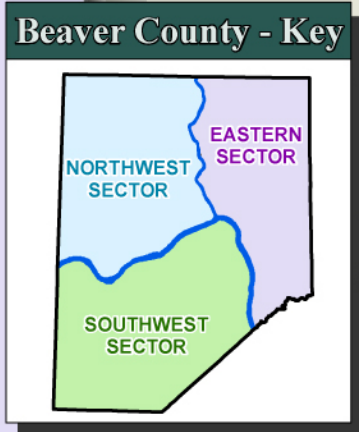
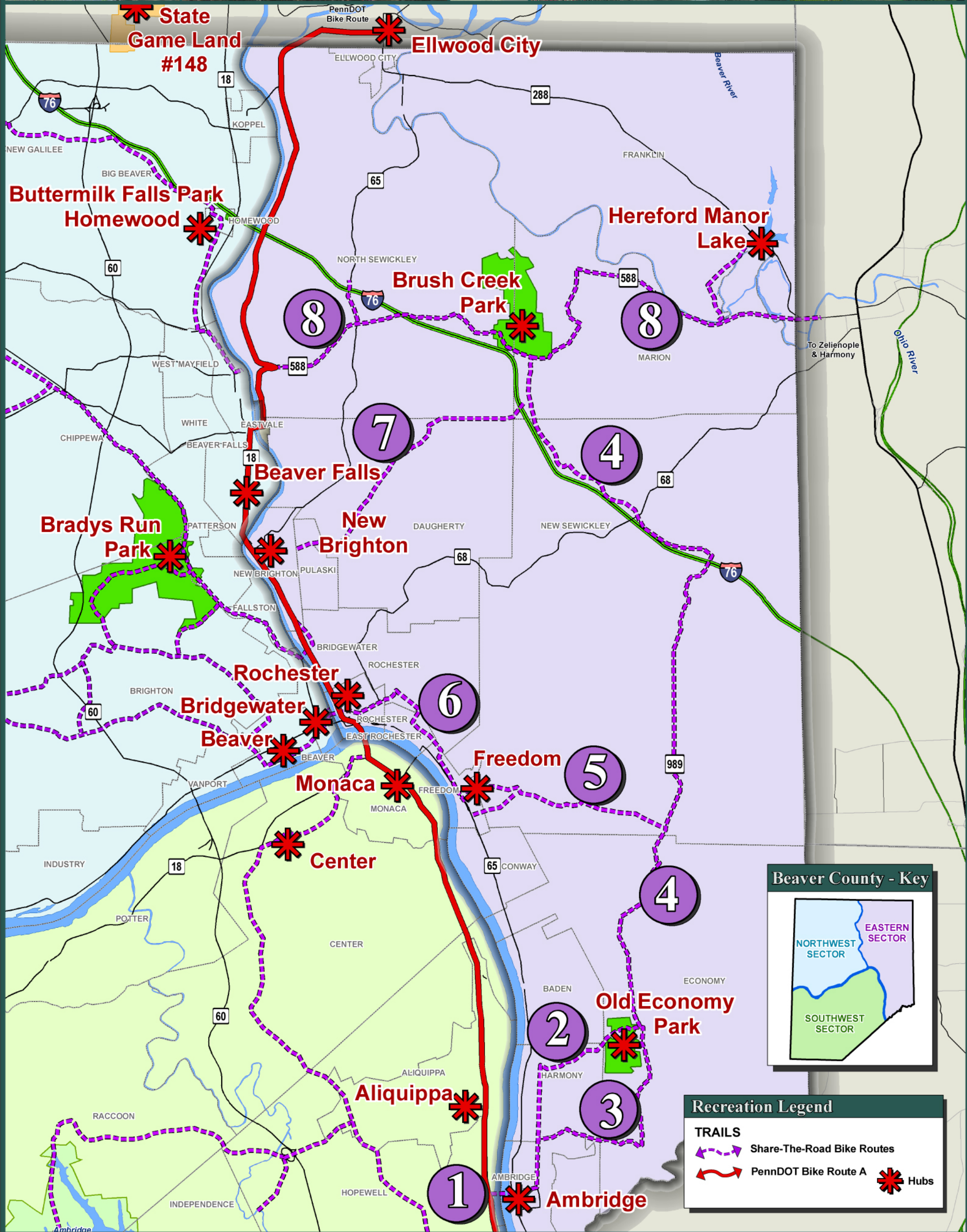
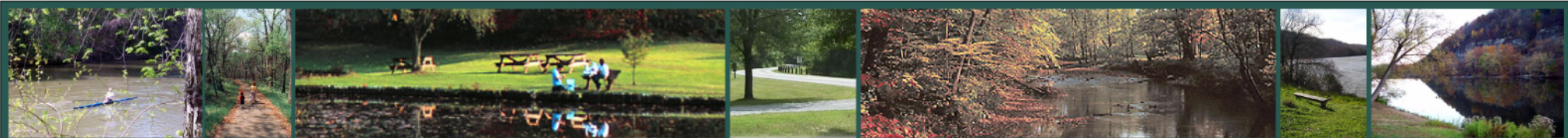
Map Sources:
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Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

Scale: 1 0.5 0 0.5 1 Miles

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Recreation Legend

TRAILS

- Share-The-Road Bike Routes (dashed purple line with arrows)
- PennDOT Bike Route A (solid red line with arrows)
- Hubs (red asterisk symbol)

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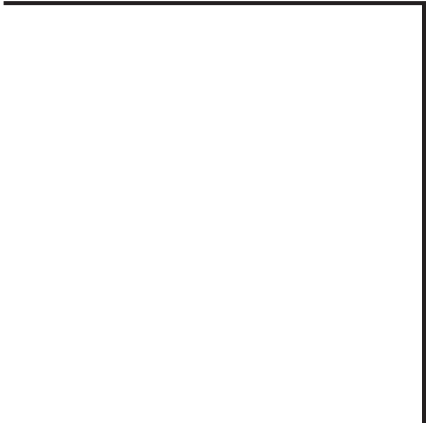
- County Boundary
- Municipality
- Lake/Reservoir
- River/Stream
- PennDOT Roads
 - Interstate
 - US Highway
 - State Route
- State Park
- County Park
- Reservoir
- Game Land

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Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

Scale: 1 0.5 0 1 Miles

PASHEK ASSOCIATES



Recreation Greenway Prioritization

The Proposed Greenways and Trails Network, incorporating both conservation and recreation/transportation corridors, is depicted in Map 9 - Proposed Greenways and Trails Network.

The Beaver County Greenways and Trails Study Committee evaluated the proposed trails to determine where County resources and efforts should be focused first. This prioritization exercise ranked the trails keeping in mind trails that meet the following factors:

1. Creates momentum for future expansion of system
2. Is destination-oriented
3. Is regional in nature
4. Serves multiple modes of transportation

As a result, the Committee recommended the following Recreation Greenway priorities:

Recreation Greenway Corridor	Priority
Confluence Connector	1
Raccoon Creek Greenway Trail	1
Raccoon Creek Water Trail	1
Beaver River Rail Trail	1
Beaver Falls to Bradys Run Trail	2
Bradys Run Park Loop Trail	2
Beaver River Water Trail	2
Rochester to Beaver Falls Connector Trail	3
Little Beaver Creek / Ohio River Water Trail	3
Rochester Riverfront Park Spur	3
Little Beaver Creek / Ohio River Water Trail	3
North Country Trail	3

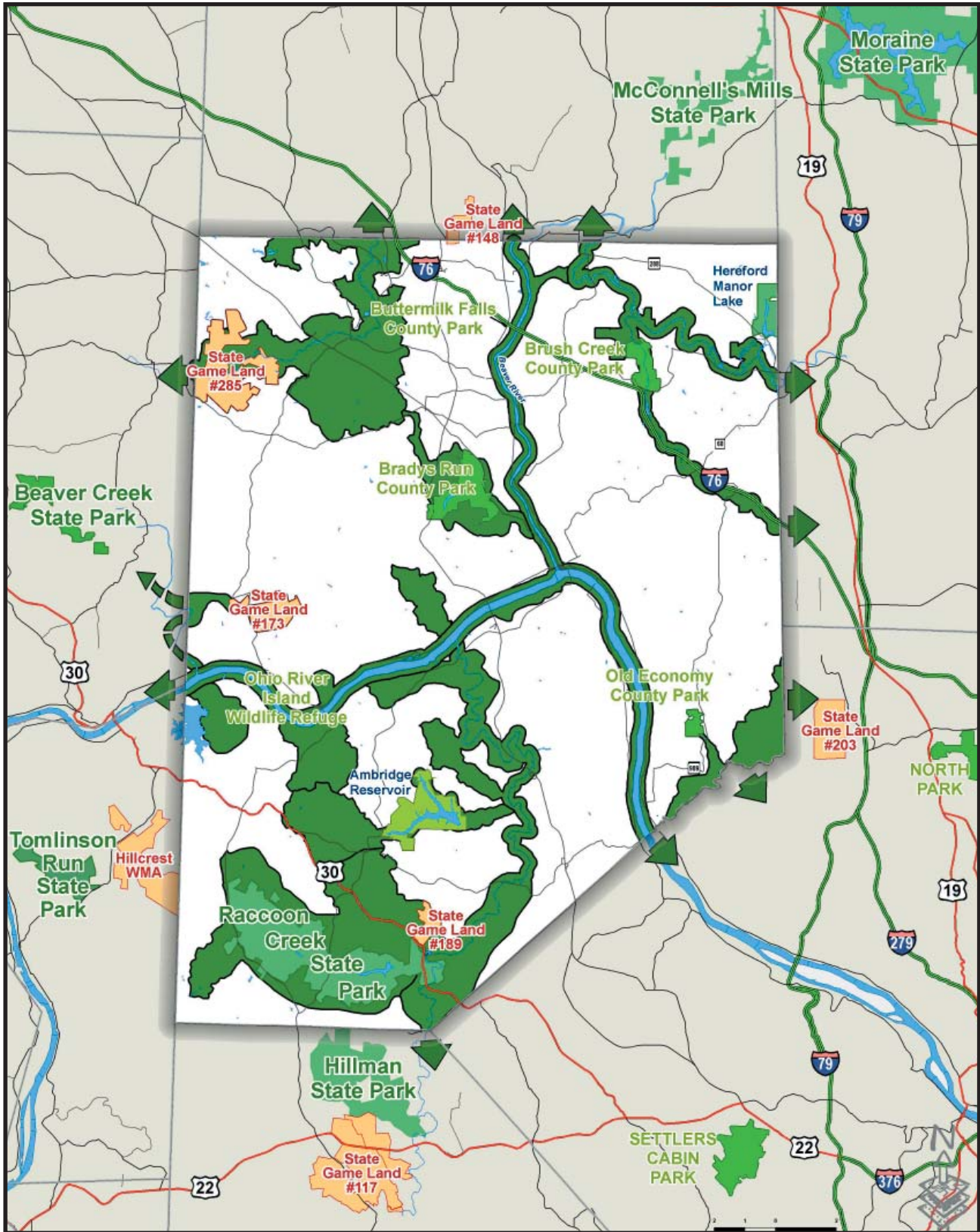
This prioritization is simply a guideline. If trail opportunities arise in other corridors, they should be pursued as long as they meet the criteria established above. Factors such as corridor availability or emergence of an energetic local trail group can not be predicted, but should be capitalized upon if they arise.

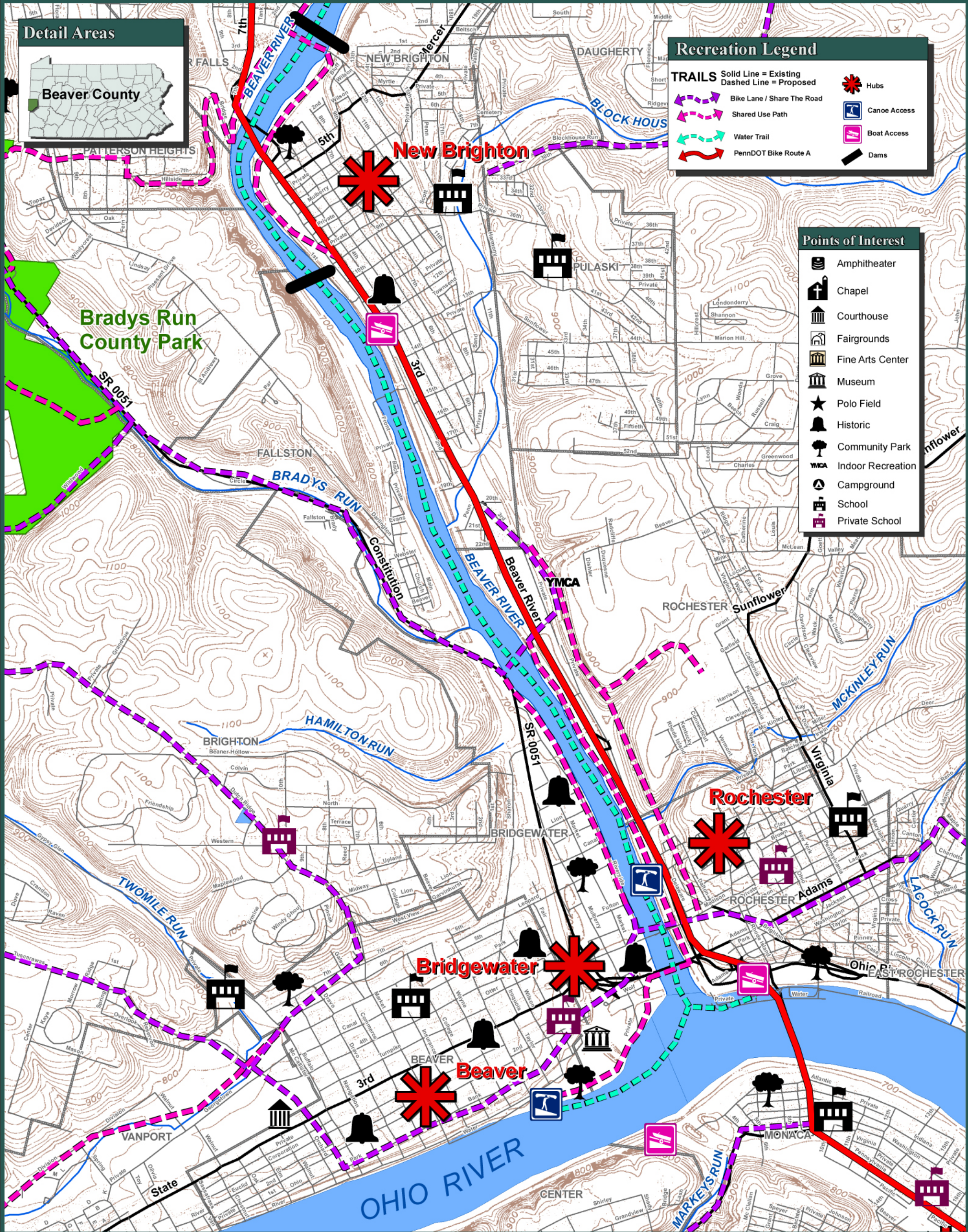
Regional Connectivity

Early in the course of this project the study committee indicated their desire for the Beaver County Greenways and Trails System to connect to regionally significant destinations in adjacent counties. This is documented in Chapter 2 - Inventory of Beaver County's Resources. The greenways and trails system that resulted from the study achieves that goal.

- Raccoon Creek and Traverse / Little Traverse Creek Greenways provide the opportunity to connect to Hillman State Park and the Montour Trail in Washington and Allegheny Counties.
- Little Beaver Creek Greenway provides the opportunity to connect to Beaver Creek State Park in Columbiana County Ohio.
- Brush Creek / Connoquenessing Creek Greenway provides the opportunity to connect to the Neshannock Creek corridor in Ellwood City Borough, Lawrence County, and to McConnell's Mills State Park and Moraine State Park in Lawrence County and Butler County respectively.
- Ohio River Greenway provides potential opportunities for trail connections into the City of Pittsburgh. This corridor has many challenges, such as the active rail lines located on both the eastern and western banks, heavy industry development sites, river transportation loading / unloading facilities, to name a few. However, this is an important corridor and opportunities to develop trails in this corridor should continue to be pursued as opportunities become available.

Beaver County Greenways Regional Connectivity Map



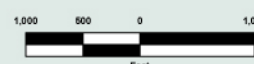


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LEGEND	County Boundary	PennDOT Roads	State Park
Municipality	Interstate	County Park	
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Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

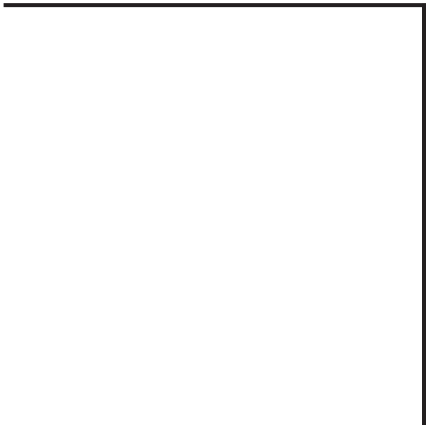


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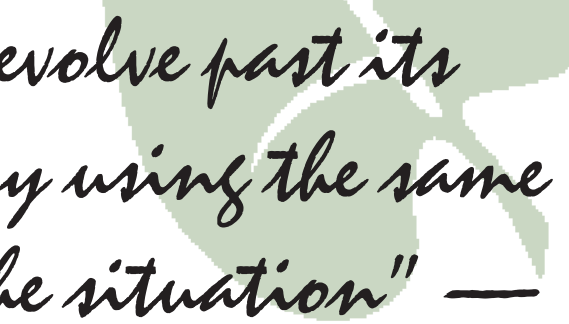

Map 8 - Proposed Recreation Greenways (Enlargement)

Beaver County
 Greenways & Trails



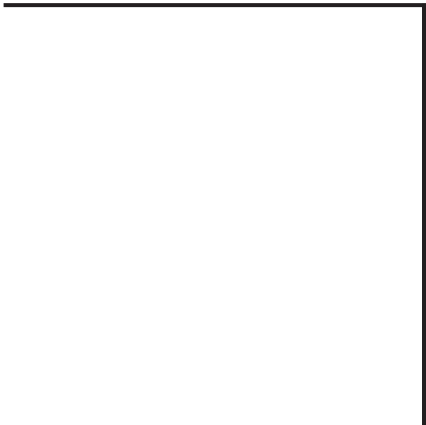


Chapter IV: Making the Vision a Reality - The Action Plan



"The world will not evolve past its current state of crisis by using the same thinking that created the situation" —

Albert Einstein



IV. Making the Vision a Reality - The Action Plan

In this Section, the Consultant recommends a framework for implementation. The recommendations include concrete strategies to be undertaken by municipalities, public agencies, and private / non-profit organizations to build the greenways network.

The Action Plan is organized into several subsections: 1) Management Structure; 2) Implementation Strategies; 3) Land Conservation Tools; 4) Model Ordinances and Agreements; and 5) Potential Funding Sources. Chapter V provides specific strategies for implementing the recreation and conservation demonstration projects that have been recommended.

Implementation of this Greenways and Trails Plan will require leadership at the County level and the development of strong partnerships with local municipalities and key organizations, both public and private.

The proposed network can only be realized if there is commitment at the County and local level to execute the plan. Greenway and trail corridors are not developed overnight. They are built piece-by-piece, often a parcel at a time. The process takes years, even decades. Segments that can be achieved with few obstacles should be undertaken first to establish a record of success and build momentum for the plan. This Section provides guidance about those tools that can be used to help turn the vision developed for Beaver County's Greenways and Trails into a reality.

MANAGEMENT STRUCTURE

Opportunities and Constraints with Various Management Options

There are several management structure models available to facilitate the planning and development of greenways and trails in Beaver County. These include:

- Greenways and Trails Organization
- County Parks and/or Greenways and Trails Department
- County Parks and/or Recreation or Greenways /Trails Board
- Greenways, Trails, Recreation and/or Conservation Authority
- County Planning Office
- Multi-County Greenway Coordinator

Each model has strengths and weaknesses. To facilitate the discussion and decision making process, the Consultant outlined the models and summarized the strengths and weaknesses for the study committee to consider. This is illustrated in the following Table 4.1:



Potential Management Options

Type of Organization	Strengths	Weaknesses	Examples
<p>Greenways and Trails Organization</p> <p>A non-profit organization usually created for the specific purpose of developing and managing trails and/or greenways. Such organizations are not directly affiliated with a municipal government but serve to support and enhance trail and greenway plans of one or more municipal bodies.</p>	<ul style="list-style-type: none"> • Able to apply for public funds • Able to apply for funds that are only available to non-profits • Volunteers have a special interest in trails and greenways • Easier recruitment of volunteers for special activities and projects • Strong interest in trail development • Limits County funding of trails and greenways • Able to recruit and utilize volunteer experts for a variety of services such as engineering, design, construction, etc. 	<ul style="list-style-type: none"> • Relies solely on volunteers • Often ends up with just a few people doing most of the work • Volunteers have a limited interest in on-going maintenance and upkeep tasks • Fund-raising often accounts for more of the volunteers time that trail work • Some trail groups become singularly focused on just one trail • The trail organizations goals may not always match those of the County • There is limited accountability for volunteers 	<p>Venango County/ Allegheny Trails Assoc. ATA is responsible for planning, development, and maintenance of the trails. Individual municipalities are responsible for development and maintenance of trailheads within their municipalities. Wildwater Conservancy, Lawrence County Allegheny Land Trust Independence Marsh Foundation Friends of the Riverfront</p>
Type of Organization	Strengths	Weaknesses	Examples
<p>County Parks and/or Greenways / Trails Department</p> <p>The County Department is responsible for aspects of planning, development, management, and maintenance. Volunteer groups may be used to assist or support the County on specific projects.</p>	<ul style="list-style-type: none"> • Able to apply for public funds • The County sets the standards for all aspects of trail management • Paid staff are usually more reliable and are accountable to the County • The County has control over priorities and how they are accomplished • The County manages quality control 	<ul style="list-style-type: none"> • Relies mostly on paid staff to accomplish almost all work • Volunteers usually play a limited role • The County funds all aspects of planning, development, management, and maintenance • Staff may have many responsibilities other than trails and greenways therefore trails may not be the primary focus of the department or staff. • Not able to apply for grants that are only available to non-profit organizations 	<p>Indiana County Parks and Trails York County Parks Westmoreland County</p>

Table 4.1 - Strength and Weaknesses of Various Management Structures

Type of Organization	Strengths	Weaknesses	Examples
<p>County Parks and Recreation or Greenways / Trails Board</p> <p>A volunteer Board appointed by the County Commissioners. The Commissioners determine the purpose and responsibilities of the Board. Some Board's are permitted to hire staff through the County to assist with necessary tasks.</p>	<ul style="list-style-type: none"> • Comprised of volunteers who have special interests in parks and recreation or trails and greenways • Operates in conjunction with the County • Could provide a good balance of workers between volunteers and County paid staff • Able to apply for public funds with the County as the legal applicant • The County sets the standards for how the Board will operate 	<ul style="list-style-type: none"> • Rely mostly on volunteers to accomplish all work • Often end up with just a few people doing most of the work • Limited interest in on-going maintenance and upkeep tasks • Fund-raising often accounts for more of the volunteers time that trail work • Not able to apply for grants only available to non-profit organizations 	<p>Somerset County Recreation Board manages the Allegheny Passage Trail within the County</p>
Type of Organization	Strengths	Weaknesses	Examples
<p>Greenways, Trails, Recreation and/or Conservation Authority</p> <p>An organization created by the County Commissioners for the expressed purpose of trail and greenway planning, development, maintenance and management.</p>	<ul style="list-style-type: none"> • Separate from the political subdivision • Can operate independently of the governmental unit • Able to apply for public funds • Can borrow funds for major development projects • Set their own standards for quality and accountability • Typically think and plan for the long-term 	<ul style="list-style-type: none"> • Apart from County or municipal funding, an Authority has limited ability for revenue production • Typically do not have volunteer groups associated with them • Not able to apply for grants that are only available to non-profit organizations • Relies mostly on paid staff to accomplish almost all work • The trail organizations goals may not always match those of the County • The Board of Commissioners has little control over the decisions or actions of the Authority 	<p>Cambria County Conservation and Recreation Authority Centre Region Park and Recreation Authority Clearfield County Recreation and Tourism Authority Lewisburg Area Recreation Authority Tri-Area Recreation Authority Montour County Recreation Authority Mountains Recreation and Conservation Authority Cameron County Recreation Authority</p>

Table 4.1 - Strength and Weaknesses of Various Management Structures (continued)

Type of Organization	Strengths	Weaknesses	Examples
<p>County Planning Office The Office manages the planning and supervision of trails and greenways, coordinating with local municipalities and volunteer organizations for implementation and operation. A full-time Trail and Greenways coordinator may be needed. In the future this may also require some support staff.</p>	<ul style="list-style-type: none"> • Able to apply for public funds • The Planning Office sets the standards for all aspects of trail management • Paid staff are usually more reliable and are accountable to the County • The County has control over priorities and how they are accomplished • Quality control comes from the Planning Office • Coordination with local municipalities and volunteer organizations spreads the workload and funding among many agencies • Volunteer groups can apply for funding that is only available to non-profits • Assures compliance with the County Trail and Greenway Plan • Assures greater accountability of all those working on projects • Allows all the benefits of both volunteer non-profit organizations and municipalities 	<ul style="list-style-type: none"> • Requires a County-paid management position in the Planning Office • Requires a tremendous amount of coordination by the Planning Office 	<p>Pike County Cumberland County</p>

Table 4.1 - Strength and Weaknesses of Various Management Structures (continued)

Type of Organization	Strengths	Weaknesses	Examples
<p>Multi-County Greenway Coordinator Two or more Counties enter into a Multi-Municipal Agreement to create and fund a Greenway Coordinator position. The person filling this position will be responsible for implementing the recommendations of the participating Counties' adopted Greenways and Trails Plans. This person will split time based on an agreed upon arrangement in each of the participating Counties.</p>	<ul style="list-style-type: none"> • Cost to fund position shared with others • Able to apply for public funds • The Planning Office sets the standards for all aspects of trail management • Paid staff are usually more reliable and are accountable to the County • The County has control over priorities and how they are accomplished • Quality control comes from the Planning Office • Coordination with local municipalities and volunteer organizations spreads the workload and funding among many agencies • Volunteer groups can apply for funding that is only available to non-profits • Assures compliance with the County Trail and Greenway Plan • Assures greater accountability of all those working on projects • Allows all the benefits of both volunteer non-profit organizations and municipalities 	<ul style="list-style-type: none"> • May not be available, or available on a limited basis only when needed • Requires a County-paid management position in the Planning Office • Requires a tremendous amount of coordination by the Planning Office 	None

Table 4.1 - Strength and Weaknesses of Various Management Structures (continued)

No one organization in Beaver County has the capacity or expertise to undertake an effort of this magnitude single-handedly. Therefore, a partnership structure is recommended. The study committee, County Planning staff, and the Consultant recommend the County Planning Commission lead and oversee implementation of the County Greenways and Trails Plan, as developing and managing the partnerships require careful coordination and well-defined roles. This structure is illustrated in Figure 4.2.

This structure allows the County to maintain an active role in implementing and advancing the recommendations outlined in this study. This management structure also allows the County, and participating municipalities, to draw upon the expertise and resources of other state, county, local, and non-profit organizations when implementing the recommendations contained in this plan.

The Consultant recommends the Planning Commission create a new staff position in the County's Planning Department, that is dedicated to greenway implementation. In other greenway planning efforts, lack of a "point person", charged with responsibility for advancing the greenways plan, has resulted in stagnation of the plan. A Greenways and Trails Coordinator can focus attention on bringing the appropriate agencies and nonprofit organizations to the table, interfacing with municipal officials and providing technical assistance where needed. A brief review was conducted, on the capabilities of current County staff members, with recognition that the greenway coordinator requires a specialized skill set. Based on this review, we have determined that existing staff lack the background and skills required to fulfill a County Greenways and Trails Coordinator position. Therefore, we recommend an interview process be completed to search for the appropriate person to fill the position.

Job descriptions for two Greenway Coordinator positions that were created in Pike and Cumberland Counties are included as Appendix D.

Beaver County may apply to the Pennsylvania Department of Conservation and Natural Resources, through their Circuit Rider Program, to fund the position of the County Greenways and Trails Coordinator. The person hired for this position would be responsible for implementing and advancing the County's Greenways and Trails Plan.

To reduce the costs of funding this position, Beaver County Planning Commission staff have begun discussing with Lawrence County the possibility of entering into an intergovernmental agreement to jointly fund and share this position.

Lawrence County is in the process of completing their County Greenways and Trails Plan, and they also have a need for a County Greenway Coordinator to allow them to implement the vision established for greenways and trails in Lawrence County.

Whether Beaver County chooses to develop this position on their own, or in conjunction with Lawrence County, DCNR may provide funding for this position through their Circuit Rider Program. Although partnering with another governmental agency is not a requirement of DCNR, it would strengthen the County's application.

DCNR's Circuit Rider Program is designed to provide initial funding for county or regional organizations to hire a professional, full-time staff person. The circuit rider's purpose is to initiate new programs and services for counties, municipalities, and organizations that individually do not have the financial resources to hire a professional staff person.

Circuit rider applications are accepted at any time. Eligible project costs include only the circuit rider's salary and DCNR-approved technical assistance and training expenses as follows:

- First Year: up to one hundred percent (100%) of gross salary.
- Second Year: up to seventy-five percent (75%) of gross salary.
- Third Year: up to fifty percent (50%) of gross salary.
- Fourth Year: up to twenty-five percent (25%) of gross salary.
- Training Expenses: up to \$2,000 available for Bureau-approved training expenses over the four years of funding.

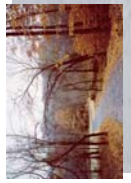
Participating parties must provide local funds to cover the circuit rider's employee benefits for all four years; the balance of the salary in years two, three, and four; and normal support services such as office space and furnishings, training and travel expenses, clerical support, equipment, etc.

Table 4.2 - Beaver County Greenways and Trails Management Structure

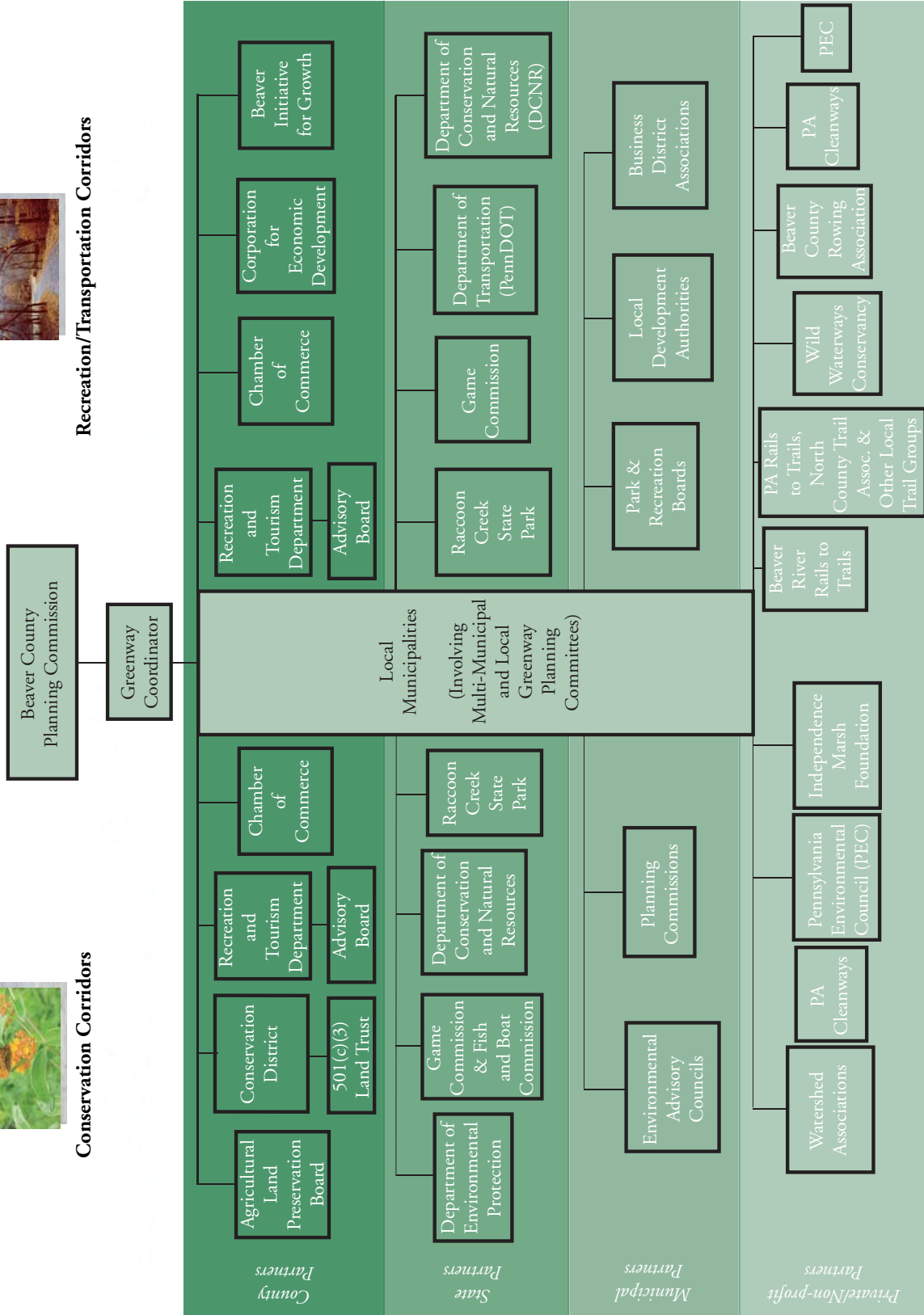
Planning and Implementation Partners



Conservation Corridors



Recreation/Transportation Corridors



In year five and beyond, PA DCNR expects the County to have the capacity to continue this position on its own.

To request a Circuit Rider grant, Beaver County is required to submit a Community Conservation Partnerships Program grant application. These applications can be submitted to DCNR at any time of the year. Following receipt of this application, the Bureau will request the submission of a first year budget, draft job description, and when applicable, an intergovernmental agreement. If it is determined an eligible and viable initiative, the Bureau will consider the grant request. The Bureau will provide a grant agreement and work with the grantee to begin the hiring process.

Continued DCNR funding in the remaining years is contingent on the grantee's performance in the previous year(s) of the project and submission of acceptable requests for additional funding.

To date, two counties have established greenway coordinator positions. Both have received some funding from the PA DCNR. Cumberland County's coordinator was the pilot project and has been in place for four years. Pike County's coordinator was hired in August 2005. Both are responsible for working with municipal officials to develop local plans, promote greenways, write grant applications, and conduct other functions necessary to advance the County Greenways Plan.

Typically, to apply for this funding the County(ies) must have adopted their respective Greenways and Trails Plan before applying. However, if the County(ies) can demonstrate a commitment to both the value of establishing greenways and trails and to providing increasing financial support, DCNR may permit them to apply before their plan(s) are completed. If an agency is successful in obtaining a grant to fund the position, DCNR staff will participate in the interview process, and must approve (but not select) the person selected or hired to fill the position.

DCNR has been involved in the preliminary discussions of a shared Greenway Coordinator between Beaver and Lawrence Counties, and they are excited about the potential opportunity.

Greenway Coordinator

Skills

Employers often say that the knowledge and experience one brings to a job are only half of what makes a successful worker. Equally important are their attitude, ability to communicate and work with others, and ability to research and obtain answers to issues beyond their knowledge or experience base. Therefore, first and foremost, a Greenway Coordinator must be self-directed, energetic, and entrepreneurial. In addition, the Coordinator shall bring the following specific skills and credentials to the position:

- Excellent communication, organizational, and relationship-building skills;
- Experience in public and private land conservation techniques and obtaining ownership of trail corridors through acquisition and easements;
- Bachelor's Degree or better in environmental planning, natural resources, parks and recreation management, or related field;
- Two or more years experience working as a paid staff person for a conservation organization preferred; and
- Two or more years of experience managing projects or initiatives that involve coordination and consensus building among diverse interest groups.

Expectations

The Coordinator shall implement and advance the recommendations of the County's adopted Greenways and Trails Plan. The Coordinator's duties shall include:

- Educating municipal officials;
- Providing technical assistance to municipalities to advance greenways and trails in accordance with the County's priorities for greenway and trail development;
- Working and negotiating with land owners, other agencies, and organizations to implement and protect greenway corridors and secure and develop trail corridors;
- Overseeing property holdings;
- Increasing awareness of benefits of greenway protection and trail development throughout county by conducting presentations,

distributing information, and attracting media coverage;

- Developing good working relationships with conservation organizations, government agencies, non-profit organizations, and land owners;
- Working with municipalities and/or non-profit groups to increase funding by assisting with grant writing and development of donor materials;
- Managing daily operations;
- Coordinating volunteers; and
- Attend meetings or events during evening and weekend hours.

The primary partners for implementation will be the local municipalities. In some cases, interested local citizens may form nonprofit trail groups that can work hand-in-hand with local municipalities to push the trail plans forward.

The Planning Commission, through its Greenway Coordinator, will assist municipal officials and non-profits in advancing the greenway corridors, seeking funding, and connecting with others partners who can provide technical assistance.

Multi-municipal and municipal comprehensive plans should confirm and refine the recommendations made in this Greenways and Trails Plan and recommend the adoption of new land use tools in local ordinances that facilitate greenway development. Such tools may include, but are not limited to, adoption of conservation corridor overlay districts, stream buffer requirements, steep slope restrictions, and developer incentives that encourage the preservation of contiguous open space in new subdivisions.

The Consultant recommends that implementation of the greenways and trails network be achieved through development of multi-municipal greenway plans or feasibility studies, preferably as part of adopted comprehensive plans. These plans will evaluate the corridors proposed in this Plan in greater detail, including trail alignments, land ownership at the parcel level, known obstacles, and proposed solutions.

The Planning Commission and its municipal partners will work with an array of County, State, municipal, and private/non-profit partners. These entities have valuable expertise that can be tapped to advance the goals of this Plan. For example, on the conservation side, key County partners may be the Beaver County Conservation District and the County's Agricultural Land Preservation Board.

The Conservation District has expressed interest in creating a 501(c)(3) land trust that would assist in the acquisition of interests in land with conservation value. The Agricultural Land Preservation Board administers the State program, that allows for the acquisition of agricultural conservation easements on farmland, that meets certain criteria.

On the recreation side, the Beaver County Recreation and Tourism Department, the Recreation Advisory Board, the Chamber of Commerce, the Corporation for Economic Development, and the Beaver Initiative for Growth may be important County partners in planning and developing trails. The organizational chart above depicts other key partners with knowledge and skills pertinent to the establishment of greenways.

The Consultant recommends that the local municipalities enlist representatives from these partner organizations to serve on their greenway planning committees, or at a minimum, coordinate closely with them. Moreover, municipalities are encouraged to identify and engage other partners that have the know-how and resources to move the plan forward.

Intergovernmental Cooperation

Staff of the Beaver and Lawrence Counties Planning Commissions have taken the recommendation to develop a shared Greenway Coordinator. To date, several meetings have occurred between Commission staff, and one meeting has occurred jointly with representatives of DCNR.

These meetings have resulted in the development of drafts of the following documents that would create the position upon concurrence by the respective County Board of Commissioners:

- Draft Greenway Coordinator Position Description
- Draft Administrative Budget
- Draft Intergovernmental Agreement between Lawrence and Beaver Counties

Draft Greenway Coordinator Position Description

The sample position descriptions referenced earlier served as a point of discussion in developing a position description for the Lawrence and Beaver County Shared Greenway Coordinator position.

The directors of the Beaver and Lawrence Counties

Planning Commissions collaborated to jointly develop a position description that would meet their respective needs. A copy of this draft description is included in the appendix.

Draft Administrative Budget

The following Table 4.3 proposes an administrative budget for the Greenway Coordinator position. Based on discussions with the respective planning commission directors, we understand the Coordinator will have the ability to utilize the resources of the Beaver and Lawrence County Planning Commissions, including:

- Office space
- Computer
- U.S. Postal Services
- Clerical and Reproduction Services
- Telephone

Table 4.3

Projected Expenses	Year One	Year Two	Year Three	Year Four	Year Five
Coordinator	\$40,000	\$41,200	\$42,436	\$43,709	\$45,020
Payroll Benefits and Costs	\$12,000	\$13,200	\$14,520	\$15,972	\$17,569
Travel / Training	\$9,000	\$3,000	\$3,000	\$3,000	\$3,000
<i>Total Operations Costs</i>	<i>\$65,000</i>	<i>\$60,400</i>	<i>\$61,835</i>	<i>\$63,305</i>	<i>\$64,811</i>

Potential Revenue	Year One	Year Two	Year Three	Year Four	Year Five
Circuit Rider Program / and DCED	\$40,000	\$30,00	\$20,000	\$10,000	\$0

Net Cost	Year One	Year Two	Year Three	Year Four	Year Five
Expenses	\$65,000	\$60,400	\$61,835	\$63,305	\$64,811
Revenue	\$40,000	\$30,000	\$20,000	\$10,000	\$0
Net Cost After Revenue	\$25,000	\$20,400	\$21,835	\$23,305	\$24,811
Total Cost to County					\$92,046

If Beaver County chooses to create the position exclusively for Beaver County, the total projected cost to the County, over a five year period is estimated at \$93,000, averaging almost \$20,000 per year. After year five, the projected cost for the position would be \$66,355, and increase by approximately four percent per year.

Assuming the costs are split equally between the two counties, the annual expense for this position is projected in Table 4.4 .

Should Beaver and Lawrence Counties pursue sharing a joint Greenways Coordinator between the two counties, it may further reduce the cost of this position, as they may become eligible for Shared Municipal Services funding through the Pennsylvania Community and Economic Development department.

Table 4.4

Year	Salary DCNR	Salary DCED	Salary Counties	Benefits Counties	Travel / Training Counties	Annual Total	Beaver County Total	Lawrence County Total
1	\$40,000	\$0	\$0	\$16,000	\$9,000	\$65,000	\$12,500.00	\$12,500.00
2	\$30,000	\$10,000	\$1,000	\$16,400	\$3,000	\$60,400	\$10,200.00	\$10,200.00
3	\$20,000	\$20,000	\$2,025	\$16,810	\$3,000	\$61,835	\$10,917.50	\$10,917.50
4	\$10,000	\$30,000	\$3,075	\$17,230	\$3,000	\$63,305	\$11,652.50	\$11,652.50
5	\$0	\$40,000	\$4,151	\$17,660	\$3,000	\$64,811	\$12,405.50	\$12,405.50
6	\$0	\$0	\$45,254	\$18,101	\$3,000	\$66,355	\$33,177.50	\$33,177.50
7	\$0	\$0	\$46,385	\$18,554	\$3,000	\$67,939	\$33,969.50	\$33,969.50
8	\$0	\$0	\$47,544	\$19,016	\$3,000	\$69,560	\$34,780.00	\$34,780.00
Total	\$100,000	\$100,000	\$149,434	\$139,771	\$30,000	\$519,205	\$159,603.00	\$159,603.00

A successful coordinator may be able to bring in \$100,000 to \$200,000, on average each year, through grants, allocations from foundations (in conjunction with a non-profit who can accept a donation / grant from a foundation), and fund-raising. Therefore, the benefits of the position out weight the burden of the position on each County's finances.

IMPLEMENTATIONS STEPS AND STRATEGIES

This Section of the Greenways Plan includes step-by-step recommendations that outline the process of implementing the greenways and trails network for Beaver County.

Table 4.5 lays out the sequence of events needed to take the Greenways Plan, from the County Greenway Vision expressed in this Plan, to completion of conservation and recreation / transportation corridors. The table breaks the process down into key objectives, the sequence of tasks needed to achieve them, and the parties who will take the lead and assist in undertaking these tasks. Responsible parties will need to seek funding through grants or cost reimbursement programs throughout the process. Lists of funding sources are provided later in this section.

The second part of this Section sets forth specific strategies that are organized into tables on the following pages. Each entry includes columns specifying responsible parties, priority, estimated cost, and status (for keeping track of progress). Tables should be reviewed, no less than annually,

to determine which tasks have been accomplished, which should be undertaken next, and whether adjustments need to be made.

Table 4.5 lists those strategies that apply broadly to the implementation of the whole network. They include recommended action items related to process and management. Table 4.6 lists strategies that apply more specifically to establishment of the conservation corridors. Finally, strategies needed to put the recreation and transportation greenways in place appear in Table 4.7.

Under "Responsible Parties," the tables identify the entities that will have a role in undertaking a particular strategy. This list should be viewed as preliminary. Additional parties with expertise or interest in a particular aspect of the plan should continue to be identified and brought into the process.

We have recommended that a non-profit partner be identified as they open up access to resources that may not otherwise be accessible. There are several conservation focused non-profit organizations that are active in and around Beaver County. They include the Beaver County Conservation Foundation, the Independence Marsh Foundation, the Hollow Oak Land Trust, and the Allegheny Land Trust. These organizations should be approached on a formal basis to determine whether any of them have the capability to meet the County's needs.

Prioritization of implementation tasks has been divided into Short-term, Mid-Term, and Long-Term. Short-Term tasks (designated as "S") should be accomplished within the first two years after adoption of the plan. These are

the strategies that will set the course for the successful implementation of the Greenways Plan. Mid-term priorities (“M”) are those tasks that should be undertaken in years three through five, and long-term priorities (“L”) are expected to begin after five or more years.

Many of the strategies listed have little or no cost beyond the administrative costs that will be incurred by the responsible parties. However, where recommended tasks will require an additional expense for implementation, a cost estimate is included. The costs are “ball park” estimates based on similar projects or initiatives. However, more detailed cost estimates will need to be developed through feasibility studies.

The consultant recommends that the “Status” column of the tables be used to keep track of progress made toward

completion of each strategy. For example, “I” could be noted to indicate “In Progress” and “C” to indicate “Complete.”

The implementation strategies are intended to provide guidance to the Beaver County Planning Commission and its municipal and other partners. These tables outline a recommended game plan. Actual implementation will depend upon the fiscal and political climate in any given year. Therefore, it is essential that the tables be reviewed annually and strategies modified and re-prioritized to reflect what is achievable under the circumstances.

This implementation section should be a “living document,” one that sets high goals, but responds to fiscal and political realities.

Table 4.5 Comprehensive Greenway Implementation Strategies

	Task	Responsible Parties	Priority	Cost Estimate	Status
1.	Adopt the Greenways Plan as part of the County Comprehensive Plan.	Beaver County Planning Comm'n (BCPC), County Commissioners	S	-	
2.	Establish a "Greenway Coordinator" position within the BCPC to advance greenway and trail development in the County. Seek combination of funding from County and other sources (DCNR).	BCPC, County Commissioners	S	\$75,000 per year	
3.	Develop a detailed public education program to inform municipalities and County residents about the many benefits of greenway development (economic, environmental, health, etc.).	BCPC Greenway Coordinator with assistance from other State and County Partners	S	\$15,000	
4.	Meet with municipal officials to discuss goals of the Greenways Plan and the means of advancing it through local comprehensive plans, greenway feasibility studies and ordinances; request that local municipalities pass resolutions endorsing the County's Greenway Plan.	BCPC Staff and Greenway Coordinator	S	-	
5.	Provide Municipal Officials with information about tools to preserve open space as discussed beginning on page 95, Land Conservation Tools.	BCPC Greenway Coordinator	Ongoing	-	
6.	Create a package of incentives to encourage municipalities to pursue multi-municipal greenway planning including matching funds, grant writing and other technical assistance.	BCPC Staff and Greenway Coordinator with advice from County and State partners[]	S	\$20,000 annually	
7.	Pilot a multi-municipal greenway feasibility study to refine the recommendations of the County Plan.	Municipal Officials w/ guidance from BCPC Greenway Coordinator and multiple partners	S	\$40,000 to \$60,000	
8.	Carry forward and refine the recommendations of this Greenway Plan through municipal or multi-municipal greenway and trail plans / feasibility studies.	Municipal Officials w/ guidance from BCPC Greenway Coordinator and multiple partners	Ongoing	\$40,000	
9.	Coordinate local greenway planning efforts with those in neighboring Counties / States to ensure connectivity of recreation and conservation corridors across County / State lines.	Municipal Officials, BCPC Greenway Coordinator	Ongoing	-	
10.	Develop a strong marketing plan to promote the many attractions of the greenway network (eco-tourism, recreation, cultural, historic, etc.). Seek grant money for hiring professional marketing consultant.	BCPC Staff and Greenway Coordinator and Beaver County Tourism Promotion Staff	M, L	\$30,000	

Table 4. 6 Conservation Greenway Strategies

	Task	Responsible Parties	Priority	Cost Estimate	Status
1.	Identify 501(c)(3) land trust partner.	County Commissioners with assistance from Pennsylvania Land Trust Association	S	\$50,000 per year for the first five years	
2.	Identify opportunities for purchase of conservation land or easements in priority areas identified under this Plan and negotiate agreements.	Municipal officials, land trust association, local stakeholders	Ongoing	\$50,000	
3.	Apply for funds (such as Growing Greener) to assist in the purchase of conservation land or easements.	Municipal Officials, BCPC, land trust association	Ongoing	-	
4.	Establish Environmental Advisory Councils at the municipal or multi-municipal level to advise local elected and appointed officials about conservation priorities and assist in conservation efforts.	Municipal officials with advice from, BCPC, PEC and local watershed groups	Ongoing	-	
5.	Work with local municipalities to ensure that conservation corridors are established in municipal or multi-municipal comprehensive plans and/or greenway plans.	BCPC	Ongoing	-	
6.	Limit development in sensitive environmental areas through zoning and/or subdivision and land development tools and developer incentives as discussed beginning on page 95, Land Conservation Tools.	Municipal officials with guidance from BCPC.	Ongoing	-	

Table 4.7 Recreation and Transportation Greenway Strategies

	Task	Responsible Parties	Priority	Cost Estimate	Status
1.	Support completion of the Beaver River Rail Trail by extending it north into Lawrence County and south across the Beaver River on a new bridge using the former 10 th Street Bridge piers.	BCPC, County Commissioners, Beaver River Rails to Trails	S, M	Unknown	
2.	Establish municipal or multi-municipal park and recreation boards to spearhead high priority trail development at the local level.	Municipal officials with advice from County Rec & Tourism Dep't	Ongoing	-	
3.	Pilot the development of demonstration trail segments Raccoon Creek Trail, from Beaver County Conservation District Environmental Education Center to Independence Community Park, and the Confluence Connector Trail, from Rochester Riverfront Park to Bridgewater / Beaver, to create momentum for development of the trail network.	Municipal Officials, BCPC Greenway Coordinator, County Rec & Tourism Dep't, local park and rec boards	S	\$610,000	
4.	Advance proposed shared use trails through detailed feasibility studies.	Municipal Officials, BCPC Greenway Coordinator	Ongoing	-	
5.	Secure necessary approvals and funding to advance proposed bike lanes and share the road routes.	Municipal Officials, BCPC, PennDOT	Ongoing	-	
6.	Ensure that adopted trail plans requiring transportation improvements are included on the Long-Range Plan and TIP for the Region.	BCPC, Municipal Officials, PennDOT regional office	Ongoing	-	
7.	Pursue PA Fish & Boat Commission designation for the Raccoon Creek Water Trail.	BCPC, County Rec & Tourism Dep't, Independence Marsh Foundation, PEC	S		
8.	Conduct detailed studies of other waterways proposed for water trail development to identify routes & access points.	Municipal officials with assistance from PEC	S, M		
9.	Partner with local hospitals and health organizations to develop an outreach and marketing campaign to promote the health benefits of recreational trails. Piggyback on existing efforts such as the Keystone Active Zones Program.	BCPC, County Rec & Tourism Dep't, Beaver County YMCA	M, L	\$10,000	
10.	Promote the local trails and emphasize their economic development potential.	BCPC, County Rec. & Tourism Dep't, Beaver Initiative for Growth	M, L	-	
11.	Develop a plan for trail maintenance using a combination of County and local resources as well as volunteer services.	Local Municipal Officials, local park & rec. boards, PA Cleanways	L	-	

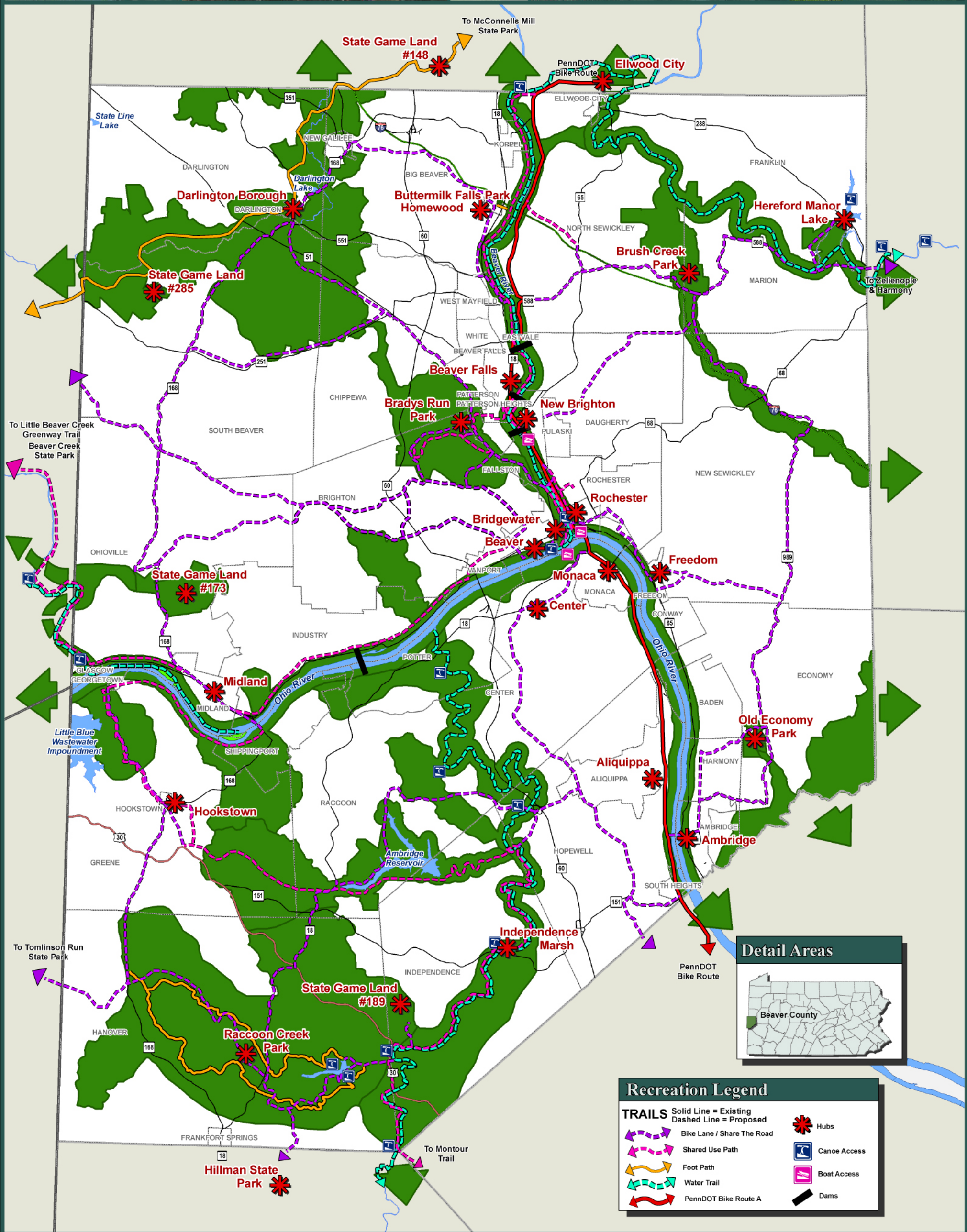
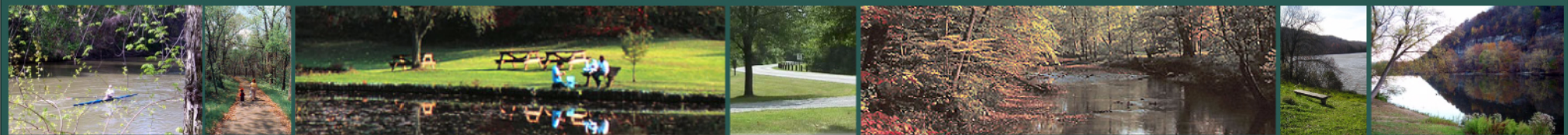
The following sample outline shows what steps should be anticipated in advancing a selected greenway and trail corridor .

Steps in Implementing, Advancing, and Developing Specific Corridor Segments

Implementation of the recommendations contained in this plan must be driven and guided by a coordinated effort, lead by the Beaver County Planning Commission, through its Trail and Greenway Coordinator. The Coordinator must be able to effectively coordinate and communicate with partnering agencies, municipalities, and volunteer groups.

The following is an example of a step-by-step process that the Coordinator might utilize to advance the recommendations for a specific trail segment.

1. County Greenways and Trails Coordinator (Coordinator) approaches municipalities and municipal officials to educate them on the environmental, economic, and recreational benefits establishing the greenway and trail corridor.
2. Coordinator works with each municipality to achieve consensus and support for advancing the project.
3. Coordinator works with municipal officials to identify demonstration project(s) that will result in a success story.
4. Coordinator interviews local officials and other local supporters to plan strategy for approaching property owner(s) and discussing greenway protection and trail development, and to identify “Local Greenway and Trail Champion(s)” (Champion(s)).
5. Coordinator determines who will hold property or easement if acquisition is successful.
6. Coordinator will assist Champion(s) and local municipalities in determining if further planning is required, or if acquisition and development can occur. If additional planning is required proceed directly to step 11.
7. Coordinator supports Champion(s) by assisting them in anticipating questions, issues, and concerns of property owners; and preparing detailed response on how proper planning and design of the greenway and trail will address the property owner(s)’ issues and concerns in an amicable manner.
8. Coordinator coaches Champion(s) in preparing to negotiate for the acquisition of the trail corridor.
9. Coordinator and champion(s) approach property owner(s) and discuss the project, identify property owners issues / concerns, and indicate whether the planning and design of the corridor can address those concerns in an acceptable manner. Coordinator and champion(s) ask property owners permission to advance the planning and design. Coordinator and champion(s) schedule a follow-up meeting with property owner(s) to present the concept of greenway and / or trail.
10. Coordinator and champion(s) present preliminary planning and design, and ask owner(s) if their issues and concerns have been addressed sufficiently. If yes, proceed to step 10; if no, revise plan and present plan to property owner(s) again.
11. Coordinator and Champion(s) review methods of acquiring greenway and/or trail corridor, and negotiate with property owner(s) to acquire corridor.
12. Coordinator arranges for County Solicitor to draft legal paperwork associated with acquisition of the corridor.
13. Coordinator assists in establishing construction budget and determines what level of participation the County will have in developing the corridor.
14. Coordinator prepares and/or assists with the preparation of grant applications to secure funding for the development of the corridor.
15. Coordinator oversees development of corridor.



BEAVER COUNTY PLANNING COMMISSION
 Beaver County Courthouse
 416 Third Street
 Beaver, PA 15009
 Phone: (724) 736-5700
 Fax: (724) 775-8915

County Boundary	PennDOT Roads
Municipality	Interstate
Lake/Reservoir	US Highway
River/Stream	State Route

Map Sources:
 Southwestern Pennsylvania Commission (SPC)
 PASDA (Pennsylvania Spatial Data Access)
 Beaver County
 Western Pennsylvania Conservancy

Projection: State Plane - NAD 1983
 Pennsylvania South, Feet

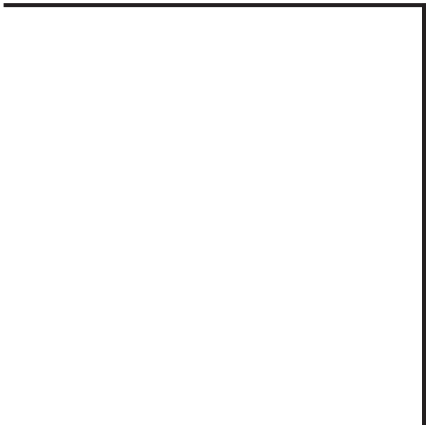
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Map 9 - Proposed Greenways & Trails Network

Beaver County
 Greenways & Trails





LAND CONSERVATION TOOLS

Proposed greenways will pass through public land, such as County Parks and State Gamelands and are protected from adverse uses. However, many will pass through privately-owned land. This Section evaluates whether municipalities have enacted land use controls to guide the implementation of greenways in their respective municipalities. Following this evaluation is a discussion of the tools which can be used to assist in establishing these corridors.

A review of municipal zoning, land development, and subdivision ordinances reveals most municipalities have limited or no provisions to protect resources associated with greenways and trails. Table 4.8 summarizes the results of these findings.

Table 4.8

Municipality	Sidewalks/ Trails	Steep Slopes	Slide Prone Slopes	Floodplains	Geological Hazards	Bodies of Water	Historic Districts	Agricultural Pres.	Mand. Dedication/ Fee-In Lieu	Stream Buffer	Forest Management
Aliquippa City	S										
Ambridge Boro.											
Baden Boro.				Z							
Beaver Boro.											
Beaver Falls											
Big Beaver Boro.	S		S/Z	S/Z							
Bridgewater Boro.						Z					
Brighton Twp.	S	Z	S	S/Z		S					
Center Twp.	S	S		Z							
Chippewa Twp.	S			S							
Conway Boro.		Z		Z							
Darlington Boro.											
Darlington Twp.											
Daugherty Twp.	S										
East Rochester Boro.											
Eastville Boro.											
Economy Boro.	S	Z									
Ellwood City Boro.											
Fallston Boro.											
Frankfort Springs Boro.											
Franklin Twp.	S										
Freedom Boro.	S										
Glasgow Boro.											
Georgetown Boro.											
Greene Twp.											

*S - Municipal Subdivision and Land Ordinance

* Z - Zoning Ordinance

Municipality	Sidewalks/ Trails	Steep Slopes	Slide Prone Slopes	Floodplains	Geological Hazards	Bodies of Water	Historic Districts	Agricultural Protection	Mandatory Dedication/ Fee-In Lieu	Stream Corridor Buffer	Forest Management
Hanover Twp.											
Harmony Twp.		Z		Z							
Homewood Boro.											
Hookstown Boro.											
Hopewell Twp.	S	S									
Independence Twp.	S	Z		S						Z	
Industry Boro.				Z							
Koppel Boro	S										
Marion Twp.	S		S	S							
Midland Boro.											
Monaca Boro.											
New Brighton Boro.											
New Galilee Boro.											
New Sewickley Twp.											
North Sewickley Twp.	S										
Ohioville Boro.											
Patterson Heights Boro.	Z										
Patterson Twp.	S										
Potter Twp.	S			Z							
Pulaski Twp.				Z							
Raccoon Twp.	S										
Rochester Boro.											
Rochester Twp.	S			Z							
Shippingport Boro.											
South Beaver Twp.	S		S	S							S
South Heights Boro.											
Vanport Twp.	S										
West Mayfield Boro.											
White Twp.											

*S - Municipal Subdivision and Land Ordinance * Z - Zoning Ordinance

Table 4.8 (continued)

Based on this review, we recommend the County educate local officials on the benefits of the planning and the tools outlined herein, that can be implemented to protect and preserve greenway and trail resources.

Many of the tools recommended herein not only meet the desire to conserve corridors for greenway and recreation corridors, but can also be utilized by those municipalities that desire to maintain their rural character. The tools can also be utilized by those municipalities that desire to conserve green space and encourage development and redevelopment activities on previously developed sites, or in a manner that respects the resources present on the particular property.

The County Planning Commission should provide local municipalities with guidance and technical assistance in developing these tools to meet the particular needs of the respective municipalities.

There are two primary methods for conserving greenway corridors. The first category includes various means of acquiring property or certain underlying rights to property. The second category involves types of regulatory requirements. Many of the mechanisms highlighted below are discussed in the publication “Land Use in Pennsylvania: Practices and Tools”. These tools should be implemented at the municipal level, to reduce the fragmentation of County’s greenways and trails system, in order to prevent negative environmental impacts:⁸

Acquisition Tools

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

Fee Simple Purchase

- **Description:** This practice involves the acquisition of land for the purpose of preservation of open space and natural areas. The purchase 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 provides a more permanent long-term protection of open space and natural areas than through other methods such as zoning or subdivision requirements. Acquisition by nonprofit groups, in partnership with communities to

protect open space and natural areas, imposes minimal or no cost and little administrative burden to local governments.

- **Implementation:** Pennsylvania’s Department of Conservation and Natural Resources and the Pennsylvania Department of Environmental Protection’s Growing Greener Program has sources of funding to help communities and non-profit groups implement acquisition of open space and natural areas projects.

Option/First Right of Refusal

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

Conservation Easements

- **Description:** Under this option, the 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:** Acquisition of conservation easements also provides permanent, long-term protection of open space and natural areas, but is less costly than fee simple acquisition because the purchaser receives less than full title to the land. Similarly, where the easement is held by a nonprofit group, there is little cost or burden on local governments. Moreover, the landowner pays lower real estate taxes on land subject to conservation easements.
- **Implementation:** Generally, the purchaser 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 deed and “runs with the land,” meaning that if the land is sold by the grantor, the land transfers subject to the easement.

Agricultural Conservation Easements

- **Description:** Agricultural conservation easements are a subset of conservation easements described above. They permanently protect farms from development. Landowners voluntarily sell the rights to develop the farm 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. They provide a financial benefit to farmers, while allowing conservation of farmland that often provides important habitat. Real estate taxes on land subject to conservation easements are lower.
- **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.

Forest Land Conservation Easements

- **Description:** 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; simultaneously preserving wildlife habitat, protecting watersheds, providing outdoor recreation opportunities, and promoting soil conservation.
- **Benefits:** Again, this tool provides permanent protection of land from development. Since 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 of such easements are economic as well as environmental. Benefits to landowners include lower property taxes.

- **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.

Transfer/ Purchase of Development Rights

- **Description:** Transfer of Development Rights (TDRs) is a tool that allows conservation and development to coexist within a municipality or group of municipalities with joint zoning. TDRs permit landowners, in areas where conservation is desired, to transfer some or all of the development rights associated with their land (sending areas) to areas where growth is desired at densities in excess of that permitted by current zoning (receiving areas). The landowner keeps title to the land and the right to use it, but gives up the right to develop the property for other purposes. The purchaser of the development rights uses them to develop another parcel at greater densities than would otherwise be permitted. With TDRs, the transfer of rights occurs at the time of development.

Purchase of Development Rights (PDRs) operates in a similar manner. However, with PDRs, an entity buys the rights 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 ready to develop an area with high density. The municipal bond financing which was entered into to purchase the right is paid off over the years by the purchase of the development rights, as development occurs.

- **Benefits:** The value of each development right is controlled by the open market, not the municipality. TDRs are an equitable option for preserving open

space and agricultural lands, by compensating the owner of preserved land, while guiding the growth of development through the allowance of increased density, where existing infrastructure can support it.

PDRs provide an immediate return to the landowner. They compensate the landowner for reduction in development potential and facilitate the goals of the development district concept. PDRs 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.

- **Implementation:** In Pennsylvania, TDR programs 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 this transfer.

Open Space Conservation Tools

Regulatory mechanisms can also be useful when establishing greenways. This tools are typically implemented at the local level in the form of subdivision and land development ordinances, and zoning ordinances. They should not be overlooked when putting together a long-term strategy for assembling a greenway network.

Open Space Zoning/Conservation Design

- **Description:** 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 municipality, or individuals with large "conservancy lots", which are a form of non-common open space.
- **Benefits:** This technique, while a regulatory tool, provides a means for permanent protection of undeveloped land. It preserves large open spaces

while allowing full-density development. Ideally, 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 in the open space to ensure that it will not be further subdivided or developed.

Refer to Appendix Q for detailed Conservation by Design implementation strategies developed by the Natural Lands Trust.

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 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(2) of the Municipal Planning Code authorizes additional classifications, potentially through the use of overlay zoning, for "regulating, restricting, or prohibiting uses and structures at, along or near ...
 - (ii) Natural and artificial bodies of water, boat docks and related facilities.
 - (iii) Places of relatively steep slope or grade, or the areas of hazardous geological or topographic features....
 - (vi) Places having unique historical, architectural, or patriotic interest or value.
 - (vii) Floodplain areas, architectural areas, sanitary landfills, and other places having a special character or use affecting and affected by their surroundings."

Buffer Zones

- **Description:** Municipalities may enact regulations requiring that buffers of a prescribed width be established 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. Therefore, they are well-suited for greenway development. 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:** 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 coupling it with tools, such as Transfer of Development Rights and Purchase of Development Rights.

Effective Agricultural Zoning

- **Description:** Permits subdivision to be limited to densities of one unit for at least ten to twenty-five acres in agricultural zoning districts.

This restriction favors agriculture because there is a limited market for residential or commercial units with such low densities.

Mandatory Dedication and Fee-in-Lieu Ordinances

- **Description:** Township officials may 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 required is often reflective of the type, amount, and intensity of development to occur on the site.

Fees-in-lieu of dedication may be required of the owner or developer as a substitute for a dedication of land, usually calculated in dollars per lot, and referred to as in-lieu fees or in-lieu contributions. These funds can then be used by the municipality to purchase new park or conservation land.

- **Benefits:** Mandatory dedication ensures that a certain amount of open space will automatically be preserved as a municipality develops. With careful planning by municipal officials, these areas of open space can be aligned to create green corridors. However, many municipalities prefer payment of fees-in-lieu to mandatory dedication because it allows the municipality to aggregate funds from several developments and purchase a single contiguous tract of recreation or conservation land.
- **Implementation:** Provisions requiring mandatory dedication and fee-in-lieu must be added to municipal land development and subdivision ordinances. The Municipalities 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 by future inhabitants of the development...”. The municipality is also required to expend any fee within three years of payment by the developer.

Lot Averaging

- **Description:** Permits the creation of lots that average a minimum allowable lot size in the applicable zoning district, rather than strictly adhering to the minimum lot size on every lot created.

This tool can reduce the fragmentation of natural features and farm land, allowing these resources to be managed as a whole on one property.

Open Space / Cluster Development

- **Description:** Permits residential units to be grouped, reducing the disturbed footprint of the development, leaving a majority of the property as permanently protected open space.

Performance Zoning

- **Description:** Permits development on a given site to be limited to only those land uses that will not unduly impact natural features or other constraints such as traffic capacity. It requires performance zoning criteria be adopted to establish the development carrying capacity of the property.

Rural Center Zoning

- **Description:** Permits new development on a site to be concentrated in villages with rural communities, while limiting the surrounding areas to farms and other open land uses.

Village Program Zoning

- **Description:** Permits development restriction within traditional villages to ensure new development is consistent in character with the character of the existing development.

Scenic River Overlay District

- **Description:** Regulates developments so they are visually consistent with a scenic river and its surrounding buffer.

Scenic Road Overlay District

- **Description:** Permits parcels within a scenic overlay zone to be regulated in terms of setbacks, design guidelines, signage, and buffers.

OTHER REGULATORY TOOLS

The Official Map

- **Description:** The Municipalities Planning Code permits municipalities to create an “official map” that designates public or private land for which it has identified a current or future public need. This can be land for roads and other infrastructure, as well as open space for conservation and recreation needs. This tool puts landowners and developers on notice about land that the municipality is planning to use for public purposes.
- **Benefits:** The Official Map is a powerful tool for municipalities planning their open space and recreation needs. The time period allowing the right of first refusal gives a municipality time to assemble funding needed to purchase land or easements.
- **Implementation:** The Official Map does not cause a taking of land, but rather allows the municipality to have the right of first refusal to purchase the land or obtain an easement. After one year, the right of first refusal expires, and the landowner can sell the property to another interested purchaser. Municipalities wanting to establish an official map should only do so after they have identified the lands needed to serve a public purpose through a comprehensive planning process. Official maps can designate parks, trail corridors, greenways, and conservation lands protecting sensitive environmental features, such as wetlands and floodplains. However, 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 interest.

A municipality should only include properties or easements on the Official Map that the local municipality can realistically expect to acquire. Therefore, if a municipality does not have the financial or organizational capacity to complete the transaction, then the property should not be identified on the Official Map.

Municipalities should coordinate with local landowners that own property being considered for inclusion on the Official Map. If property owners can be brought into the process early, the likelihood of success should be greater.

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.
- **Benefits:** Agricultural Security Designation encourages the preservation of agricultural land. They provide a landowner with protection from local ordinances that unreasonably 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 land of 500 acres or more for the purchase of conservation easements under the Pennsylvania statewide program.
- **Implementation:** The process to designate an ASA must be initiated by a landowner or a group of landowners. It also is reviewed by local officials with assistance from the County Agricultural Land Preservation Board.

Agricultural Tax Incentives

- **Description:** 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:** The 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.

To assist the County and its municipal partners, this Plan includes models of several useful acquisition and regulatory tools. These models are taken from reliable sources and have been used successfully in the Commonwealth. If used, these models should be tailored to meet each landowner's or municipality's unique circumstances, and more importantly, reviewed carefully by solicitors prior to adoption.

The following models are included as Appendices to this Plan:

- Conservation Easement⁹ – Appendix E
- Riparian Buffer Protection Agreement¹⁰ – Appendix F
- Model Stream Corridor Buffer Easement¹¹ – Appendix G
- Floodplain Overlay District Ordinance¹² – Appendix H
- Steep Slope Ordinance¹³ – Appendix I
- Penn State University School of Forestry Forest Management Model Regulations¹⁴ – Appendix J
- Mandatory Dedication and Fee-in-Lieu Ordinance – Appendix K
- Pennsylvania Land Trust Association's Model Trail Easement and Commentary- Appendix L

In addition, there are several organizations that can assist municipalities in employing tools useful in the development of greenways. The Natural Lands Trust (NLT) (www.natlands.org) has created ordinance provisions, in consultation with the Department of Conservation and Natural Resources, that are designed to preserve interconnected corridors of open space in residential land developments. Known as Growing Greener Conservation Design, this program allows municipalities to develop while setting aside important natural areas. NLT has developed model zoning and subdivision and land development ordinance models that municipalities can use to amend their ordinances. Interested municipalities that meet certain criteria may qualify for assistance through NLT's Ordinance Assistance Program.

Other organizations that have helpful resources relating to the development of conservation easements, agricultural conservation easements, and other conservation tools are:

- Pennsylvania Environmental Council (www.pecpa.org)
- Pennsylvania Association of Land Trusts (www.conserveland.org)
- Beaver County Agricultural Land Preservation Board (contact Joe Petrella at 724-728-5700 or jpetrella@beavercountypa.gov)
- Brandywine Conservancy (www.brandywineconservancy.org)
- Heritage Conservancy (www.heritageconservancy.org)

POTENTIAL FUNDING SOURCES

Development of a greenway network is costly and requires a long-term strategy that taps into a variety of State, Federal, and other sources. Funding programs designed to conserve natural resources, develop recreational trails, and create transportation improvements are all potential sources of grants. Most require that local matching funds be allocated toward the project. Tables 4.10, 4.11 and 4.12 list many of the current funding sources that may be useful in establishing a greenway network. Because these programs are constantly changing, these tables are a starting point. When seeking grant programs, applicants should check the web sites of funding organizations for an updated listing of grant programs and eligibility requirements.

Moreover, any funding strategy should leverage local sources as well. Private and non-profit contributors in the local community are an important source that should not be overlooked when assembling a funding strategy. In addition, efforts should be made to create public-private partnerships and seek out in-kind contributions from the local business community.

Table 4.9 Potential Funding Sources - State

Source	Program	Description	Contact Information
Department of Conservation and Natural Resources (DCNR)	Community Conservation Partnership Program	<p>Grant monies are available to municipal governments to support greenway and park planning, design and development. A 50% match is required from the local project sponsor. This program includes the following specified grants:</p> <ol style="list-style-type: none"> 1) Planning Grant Projects <ul style="list-style-type: none"> • Comprehensive Recreation, Park and Open Space Plans • Conservation Plans • Feasibility Studies • Greenways and Trails Plans • Rails-to-Trails Plans • Master Site Plans 2) Technical Assistance Grant Projects <ul style="list-style-type: none"> • Education and Training • Peer-to-Peer • Circuit Rider 3) Acquisition Grant Projects <ul style="list-style-type: none"> • Park and Recreation Areas • Rivers Conservation • Rails-to-Trails 4) Development Grant Projects <ul style="list-style-type: none"> • Park Rehabilitation and Development • Greenways and Trails • Rails-to-Trails • Rivers Conservation 	DCNR Southwestern Regional Advisor, 412-880-0486 www.dcnr.state.pa.us/brc
DCNR	PA Recreational Trails Program	Provides funds to develop and maintain recreation trails and trail-related facilities for motorized and non-motorized recreation trail use. The program requires a 20% match from the local sponsor.	DCNR Southwestern Regional Advisor, 412-880-0486 www.dcnr.state.pa.us/brc

Source	Program	Description	Contact Information
DCNR	Heritage Area Grants	Grants are available to promote public-private partnerships that preserve and enhance natural, cultural, historic and recreation resources to stimulate economic development through heritage tourism. Municipalities, nonprofit organizations or federally designated commissions acting on behalf of the municipalities in heritage park areas may apply. Funds may be used for feasibility studies; development of management action plans for heritage park areas; specialized studies; implementation projects; and hiring of state heritage park managers. Grants require a 25-50% local match.	DCNR Southwestern Regional Advisor, 412-880-0486 www.dcnr.state.pa.us/brc
DCNR	Urban and Community Forestry Grants	These grants can be used to encourage the planting of trees in Pennsylvania communities. Municipal challenge grants provide 50% of the cost of the purchase and delivery of trees. Special grants are available for local volunteer groups, civic clubs, and municipalities to train and use volunteers for street tree inventories, and other projects in urban and community forestry.	www.dcnr.state.pa.us/forestry/pucfc/ Service Forester Washington County Cooperative Extension Room 601 Courthouse Square Washington, PA 15301 Phone: (724) 228-6881
Department of Environmental Protection (DEP)	Growing Greener Program	These funds can be used for farmland-preservation projects; preserving open space; cleanup of abandoned mines, watershed planning; recreational trails and parks and other land use projects. Eligible applicants include nonprofit groups, counties, and municipalities. A local match is encouraged, but not required.	Growing Greener Helpline, 877-724-7336, GrowingGreener@state.pa.us www.depweb.state.pa.us/growinggreener
DEP	Stormwater Planning and Management Grants	This program provides grants to counties and municipalities for preparation of stormwater management plans and stormwater ordinances. The program requires a 25% local match that can come in the form of in-kind services or cash. This program is part of the Growing Greener Initiative.	717-772-4048 www.dep.state.pa.us/dep/deputate/watermg/wc/Subjects/StormwaterManagement/GeneralInformation/default.htm

Source	Program	Description	Contact Information
DEP	Nonpoint Source Management Section 319 Grants	This funding comes from the federal Clean Water Act. Grants are available to local governments and nonprofit groups for watershed assessments, watershed restoration projects, and projects of statewide importance. A 60% local match is required and 35% of the construction costs of projects implemented on private land must come from non-federal sources.	717-787-5642 www.dep.state.pa.us/dep/deputate/watermgmt/wc/Subjects/NonpointSourcePollution/default.htm
DEP	Environmental Education Grants	This program uses a 5% set aside of the pollution fines and penalties collected in the Commonwealth each year for environmental education in Pennsylvania. There are eight different grant tracks, most requiring a 20% match. Public and private schools, nonprofit conservation/education organizations and county conservation districts may apply for the grants.	DEP, 717-772-1828 DEPLearningCenter@state.pa.us www.depweb.state.pa.us/enved/cwpl/view.asp?a=3&q=473483
DEP	Land Recycling Grants Program	This program provides grants and low interest loans for environmental assessments and remediation. It is designed to foster the cleanup of environmental contamination at industrial sites and remediate the land to a productive use.	DEP, 717-787-7816, www.depweb.state.pa.us/dep/site/default.asp
Department of Community and Economic Development (DCED)	Community Revitalization Program	This funding source supports local initiatives aimed at improving a community's quality of life and improving business conditions.	412-565-5005, www.newpa.com/programDetail.aspx?id=72
DCED	Land Use Planning and Technical Assistance Grants	This program provides funding to municipalities for preparation and maintenance of community development plans, policies, and implementation measures. The grant requires a 50% match and priority is given to projects with regional participation.	412-565-5005, www.newpa.com/programDetail.aspx?id=72

Source	Program	Description	Contact Information
DCED	Community Development Block Grants	This program provides financial and technical assistance to communities for infrastructure improvements, housing rehabilitation, public services, and community facilities. It targets local governments and 70% of each grant must be used to benefit low to moderate income people.	717-787-5327, www.newpa.com/programDetail.aspx?id=71
DCED	Main Street Program	This program provides grants to municipalities and redevelopment authorities to foster economic growth, promote and preserve community centers, create public/private partnerships, and improve the quality of life for residents. It has two components, a Main Street Manager and Commercial Reinvestment.	717-787-5327, www.newpa.com/programDetail.aspx?id=79
Pennsylvania Department of Transportation (PennDOT)	Transportation Enhancements, Home Town Streets & Safe Routes to Schools Program	This cost reimbursement program funds projects within twelve categories including pedestrian and bicycle trails and bike lanes; purchase of scenic easements or scenic sites; and preservation of abandoned railway corridors. Any federal or state agency, county or municipal government, school district or non-profit can apply.	717-783-2258, www.dot.state.pa.us
Pennsylvania Historical and Museum Commission (PHMC)	Keystone Historic Preservation Grants	Local governments and non-profit groups may apply for this grant. A 50% local match is required and funds may be used for preservation, rehabilitation, and restoration of historic properties, buildings, structures, sites, or objects.	S717-783-6012, www.artsnet.org/phmc/pdf/khp_app.pdf
PHMC	Certified Local Government Grants	The PHMC administers this federal funding program for purposes of cultural resource surveys, technical and planning assistance, educational and interpretive programs, and national register nominations. The program includes a 40% local match that can be made with in-kind services, cash, or Community Development Block Grants.	717-787-0771, www.artsnet.org/phmc/pdf/clg_app.pdf

Source	Program	Description	Contact Information
PA Fish and Boat Commission	Boating Facilities Grant Program	<p>The grant will reimburse recipients for up to 75% of the costs for land acquisition, project design and engineering, development, expansion, and major rehabilitation of public recreational boat access facilities. Eligible activities include the rehabilitation, expansion or construction of new boat ramps, bulkheads, courtesy floats, access roads, parking areas, restrooms, signs and localized landscaping. All construction activities must benefit and directly support recreational boating. Eligible projects must occur on public lands owned by the project sponsor, or where the sponsor has a long term lease or agreement on the site.</p> <p>Grant funds are to be used for major site improvements and not for any routine maintenance or operation activities.</p>	<p>PA Fish and Boat Commission 717-705-7832 717-705-7831 P.O. Box 67000 Harrisburg, PA 17106 www.fish.state.pa.us</p>

Source	Program	Description	Contact Information
Federal Highway Administration	Transportation and Community and System Preservation Pilot Program	States, MPOs, and local governments are eligible to receive planning and implementation grants for projects that include reducing impacts of transportation on the environment, minimizing the need for costly future infrastructure investments, and improving the efficiency of the transportation system.	(202) 366-6654 www.fhwa.dot.gov/tcsp
National Parks Service (NPS)	Rivers, Trails and Conservation Assistance Program	This program provides technical assistance to community groups and local, State, and federal government agencies so they can conserve rivers, preserve open space, and develop trails and greenways.	215-597-6483 www.nps.gov/rtcal
NPS	Land and Water Conservation Fund Grants	Administered by DCED. See Table 4.	
U.S. Department of Housing and Urban Development	Community Development Block Grants	Community Development Block Program of Beaver County	Beaver County Community Development Program 1013 8th Avenue Beaver Falls, PA 15010 724-847-3889
U.S. Department of Agriculture (USDA)	Conservation Reserve Program	This is a voluntary program for agricultural landowners who receive annual rental payments and cost-share assistance to establish long-term, resource conservation methods on eligible farmland. The annual rental payments are based on the agriculture rental value of the land. The program provides cost-share assistance for up to 50% of the participant's costs in establishing approved conservation practices. Participants enroll in CRP contracts for 10 to 15 years.	202-720-1872 www.fsa.usda.gov/dafp/cepd/crp.htm

Source	Program	Description	Contact Information
USDA	Wetlands Reserve Program	The Department of Agriculture provides direct payments to private landowners who agree to place sensitive wetlands under permanent easements. This program can be used to fund the protection of open space and greenways within riparian corridors.	202-720-1067. www.nrcs.usda.gov/programs/wrp
USDA	Watershed Protection and Flood Prevention Grants	The USDA Natural Resources Conservation Service (NRCS) provides funding to state and local agencies or nonprofit organizations authorized to carry out, maintain and operate watershed improvements involving less than 250,000 acres. The NRCS provides financial and technical assistance to eligible projects to improve watershed protection, flood prevention, sedimentation control, fish and wildlife enhancements, and recreation planning. The NRCS requires a 50% match for public recreation and fish and wildlife projects.	202-720-8770 www.nrcs.usda.gov/programs/watershed/index.html
Environmental Protection Agency	Targeted Watersheds Program	The EPA awards funds to encourage successful community-based approaches and management techniques to protect and restore the nation's waters. Eligible projects include addressing agricultural pollution, urban and industrial runoff or streambank or wetland restoration for sediment control. Watersheds must be nominated by the governor. A non-federal match of 25% is required.	215-814-2718, www.epa.gov/owow/watershed/initiative/regions.html

Table 4.11 Other Potential Funding Sources

Source	Program	Description	Contact Information
National Fish and Wildlife Foundation (NFWF)	General Matching Grants	NFWF awards matching grants to governments, education institutions, and non-profit conservation organizations for projects that address priority actions promoting fish and wildlife conservation and the habitats on which they depend.	NFWF Eastern Regional Office 202-857-0166 www.nfwf.org/programs.cfm
NFWF	Five-Star Restoration Matching Grants Program	Provides grants between \$5,000 and \$2,0000 to support community-based wetland, riparian and coastal habitat restoration projects that build diverse partnerships and foster local stewardship through education, outreach, and training.	www.nfwf.org/programs.cfm
NFWF	Acres for America	Provides funding for acquisition of interests in real property that conserve important habitat.	www.nfwf.org/programs.cfm

(Footnotes)

¹ These rankings were derived from the system used in the Natural Infrastructure Project.

² Natural Infrastructure Project.

³ PA Audubon Society.

⁴ PA Code, Chapter 93.

⁵ Natural Infrastructure Project.

⁶ Natural Infrastructure Project.

⁷ These consist of primarily of privately-managed lands for hunting, fishing and other recreation.

⁸ Department of Community and Economic Development, Governor's Center for Local Government Services, 2000.

⁹ PA Land Trust Association, <http://conserveland.org>.

¹⁰ PA Land Trust Association, <http://conserveland.org>.

¹¹ Upper Salford Township, Montgomery County, cited as a model by the Delaware Valley Regional Planning Commission, <http://www.dvrpc.org/planning/community/ProtectionTools/ordinances.htm>.

¹² Allegheny County Planning Department, *Improving Local Development Regulations: A Handbook for Municipal Officials* (May 1993).

¹³ Upper Salford Township, Montgomery County, cited as a model by the Delaware Valley Regional Planning Commission, <http://www.dvrpc.org/planning/community/ProtectionTools/ordinances.htm>.

¹⁴ Penn State University, School of Forest Resources.

¹⁵ Brandywine Conservancy, *Community Trails Handbook*, Appendix A (1997).

Chapter V:
Demonstration
Segments



V. Demonstration Segments

Chapter III: Assembling the Network, discusses the criteria that was established for prioritizing the greenways in Beaver County.

For conservation corridors, the criteria was developed to conserve those areas of the County that have the most significant natural infrastructure components that we desire to maintain because they provide essential functions.

For recreation corridors, the criteria was developed to determine which of the priority segments might best serve as demonstration trails. That criteria established for a demonstration trail is as follows:

1. Creates momentum for future expansion of system
2. Is destination oriented
3. Is regional in nature
4. Serves multiple modes of transportation

Utilizing these sets of criteria, the Steering Committee recommended the following demonstration corridors:

Conservation Greenway Demonstration Corridors

- Little Traverse / Traverse Creek Corridor
- Raccoon Creek Corridor
- Brush / Connoquenessing Greys Greenway

Recreation Greenway Deomnstration Corridors

- Confluence Connector (shared use path linking Beaver, Bridgewater & Rochester)
- Raccoon Creek Greenway Trail, from the Beaver County Conservation District Environmental Center to Independence Township Community Park

Water Trail Demonstration Corridors

- Raccoon Creek Water Trail
- Beaver River Water Trail

Each of these segments will be further explored and evaluated in this Chapter to determine the viability of developing these demonstration segments. For the proposed trail segments, we are providing recommendations and analysis for the alignment, construction, and development costs of the respective trails.



CONSERVATION GREENWAY CORRIDOR DEMONSTRATION PROJECTS

We recommend the County focus its efforts towards conservation corridors along the Raccoon / Traverse and Little Traverse Creeks and along the Brush and Connoquenessing Creeks, as these areas include the highest concentration of natural infrastructure resources in the County. Towards this end, we recommend the County Greenway and Trail Coordinator work with municipal officials in the respective municipalities. The purpose of this effort is to educate the municipal officials on the value of conserving these resources with the intent they will implement land use tools to achieve the vision established herein.

Given each of the corridors is in the same state of planning and implementation, the strategies for implementation are the same. However, they will impact their associated municipalities. They include:

Raccoon Creek Greenway: Center, Hanover, Hopewell, Independence, Potter, Raccoon, and Shippingport

Little Traverse / Traverse Creeks Greenway: Greene, Hanover, Independence, and Raccoon

Brush / Connoquenessing Creeks Greenway: Ellwood City, Franklin, Marion, New Sewickley, and North Sewickley.

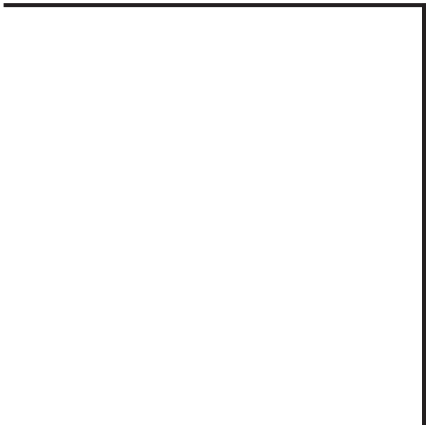
A significant component of working with these municipalities will be to educate them on the value of the recommendations contained herein, and to get them to commit to adopt the Land Conservation Tools described beginning on page 95 of this document.

Conservation Corridors Steps to Implementation

1. County Greenway and Trails Coordinator meets with municipal representatives to present findings of County Greenway and Trails Plan, educate local officials on the value of conservation and recreation greenways to their municipality and the County.
2. County Greenway and Trails Coordinator asks permission to audit municipal ordinances to determine if they can be strengthened to assist in implementing the recommendations of the County Greenway and Trails Plan.
3. County Greenway and Trails Coordinator reviews municipal ordinances and makes recommendations to the municipality on how to strengthen them to assist in implementing the recommendations of the County Greenway and Trail Plan.
4. County Greenway and Trails Coordinator identifies opportunities for conservation greenway demonstration projects and targets receptive municipality / stakeholder(s) and potential land trust agency.
5. County Greenway and Trails Coordinator meets with respective municipal officials to present draft of recommended ordinance revisions designed to achieve goal of conserving proposed resources and encouraging development that respects those resources.
6. County Greenway and Trails Coordinator, land trust agency representative, municipal representative, and local stakeholder(s) meet to determine desired area for potential conservation corridor, and discuss property ownership opportunities and constraints.
7. County Greenway and Trails Coordinator encourages respective municipal officials to adopt proposed ordinances.
8. County Greenway and Trails Coordinator / land trust agency representative researches options to acquire conservation easement from property owners, and evaluates opportunities and constraints from property owner perspective.
9. Local stakeholder and trust agency representative meet with property owner(s) in the conservation corridor to discuss potential issues and concerns of property owners.
10. Land trust agency representative and local stakeholder meet with property owners to discuss interest in providing conservation easement, discuss opportunities and constraints of acquisition options, determine interest in providing acquisition / easement, reviewing draft agreement language, etc..
11. County Greenway and Trails Coordinator assists responsible parties in overcoming issues that may arise

during the implementation process.

12. County Greenway and Trails Coordinator assists responsible parties in applying for grants and securing funding for acquisitions.
13. Local land trust agency acquires conservation corridors.



RECREATION GREENWAY CORRIDOR DEMONSTRATION PROJECTS

Raccoon Greenway Trail

In Chapter III - Assembling the Network, the Raccoon Creek Greenway Trail is described. The trail is proposed as a thirty-five mile long shared use path. The trail is proposed to connect the Montour Trail, in Allegheny County, with Hookstown Borough, located north of State Route 30.

Key destinations along the Raccoon Creek Greenway Trail include:

- Montour Trail in Allegheny County
- Hillman State Park in Washington County
- Raccoon Creek State Park in Raccoon and Hanover Townships
- Independence Township Community Park
- Beaver County Conservation District Environmental Education Center in Independence Township
- Service Creek Reservoir in Raccoon and Independence Townships
- Hookstown Borough's Main Street

The initial focus of the trail should be the seven to eight-mile stretch between Raccoon Creek State Park and the Beaver County Conservation District's Environmental Education Center. In this area, the trail would run parallel to Raccoon Creek, along its left bank (north side) to the confluence with Traverse Creek, at which point the proposed trail would continue along the left bank (north side) of Traverse Creek, into Raccoon Creek State Park. At this point the proposed trail would connect to the Raccoon Loop Backpack Trail which circles the park.

The development of this trail would be consistent with the Beaver County Comprehensive Park and Recreation Plan, which was adopted by the County in 2003. That plan recommended that the County place emphasis on coordinating recreation opportunities with Raccoon Creek State Park, and that steps be taken to encourage greater use of Raccoon Creek State Park by Beaver County residents.

Land use along this section of the proposed Raccoon Creek Greenways Trail is either primarily undeveloped wood lots or agricultural farm land. Although the area being

proposed for the trail is privately owned, the parcels of land are generally large, and there are a limited number of owners.

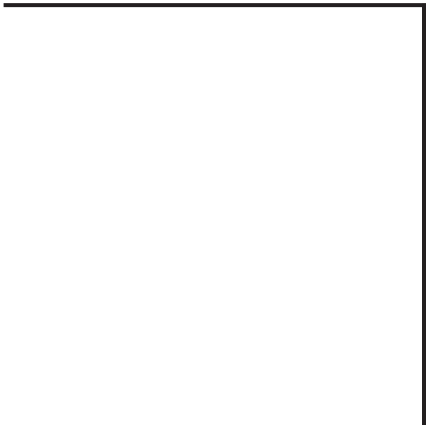
A review of the Beaver County Assessment Office's tax maps, for Hanover and Independence Township, indicates there are twelve to fifteen parcels, along this seven to eight-mile length, that the trail must cross over between Raccoon Creek State Park and Beaver County Conservation District's Environmental Education Center.

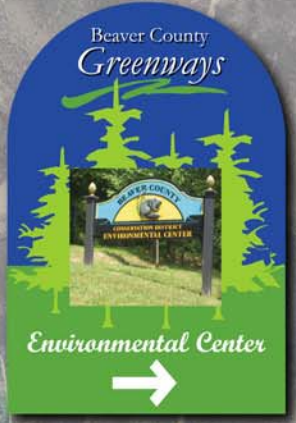
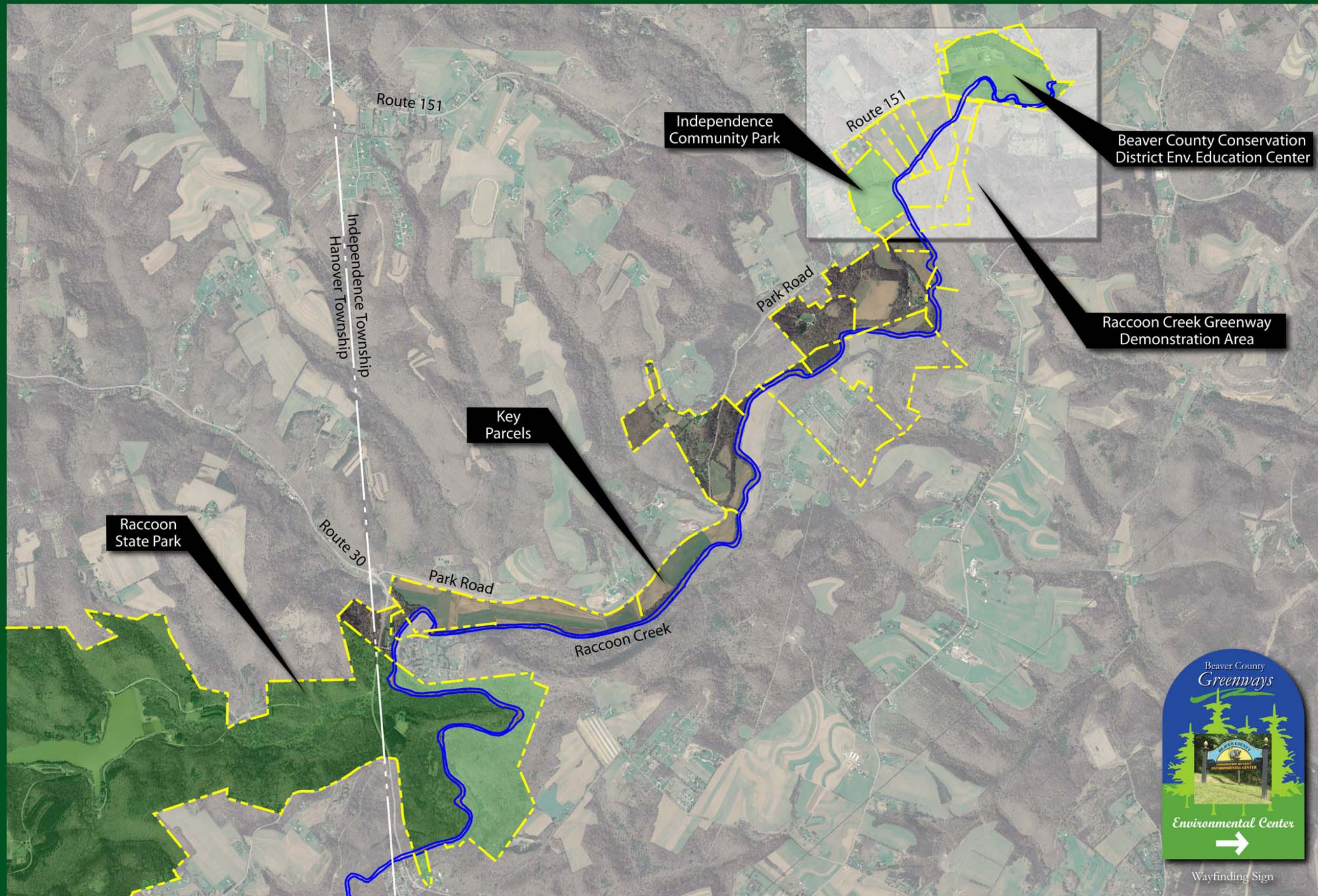
Many of these properties are enrolled in the County's Clean and Green program as agricultural land or forest reserve. Also, many of the property owners allow public access to the properties for hunting.

The Raccoon Creek Greenway Trail - Beaver County Conservation District Environmental Center to Raccoon Creek State Park corridor is shown on the following page. The key parcels identified on the map are the private parcels of land. Easements would need to be acquired through the key parcels to provide for the trail.

In addition to the proposed Raccoon Creek Greenway Trail itself, the proposed trail alignment provides an opportunity to protect existing streamside buffers and to enhance them.

Therefore, we recommend easements not only be acquired to provide for the trail but to conserve the streamside buffer between the trail and Raccoon Creek, where possible. Where land owners have enrolled property into the County's Clean and Green program, the ability to do this may be limited depending on the proximity of the trail corridor to the stream. The Clean and Green legislation only permits an easement width for a trail of up to twenty feet wide. Therefore, we recommend the County work with local municipalities to provide other mechanisms, such as stream buffer overlay zones in the municipal ordinances to protect these areas.





Wayfinding Sign



Raccoon Creek Greenway Trail
Raccoon State Park to
Beaver County Conservation District Environmental Education Center



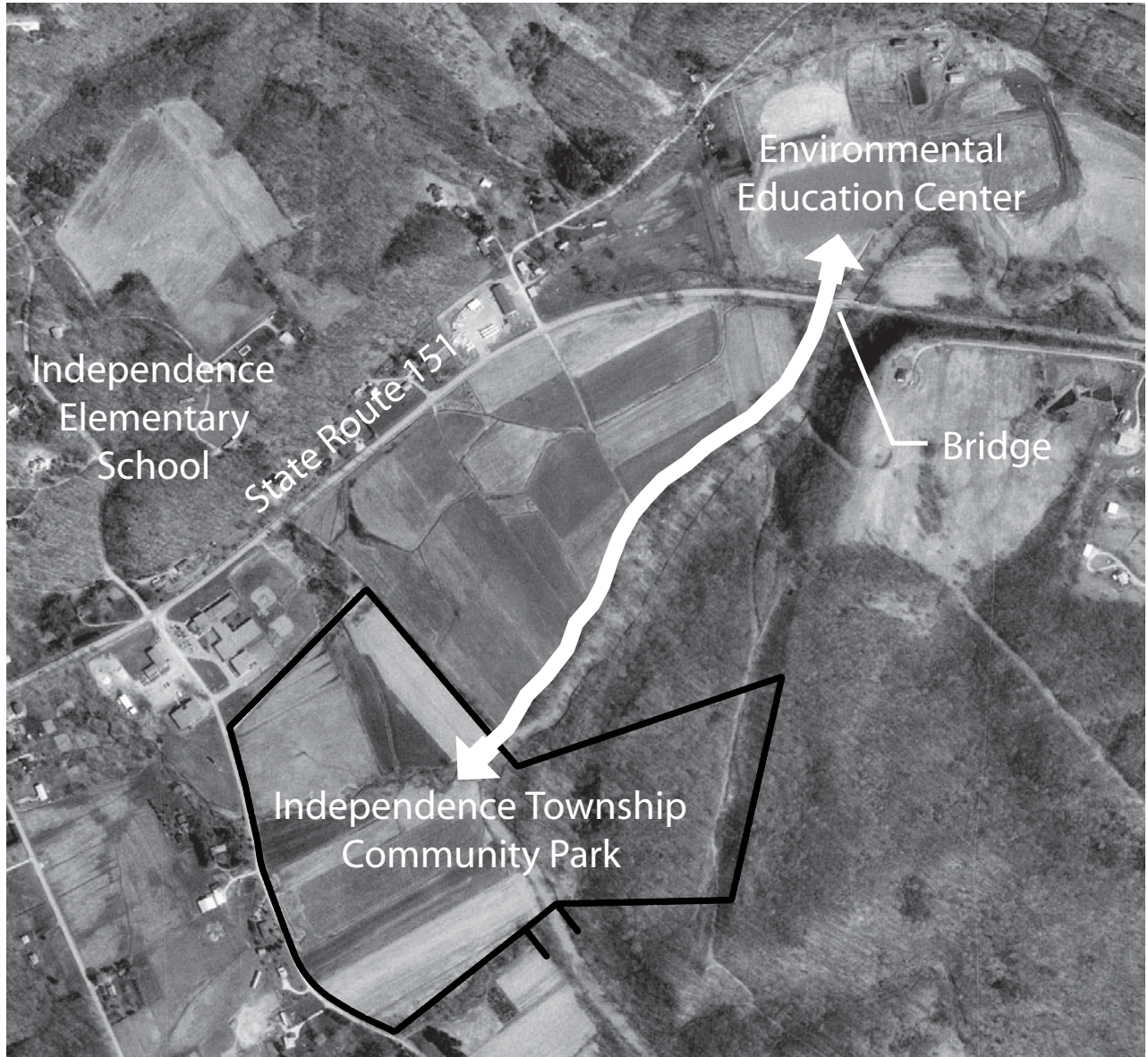


Figure 5.1 - Proposed Raccoon Creek Trail Demonstration Segment

Beaver County Conservation District Environmental Center to Independence Township Community Park

The study committee, recognizing the need to focus on implementing a manageable portion of this proposed trail, suggested the Beaver County Conservation District Environmental Center to Independence Township Community Park would serve as a good demonstration segment. This decision was based on the verbal commitments from property owners to provide easements for the trail, and the fact there are suitable destinations and trailhead opportunities located at both ends of the segment.

The proposed trail will begin at the existing trailhead located on the property of the Beaver County Conservation District Environmental Center, located on Cowpath Road in Independence Township. The Environmental Education Center is located on the left bank of Raccoon Creek, adjacent to the State Route 151 bridge.

Independence Township Community Park is currently being developed approximately one mile west of the Beaver County Conservation District's Environmental Education Center, also on the left bank of Raccoon Creek. To connect the Environmental Education Center to Independence Township Community Park, it requires obtaining easements from the owners of four privately held parcels located between the two destinations.

This trail was identified in concept as part of the Independence Township Community Park Master Plan that was completed and adopted by Independence Township in 2003.

Park development recently began, and the Beaver County Conservation District has agreed, with Independence Township, to develop a water trail access point on Raccoon Creek, within the park, as proposed in the park's master plan.

The Beaver County Conservation District's Environmental Education Center contains internal walking, hiking, and interpretive trail opportunities. The Independence Township Park master plan proposes internal walking and hiking trails, as well as a connection to the Raccoon Creek Trail that will

extend through the park. The Township Park and the Conservation District Center both lend themselves well to being destinations on a regional trail with the potential to connect Raccoon Creek State Park to the south and the Montour Trail to the northeast.

Beginning in the parking lot of the Beaver County Conservation District, trail users will proceed south on an existing trail. Upon reaching the left bank of Raccoon Creek, a new trail must be developed to extend beneath the State Route 151 bridge over Raccoon Creek. In 2004, the bridge over Raccoon Creek was reconstructed by the Pennsylvania Department of Transportation. Recognizing the opportunity for a trail connection between the Environmental Education Center and the Township's Community Park, the Township worked with PennDOT to modify the bridge design. The design was modified to provide a grade separated crossing for the trail. The bridge design provides sufficient clearance and width to allow pedestrian passage beneath State Route 151, on a shelf above the left bank of Raccoon Creek. The bank was armored with stone rip-rap to protect it from erosion during reconstruction of the bridge.

The four privately held parcels are actively being farmed by one of the owners who leases the rights to farm the properties from the remaining three property owners. The trail can be located in such a manner so as not to interfere with the farming activities. During the process of this study, the property owners were approached informally by the representative of Independence Township to determine whether the owners would be receptive to the proposed trail. Each of the four owners verbally approved of the proposed plan and indicated they would be willing to provide access through their property for the proposed trail.

An on-line query of the Beaver County Assessment Office records indicates the following ownership information for these parcels:

Key Parcels - Ownership				
Map No.	Parcel No.	Owner	Mailing Address	Acreage
1	66-213-0185.000-01-2	Independence Township	104 School Road, Aliquippa, PA 15001	59.45
2	66-213-069.000-01-1	Samuel M. Butler, et. al.	168-A Thompson Hill Road, Aliquippa, PA 15001	31.65
3	66-213-0168.N00-01-1 66-213-0168.P00-01-1	David R. & Carrie L. McDonald	3553 Route 151, RD1, Aliquippa, PA 15001	38.83
4	66-213-0167.N01-01-1 66-213-0167.P01-01-1	W. Wayne & Frances McDonald	3553 Route 151, RD1, Aliquippa, PA 15001	14.35
5	66-213-0164.000-01-1	Alan L. Butler	18213 Poplar Road, Fort Meyers, FL 33912	56.521
6	66-213-0163.002-01-2	Beaver County Conservation District	156 Cow Path Road, Aliquippa, PA 15001	76.829

Table 5.1

After crossing beneath the State Route 151 bridge, the proposed trail would continue to parallel Raccoon Creek and be located just north of the existing forested buffer along the creek's left bank. Caution must be taken in aligning the trail so that trail users are not invited or encouraged to cross Raccoon Creek and continue on the right bank of the stream. That area contains a species of special concern identified through the Pennsylvania Natural Diversity Inventory process, and confirmed by field observations. Crossing the stream serves little value in this location, as the topography on the right bank of the stream is rather severe.

By continuing south on the left bank of the creek, the trail would eventually reach the Independence Township Community Park property. Upon reaching the park's northeastern boundary, the trail would then continue southward and must cross two perennial drainageways before reaching the portion of the park that is currently being developed by the Township. The two drainageways would require small bridges to allow the trail to cross over them. In addition, each bridge would require the acquisition of a Pennsylvania Department of Environmental Protection permit to allow the crossings to occur.

The map on page 120 conceptually proposes an alignment for this demonstration trail.



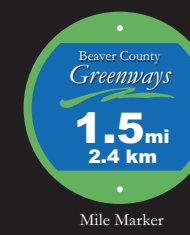
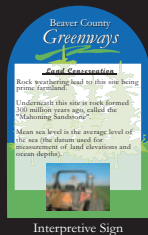
State Route 151 Bridge Over Raccoon Creek - Before

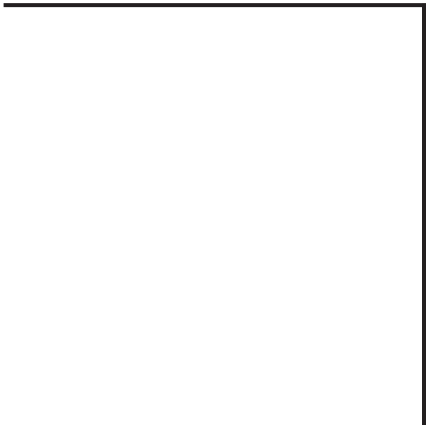


State Route 151 Bridge Over Raccoon Creek - After



*Raccoon Creek Greenway Trail
Independence Township Community Park
to Beaver County Conservation District Environmental Education Center*





Property Ownership Issues

Given the proposed trail is entirely located on private property, rights need to be secured from each property owner to allow the trail to cross over their land.

As noted earlier, each of the property owners have made a verbal commitment to allow the trail to cross their property. However, before the further planning, design, and trail development efforts take place; a formal agreement should be entered into to secure the right to use a portion of the private properties for the proposed trail. This agreement also must define the responsibilities of the grantee and grantor so expectations are established up front, and each party fully understands their responsibilities.

Towards this end, there are several directions this easement can take. The grantors of the agreement are the property owners. A grantee, who will hold the agreement with the grantor, needs to be identified. Typically, the management structure for the overall trail would define who holds the agreements for the various sections of the trail.

During the course of this study several potential grantees were discussed for this particular segment of trail. The possibilities include:

- Independence Township
- Beaver County Conservation District
- Beaver County, through the Planning or Recreation Department
- A Non-Profit organization

The regional nature and significance of the overall trail is apparent. The trail will not only serve Independence Township, but also the larger regional population of Beaver County. Also, it is desirable to maintain continuity when developing and maintaining the proposed trail. As the entire trail will likely be developed in several phases, it is important to establish design and maintenance standards that each phase of the trail must meet. Therefore, a management structure which has jurisdiction over the entire trail provides the best option to be the grantee.

Furthermore, a public private partnership will provide the best opportunity to leverage opportunities for funding and assembling a volunteers base to assist with trail management, development, and maintenance efforts.

If the County is serious in its efforts to establish a system

of greenways and trails in Beaver County, then the County Planning Department should be authorized to take the lead in implementing this trail. Therefore, the County should be the grantee and hold the rights to develop the trail and provide public access to it. If at some point in the future a County-wide non-profit trail association emerges, the County may want to consider transferring their agreements to a non-profit trail organization.

Recently, the Beaver County Conservation Foundation was formed as a non-profit organization to aid in conservation and trail efforts in Beaver County. This organization can fulfill the County's need to partner with a private non-profit agency to leverage additional funding opportunities.

Beaver County, partnering with the Beaver County Conservation Foundation or another suitable non-profit agency, is the best solution for managing the implementation of the greenways and trails that are of regional significance to Beaver County. With this arrangement, one partnership would be responsible for all regional greenway and trail efforts in the County. This is the most efficient method of managing multiple greenway and trail corridors provided:

- The County has a competent Greenways and Trails Coordinator in place.
- The County Greenways and Trails Coordinator is provided with adequate resources to work towards the implementation of prioritized projects.
- The County Greenways and Trails Coordinator can leverage local match monies, allocated by the County and participating municipalities, to obtain federal and state grants to implement the prioritized projects.
- The County Greenways and Trails Coordinator can work in partnership with a non-profit organization to secure support and funding from foundations to implement the prioritized projects.

Given this analysis, we recommend that the County negotiate for trail easements to provide the right to develop, construct, and provide public access for a trail between the Beaver County Conservation District Environmental Education Center and the Independence Township Community Park.

However, the easement should be granted from the property owners to a suitable non-profit organization, such as the Beaver County Conservation Foundation, for the reasons outlined as follows.

The parcels owned by David and Carrie McDonald, and W. Wayne and Francis McDonald, have been enrolled in the County's Clean and Green program. This state program, administered at the County level, benefits owners of agricultural, agricultural reserve, and/or forest reserve land. It benefits the land owners by affording preferential assessment of the properties' values. The state's legislation for this program is contained in the Pennsylvania Code, Chapter 137b, Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act.

Owners of these lands, that meet the respective definitions contained in the State's Clean and Green legislation, can enroll their land in this program. Once enrolled, the value of the land is preferentially assessed. This means the land value is not established based on its highest and best use, but on the value the land holds based on its current classification, either as agricultural; agricultural reserve; and/or forest reserve land. This reduces the property tax burden on the properties' owners.

Generally, if the classification of the land, or portion thereof, changes and is no longer consistent with the eligible land classification defined in the legislation, the land, or portion of thereof, is re-assessed at its highest and best use.

However, the legislation specifically provides a provision to allow a portion of the enrolled land to be conveyed, by

easement, to a non-profit organization, in accordance with the requirements of the legislation. The legislation requires the following:

1. The land, or an easement or right-of-way in the land, be conveyed to a non-profit organization.
2. The conveyed land shall be used as a trail for non-motorized purposes.
3. The conveyed land does not exceed twenty feet in width.
4. The conveyed land is available to the public for use without charge.
5. At least 10 acres of the remainder of the land enrolled remain in agricultural, agricultural reserve, and/or forest reserve.

By conveying the right to develop and access a trail, in accordance with the Clean and Green requirements on the McDonald properties, the property owners will have met the conditions of the legislation including retaining ownership of ten acres or more of eligible land. Therefore, their properties will continue to be enrolled in the County's Clean and Green program.

The County may choose to advise potential grantors of this particular legislation, as it provides them with a benefit, and at the same time allows the County to implement its greenways and trails program.

Table 5.2

Key Parcels - Acreage of Required Acquisition				
Map No.	Parcel No.	Owner	Lineal Feet of Trail to Cross Property (20' wide)	Acreage of Required Acquisition
1	66-213-0185.000-01-2	Independence Township	100	0.458
2	66-213-069.000-01-1	Samuel M. Butler, et. al.	325	0.149
3	66-213-0168.N00-01-1 66-213-0168.P00-01-1	David R. & Carrie L. McDonald	360	0.165
4	66-213-0167.N01-01-1 66-213-0167.P01-01-1	W. Wayne & Frances McDonald	380	0.174
5	66-213-0164.000-01-1	Alan L. Butler	740	0.339
6	66-213-0163.002-01-2	Beaver County Conservation District	3685	1.688

Property Acquisition

Acquisition of property for the proposed trail can occur in a variety of ways, as identified in Chapter IV - Implementation.

The preferred methods of acquiring property for trail development are either by fee simple purchase, or trail easement. Typically, a property owner is more willing to provide an easement than to subdivide and sell a portion of the property. Furthermore, fee simple acquisition requires subdivision of property in conformance with the local municipality's subdivision and land development ordinances. This creates complications, as ordinances state parcels resulting from the subdivision must have access to a public right-of-way and not be land locked. As linear elements, subdivisions for trails can seldom provide the required access to a public right-of-way. Thus, easements are generally utilized for acquiring property for trails.

The Pennsylvania Association of Land Trusts (PALTA) has developed a Model Trail Easement Agreement, (refer to Appendix K for a copy of this model ordinance and corresponding commentary). The PALTA model trail easement agreement is an excellent document to begin with when tailoring an agreement to meet specific grantor and grantee requirements. Furthermore, the agreement provides many provisions that address trail issues that often come up on trail projects, but generally are not thought of and addressed ahead of time in a traditional easement.

A companion document, the Model Trail Ordinance Commentary, has also been published by PALTA, the . The commentary provides layperson friendly explanations of the significance of the various clauses in the trail easement. Furthermore, upon reading the commentary, one learns the trail easement agreement does not favor the grantor or grantee, but provides for a fair distribution of rights and responsibilities that are generally accepted by both parties.

We recommend the County begin negotiating for trail easements for the Raccoon Creek Demonstration Trail by starting with this easement.

Trail Development

We recommend the County establish Trail Development Standards for the various trails being proposed in the County's trail system.

The Raccoon Creek Demonstration Trail is proposed as a shared use path for pedestrians and cyclists.

A shared use path (also commonly referred to as a multi-use path) is a facility that is typically removed from the vehicular transportation network, within its own easement or right-of-way, not the vehicular right-of-way. As its name suggests, many different types of users may be present on a shared use path. Users generally include walkers, joggers, in-line skaters, and bicyclists.

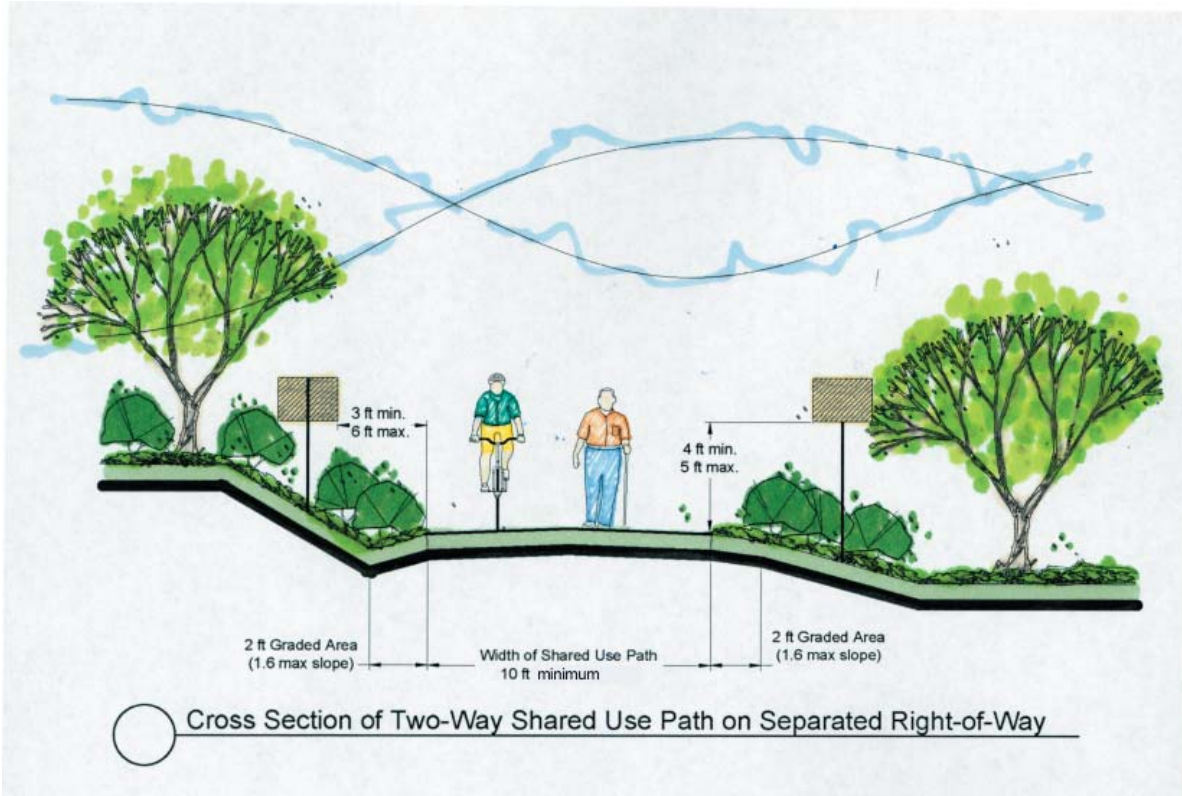
Based on this use classification, the following standards are recommended.

The American Association of Transportation Officials have published "Guidelines for the Development of Bicycle Facilities". In this publication, they establish recognized guidelines for the development of shared use paths.

Shared Use Path Width and Clearance Requirements

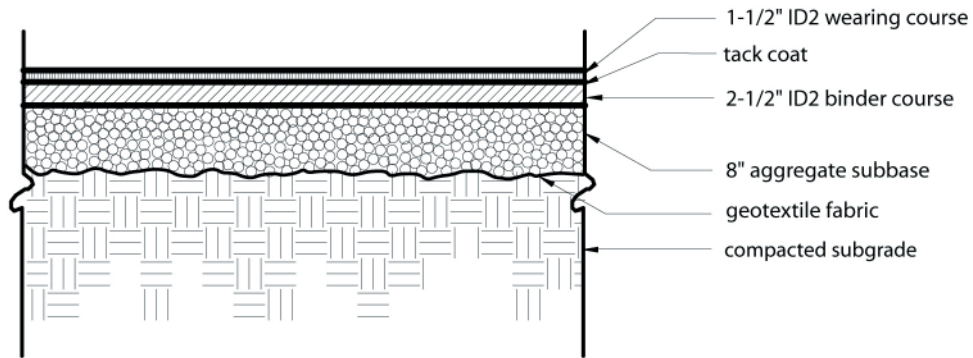
The AASHTO "Guidelines for the Development of Bicycle Facilities" recommends two directional shared use paths be constructed with a minimum width of ten feet. Additionally, the guideline states a minimum of a two foot wide graded area, with a maximum slope of 1:6, should be maintained adjacent to each side of the path. Where lateral obstructions; such as guiderails, utility poles, trees, and walls are present; three feet of clearance is recommended. Where slopes greater than 3:1 are present, the guidelines recommend a minimum of five feet be maintained between the edge of the path and the top of slope, or a suitable barrier; i.e. hedgerow, fence, or other barrier; be placed at the top of slope.

The recommended minimum vertical clearance to an obstruction is eight feet. However, the vertical clearance may need to be greater to accommodate maintenance and emergency vehicles.



Shared Use Path Materials

For optimum durability a shared use path should be constructed of bituminous paving. The path must also be constructed on stable, compacted soils to achieve maximum structural stability.



Bituminous Paving

Not to Scale

Drainage

Probably one of the most important aspects of a trail's design, regardless of trail type, is that of drainage. Without sufficient drainage a trail is bound to fail within the first five years. Although drainage, improvements are site specific, there are some general rules of thumb that should be followed. They include

- The trail should have either a cross slope, or a running slope, that is 2%, with the surface draining towards the downhill side.
- When constructing trails on existing grades of greater than 30%, the trail should be crowned.
- Side swales and culverts prevent water from reaching the trail surface and give water on the trail surface a means to drain the water beneath the trail. Side swales convey water along the trails to a point where culverts can be placed to carry the water under the trail to daylight.
- Rolling dips help to prevent washouts on long running grades and steep grades. Rolling dips must be smooth and integrated into the grade of the trail. Their locations are dependent on the length of the trail above the dip and the size of the watershed that drains onto the trail.

Markings and Signage

Generally, the following types of signs should be installed along shared use paths:

1. Trailhead Signs must invite users, be attractive, and provide trail users with an overall summary of the trail and rules for use of the trail.
2. Mileage Markers should be installed in either one-tenth mile or one-half mile intervals along the path. Mile markers assist emergency response personnel in locating users in need of assistance.
3. Wayfinding Signs should be installed at appropriate locations along the path to direct users to cultural features and points of interest along the path, and beyond the trail corridor. At a minimum, wayfinding signs should be placed to direct users to schools, parks, municipal buildings, and other publicly assessible facilities and areas.
4. Historical / Interpretive Signs should be installed at appropriate locations to interpret points of interest. Interpretive signs can be of cultural, historical, or environmental interest.

5. Regulatory Signs are required where the shared use path crosses roads. Regulatory signs must conform to the U.S. Department of Transportation's "Manual on Uniform Traffic Controls" and all Pennsylvania Department of Transportation requirements.

The design of all signs must take into consideration durability, maintenance requirements, and replacement costs.

No pavement markings are required for shared use paths.

Drainage Structures and Utility Covers

Drainage structures and utility covers, located in or adjacent to a shared use path, must be flush with the path and be bicycle safe. Grates with cross members spaced a maximum of four inches apart, on center, are considered bicycle safe.

Bicycle and Pedestrian Amenities

Trailhead Access Points and Rest Opportunities

The locations of trailhead access points and rest opportunities along a shared use path are crucial to ensuring a positive trail experience. Generally, trailhead access points are paired with rest opportunities. Therefore, a typical Trailhead Access Point includes:

- Parking
- Picnic Shelter
- Picnic Tables
- Bicycle Rack
- Trash Container
- Trail Information Kiosk
- Portable or Permanent Toilets depending on utility availability

In addition, where water and electric utilities are available, the following are desirable:

- Drinking Fountain
- Permanent Flush Toilets
- Air Station
- Security Lighting

For the Raccoon Creek Demonstration Trail, a trailhead access point and rest area should be established as part of the Independence Township Community Park development. Also, there is sufficient parking, and there is access to public restrooms in the Beaver County Conservation District Environmental Education Center during their operating hours.

Opinion of Probable Construction Costs for the Raccoon Creek Demonstration Trail

Utilizing the concept plan presented in Map 10 - Raccoon Creek Greenway Trail - Demonstration Segment, we prepared an Opinion of Probable Construction Costs. The costs are based on the trail design standards, proposed in this Chapter, for the corridor.

The construction costs projected here are based on 2007 dollars. To budget for inflation of costs, we recommend a four percent annual increase for all work occurring after 2007. In projecting these costs, we assumed all construction will be completed through a competitive public bidding process and with Pennsylvania Prevailing Wage Rates being paid by the contractors to their employees.

Table 5.3 - Raccoon Creek Greenway Demonstration Trail - Opinion of Probable Costs

Raccoon Creek Greenway Demonstration Trail					
<i>Item</i>	<i>Description</i>	<i>Qty.</i>	<i>Unit</i>	<i>Unit Price</i>	<i>Subtotal</i>
1	Clearing & Grubbing	3	AC	\$4,000	\$12,000
2	Earthwork	3000	CY	\$8	\$24,000
3	Drainage Structures / Improvements	1	LS	\$25,000	\$25,000
4	Seeding	3	AC	\$1,500	\$4,500
5	Asphalt Paving	7300	SY	\$35	\$255,500
6	Stream Crossings - Pedestrian Bridge	2	EA	\$50,000	\$100,000
7	Trail Markers (@ every 0.1 mile)	6	EA	\$250	\$1,500
8	Trailhead Kiosks	2	EA	\$3,000	\$6,000
<i>Subtotal</i>					<i>\$428,500</i>
<i>Contingency @ 10%</i>					<i>\$42,850</i>
<i>Mobilization</i>					<i>\$34,280</i>
<i>Erosion & Sediment Control @ 8%</i>					<i>\$34,280</i>
<i>Engineering (Including NPDES and Stream Crossing Permits) @ 15%</i>					<i>\$64,275</i>
<i>Total</i>					<i>\$604,185</i>

Liability

Generally, the stumbling block for trail projects becomes the property owner's fear of liability. Many times an easement or lease will be granted for little cost if the property owner is convinced that they have no exposure to liability claims.

To address this concern, the property owners need to be made aware of the fact the proposed trail will be designed in accordance with current practices and standards. Secondly, the agency who holds the easement for the trail should guarantee the land owner that "ordinary care" of the trail will be provided. Ordinary care is defined by the courts as the level of care that a reasonable prudent professional or other individual would have taken in the same action or event. And third, the agency who holds the easement will take prompt action to repair hazardous conditions that may arise on the trail from time to time.

While it is difficult to guarantee protection from liability, there is some protection provided to the private land owner in Pennsylvania by the Commonwealth's Recreational Use Statute, Title 68, Chapter 11.

The Act can be summarized as legislation that has been enacted in the Commonwealth that limits the liability of land owners who make their land and water areas available to the public for recreational purposes. The Act does not provide protection for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; nor for injury suffered in any case where a land owner charges the person or persons who enter or go onto the land for the recreational use thereof. The exception in the case is where the land is leased to the State or a subdivision thereof.

The Act does not warrant a user to trespass onto private property. So, trespassing can be enforced should a trail user wander outside the agreed upon easement or right-of-way.

Political subdivisions are afforded limitation of liability through the Political Subdivision Tort Claim Act. This Act provides protection to political subdivisions in cases where injury is facilitated or caused by the act of others. An exception is granted to municipal immunity when a plaintiff alleges and proves that an artificial condition or defect of the land itself caused the injury.

Therefore, in some instances it may be in the lease holder's best interest to hold harmless the private land owner who

offers their property for trail development.

Before making any final decisions, one must consider the matter of law and should consult their solicitor for a legal opinion.

Operations and Security

This study recommends that a formal management plan be prepared for the County's Greenways and Trails System. This plan should be adopted by the County and those the County partners wish to develop the system. The objective of the plan is to ensure that the health, safety, and welfare of the public are protected. A trail should be classified as a linear park and should be maintained in a safe and usable condition like all other public park facilities. Trails should be designed with consideration given to maintenance, so they can fulfill their function, but not put undue burden on the maintenance staff.

A management plan should define the roles and responsibilities associated with performing the various tasks related to the trail system, establish a routine maintenance schedule, and a risk management inspection schedule. The trails must be kept free from litter, debris, and other foreign matter that may pose a hazard to the users.

Vegetation should be controlled to ensure clear and open lines of sight and must establish a plan for the systematic removal of invasive plant species. Standard practices are to maintain a clear line of sight for three hundred feet along the trails in both directions from the user, and within three to ten feet of the trail edges.

Shared use paths must be maintained for the full width, so as not to allow the edges of the trail surface to unravel. We recommend a "pack it in, pack it out" policy be developed for the trails, eliminating the necessity to provide trash collection along the entire route. Trash receptacles and /or dumpsters should be located at the trailheads. Seeded areas in the vicinity of shared use paths should be mowed frequently, and if winter maintenance occurs, it should be accomplished through plowing in lieu of using de-icing agents, which can damage the trails and be harmful to the surrounding environment.

Management Plan

To ensure the success of the trail system, this study recommends the County work with local municipalities to establish an agreement to have the local municipalities assume the responsibility of maintaining the trail network. Trails surfaces must be maintained in a safe and usable condition at all times. All defects in a trail surface must be corrected as soon as feasible through the removal and replacement or corrective action which restores the trail surface to a safe and usable condition. All potential hazards must be clearly identified and marked to alert users until they can be repaired.

Costs associated with the operation of trails is difficult to project due to volunteer labor, which has not been yet identified, which can help to offset costs. However, operation and maintenance of trails is on-going and a necessary activity that will ensure the continued use of safe trails in the County.

Trails should be maintained at the same level as roads. This means the tasks shall generally include the following:

- Mowing of berms
- security patrols
- maintenance to clear brush, debris and trash
- Sweeping of trails with a rotary brush to remove dirt and leaf litter
- Erosion control, repair of drain pipes and cleaning of swales
- sealing of bituminous pavement
- patching and regrading of surface
- inspecting, repairing, replacing signs, traffic markers bollards and gates
- Cleaning of culverts, catch basins and other drainage structures
- maintaining, and completing preventative maintenance on support facilities
- Inspecting all trail related structures to ensure they are in a safe condition

Based on the above, we have projected the tasks associated with maintaining each trail type proposed herein. In addition, we have estimated the person hours required to complete each task, on a per mile basis. These figures were then multiplied by the number of events required per year, and then multiplied by an average salary to establish an annual maintenance budget for the trail system.

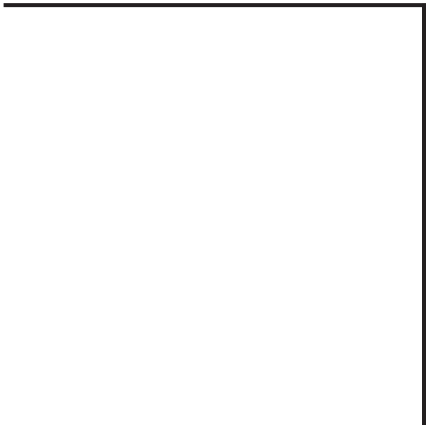
This analysis assumes existing staff can be allocated, or new maintenance staff be hired to complete the work. Costs can be substantially reduced if volunteers are available to complete these tasks.

Person hours were projected in accordance with the guidelines presented in the National Recreation and Park Association's publication titled "Park Maintenance Standards." These standards typically address maintenance requirements for traditional community park land. Therefore, the standards were adapted to meet the needs of the proposed trail corridors.

We recommend monies be set aside to build up financial resources for years when major repairs or capital improvements are required. Maintenance is critical and has an effect not only on user safety, but on crime and vandalism as well.

Table 5.4 - Raccoon Creek Greenway Trail - Projected Maintenance Costs in 2007 Dollars

Task	Person Hours per Mile	Number of Miles	Total Person Hours per Event	Number of Events per Year	Cost per Person Hour	Total
1. Quarterly mowing of berms	0.50	1.23	0.62	4	\$30.00	\$73.80
2. Quarterly inspection patrol and clearing of debris from trail surface	0.50	1.23	0.62	4	\$30.00	\$73.80
3. Sweep trail with rotary brush, once in the spring and summer, and weekly September through October	1.00	1.23	1.23	10	\$30.00	\$369.00
4. Quarterly erosion control repair, maintenance of drainage structures and sign repair / replacement	2.00	1.23	2.46	4	\$30.00	\$295.20
5. Plow snow from trail once per week December through March	1.00	1.23	1.23	20	\$30.00	\$738.00
Subtotal						\$1,549.80
Contiengency						\$154.98
Total Cost						\$1,704.78



Confluence Connector

In Chapter III - Assembling the Network, the Confluence Connector is generally described. The Confluence Connector is an integral part of the County's trail network as it connects several of the County's major hubs to one another. These hubs include:

- Rochester Borough
 - Rochester Borough Riverfront Park
 - Beaver County Flags Across America Plaza
 - Rochester Borough Business District
- Bridgewater Borough
 - Bridgewater Borough Business District
 - Bridgewater Borough Historic District
 - Bridgewater Borough Riverfront Park
 - Bridgewater Crossing
- Beaver Borough
 - Beaver Borough Riverfront Park - proposed
 - Beaver Area Historical Museum
 - Beaver National Register Historic District
 - Beaver Borough Business District
 - Fort McIntosh Historic Site
- Beaver County YMCA in Rochester Township

In addition, it provides access from Bridgewater Borough to Bradys Run Park along the widened shoulders of State Route 51.

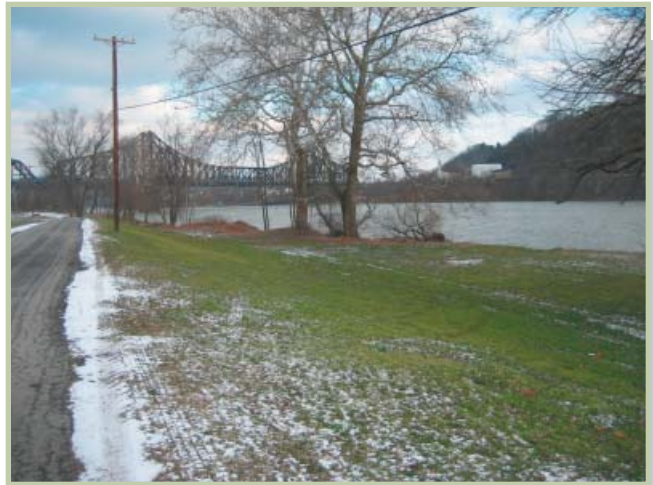
This trail will be approximately one and one-half miles in length. It will consist of shared use paths, bicycles sharing the road, and pedestrian sidewalks. This combination of modes is required to allow the connection through the main street areas of each of the municipalities.

Confluence Connector Description

Beginning in the proposed Beaver Borough Riverfront Park, the trail will begin as a shared use path and head easterly towards Bridgewater Borough. As the trail enters into Bridgewater Borough it will pass beneath the Rochester Beaver Railroad Bridge (CSX Railroad line) and onto the Bridgewater Crossing property (formerly known as the Crain Brothers property).



Bridgewater Crossing - Existing CSX Bridge Underpass



Beaver Riverfront Park - Proposed

The Bridgewater Crossing site was purchased several years ago by the Beaver County Corporation for Economic Development (BCCED). The BCCED purchased the site with the intent to establish a mixed-use development on the property. The property's river frontage will be retained in public right-of-way and will provide for a pedestrian promenade near the confluence of the Beaver and Ohio Rivers.

Development of the property has been stalled by the need to acquire public crossing of the CSX rail line which isolates the site from the Bridgewater main street district. Several alternatives for the crossing were studied, including an at-grade crossing and a grade separated crossing.

In the end, the BCCED and CSX agreed an at-grade crossing was the most feasible option, as it did not reduce the amount of property available for redevelopment on the Bridgewater Crossing property. CSX also stipulated that pedestrian sidewalks are not permitted to cross at this public crossing because of the inability to meet the Americans with Disabilities Act requirements due to the crossing of the tracks.

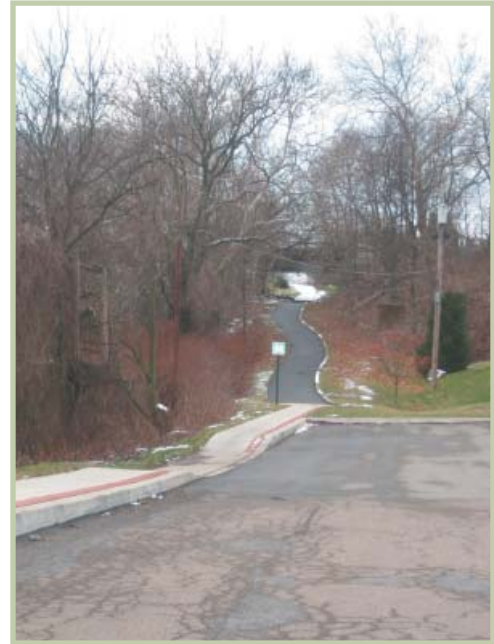
Without a suitable pedestrian crossing of the tracks, the site cannot provide a pedestrian connection to the Bridgewater Borough business district. The decision to not include pedestrians in the public crossing presents a safety issue. Pedestrians who desire to reach the Bridgewater Borough Business District are likely to utilize the proposed at-grade vehicular railroad crossing to reach the business district. Therefore, not only is there the safety conflict with rail traffic, but also the vehicular traffic traveling on the public road.

We strongly recommend that solutions to provide the pedestrian connection from Bridgewater Crossing to the Bridgewater Business District be explored. This is necessary to alleviate the safety hazard that will exist if the at-grade crossing is constructed as currently proposed.

One solution would be to provide a grade separated pedestrian crossing of the CSX line. Although this is an expensive solution, it provides for the highest level of safety. Whether a grade separated pedestrian crossing can be accommodated needs to be further studied, as it is beyond the scope of this project.

Once the trail crosses over the railroad tracks, it will continue along the proposed Mulberry Street Extension to Wolf Lane. At Wolf Lane a decision point is reached. Trail users can either proceed west to Beaver, or east towards the Bridgewater Business District and Riverfront Park.

Proceeding east along a sidewalk on the southern side of Wolf Lane, the trail connects to the shared use path known as the Wolf Lane Connector.

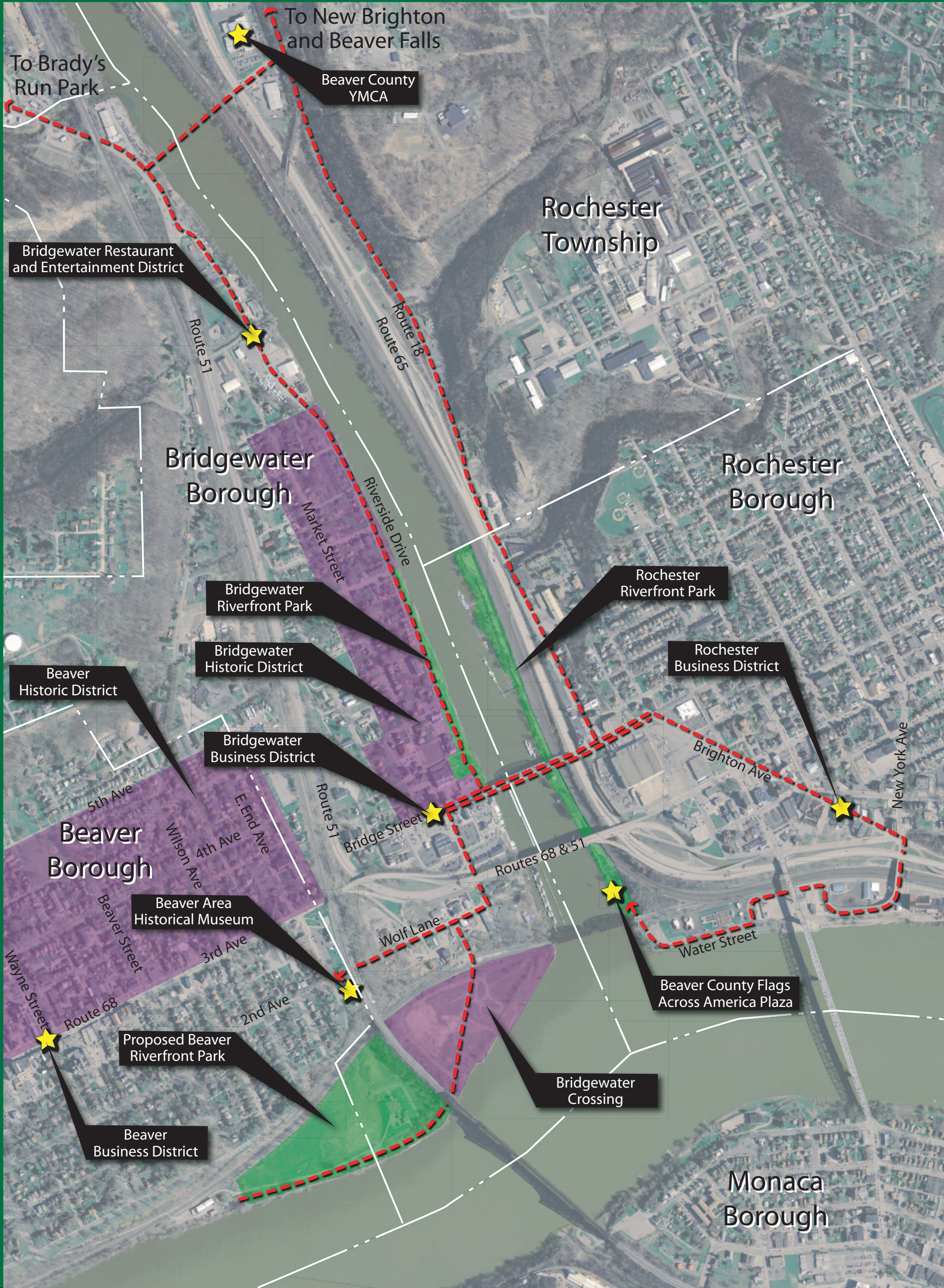


Wolf Lane Connector

The Wolf Lane Connector continues west along the southern boundary of the Thursday's Restaurant property, crosses beneath another CSX railroad bridge, and arrives on East End Avenue in Beaver. The trail terminates on East End Avenue adjacent to the Beaver Area Historical Museum. From this point sidewalks allow trail users to access the Beaver Business District, the Beaver National Register Historic District, and the National Register's Fort McIntosh site.



Beaver Area Historical Museum



Confluence Connector
Connecting Beaver, Bridgewater, and Rochester

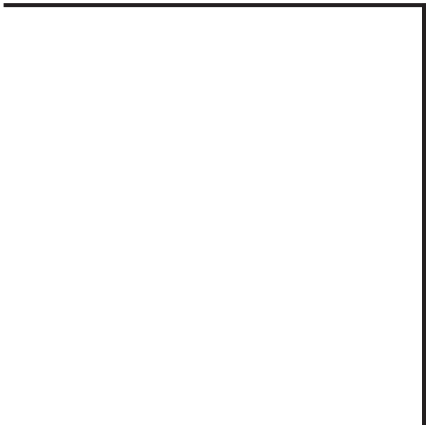


Not to Scale



Mile Marker





Upon reaching Wolf Lane and heading east, pedestrian trail users must use sidewalks along Wolf Lane, continue on the sidewalks on Market Street to the Bridge Street, which begins the Bridgewater Business and National Register Districts. Bicyclists must share the road from the Bridgewater Crossing Road, along Wolf Lane and Market Street to reach Bridge Street.



Bridgewater Business District

Upon reaching Bridge Street there is another decision point. Pedestrian trail users can continue east on the Bridge Street sidewalks and cross the Bridge Street Bridge sidewalks to reach Rochester Borough. Sidewalks extend the length of West Madison Street. At the intersection of West Madison Street and Brighton Avenue users can take the Brighton Road sidewalks east to the New York Avenue intersection.



Market Street - Bridgewater



Bridge Street Bridge between Bridgewater and Rochester

From New York Avenue, trail users can reach the Rochester Riverfront by the New York Avenue overpass which crosses the Norfolk Southern rail lines on the right bank (eastern) of the Ohio River. The overpass ramp does not provide any accommodations for pedestrians.

In addition, the intersection of Brighton Road and New York Avenue is busy with vehicular traffic and the intersection is controlled with traffic lights. This intersection should be further evaluated to determine if pedestrian improvements can be made to increase the level of safety for pedestrians who desire to cross this intersection.

The New York Avenue overpass is in poor condition. Consideration must be given to adding pedestrian accommodations to the New York Avenue overpass as plans for its rehabilitation progress. The expense of adding pedestrian accommodations to this overpass are outweighed by the need to have pedestrians reach the Rochester Borough Riverfront Park and the Beaver County Flags Across American Plaza.

As the focal point for community events in Rochester Borough and other County-wide events, the need to provide pedestrian access to the Rochester Riverfront cannot be overstated. Parking at the Riverfront is limited, and during special events many park in the Borough's business district and walk down to the Riverfront.

Many pedestrians are often observed trespassing and crossing the Norfolk Southern rail lines at-grade when special events are held in the Borough's Riverfront Park.

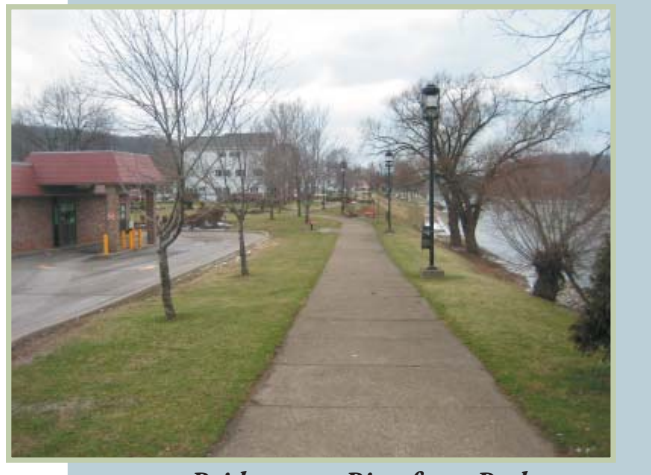
Bicyclists who choose to reach the Rochester Riverfront would follow the same route, although they must share the road with vehicular traffic.

We recommend the County and Rochester Borough meet with PennDOT to discuss the plans for this route and begin to implement pedestrian and bicycle improvements along it as other projects are occurring along the route.

At Bridge Street in Bridgewater Borough, trail users also have the option to continue north, towards the Veterans Memorial Bridge, and Bradys Run Park located north along State Route 51. If this route is chosen, users will access the pathway that extends along Bridgewater's Riverfront Park from Bridge Street. At Fulton Street, the path ends on Riverside Drive. At this point, two options exist to proceed north.



Riverside Drive between Fulton and Sharon Roads - Bridgewater



Bridgewater Riverfront Park

The first option is for pedestrians to use the western side of Riverside Drive between Fulton and Sharon Road. Bicyclists can share the road along Riverside Drive as traffic is limited and light along the road to Sharon Road.

Beginning at Sharon Road and extending north along Riverside Drive is a popular restaurant and entertainment district. It may be possible to extend the sidewalk, along Riverside Drive from Sharon Road to State Route 51 and the Veterans Memorial Bridge, by acquiring an easement for the sidewalk from the property owners. Bicyclists would share the road. Given the high volumes of traffic along State Route 51 and the new traffic that will be generated due to the Veterans Memorial Bridge, bicyclists may not find it desirable to share the road.



Riverside Drive restaurant and entertainment district - Bridgewater

The second option would be to limit the traffic on Riverside Drive to traveling one-way. This would provide sufficient space for a shared use path on the eastern side of the road (river side). This shared use path would then reach the Veterans Memorial Bridge and connect to the shared use path on the bridge to reach the Beaver County YMCA in Rochester Township. Then trail users would have the opportunity to access the proposed Rochester to New Brighton shared use path, and continue towards Beaver Falls.



State Route 51 and Veterans Memorial Bridge Intersection



Beaver County YMCA - Rochester Township

Property Ownership Issues

The majority of the proposed Confluence Connector will be located in the following areas:

- Public Property - Beaver Riverfront Park & Bridgewater Riverfront Park
- Public Right-of-Ways - Bridgewater Crossing, proposed Mulberry Street Extension, Wolf Lane, Market Street, Bridge Street, Riverside Drive, State Route 51, Bridge Street Bridge, and the Veterans Memorial Bridge

Of the above, the only state rights-of-way that are under the jurisdiction of the Pennsylvania Department of Transportation are:

- State Route 51 - Bridgewater Borough
- Veterans Memorial Bridge - Bridgewater
- State Route 18 - Rochester Township
- West Madison Street - Rochester Borough
- Brighton Avenue - Rochester Borough

Portions of the Confluence Connector that are proposed within these right-of-ways, and that would require improvements to be made, would require the approval of the PA Department of Transportation and a Highway Occupancy Permit.

Trail easements may need to be acquired in the restaurant / entertainment district on Riverside Drive in Bridgewater Borough, between Sharon Road and State Route 51, depending on which alignment option is selected, and the existing width of the vehicular right-of-way for Riverside Drive.

Property Acquisition

If the acquisition of easements are required, the procedures and steps we recommended in other portions of this document must be followed.

Trail Development

We recommend the County adopt the Trail Development Standards described herein for the various trails being proposed in the County's trail system.

Shared Use Paths

Shared use paths should follow the standards recommended in the description for the Raccoon Creek Greenway Demonstration Trail.

Sidewalks

Sidewalks are the portion of the street or highway right-of-way designed for the preferential or exclusive use by pedestrians.

Locations

The County must work with local municipalities to require sidewalks, as recommended by the Federal Highway Administration's publication titled "Priorities and Guidelines for Providing Places for Pedestrians to Walk Along Highways and Streets," in their land development and subdivision ordinances.

Construction

Sidewalks shall be constructed in accordance with the recommendations herein, and in accordance with the requirements of the Americans with Disabilities Act.

Where sidewalks are installed they should be separated from the roadway with a concrete curb, minimum height six inches above street surface.

Widths

Sidewalks shall be constructed in accordance with the recommendations herein, and shall be in accordance with requirements of the Americans with Disabilities Act. This Act requires a clear width of sixty inches. The width may be reduced to thirty-six inches in the following instances.

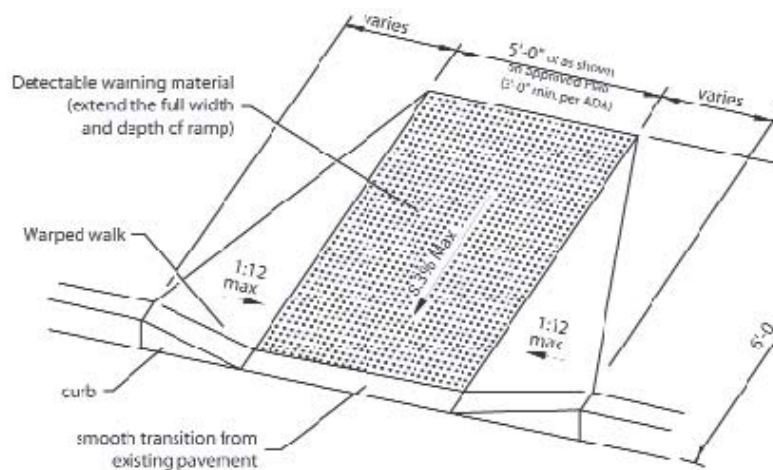
1. A wider width is impossible.
2. The narrow width continues for as short a distance as possible.
3. Passing spaces are provided at a minimum interval of two hundred feet.

Materials

Sidewalks shall be constructed with reinforced concrete with a psi strength of 3,500. Expansion joints should be installed at not more than twenty feet on center, and control joints should be constructed at intervals of five feet on center. The walking surface shall receive a non-slip broom finish to provide the slip resistant surface required by the Americans with Disabilities Act. This will provide a durable surface with an approximate life span of twenty years.

Curb Ramps

Curb ramps are required to provide access to sidewalks that are elevated from the surrounding surfaces. Curb ramps



Curb Ramp

Not to Scale

should be installed at intersections, perpendicular to the roadway. Diagonal curb ramps should be avoided because they place users in positions vulnerable to turning traffic. Additionally, a pedestrian crossing at a diagonal ramp takes more time to cross the roadway than does a pedestrian crossing perpendicular to the road.

Curb ramps shall be a minimum of forty-eight inches wide, have a slope of 8.33% or less, and have side slopes with a slope of less than ten percent. It is preferable to have a minimum clear walk width of thirty-six inches behind the ramp so pedestrians avoid traveling over the side slopes when walking perpendicular to the ramp.

Where it is not possible to have a minimum clear walk width of thirty-six inches behind the ramp, parallel curb ramps should be constructed.

The ramp slope should be perpendicular to the curb to avoid an uneven cross slope that creates problems for wheelchair users because all four wheels will not touch the ground.

Crosswalks

Crosswalks inform the motorist of pedestrian activity across the roadway and indicate to the pedestrian the desired location to cross a roadway.

Locations

Local land development and subdivision and zoning ordinances must require crosswalks in all instances where sidewalks continue on the opposite side of a roadway, and vehicular traffic is controlled by either a stop sign or traffic signal. Mid-block crosswalks should not be permitted unless adequate site distance exists to allow a pedestrian to cross the street at a speed of 3.5 feet per second.

Although the MUTCD does not provide a specific recommendation for crosswalk striping, it is generally regarded that more paint provides more protection. Although this has not been substantiated, it may be that the greater the amount of paint, the greater the perceived protection on the part of the pedestrian and the stronger message to the motorist.

Ordinances must require a PennDOT approved crosswalk pattern.

Bicycle Lanes

A bicycle lane is a portion of roadway that is designated by striping, signing, and pavement markings for the preferential or exclusive use of bicyclists. Bike lanes are designed to promote predictable movements of bicyclists and motorists. Bike lane markings can increase a bicyclist's confidence in motorists staying within their path of travel. Likewise, passing motorists are less likely to swerve to the left out of their lane to avoid bicyclists on the right, if the bicyclists are within a bicycle lane.

Locations

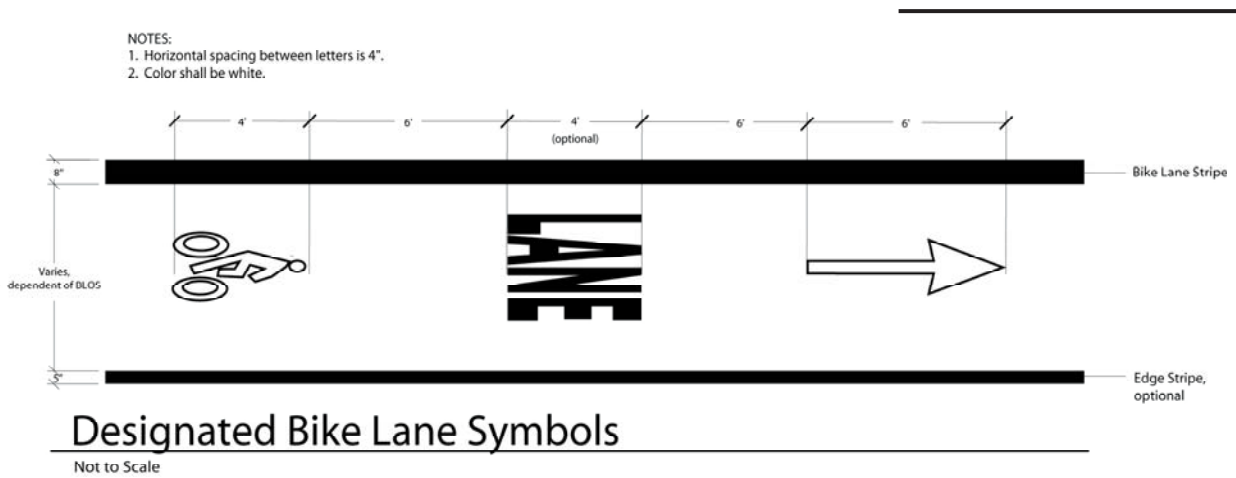
Bicycle lanes must be one-way facilities that carry bike traffic in the same direction as the adjacent motor vehicle traffic. Two way bicycle lanes are not recommended when they result in bicyclists riding against the flow of traffic. Wrong-way riding is a major cause of bicycle accidents and violates the Uniform Vehicle Code.

Widths

All bicycle lanes should be designed to achieve the highest bicycle level of service rating possible. The American Association of State and Highway Transportation Officials' "Guide for the Development of Bicycle Facilities" recommends a minimum of four feet, and where there are vertical obstructions, such as utility poles, curbs, or guide rails are present, a five foot width is recommended. However, a greater width will often be required to achieve an acceptable bicycle level of service rating.

Construction Materials

The surface of a bicycle lane must be smooth and uniform. PennDOT will require a Type I shoulder along state owned roadways.



Markings

All traffic control markings along the bicycle lanes will comply with the requirements of Part IX of the MUTCD.

A bicycle lane should be delineated from the motor vehicle travel lanes with a six inch solid white line. A larger width, such as eight inches, may be used for added distinction. The bicycle lane should be painted with standard pavement symbols to inform the bicyclists and motorists of the bike lane's existence. Preferred symbols are either a bicycle or a bicyclist on a bike, with a directional arrow. All markings shall be white and reflectorized.

In the past, the Preferential Lane Symbol (Diamond) was recommended. However, it is no longer recommended for bicycle lanes due to confusion with the use of the diamond for the High Occupant Vehicle (HOV) lanes. If a bicycle lane is marked with a diamond, motorists may become confused and drive on the bicycle lane.

At intersections with driveways, bike lane striping is dependent on edge line striping. At low volume residential driveways where the road edge line is continuous, the bike lane striping should be continuous. At high volume commercial driveways where the edge line is discontinued (but regular vehicle lane striping is continuous), the striping separating the bicycle lane from the regular travel lane should become a two to four foot, or dotted, skip line.

Vertical barriers and obstructions, such as abutments, piers, and other features causing construction of a bike lane should be clearly marked to gain the attention of approaching bicyclists. This treatment should be used only where the obstruction is unavoidable, and be by no means a substitute for good design. In all cases, the designer must first make every effort to correct the hazard before resorting to obstruction markings. Obstruction marking is generally

accomplished by placing signs, reflectors, and diagonal yellow markings or other treatments, as appropriate to alert bicyclists of the hazard.

The AASHTO Guideline for the Development of Bicycle Facilities recommends the diagonal yellow striping be six inches. The length of the strip is calculated by multiplying the width into which the obstruction projects into the roadway by the bicycle approach speed. Therefore, if the obstruction project's two feet into the bicycle lane, and the approach speed is ten miles an hour, a diagonal strip shall be painted from the apex of the obstruction towards the direction of travel to the outside edge (shoulder) of the bike lane for a horizontal distance of twenty feet.

Share-the-Road Corridors

A share-the-road corridor is one that is open to both bicycle and motor vehicle travel. This may be an existing roadway, street with wide curb lanes, or road with paved shoulders.

Share-the-road roadways are those that have been identified by signing as preferred bike routes. There are several reasons for designated signed bike routes:

- provide continuity to other bicycle facilities such as bike lanes or shared use paths;
- common route for bicyclists through a high demand corridor;
- in rural areas, it is the route preferred for bicycling due to low motor vehicle volume or paved shoulder availability; and/or;
- the route extends along local neighborhood streets and collectors that lead to an internal

neighborhood destination, such as a park, school, or commercial district.

Signing of shared use roadways indicates to bicyclists that there are particular advantages to using the routes.

Widths

The AASHTO “Guide for the Development Bicycle Facilities: recommends a minimum usable lane width of fourteen feet for shared use. The Township should be constantly aware of PennDOT and Township road projects and look for opportunities to increase the existing pavement width where necessary to meet this requirement.

Signage

All signs installed along shared-use roadways should comply with the requirements of Part II of the MUTCD.

Miscellaneous

Because most roadways were not originally designed with the bicyclist in mind, consideration must be given to addressing hazards that bicyclists may be exposed to along the roadway. These include installing bicycle safe drainage gates, smooth pavement, and by providing adequate sight distances.

WATER TRAIL DEMONSTRATION PROJECTS

The water trail demonstration projects may be quick successes that will be visible accomplishments.

The Raccoon Creek Water Trail

The Raccoon Creek Water Trail has formally been established by the Raccoon Creek Watershed Association. However, it has not been officially acknowledged by the Pennsylvania Fish and Boat Commission through their water trails program. Advancing this trail by establishing it as a PA Fish and Boat Commission sanctioned water trail would enhance the trail's visibility, provide it to access to potential grant funding through the Commission's Boating Facility Grant program, and provide the resources of the PA Fish and Boat Commission to develop a water trail brochure for general distribution.

To implement this project the following steps must be taken:

1. County Greenway and Trails Coordinator meets Raccoon Creek Watershed Association to confirm status of trail and public access agreements.
2. County Greenway and Trails Coordinator and Raccoon Creek Watershed Association hold public meetings to gather public support for water trail, as required by PA Fish and Boat Commission.
2. County Greenway and Trails Coordinator works with Raccoon Creek Watershed Association and local municipalities to obtain written public access agreements for canoe launches, where needed.
3. County Greenway and Trails Coordinator and Raccoon Creek Watershed Association representative meet with PA Fish and Boat Commission to discuss formalization of water trail in PA Fish and Boat Commission Water Trail Program.
3. County Greenway and Trails Coordinator and Raccoon Creek Watershed Association representative meets with municipal representatives to discuss formalization of water trail, access points, and willingness of municipalities to provide maintenance assistance for access points, and review draft maintenance agreements with municipalities.
4. County Greenway and Trails Coordinator and Raccoon Creek Watershed Association representative work with

PA Fish and Boat Commission to develop Raccoon Creek Water Trail Brochure.

5. PA Fish and Boat Commission formally recognizes Raccoon Creek Water Trail.

The County Greenway and Trails Coordinator will facilitate the process to follow the PA Fish and Boat Commission's guidelines for developing a water trail, www.fish.state.pa.us/watertrails/fact_sheet_guidelines.pdf.



Beaver River Water Trail

The proposed Beaver River Water Trail will require more work as it is currently a concept and public access points have yet to be acquired. The steps to implementing a water trail on the Beaver River are:

1. County Greenway and Trails Coordinator identifies local stakeholders.
2. County Greenway and Trails Coordinator meets with local stakeholder to identify opportunities and constraints in establishing water trail. County Greenway and Trails Coordinator canoes corridor with local stakeholder, to identify physical opportunities and constraints, opportunities for access points, etc.
3. County Greenway and Trails Coordinator and local stakeholder meets with municipal representatives to discuss potential water trail, proposed access points, and discuss current ownership of access points.
4. County Greenway and Trails Coordinator facilitates public meetings with stakeholders to refine concept plan, identify improvement requirements and costs, identify on-going maintenance requirements and costs, develop preliminary management structure for trail, identify project phasing, etc.
5. Local stakeholder contacts property owners to present concept plan and discuss potential issues and concerns of property owners with regard to providing public access to corridor.
6. County Greenway and Trails Coordinator, local stakeholder, and municipal official(s) meet with PA Fish and Boat Commission to review proposed water trail concept plan and discuss access opportunities / barriers.
6. Responsible party meets with property owners to finalize and secure written access agreement(s).
7. County Greenway and Trails Coordinator assists responsible parties in overcoming issues that may arise during the implementation process.
8. County Greenway and Trails Coordinator assists responsible parties in applying for grants and securing

funding for required improvements.

9. County Greenway and Trails Coordinator, local stakeholder, and municipal official(s) work with PA Fish and Boat Commission to develop water trail guide.
10. Responsible parties formalize trail by implementing required improvements in accordance with project phasing plan.

The County Greenway and Trails Coordinator will facilitate the process to follow the PA Fish and Boat Commission's guidelines for developing a water trail as referenced earlier.

AWARENESS, EDUCATION, & MARKETING

During the course of this study it became evident that there is a serious lack of public awareness about greenway and trail opportunities in Beaver County. Most County residents and municipal officials are not aware of existing trail opportunities in the County, such as: Beaver River Rail Trail, Bradys Run Shared Use Path, and the Bradys Run Mountain Bike Trails. Furthermore the residents of the County are also not aware of the proposed greenway and trail opportunities.

Therefore, an important task for the County Greenway and Trail Coordinator will be to educate and market county residents and municipal officials on the existing opportunities, and the proposed vision for a county wide system of greenways and trails. As this campaign evolves it should be expanded to include focusing efforts to get the message out to specific user groups and organizations on a regional and state wide basis.

As an example the Pittsburgh Off-Road Cycling Club is an organization of mountain biking enthusiasts in the Pittsburgh region. Their web page, www.porcmtbclub.org/, documents riding opportunities in the region. By developing a relationship with this organization the County will be able to advertise mountain biking opportunities in Beaver County, and have a resource pool of volunteers who may be able to assist the county in organizing trail work days, mountain biking events, etc., in Beaver County.

Some other organizations that Beaver County can develop Partnerships with include:

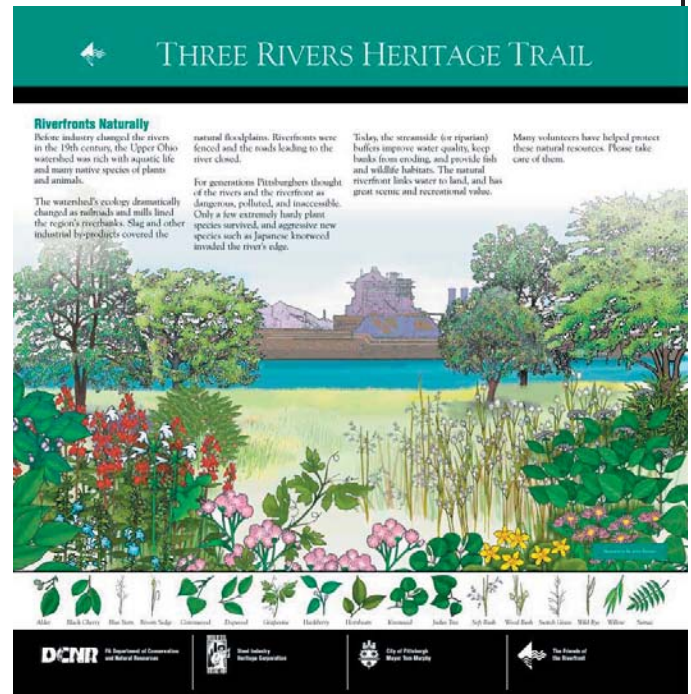
- Bike Pittsburgh, <http://bike-pgh.org>
- Pittsburgh Trails Advocacy Group, www.bike-pgh.org/ptag
- Pittsburgh Mountain Biking <http://pittsburghmountainbiking.com>
- Friends of the Riverfront, www.friendsoftheriverfront.org
- Beaver County Rowing Association, <http://www.beavercountyorowing.org/>

Other methods, often utilized to increase awareness, include the development of trail guides, brochures, wayfinding, and interpretive signage, to name a few. We recommend the Beaver County Greenway and Trail Coordinator plan a coordinated awareness, education, and marketing campaign that considers how to best utilize these tools to educate, advocate, and promote greenway and trails in Beaver County.

For assistance in developing an awareness, education, and marketing for the conservation greenways, some of the organizations that Beaver County may want to consider develop partnerships with include:

- Beaver County Conservation Foundation
- Beaver County Conservation District, www.co.beaver.pa.us/conservation/
- Allegheny Land Trust, www.alleghenylandtrust.org
- Hollow Oak Land Trust, <http://hollowoak.org>
- Independence Marsh Foundation, www.independencemarsh.org
- Raccoon Creek Watershed Association, www.raccooncreek.org

The Southwestern Pennsylvania Commission and the Beaver County Recreation and Tourism Office can provide resources to assist with the development of the County's Education, Awareness, and Marketing Campaign.



Three Rivers Heritage Trail Interpretive Sign, *Friends of the Riverfront*



Wayfinding Signage, *City of Pittsburgh*

Public Launch Points

For more information on permits and supplies for motorized boating, refer to the Three Rivers Boating Guide published by the Pittsburgh Safe Boating Council. Contact information is listed in the Get Afloat! section on the back cover. There are also a number of private launch sites not listed in this brochure. You can contact them directly.

Rachel Carson Park and Fishing Pier (Cheswick)
Located on the west side of Rachel Carson Park. Site has a walking trail and parking. Free access is granted and advised.

Fish and Boat Commission Boat Launch (Springdale)
Located in Springdale at the end of Little River. Behind the PPG plant. There are restrooms near by. Do not motorize. Public facilities and plenty of parking are available. **Please note:** All boats using the Fish and Boat Commission access areas must be registered.

Fish and Boat Commission Boat Launch (Tarentum)
Located off Route 25 under the Route 260 Bridge. The site has plenty of parking in a mostly residential area. No public facilities available. **Please note:** All boats using the Fish and Boat Commission access areas must be registered.

Buttalo Creek Launch (Freeport)
Located off of Freeport. Located off parking is available.

Allegheny River Launch (Freeport)
Located off of Freeport. Located off parking is available.

Points of Interest

Cheswick Power Station
The original 750-foot concrete dam is part of a power plant that uses coal to generate electricity. Many of the barges you see on the river transport coal to this plant that was finished in 1910 and reconstructed in 1972.

Rachel Carson Homestead
The original, original and what was built in 1807 at 612 Wilson Avenue, near 1800 block. "The Spring" highlighted the danger of pesticides and chemical the river's environmental movement. One of the companies affected by the public concern raised by the book was Hercules, a hydrocarbon manufacturing firm located north of Tarentum where some company houses still stand.

Original PPG Plant
The glass plants of the New York City Glass Glass Company were located at Tarentum, just downstream of Tarentum. These plants became the first plants of the Pittsburgh Plate Glass Company when the firm merged in 1896.

First ALCOA Plant
In 1890, the Pittsburgh Reduction Company, predecessor to ALCOA, moved its plant in New Kensington after producing the first commercial aluminum in Pittsburgh's Strip District.

Tarentum
The old Shawnee village called Tarentum's Old Town stood here in the early 1700s. Tarentum developed as a town on the Pennsylvania Canal and later on the Pennsylvania Railroad. The town station is now a restaurant.

Allegheny River Valley Heritage Museum
Located 10 miles from the river access ramp, the museum includes an exhibit that focuses on the Allegheny Valley's history from the Native American period through the industrial age.

James Law Memorial Rock
On the right bank of the river, look for a rock with the inscription "JAMES LAW AND COMPANY 1822 TO 1842-43".

Valley Mills
At the juncture of tributary streams, many water-powered mills were built to grind grain and saw timber. The Valley Mills (also in the Fall) We are not continued to operate until the 1930s.

Pennsylvania Canal
The Pennsylvania Canal utilized the Allegheny River here and continued to Pittsburgh. For that a certain between 1810 and the Civil War, packed boats pulled by mules navigated the route. The canal was an engineering triumph, carrying Pennsylvania's first and a spectacular 17-mile railroad path over the mountains.

Allegheny River Water Trail Map, Friends of the Riverfront

Riverfrontiers

Stories of Beaver County & Its Rivers

SPANNING the WATERS

A Seat of Engineering

The Pittsburgh & Lake Erie (P&LE) Railroad Bridge that spans the Ohio River between Monaca and Bridgewater was completed in 1910 and is considered an engineering marvel. Built by the McClintock-Marshall Construction Co. of Pittsburgh, the bridge sections were built from both sides of the river. This was a complex project requiring much manpower and engineering expertise. When the two sides met up to be joined in the middle, the sections were only off by one-eighth of an inch! Built to withstand heavy loads, it is said that 50 freight engines were parked on the bridge to prove its strength to the public before it was opened for use.

Left: Early construction photo of the P&LE Railroad Bridge known as the "beaver of the sea." Above: The asymmetrical arches of the Rochester-Bridgewater Bridge are said to look like a giant's web legs.

connecting Rochester to Monaca over the Ohio was a lengthy suspension bridge known as the Ohio River Bridge that served the area from 1895 to 1930. A second bridge was built in 1932 and closed in 1983. Now crossing the Ohio in nearly the same spot is the Rochester-Monaca Bridge — a highway bridge that was completed in 1986 and is the third bridge built on that site. Sometimes known as the Monaca-Rochester Bridge, the bridge's current name depends on the outcome of the annual football game between rival high schools in Rochester and Monaca.

Up river from Rochester is another highway bridge that also crosses the Ohio River — the East Rochester-Monaca Bridge — which was completed in 1959. Once a toll bridge, it is now a free bridge that is still in use.

There are more than 470 bridges in Beaver County. How many can you see from where you are standing? Which are for cars and which are for trains?

Above: The changing of the Rochester-Monaca Bridge sign, known also as the Monaca-Rochester Bridge which varies according to the outcome of an annual high school football game. Because of this, it has been called "bigger trophy in the state."

ROCHESTER

Above: An unidentified family ca. 1900 poses near the old iron bridge spanning the Ohio River at Rochester as a merchant passes by. Above, bottom: This bridge was the first built to span the Ohio River. It crossed over Winter Street in Rochester and spanned half-a-mile to Monaca's Stone Island. A modern aerial view of the Rochester area and its rivers.

- 1 Rochester-Bridgewater Bridge
- 2 Rochester-Beaver Bridge
- 3 Rochester-Monaca Bridge
- 4 East Rochester-Monaca "old toll" Bridge
- 5 Cleveland & Pittsburgh Railroad Bridge
- 6 P&LE Railroad Bridge

Learn more about Rochester Borough, Beaver County and Western Pennsylvania history online at rochesterpa.org, visitation.com/rochester, or your local library.

Rochester Riverfront Park Interpretive Sign, Rochester Borough

Three Rivers Heritage Trail Wayfinding Sign, Friends of the Riverfront



Mile Marker, Three Rivers Heritage Trail

Appendix A

Study Committee Meeting Minutes





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Meeting Minutes

Beaver County Greenway and Trail Plan

Study Committee Meeting One

Meeting Date and Time:

July 14, 2005, 1:30 pm

Meeting Location:

*Beaver County Office on Aging
1030 Eighth Avenue
Beaver Falls, PA 15010*

Attendees:

Marty Warchol, Beaver County Conservation District
Laura Rubino, Beaver County Corporation for Economic Development
Bill Evans, Beaver County Planning Commission
Joe West, Beaver County Planning Commission
Sandy Bursey, Beaver County Planning Commission
Frank Mancini, Beaver County Planning Commission
Tom King, Beaver County Recreation and Tourism Department
Dan Woodske, Beaver Initiative for Growth
Marlin Erin, Beaver County Parks and Recreation Board
Beth Brennan, Pennsylvania Environmental Council
Kathryn Johnston, Beaver Falls Rails to Trails
Ed Piroli, Beaver County Redevelopment Authority

The following represents a brief review of discussions held during the above meeting:

- 1.1 Mancini began the meeting by introducing Pashek Associates, the firm selected to complete the County Greenway and Trail Plan.
- 1.2 Buerkle reviewed the Agenda, as attached, for the meeting.
- 1.3 Miles reviewed the definition of “Greenways” and discussed the benefits that can be realized by implementing a greenway system (refer to attached handout). Discussion followed about the differences between conservation greenways, recreation greenways, and trail corridors which may or may not be part of a greenway.
- 1.4 Buerkle reviewed the Scope of Work to be completed by Pashek Associates over the course of the project. Buerkle indicated the planning process can be summarized in three steps:

SITE DESIGN,
RECREATION PLANNING,
LANDSCAPE ARCHITECTURE,
COMMUNITY PLANNING,
ZONING



- Phase I: Where are we now? – Pashek Associates will complete and inventory of existing conditions identifying opportunities and constraints.
- Phase II: Where do we want to be? – Pashek Associates, with guidance from the steering committee will establish the Vision for Greenways and Trails in Beaver County.
- Phase III: How do we get there? – Pashek Associates will define a plan of action that identifies goals and objectives, along with detailed implementation strategies that will explain what steps must be undertaken to achieve the vision.

1.5 Buerkle noted Pashek Associates is in the initial phases of the inventory, collecting data and mapping the existing resources in the County.

1.6 Buerkle reviewed a list of prior county and local planning efforts that will be reviewed to determine whether their recommendations are significant to the greenway and trail planning effort. After reviewing the list of plans Buerkle asked if there were other plans that the steering committee members are aware of that were not mentioned. Attendees identified the following additional plans:

- a. Beaver River Conservation Plan that PEC will be completing
- b. Thunder of Protest Plan prepared several years ago by Rivers of Steel Heritage Area
- c. PEC's Natural Infrastructure Plan
- d. Aliquippa Parks Master Plan - West indicated that the study is just starting
- e. Bridgewater Crossing Master Plan – Laura Rubino will forward a copy to Pashek Associates
- f. Center Township Trail Feasibility Study - Buerkle noted the planning process has not yet begun in Center Township
- g. Inventory and Assessment of Historical and Heritage Sites completed by Christine Davis Consultants

1.7 Miles asked attendees to brainstorm and provide answers to the following questions. To aid in the process Miles provided the attached handout titled “Brainstorming Questions.”

- a. What are your goals for the plan?
- b. What issues, concerns, and barriers do you envision?
- c. What opportunities exist?

Attendees provided the following responses:

1. DCNR desires to have each county in the commonwealth to complete a greenway and trail plan.

2. to protect the environment.
 3. to encourage economic development by providing a high quality of life
 4. to connect fragments
 5. to develop trail infrastructure for recreation and transportation purposes
 6. to coordinate connections between resources
 7. to retain and attract young people – a marketing resource
 8. untapped resources, often viewed as constraints, let's turn them into assets
 9. to connect historical resources
 10. Brady's Run Park is the central county facility and should be a hub
 11. to market the value added to adjacent property that comes with trails and green space
 12. to promote active life styles that include walking and biking
 13. to get people on the water, educate them on the value of our waterways
 14. for the tourism value, currently there is the "you can't get from here to there" mentality
 15. trails need to be adequately signed
 16. look for opportunities to connect to the Montour and North Country Trails
 17. for safety, provide people with a safe place, off of existing roads, to walk and bike
 18. for open space preservation
 19. our residents demand it, if we don't provide it how can we expect to retain them
- 1.8 Miles recorded the hubs that attendees suggested on a map of the county. These locations included:
- a. Brady's Run Park
 - b. Brush Creek Park
 - c. Old Economy Park
 - d. Buttermilk Falls Park
 - e. Raccoon Creek State Park
 - f. The riverfront communities of Ambridge, Aliquippa, Rochester, Beaver, Bridgewater, Monaca, New Brighton, and Beaver Falls
 - g. Townships including Center, Hopewell, Raccoon, Brighton, Chippewa and Darlington
 - h. Old Economy Village
 - i. Legionville
 - j. Vicary House
- 1.9 Attendees suggested Pashek Associates look at the following existing opportunities:
- a. Abandoned roads in the county, including Ohio Avenue in Rochester, Woodlawn Road in Aliquippa, and the closed park road in Brady's Run Park.
 - b. Islands of the Ohio River
 - c. Little Beaver Creek – Ohioville
 - d. Mines in Darlington and South Beaver Townships

- e. Abandoned rail behind Little Steel
- f. Stubenville Trolley Line – to Shippingport
- g. Wolf Lane connector between Beaver and Bridgewater, potential to expand Fallston and Rochester
- h. Two Mile Run Park in Brighton Township to Brady's Run Park
- i. Water trails along various streams and rivers throughout the county
- j. Potential to connect to trails in Ohio, specifically Columbiana County
- k. Protection of riparian zone along Connoquenessing Creek (WPC has received a grant to do a study of it)
- l. Three exceptional value streams in Beaver County: Traverse Creek, Service Creek, and North Fork of Little Beaver Creek
- m. Connections to schools
- n. Connections to commercial districts

1.10 Miles asked if we should consider connecting to brownfield sites within the county. Rubino said Pashek Associates may want to consider the following brownfield/industrial park sites in the county:

- o. Ambridge Regional Industrial Park
- p. Monaca Industrial Park
- q. Westgate Industrial Park in Big Beaver
- r. Hopewell Industrial Park
- s. LTV site in Midland
- t. Site in Marion Township and Fombell

Rubino also indicated she would send Pashek Associates a list of the vacant industrial property in Beaver County.

1.11 Attendees encouraged Pashek Associates to think outside of the county. How can we connect with greenway and trail activities of other counties?

1.12 Buerkle indicated Pashek Associates will be interviewing fifteen key persons throughout the County to obtain input from them with regards to the county's greenway and trail planning effort. Towards that end Buerkle provided attendees with a preliminary list of persons he thought should be interviewed (refer to the attached Key Person Interview handout). Buerkle reviewed the names and asked attendees to confirm whether they agreed and if there are other individuals we should interview. Buerkle noted that it is better to have more than fifteen people on the list because typically several of the individuals may be difficult to reach. Attendees suggested that the following organizations/people be added to the list:

- a. Hancock County, WV Planning Commission Director
- b. Brush Creek Watershed Association
- c. Beaver Chamber of Commerce – Lincoln Krechmeyer
- d. Rochester Chamber of Commerce – email Ed Piroli to obtain name
- e. Allegheny Trail Alliance

- f. Montour Trail Council
- g. Bill Parise, Beaver County YMCA
- h. Beaverun
- i. Venture Outdoors
- j. Bonnie Priddy, Beaver County Recreation Board, equestrian community representative

1.13 Buerkle indicated the next step is to hold a public input session. Buerkle suggested that meeting not occur until mid September as he expects a better turnout given summer vacations will be over. All agreed. Buerkle will coordinate a date and location for the public input session with Evans. Once the date and location is set all steering committee members will be notified.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:



John O. Buerkle, Jr., RLA, AICP
Wednesday, July 27, 2005

Distribution: Attendees
Cynthia Corsetti, Beaver County Chamber of Commerce
Lisa Troiani, Beaver County Community Development Program Office
Carl DeChellis, Beaver County Housing Authority
Sandy Wright, Green Township
Larry Morley, New Brighton Borough
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR



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Meeting Minutes

Beaver County Greenway and Trail Plan

Study Committee Meeting Two

Meeting Date and Time:

October 26, 2005, 1:00 pm

Meeting Location:

*Beaver County Office on Aging
1030 Eighth Avenue
Beaver Falls, PA 15010*

Attendees:

Sandy Bursey, Beaver County Planning Commission
Bill Evans, Beaver County Planning Commission
Kathryn Johnston, Beaver Falls Rails to Trails
Tom King, Beaver County Recreation and Tourism
Frank Mancini, Beaver County Planning Commission
Laura Rubino, Beaver County Corporation for Economic Development
Lisa Troiani, Beaver County Community Development Program
Marty Warchol, Beaver County Conservation District
Joe West, Beaver County Planning Commission
Sandra Wright, Greene Township
Joseph Zagorski, Beaver County Planning Commission

John Buerkle, Pashek Associates
Joan Miles, Pashek Associates

The following represents a brief review of discussions held during the above meeting:

- 1.1 Buerkle welcomed everyone and reviewed the agenda for the meeting.
- 1.2 Buerkle summarized the input received at the public meeting. Those who attended provided us with feedback regarding additional “hubs” or destinations; natural places needing protection; the need for all types of trails, including motorized vehicle trails; trail opportunities; and water access points.
- 1.3 Miles provided a brief overview of what we have learned through key person interviews. Fifteen interviews have been conducted. Many felt that quality of life in the County is linked economic, ecological and recreational assets. The value of Beaver County’s rich natural assets is not currently recognized and it is important for the County to market those assets and capitalize on them before they are lost.

1.4 Buerkle and Miles then discussed regional versus local significance. Because this is a County-wide plan, resources will generally need to be of regional significance to be included in the greenways and trails network. Buerkle listed the factors used to determine regional significance:

- Likely to attract visitors from outside the County
- Benefits two or more communities
- Brings revenue into the County
- Helps define the identity of the County

Mancini recommended we specify a resource should meet at least two of the criteria to qualify as regionally significant.

1.5 Miles discussed a draft of the criteria used to identify resources to be included in conservation greenways. A three-step process was used. First, we identified all resources to be considered for preservation. These included, among others:

- Floodplains and wetlands
- Steep slopes > 25%
- Biological Diversity Areas as refined by the Natural Infrastructure Project
- High Quality Cold Water Fisheries
- Important Bird Area

In the second step, all resources were assigned either a first or second priority ranking and mapped. For example, sensitive environmental features like floodplains and wetlands, as well as permanently protected land like parks and land subject to conservation easements, were categorized as first priority. Second priority resources include other features such as the Important Bird Area and Brook Trout Habitat. First priority resources are considered the “drivers” of the conservation greenways. However, only those second priority resources that overlap with at least one other resource were advanced for consideration as components of the conservation greenways.

1.6 Buerkle demonstrated with maps the location of first and second priority resources in the County and the results of applying the prioritization process. Committee members made several observations and suggestions. It was decided to make the following adjustments to the maps:

- Farms with Agricultural resources should be shown as first priority resource areas.
- Agricultural Security Areas should be eliminated from both maps.
- Exceptional brook trout habitat will be listed and mapped as a first priority resource area, while good brook trout habitat will remain as second priority resource area.
- High quality cold water fisheries should be mapped to include their entire watershed to be consistent with the brook trout habitats.

- 1.7 Buerkle then explained the third step in the process. Step three will be to map the conservation corridors by linking together the first and second priority resource areas into a cohesive network. Small, isolated resource areas will be eliminated. Miles noted these areas can still be protected through local land use tools like stream buffers.
- 1.8 Buerkle summarized the next steps in our process to develop the County Greenways and Trails Plan.
- Establish criteria to identify and prioritize hubs
 - Evaluate potential connections between the hubs with recreational greenways or “spokes.”
 - Prepare draft greenway plan
- 1.9 Copies of the Power Point presentation and all color maps were distributed to the Committee members.
- 1.10 The next Study Committee meeting was scheduled for Monday, November 21st from 1:00 – 3:00 PM at the Beaver County Office of Aging Conference Room.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:



John O. Buerkle, Jr., RLA, AICP
Monday, October 31, 2005

Distribution: Study Committee Members
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR



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Meeting Minutes

Beaver County Greenway and Trail Plan

Study Committee Meeting Three

Meeting Date and Time:

November 21, 2005, 1:00 pm

Meeting Location:

*Beaver County Office on Aging
1030 Eighth Avenue
Beaver Falls, PA 15010*

Attendees:

Marlin Erin, Beaver County Parks and Recreation Board
Bill Evans, Beaver County Planning Commission
Kathryn Johnston, Beaver Falls Rails to Trails
Frank Mancini, Beaver County Planning Commission
Larry Morley, New Brighton Borough
Laura Rubino, Beaver County Corporation for Economic Development
Marty Warchol, Beaver County Conservation District
John Walliser, Pennsylvania Environmental Council
Joe West, Beaver County Planning Commission
Dan Woodske, Beaver Initiative for Growth
Sandy Wright, Greene Township

John Buerkle, Pashek Associates
Joan Miles, Pashek Associates

The following represents a brief review of discussions held during the above meeting:

- 1.1 Buerkle welcomed everyone and reviewed the agenda for the meeting.
- 1.2 Buerkle then reviewed regional versus local significance. Buerkle reminded everyone that because this is a County-wide plan, resources will generally need to be of regional significance to be included in the greenways and trails network. Buerkle reviewed the factors used to determine regional significance:
 - Likely to attract visitors from outside the County
 - Benefits two or more communities
 - Brings revenue into the County
 - Helps define the identity of the County

Buerkle noted that at our last meeting it was suggested that we specify a resource should meet at least two of the criteria to qualify as regionally significant.

1.3 Next, Miles reviewed how hubs were selected for the County. Miles indicated that hubs were identified because the area provides amenities for trail users, is a significant recreation destination in the county, and / or is a regionally significant public holding of conservation land. Miles noted the identification of hubs was based on key locations identified by the study committee, through key person interviews, at the public meeting, and through professional analysis of the resource inventory prepared for this study. Miles recommended the following destinations be established as hubs in the Beaver County's Greenway plan:

▪ **Towns***

- Ambridge
- Aliquippa
- Monaca
- Rochester
- Beaver
- Bridgewater
- New Brighton
- Beaver Falls
- Midland
- Darlington Borough

* must provide amenities for trail users - food, lodging, etc.

▪ **Parks**

- Brady's Run Park
- Raccoon Creek State Park
- Brush Creek Park
- Old Economy Park
- Buttermilk Falls

▪ **Conservation Lands**

- Independence Marsh
- State Game Land 189
- State Game Land 285
- State Game Land 148
- State Game Land 173
- Hereford Manor Lake

The recommended hubs were then show on a map of the County. This analysis revealed that spatially several areas of the county may be lacking hubs in key areas. These areas include the south central portion of the County, the west central portion if the County, and the east central portion of the County. Miles indicated Hookstown may be a logical hub in the south central portion of the County as the proposed trail segments converge in the vicinity of Hookstown, that the PSU Beaver / Community College of Beaver County area is a logical hub, also in the south central portion of the

County. Buerkle noted that initially this area was selected, but he was unable to make a trail connection to the area. Mancini said he can identify an on-road bike route that will tie this area into the system and he recommended it be included as a hub given the significant college student population in the area. Buerkle also noted the Vicary House was mentioned as a potential hub but trail access to it is difficult. Again Mancini suggested an on-road route that would allow it to be included as a hub.

1.4 Miles then reviewed a draft of the proposed trail segments. Segments were identified as Shared Use Paths, Foot Paths, Bike Lanes / Share the Road, and Water Trails. Miles indicated the goal of the trail plan is to connect the hubs with one another through a system of trails. Each proposed trail segment's alignment was described. Committee members suggested adjustments to several alignments, particularly the on-road segments including:

- Woodlawn Road, Aliquippa riverfront - during discussion it was noted that the road's truck traffic will continue to increase due to the redevelopment of the former J&L Steel site – Pashek to evaluate whether this is a viable option
- Old Broadhead Road, Broadhead Road – from Monaca, via Philips or 14th Street, to Aliquippa
- Route 151 from South Heights to Five Points
- Lisbon Road to Beaver Creek State Park in Ohio
- Blockhouse Run, to Wise's Grove Road to Ridge Road
- Rustic Park Road – off of Country Club Road in North Sewickley
- Economy to Vicary House in Freedom, via State Route 989, Lovi Road, and Harvey Run Road
- Tour De Sewickley Route along Big Sewickley Creek.

Mancini offered to print the County Road Map and distribute it so several committee members could make up their suggestions for on-road routes. The routes suggested by the committee takes the on-road segments along road corridors with the least amount of traffic. Buerkle agreed with Mancini's suggestion and asked that the maps be distributed, marked up and returned to Pashek Associates as soon as possible.

1.5 Miles then reviewed the hubs and trails in adjacent counties that Beaver County should try to connect with. They included:

- **Allegheny County**
- Montour Trail

- **Butler County**
- Zelienople
- Harmony

- **Lawrence County**
- Ellwood City
- McConnell's Mill

- **Washington County**
- Hillman State Park

- **Columbiana**
- Beaver Creek State Park
- Little Beaver Creek Trail and Greenway

Miles asked if there were any others. The following were suggested:

- Tomlinson Run State Park, WV
- Stavich Trail, southeast of Youngstown, OH – after some discussion it was agreed that this trail not be included as its nearest terminus is west of New Castle, approximately 17 miles north of the New Galilee, Beaver County

1.6 Next, Buerkle reviewed the proposed alignment of three shared use paths in detail, on aerial photography. The routes included the Independence Marsh to Raccoon Creek State Park segment, the Rochester to New Brighton segment, and the New Brighton to Beaver Falls segment. The study committee members concurred with the alignments proposed for each of these segments.

1.7 Miles then suggested that Schools, Municipal Parks, Colleges, Historic Sites, and other Cultural Features of interest to County residents, but not of hub stature, be considered as points of interest along the proposed trail system. Miles distributed a list of eighty-five potential points of interest have been identified, excluding municipal parks. She stated that municipal parks will also be included and mapped. Buerkle noted that to be included as a point of interest along the county trail system, the feature must be located within one-half or one mile of a proposed county trail corridor. Buerkle noted the next step in the planning process is to determine which of the eighty-five potential points of interest fall within that range.

Wright suggested that public and private campgrounds be added to the points of interest as they provide lodging for potential trail users.

1.8 Buerkle asked committee members to begin to think about criteria that might be utilized to prioritize trail segments. Buerkle suggested the following potential criteria:

- Create momentum for future expansion of system
- Must be destination oriented
- High probability of implementation

1.9 Miles asked what agencies might be involved with the management and implementation of the County Greenway System. Miles showed an example of a management structure prepared for Blair County as an example. Miles asked them to think of various agencies, at all levels of government, and the private sector that may play a role in the plan. The following organizations were suggested:

- ✓ State
 - Department of Conservation and Natural Resources
 - Department of Community and Economic Development
 - State Parks – Raccoon Creek State Park and Hillman State Park – Erin suggested calling Gene Hart, Park Manager to discuss Raccoon to Hillman connection and tie in to park campground and cottages.
- ✓ County
 - Planning Commission
 - Recreation and Tourism Department
 - Recreation Advisory Board
 - Beaver County Corporation for Economic Development – riverfront trails and greenways only
 - Beaver County Conservation District – conservation lands, trail easements
 - Beaver County Chamber of Commerce
- ✓ Local
 - Watershed Associations
 - Beaver Rails to Trails
- ✓ Non-Profits
 - Pennsylvania Environmental Council
 - Independence Marsh Foundation
 - PA Cleanways
 - Beaver Initiative for Growth
 - Wild Waterways Conservancy
 - Allegheny Land Trust - ?
 - Hollow Oak Land Trust - ?
- ✓ Public / Private Partnerships

1.10 Buerkle indicated the next steps in the planning process are:

- To prepare draft Greenway Map
- To prioritize Greenway Opportunities
- To identify Implementation Strategies and Responsibilities
- To identify Demonstration Corridor

1.11 Copies of the Power Point presentation and all color maps were distributed to the Committee members.

1.12 The next Study Committee meeting was scheduled for Monday, December 15th from 1:00 – 3:00 PM at the Beaver County Corporation for Economic Development Office Conference Room located on the second floor, at 250 Insurance Street, Beaver, PA (Sky Bank Building). Enter the bank in the rear, take the elevator to the second floor.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:

A handwritten signature in blue ink, reading "John O. Buerkle, Jr." in a cursive style.

John O. Buerkle, Jr., RLA, AICP
Monday, November 28, 2005

Distribution: Study Committee Members
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR



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Meeting Minutes

Beaver County Greenway and Trail Plan

Study Committee Meeting Four

Meeting Date and Time:

December 15, 2005, 1:00 pm

Meeting Location:

*Sky Bank Building Conference Room
250 Insurance Street, Beaver, PA*

Attendees:

Sandy Bursey, Beaver County Planning Commission
Marlin Erin, Beaver County Parks and Recreation Board
Bill Evans, Beaver County Planning Commission
Kathryn Johnston, Beaver Falls Rails to Trails
Tom King, Beaver County Recreation & Tourism Department
Frank Mancini, Beaver County Planning Commission
Laura Rubino, Beaver County Corporation for Economic Development
Marty Warchol, Beaver County Conservation District
John Walliser, Pennsylvania Environmental Council
Joe West, Beaver County Planning Commission
Dan Woodske, Beaver Initiative for Growth
Harry Wolf, Farm Preservation Bureau
Joe Zagorski, Beaver County Planning Commission

John Buerkle, Pashek Associates
Joan Miles, Pashek Associates

The following represents a brief review of discussions held during the above meeting:

- 1.1 Buerkle welcomed everyone and reviewed the agenda for the meeting.
- 1.2 Miles presented the revised Recreation Greenways and Hubs map and summarized the changes that were made. A copy of this map was distributed to the Committee. The changes included:
 - Adding Center, Freedom and Hookstown as hubs
 - Adding trail segments based on Committee and Planning Commission feedback, including connections from Center Township to Monaca and Aliquippa, from Freedom to Economy Borough and Rochester, and along State roads around Raccoon Creek and the Ambridge Reservoir
 - Designating State Bike Route A differently than proposed trails

Miles also explained that Pashek Associates is evaluating whether to add a trail segment along the riverfront connecting Rochester Riverfront Park to the new Veterans Memorial Bridge. This would link this important park to the network.

Mancini suggested that the Greenways & Trails Plan separately map each type of trail – shared use, footpaths, bike lanes/share the road, and water trails – before presenting the network as a whole.

- 1.3 Buerkle then reviewed points of interest along the proposed trail system. He explained that first we inventoried all significant destinations that were not of “hub” status, such as national register historic sites, cultural sites, municipal parks, schools and colleges and campgrounds. Over 100 such destinations were plotted on our base map. The recreation greenways were then overlaid and destinations that fell within ½-mile of a recreation greenway were retained as points of interest. Buerkle then showed a map of the recreation greenways with all points of interest that were retained. An enlarged map of the rivertowns from Monaca to Beaver Falls was shown so that the many trails and points of interest could be seen more clearly.
- 1.4 Miles reviewed the steps that were taken to arrive at the draft conservation greenways. She went over the matrix used to rank the various resource areas as either exceptional or high priority. She then showed how these areas were mapped. A composite of all exceptional and overlapping high priority resource areas was created and then a conceptual sketch of conservation greenway corridors was developed by eliminating any isolated patches that could not be readily connected.

The Committee recommended that in areas where large portions of the municipalities are designated as conservation greenways, we should make an effort to present this information to municipal officials as soon as possible. Such areas include the Hanover/Raccoon area as well as the South Beaver/Darlington area. We noted that we are already working with Greene, Raccoon, Independence and Potter Townships to update their ordinances to implement the comprehensive plan.

It will be important to explain that designation as a conservation greenway does not prohibit development. Rather, we will provide municipalities will certain conservation tools. Mr. Wolf and Mr. Zagorski noted that trails are not a permitted use on parcels that have agricultural conservation easements.

- 1.5 Buerkle discussed the methodology that can be used to begin prioritizing the greenway segments. He explained that the Plan will recommend that several segments be viewed as County priorities rather than a comprehensive ranking of each segment. Criteria used to define Recreation Greenway Corridor priorities are:
 - Create momentum for future expansion of the corridor
 - Must be destination oriented
 - High probability for implementation

- Must be regional in nature
- Serves multiple modes of transportation

Erin noted that often the most popular trails like the Montour Trail are not destination oriented and yet they draw users from a wide area.

The criteria for setting conservation greenway corridor priorities are:

- Protect exceptional priority resources
- Preserve conservation corridor land threatened by encroaching development
- High probability for implementation
- Cooperative landowners

The Committee then participated in a prioritization exercise. Members developed a list of recreation greenways that are important to the County. Pashek Associates listed these segments on a flip chart. Committee members were then asked to place a “dot” next to their top three choices. The following recreation trail segments received Committee votes:

- Beaver to Bridgewater to Rochester (7)
- Beaver to Midland & West to Ohio (6)
- Rochester to New Brighton (5)
- Bridgewater to Brady’s Run (5)
- New Brighton to Brush Creek (5)
- Ambridge to Old Economy Park (4)
- Independence Marsh to Raccoon Creek State Park (2)
- New Brighton to Beaver Falls (1)
- Aliquippa to Ambridge Reservoir (1)
- Center to Ambridge Reservoir (1)
- Connoquenessing Water Trail (1)

The Committee decided to hold off on conducting a similar exercise for conservation greenways.

1.6 Miles moved on to discuss the draft of the management structure needed to implement the Greenways and Trails Plan. A copy of the Management Structure flowchart was distributed to the Committee. The recommendations included that:

- Beaver County Planning Commission will take the lead
- A Greenway Coordinator Position should be created to take on the day-to-day responsibilities of seeing that the plan is carried forward
- Municipalities will work with the County to adopt the Greenways & Trails Plan and implement it
- Municipalities will work with a variety of partners at the State, County, Municipal & non-profit level

Walliser asked whether the Greenway Coordinator position could be funded through a DCNR Circuit Rider grant. Mancini asked us to provide a “skill set” for the greenway coordinator position. We agreed to research this and get back to the Committee. Mancini suggested the Greenway Coordinator responsibilities could be delegated to an existing staff planner in his department. Buerkle said he would check with DCNR to see if the Circuit Rider program could be used to obtain funding to hire a greenway coordinator or to supplement the salary of the current staff planner who would assume the greenway coordinator responsibilities.

Walliser suggested that we add the PA Fish & Boat Commission to the list of State Partners and move watershed associations from the municipal to the nonprofit level. Several Committee members suggested that we name the Beaver River Rails-to-Trails group in our flowchart.

- 1.7 Miles then reviewed the proposed steps that will be needed to make the vision of the greenways in the County-wide plan a reality. A chart summarizing each step and the parties responsible for implementation was distributed to the Committee.
- 1.8 Buerkle then discussed the next steps in our greenway planning process. They are:
 - ✓ Finalize Proposed Greenways and Trails Network Map
 - ✓ Rank Greenway Priorities
 - ✓ Identify Action Strategies and Responsibilities
 - ✓ Identify and Plan Demonstration Corridor
- 1.9 Buerkle indicated that our next Committee meeting would take place in mid-February to give us time to process the information, draft the text and develop the demonstration corridor. The Committee will be contacted about possible meeting dates in late January.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:



John O. Buerkle, Jr., RLA, AICP
Monday, December 19, 2005

Distribution: Study Committee Members
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR



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Meeting Minutes

Beaver County Greenway and Trail Plan

Study Committee Meeting Five

Meeting Date and Time:

February 24, 2006, 1:00 pm

Meeting Location:

*Sky Bank Building Conference Room
250 Insurance Street, Beaver, PA*

Attendees:

Bill Evans, Beaver County Planning Commission
Kathryn Johnston, Beaver Falls Rails to Trails
Tom King, Beaver County Recreation & Tourism Department
Frank Mancini, Beaver County Planning Commission
Suzanne Modrak, Beaver County Community Development
Laura Rubino, Beaver County Corporation for Economic Development
Marty Warchol, Beaver County Conservation District
John Walliser, Pennsylvania Environmental Council
Joe West, Beaver County Planning Commission
Harry Wolf, Farm Preservation Bureau
Sandy Wright, Greene Township
Joe Zagorski, Beaver County Planning Commission

John Buerkle, Pashek Associates
Joan Miles, Pashek Associates

The following represents a brief review of discussions held during the above meeting:

- 1.1 Miles welcomed everyone and reviewed the agenda for the meeting.
- 1.2 Miles presented an update of the Conservation Greenway Corridors and explained how corridors of County-wide significance were established and prioritized. A copy of the map and the prioritization tables were distributed to the Committee. The criteria used to narrow all potential conservation greenways to those of County-wide significance were:
 - Length
 - Width
 - Connectivity

As a result of this analysis, Pashek Associates has recommended that the following twelve conservation greenway corridors be included in the plan:

- Ohio River Greenway
- Beaver River Greenway
- Traverse/Little Traverse Creek Greenway
- Service Creek Greenway
- Raccoon Creek Greenway
- Lower Mill Creek Greenway
- Little Beaver Creek Greenway
- North Fork Little Beaver Creek Greenway
- Bradys Run Greenway
- Four Mile Run Greenway
- Brush Creek, Connoquenessing Creek Greenway
- Big Sewickley Creek Greenway

The Committee suggested that two other greenway connections be established to create a more connective network:

- Corridor connecting the Bradys Run and North Fork Little Beaver Creek Greenways
- Corridor linking Brush Creek/Connoquenessing Creek Greenway with the Beaver River Greenway

We explained that any potential conservation corridors excluded from the County-wide network can be protected at the municipal level through local ordinances and other efforts. Mancini requested that the map showing these areas be included in the Plan.

1.3 Miles then reviewed the steps that were taken to arrive at the draft recreation and transportation greenways. She went over the hubs and spokes structure and summarized the components of the trail system. The network includes eight (8) primary shared use paths, numerous bike lanes or share-the-road routes, four water trails and several walking trails. Miles also noted the changes that had been made to the prior draft:

- Added trail from Rochester Riverfront Park to Veterans Memorial Bridge
- Added trail from Big Rock Park in New Brighton along the old Beaver River Canal bed north to Beaver Falls, crossing the Beaver River on a new bridge to be constructed using the 10th Street Bridge piers
- Included link from Beaver River Rail Trail over Patterson Heights to Bradys Run Park using two segments of abandoned road
- Added a segment of Route 251 in Chippewa Township to the network of bike lanes/share the road routes

A map showing the revised trail network was displayed. The Committee recommended that two important changes be made:

- Johnston noted that a small piece of a continuous shared use path connecting the Beaver River Rail Trail to the Montour Trail is missing. Pashek Associates will establish a connection between the Raccoon and Service Creek Greenway near Hookstown and the Georgetown Rail Trail.
- Zagorski made the case a water trail be added for the entire length of the Beaver River with portage around the dams. The Committee agreed. The Plan will indicate that opportunities for boat access will be researched.

1.4 Miles discussed the methodology that was used to prioritize the conservation greenway segments. The number of natural resources was counted up in each corridor. Three points were assigned for each exceptional value resource and 1 point for every high value resource. When the results were tabulated, the corridors were listed in order of priority from highest to lowest score. The three receiving the highest scores were:

- Brush Creek/Connoquenessing Creek Greenway (42)
- Traverse/Little Traverse Creek Greenway (33)
- North Fork Little Beaver Creek Greenway (33)

Mancini suggested that rather than prioritizing the corridors from 1 to 12, three tiers of priorities be established containing several corridors in each tier. Those corridors having a score of 25 points or more will be in the highest tier, those with scores greater than 15 but less than 25 will fall within the second tier, and those scoring 15 or less will occupy the lowest tier. This system will provide the County greater flexibility in establishing the conservation greenways.

1.5 The Committee then reviewed the criteria used to define Recreation Greenway Corridor priorities. They were:

- Create momentum for future expansion of the corridor
- Must be destination oriented
- Must be regional in nature
- Serves multiple modes of transportation

We noted that at the last meeting, the Committee participated in a prioritization exercise. As a result of that exercise, the following trail segments received the most “votes:”

- Beaver to Bridgewater to Rochester (7)
- Beaver to Midland & West to Ohio (6)
- Rochester to New Brighton (5)
- Bridgewater to Brady’s Run (5)
- New Brighton to Brush Creek (5)

1.6 Buerkle discussed the parameters for selecting the plan demonstration corridor. He noted that it is important to identify segments with a high probability for success. For instance, a stretch that has few and potentially willing landowners would be a good

- candidate. Buerkle suggested the trail segment between Independence Marsh and Independence Township Park. The Committee agreed to include this corridor as well as another more urban riverfront segment in our plan demonstration section. Pashek Associates will identify a candidate for an urban demonstration corridor.
- 1.7 Miles briefly summarized the revised management structure and noted that the Beaver County Conservation District has expressed interest in establishing a nonprofit land trust to assist the County in holding interests in conservation land. Walliser noted that the Pennsylvania Environmental Council has resources to facilitate the establishment of such land trusts. Miles also summarized the responsibilities of a Greenway Coordinator and listed the skills required. Buerkle noted that DCNR is currently developing a policy on funding greenway coordinators.
- 1.8 Miles asked the Committee for any comments on the Introduction and Inventory sections that had been distributed with the agenda. Zagorski offered several changes. Mancini stated that he would call with his revisions. Other Committee members were asked to submit their comments by March 6.
- 1.9 Next steps in our greenway planning process were summarized. They are:
- ✓ Schedule and conduct three regional public meeting in late March/early April
 - ✓ Finalize and format the Introduction and Inventory Sections
 - ✓ Distribute draft of section describing the proposed conservation and recreation/transportation greenway corridors to the Committee for review
 - ✓ Develop action strategies and draft the Implementation Section of the Plan
 - ✓ Select and develop Plan Demonstration Corridor(s)
- 1.10 Buerkle indicated that our next Committee meeting would take place in April after the public meetings. At the next meeting, we will present the draft plan demonstration corridor(s). The Committee will be contacted about possible meeting dates in late March.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:



John O. Buerkle, Jr., RLA, AICP
Monday, February 27, 2006

Distribution: Study Committee Members
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR



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SITE DESIGN,
RECREATION PLANNING,
LANDSCAPE ARCHITECTURE,
COMMUNITY PLANNING,
ZONING



Meeting Minutes

Beaver County Greenway and Trail Plan

Study Committee Meeting Six

Meeting Date and Time:

October 4, 2007, 10:00 am

*Meeting Location: Beaver County Office on Aging Conference Room
1020 Eighth Avenue, Beaver Falls, PA 15010*

Attendees:

Frank Mancini, Beaver County Planning Commission
Bill Evans, Beaver County Planning Commission
Kathryn Johnston, Beaver Falls Rails to Trails
Tom King, Beaver County Recreation & Tourism Department
Suzanne Modrak, Beaver County Community Development
Laura Rubino, Beaver County Corporation for Economic Development
Marlin Erin, Beaver County Recreation Advisory Board
John Buerkle, Pashek Associates

The following represents a brief review of discussions held during the above meeting:

- 1.1 Buerkle welcomed everyone and reviewed the following agenda for the meeting:
 - a. Project Update
 - 1) Meeting with Beaver County Commissioners
 - 2) Executed intergovernmental agreement for shared greenway coordinator with Lawrence County
 - 3) Submitted applications to DCNR and DCED to secure funding for coordinator position
 - 4) Draft distributed to DCNR, Municipalities, School Districts, adjacent Counties, and Study Committee
 - b. Input on Draft
 - 1) Review of written comments received
 - 2) Committee input on draft
 - c. Next Steps
 - 1) Public Meeting, 7 pm, October 10, 2007, Four Winds Recreation Facility, Bradys Run Park
 - 2) Beaver County Planning Commission, consider recommendation to Board of Commissioners to adopt plan, October 16, 2007
 - 3) Beaver County Board of Commissioners to adopt plan – date to be determined

- 1.2 Buerkle and Mancini provided committee with update on project related activities.
 - a. Buerkle noted significant progress has been made towards creating the County Greenway Coordinator position. County has entered into an Intergovernmental Agreement with Lawrence County for a shared coordinator position. Mancini reviewed the details of the agreement with the committee.
 - b. Buerkle noted that Mancini, along with Lawrence County Planning Commission Director, have completed and submitted applications to PA DCNR and PA DCED to secure funding for position.
 - c. Mancini indicated he hoped to receive a response on the grant applications before the end of the year so they could begin the process of hiring a coordinator early in 2008.

- 1.3 Buerkle and Mancini distributed copies of written comments received from:
 1. PA DCNR
 2. Pennsylvania Environmental Council
 3. Columbiana County, Ohio

- 1.4 Buerkle reviewed response letter submitted to PA DCNR.

- 1.5 Buerkle asked the committee for their input and comments on the plan. The following comments were offered:
 - a. Kathy Johnson is listed twice under the plan's acknowledgements.
 - b. Committee members asked who the board members are for the Beaver County Conservation Foundation. Buerkle indicated that Mr. Dick Smith is one member, and Buerkle noted he would get back to the committee with names of the other members.
 - c. Buerkle noted there are several other potential non-profit partners working in the area, including: Hollow Oak Land Trust, Allegheny Land Trust, and Independence Marsh Foundation. Mancini suggested each organization be listed under the non-profit partner discussion in the study. Buerkle agreed to do so.
 - d. Mancini noted Potter Township has recently acquired 65 acres along Raccoon Creek and that they have earmarked it for recreation purposes.
 - e. Rubino noted that the Lock 57 Park in Ohioville has been completed and is now opened to the public. Buerkle noted he would revise the plan to reflect this fact.
 - f. Erin asked if the Bradys Run Loop Trail was recommended as high priority project. Buerkle noted that it is.
 - g. King asked when the next round of DCNR grant applications are due. Buerkle indicated it would be sometime in April. Committee members thought they heard the date has been moved up to January. Following the meeting Buerkle confirmed with DCNR the grant applications would be due in sometime in April, and that a specific date has not been set.

- 1.6 Buerkle reviewed the next steps as indicated in the agenda. Buerkle and Mancini indicated that the Beaver County Commissioners should be adopting this plan, as an amendment to the Beaver County Comprehensive Plan before the end of this year.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:

A handwritten signature in blue ink that reads "John O. Buerkle, Jr." in a cursive style.

John O. Buerkle, Jr., RLA, AICP
October 10, 2007

Distribution: Study Committee Members
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR

Appendix B

Public Meeting Minutes





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Meeting Minutes

Beaver County Greenway and Trail Plan

Public Input Meeting One

Meeting Date and Time:

October 4, 2005, 7:00 pm

Meeting Location:

Center High School

The following represents a brief overview of the presentation and public comments.

- A. The meeting began at approximately 7:10 p.m. Frank Mancini, Jr. welcomed everyone and thanked them for coming. Approximately 35 people attended (including eight (8) Study Committee members). A copy of the sign-in sheet is attached.
- B. Mancini introduced the members of the Study Committee who were present and explained their role in the project.
- C. Joe Spanik, Beaver County Commissioner, delivered some opening remarks.
- D. Mancini then introduced John Buerkle and Joan Miles of Pashek Associates, the consultants retained by the Planning Commission to develop the County Greenways and Trails Plan.
- E. Buerkle and Miles presented a Power Point presentation about the Greenways and Trails Plan. The presentation consisted of the following elements:
 - What Are Greenways
 - Benefits of Greenways
 - How do We Develop the Plan
 - What we Have Learned
 - Next Steps

A copy of the presentation is attached to these minutes.



At the conclusion of the presentation, Buerkle opened the meeting up to comments from the public. He asked everyone to answer five questions. Participants provided the following responses to the questions:

1) What major destinations or “hubs” have we failed to mention?

- Community College
- Geneva College
- Penn State Beaver
- Old RR Stations (Beaver Falls, Beaver, Monaca)
- Old Brighton Elementary School
- Thoroughbred stable (Georgetown)
- Fort MacIntosh
- Old Canals
- Independence Township Park
- Village Centers , including Homewood, Darlington and New Gallilee
- Independence Marsh (Environmental Center)
- Abandoned Mine Drainage Reclamation sites in Washington & Beaver Counties
- Brady’s Run Arboretum
- Hopewell Township (high growth & has a park)
- Greene Township (40-acre greenspace and walking trail)
- Big Knob/Hookstown Fairgrounds (historic village)
- Beaver Creek State Park (Ohio)
- Planned park in Ohioville (new River access point)
- Green Valley Park
- Beaver Run Sports Complex
- Beaver Valley Mall
- Darlington Polo Fields
- State Game Lands

2) What natural places, other than those mentioned, need to be protected?

- Mill Creek
- Wetlands around New Gallilee
- Clark Run (from Buttermilk Falls Park to the Beaver River)

- Big Sewickley Creek (heron rookery)
 - Wallace Run
- 3) What types of trails are most needed?
- Biking
 - Shared Use
 - ADA Accessible
 - Equestrian (although can be part of shared use)
 - ATV (need place for them too – Old Strip Mines; St. Joe’s)
- 4) What opportunities exist to create new trail connections?
- Cannelton Road – parallels Little Beaver in Darlington
 - Beaver Falls to Brady’s Run – two abandoned roads
 - New Brighton to Eastvale – abandoned RR
 - Connect Brighton Twp Bikes Lanes to Brady’s Run on abandoned road
 - Glen Eden Road from Cranberry to Brush Creek – suitable for bike lanes
 - Equestrian trail from Byersdale Rd to Old Economy Park through Legionville Rd
 - Equestrian trail from Old Economy Park across Ridge Road to Orchard Rd to Economy Borough (Bonnie Priddy will send us others via email).
 - Water Trail on Ohio and lower Beaver River with docks in each River Town for boats and fishing
 - Abandoned RR bridge above Koppel could provide excellent connection across Beaver River
 - Trail from Wallace Run to West Mayfield to Ing-Rich Road to Beaver Falls along Canal
 - Raccoon Creek Road off of Moffet Mill Road (landslide prone; could be closed and used as a trail)
 - Economy Borough has abandoned roads that were used for oil wells
 - Little Beaver Creek – old P&L RR bed runs alongside; would connect to trail system being developed in Ohio.
- 5) Where can we establish new water access points?
- Upper Beaver River – there are only 2 access points at private boat clubs
 - Another access point to Beaver River at Wampum RR Bridge (Lawrence County)

- Ohio River – old sand & gravel plant in Georgetown would make excellent put in point
- New park in Ohioville will include access to the Little Beaver Creek.

6) Where are scenic vistas that should be preserved?

- Wagner Road (view over the confluence of Beaver and Ohio Rivers)
- East Rochester (views over River)
- Ambridge Reservoir (from cemetery)
- Raccoon Creek Road – very scenic

F. Miles explained the next steps in the process are to analyze the data, map out the network of greenways, and present a draft plan to the public at three regional meetings. Once finalized the County Greenways and Trails Plan will become part of the Beaver County Comprehensive Plan.

G. Buerkle thanked everyone for their participation. The meeting was adjourned at approximately 9:00 p.m.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:



John O. Buerkle, Jr., RLA, AICP
Wednesday, October 5, 2005

Distribution: Frank Mancini, Jr., Beaver County Planning Commission
Beaver County Greenways and Trails Plan Study Committee
Kathy Frankel, Pennsylvania Department of Conservation and Natural Resources
Regional Advisor

Project: Beaver County Greenways

Date: 10/4/05

Location: Center High School

Sign-In

Name	Address / Affiliation	Email Address
1. HARRY W WOLF JR	FARM PRFV.	
2. Diane Schmidt	479 Independence Rd Alto. PA 15001 Independence	dhs2001@yahoo.com
3. JOE ZAGORSKI	BC Planning	
4. JOHN WALLISER	PEC	JWALLISER@PEWEST.ORG
5. FLORENCE TROIANI	849 6th St. Beaver PA 15009	
6. LISA TROIANI	CDP	ltroianni@beaverco.pa.com
7. David Wright	Center	
8. John Szatkiewicz	Chicville	
9. Bill Evans	Beaver County Planning	
10. JOE SPARIK	Beaver Co Commissioner	
11. Alan Dwyer	PO Box 8417 Racine Pa 15010 Homewood Borough	
12. Bonnie Priddy	967 Blockhouse Run Rd N Brighton 15066	bonnie.priddy@cinergy.com
13. Kendra Neely	↑ New Brighton	kneely@access995.com
14. Ann Sutherland	Economy Boro/ 4H Horse Show Club	acsutherland@comcast.net

Project: Beaver County Greenways

Date: 10/4/05

Location: Center High School

Sign-In

Name	Address / Affiliation	Email Address
1. FRED SCHMIDT	Independence Twp 1st Scholtz Rd, PA	479 Independence Rd Aliquippa, PA 15001
2. Kaye Kramer	Center School Health Council	Kramermk@comcast.net
3. Linda Rice	6429 TUSCARD MIDLAND, PA 15059 OHIOVILLE BORO	7246438422
4. Michael Harcher	499 Center Grange RD Monaca, PA 15061 Affiliations: Beaver County Conservation District; Beaver County Sportsmen Conservation League	None currently
5. SANDY WRIGHT	Box 181 HOOKSTOWN 15050 SEC/TREAS of GREENETWP.	sjwright2@access995.com
6. ART ROBB	912 River Rd Beaver	arthur.robbs@verizon.net
7. LARA RUSINO	BCCED	LRUSINO@BEAVERCOUNTYCED.ORG
8. Elaine Sylvester	133 Moffatt Run	
9. Kim MCKENZIE	RD2 Box 51 RICOON CREEK Aliquippa PA 15001	mcknzkim@earthlink.net
10. Cheryl Sudar	107 MacCarLene Monaca	
11. ELAINE Miller	161 HOOKSTOWN Graded RD Clinton PA 15026	
12. Susan Cole	239 Patton Drive Aliquippa PA 15001	
13. Kathleen Corcoran	491 Aley Hill Rd Darlington PA 14115	KJob@bebh.org
14.		

Project: Beaver County Greenways

Date: 10/4/05

Location: Center High School

Sign-In

Name	Address / Affiliation	Email Address
1. Barb Magnotta	Center Health & Wellness Council 1138 Chapel Rd Monroe	Magnotta.ba@casd.k12.pa.us
2. Judy Charlton	Center Health & Wellness Council	
3. Wendy Thomas	112 Evergreen DR Health & Wellness Council	jhtjr@access995.com
4. Jan Culp + Katie Culp	1152 Harmony Rd Biden PA 15005	
5. Ed Piro		epiro@rochester.net
6. KATHLEEN JOHNSON	BEAVER RIVER RTA DELEGATION TRAP	
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		

Project: Beaver County Greenway

Date: 10/4/05

Location: Center H.S.

Sign-In

Name	Address / Affiliation	Email Address
1. <u>Sam BUTLER</u>	<u>168A Thompson Hill Rd. Aliquippa PA 15007</u>	<u>butlrfm@earthlink.net</u>
2. <u>Brian David</u>	<u>Pitts Post-Gazette</u>	<u>bdavid@post-gazette.com</u>
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Meeting Minutes

Beaver County Greenway and Trail Plan

Public Meeting

Meeting Date and Time:

October 10, 2007, 10:00 am

Meeting Location:

Beaver County Four Winds Recreation Facility

Attendees:

Ellie Vojonvich

Bob Barr

Doug Berg

Marlin Erin

Sara Walfoort, Southwestern Pennsylvania Planning Commission

Frank Mancini, Beaver County Planning Commission

Bill Evans, Beaver County Planning Commission

Jack Hilfinger, Beaver County Recreation and Tourism

John Buerkle, Pashek Associates

The following represents a brief review of discussions held during the above meeting:

- 1.1 Buerkle welcomed everyone and reviewed the following agenda:

Recommendations of Plan

1. Management Structure
2. Recreation Greenways
 - a) Shared Use Paths
 - b) Water Trails
 - c) Hiking Trails
 - d) Bike Lanes / Shared Roadways
3. Conservation Greenways
4. Demonstration Projects

Recreation

- a. Confluence Connector – Rochester, Bridgewater, Beaver to Bradys Run Park
- b. Raccoon Creek Greenway Trail
- c. Beaver River Water Trail
- d. Bradys Run Park Loop

Conservation

- a. Brush Creek / Connoquenessing Creek Greenway
- b. Raccoon Creek / Traverse Creek / Little Traverse Creek Greenways

Next Steps

- 1.2 Buerkle presented an the draft recommendation of the Beaver County Greenways and Trails Plan to attendees.
- 1.3 Buerkle asked the committee for their input and comments on the plan. The following comments were offered:
 - a. Attendees indicated their concurrence with the recommendations of the plan.
 - b. An attendee suggested the plan include a recommendation for Beaver County to coordinate their greenway and trail efforts with PennDOT District 11-0 staff. Buerkle noted he would recommend the County and PennDOT meet on a quarterly basis to review the status of projects, and potential advancements in greenway and trails along state routes. Buerkle also recommended that the County provide PennDOT District 11-0 with a copy of the study upon adoption. Mancini agreed to do so.
 - c. Minor corrections to the maps were suggested. Buerkle indicated the revisions would be made.
 - d. Attendees discussed the lack of awareness when it comes to greenways and trails in Beaver County. They suggested efforts be taken to provide an education, awareness, and marketing campaign for greenways and trails in Beaver County. Buerkle noted he would strengthen these recommendations in the plan.
- 1.4 Mancini noted that PA DCNR has reviewed and provided their comments on the plan. Mancini also noted DCNR has approved the plan.
- 1.5 Buerkle reviewed the next steps which include:
 - a. Beaver County Planning Commission, consider recommendation to Board of Commissioners to adopt plan, October 16, 2007
 - b. Beaver County Board of Commissioners to adopt plan – date to be determined
- 1.6 Buerkle and Mancini indicated that the Beaver County Commissioners should be adopting this plan, as an amendment to the Beaver County Comprehensive Plan before the end of this year.
- 1.7 Buerkle and Mancini provided committee with update on project related activities.
 - a. Buerkle noted significant progress has been made towards creating the County Greenway Coordinator position. County has entered into an Intergovernmental Agreement with Lawrence County for a shared coordinator position. Mancini reviewed the details of the agreement with the committee.
 - b. Buerkle noted that Mancini, along with Lawrence County Planning Commission Director, have completed and submitted applications to PA DCNR and PA DCED to secure funding for position.
 - c. Mancini indicated he hoped to receive a response on the grant applications before the end of the year so they could begin the process of hiring a coordinator early in 2008.

The information contained in these minutes was recorded by Pashek Associates and represents our interpretation and understanding of the discussions that occurred during the meeting.

Prepared by:

A handwritten signature in blue ink that reads "John O. Buerkle, Jr." The signature is written in a cursive style with a large initial "J" and "B".

John O. Buerkle, Jr., RLA, AICP
October 10, 2007

Distribution: Study Committee Members
Diane Kripas, PA DCNR
Kathy Frankel, PA DCNR

Appendix C

Key Person Interviews



Key Person Interview with Allan DeSanzo,
Homewood Borough

Interview/Contact Date: September 12, 2005

I called Mr. DeSanzo to discuss plans for linking Buttermilk Falls Park with the planned extension to the Beaver River Rail Trail.

He told me that he is a member of the Rail Trail Committee. He indicated that the State recently did work to the tunnel that passes under Route 18, keeping road access to the stream. If you are in the Park and look at the stream heading down towards the river, there is an old roadbed on the left side of the stream. It goes all the way to the river. It was probably used when Buttermilk Falls was a quarry. He stated that this road would work well for creation of a new trail.

Mr. DeSanzo also noted that the RR bridge north of the Koppel Bridge was just turned over to Big Beaver Borough. This could be very useful in the future to create a trail crossing to the Ellwood City side of the Beaver River.

He explained that extending the Beaver River Trail north of Geneva College will be very difficult. The railbed does NOT extend north (as we had thought), so they will need to build the trail from scratch. I asked about the abandoned line I saw under the Koppel bridge. He indicated that this is simply a spur that seems to connect to the active line through Koppel. The land that the trail would be built on is owned by Geneva College, the CED (KOZ Zone), Big Beaver Borough (recently purchased 20 acres) and private landowners. He suggested I contact Carl Boak, mayor of Beaver Falls for a copy of their most recent trail plans (724-843-9412 or 724-847-2804).

Homewood is trying to restore the Old St. Cloud Hotel. Used to be a RR station, tavern and telegraph station.

I asked about other trail plans or potential trail links in that part of the County. He suggested I call Don Wachter, mayor of Big Beaver Borough (724-843-7568). They have recently put in a sewer extension and are talking about using the right-of-way as a trail.

He also noted that Homewood is participating in a multi-municipal comp plan with Big Beaver, Koppel and New Gallilee. Mackin is doing it. We may want to see whether that plan is recommending any trails and greenways.

**Key Person Interview with Bill Parise,
President & CEO, Beaver County YMCA**

Interview/Contact Date: August 25, 2005

1. What is your position/title and what is your organization's mission or role in the County?

He is president & CEO. The mission is to put Christian principles into practice through programs that build body, mind and spirit. The Y has 10,700 members and largest senior program ("Silver Sneakers") in America.

2. Do you think a greenway network should be established in the County? If yes, what do you think are the principle reasons that a greenway network should be established in Beaver County?

No. There are too many other priorities now in Beaver County. One is creating employment opportunities. Another is managing the present recreational resources that the County has.

Beaver County is decreasing in population and has the oldest population in the Country. He does not believe that these older residents will make use of trails, and he does not believe people will move to Beaver County or visit it for the trails. He would "absolutely disagree" that trails will bring new jobs or residents to Beaver County.

I asked whether, based on this opinion, he wished to answer other questions. He said he did. He indicated that he is a proponent of greenways & trails, but just feels that they should not be a high priority for Beaver County now.

3. Greenway plans often consist of a series of "hubs and spokes." The hubs consist of population centers; significant parks or other natural areas; as well as key cultural and historic sites. What are the areas that you think are the most significant destinations for visitors and residents?

- Rochester (the "hub of Beaver County")
- Brady's Run Park
- Community College of Beaver County

4. Where would you most like to see connections or new trails developed?

Bike paths along the rivers (but access will be an issue).

5. Some greenways do not include trails, but simply conserve corridors of open space. Are there places in Beaver County that should be set aside primarily to protect

wildlife habitat (e.g., streams, flyways) or sensitive environmental features (e.g., floodplains, steep slopes)?

Doesn't know. Thinks parks are sufficient.

6. Are there brownfield sites, abandoned industrial properties, mine reclamation areas or other underutilized properties that would benefit from trail development?

Lots. Rochester along Riverfront.
Old J&L site in Aliquippa
Monaca riverfront
Beaver Falls – several sites along the Beaver River
PB&I in Rochester

If could redevelop these, could get quick attention & support.

7. What do you see as the primary obstacles to developing a greenway plan? Are there ways to overcome these challenges?

Money, land acquisition & cooperation. Residents are very parochial. Hard for people to think regionally.

8. What types of trails are most needed? Walking? Biking? Multi-use? Other?

Multi-use.

9. Do you know of abandoned rail lines or roads that would make good recreational trails?

Yes. The old Conrail line runs between Beaver Falls and Rochester. It is on a hillside and not adjacent to active RR tracks. Good opportunity.

10. Where would on-road bike lanes make sense?

Yes, but could not recommend any specific roads.

11. What rivers or streams would be suitable for water trails? Where are the best locations for boat access?

Connequenessing
Big Beaver
Little Beaver

Beaver County has many boat access ramps. Would make sense to link them with trails.

Key Person Interview with Bob DeVenny,
Brush Creek Watershed Association

Interview/Contact Date: September 1, 2005

3. What is your position/title and what is your organization's mission or role in the County?

He is the original organizer of the association. The mission is to raise awareness for the environment of Brush Creek by people living close by. They try to get people to be more conscientious about littering.

They have done sampling of the creek and are working with the North Hills Environmental Council on developing a trail from Marshall Township in Allegheny County to Cranberry Township in Butler County. The association is still active, but they have lost members.

Mr. DeVenny lives in Allegheny County, but is familiar with Brush Creek in Beaver County. He did water quality monitoring of Brush Creek for six years as part of the Environmental Alliance of Senior Involvement, a program administered by DEP.

4. What is the quality of Brush Creek?

It seems to have improved, but it had a problem with e coli contamination. The source was cattle and horse farms along the tributaries to Brush Creek.

5. Would Brush Creek be suitable for a conservation greenway or for development of an adjacent trail?

Yes, he thinks it could be both. It could provide a link between Brush Creek County Park and Green Valley Park, which has a very nice walking path.

He also mentioned a system of trails that is being developed in Cranberry Township that could connect to Beaver County.

In addition, he noted that a trail is being planned along the old Harmony streetcar line that went from Pittsburgh through Butler to Harmony. There may be a way to connect to that as well.

Key Person Interview with Charlie Neville,
President, Beaver County Rowing Association

Interview/Contact Date: August 25, 2005

6. What is your position/title and what is your organization's mission or role in the County?

He is president. The mission is to bring rowing and kayaking programs to all people of Beaver County and increase health benefits of rowing and awareness of river resources in Beaver County. Website: www.beavercountyrowing.org.

7. What programs do you run and where?

The Rowing Association was hit hard during the floods of 2004 and lost 50% of their equipment. Rochester has been generous and given them land and start-up funds, but they need more money to start up regular programming.

Hope to start high school rowing programs; work with local colleges to establish programs and begin programs for the blind and handicapped in the future.

They do offer bi-weekly "Learn to Row" programs in summer and fall. They row on the Beaver River below the dams and on the Ohio (Beaver side to the Vanport Bridge). They do not row on the Beaver River above the dams. Suggested contacting the Eastvale Boat Club and County Commissioner Charlie Camp.

8. Do you think a greenway network should be established in the County? If yes, what do you think are the principle reasons that a greenway network should be established in Beaver County?

Yes, it would likely increase the natural beauty of the County, but does not think that riverbanks should be designated as greenways if that would limit potential of County to use them for economic/job development. Beaver County's economy has been devastated.

9. Greenway plans often consist of a series of "hubs and spokes." The hubs consist of population centers; significant parks or other natural areas; as well as key cultural and historic sites. What are the areas that you think are the most significant destinations for visitors and residents?

He sees the main hub as the place where the Beaver River joins the Ohio.

Other hubs would be Beaver, Rochester, Monaca, Beaver Falls, Fallston, Raccoon Creek State Park, Brady's Run Park and Brush Creek.

10. Where would you most like to see new trails developed?

- Along the Beaver River from the confluence to Beaver Falls
- From Brady's Run to Fallston to Bridgewater
- Vanport to Beaver to Bridgewater
- Raccoon Creek State Park through Raccoon & Potter to Shippingport
- Aliquippa to Monaca to Rochester

11. What types of trails are most needed? Walking? Biking? Multi-use? Other?

He thinks all types are needed: walking, biking and paddling.

12. Do you know of abandoned rail lines or roads that would make good recreational trails?

No.

13. Other than the Beaver & Ohio, what rivers or streams would be suitable for water trails?

- Raccoon Creek – State Park to the Ohio
- Brady's Run Creek (in Park)

Interview with Chris Caruso, Planning Director
Findlay Township

Interview/Contact Date: November 3, 2005

1. Are there any recreational trails (existing or planned) in the Township that are in close proximity to the Beaver County border? How would we best make connections to them?

The Montour Trail is the only trail in the Township.

2. Are there destination points (significant municipalities, parks, natural areas, cultural or historic sites) close to Beaver County that our greenways or trails might connect to?

The Airport. He noted that the Montour Trail Council is looking for opportunities to connect to the airport. Other areas have connected trails to airports.

3. Does Findlay Township have any existing or planned conservation land that we could connect to?

They have an Open Space and Recreation Plan that designates planned conservation areas. He will send us a copy. I asked about any GIS mapping that he could send us. He will check and possibly email it to us.

Key Person Interview with Dotty Betz,
Columbiana County Parks District

Interview/Contact Date: September 12, 2005

Ms. Betz is the Chairman of the Board of the Parks District. I called her to discuss existing and planned trails in Columbiana County that our greenways and trails network could connect to. She was very pleased that we would be proposing a connection to their proposed trail.

She described the Ohio Lake to River Greenway which would extend from Ashtabula on Lake Erie to East Liverpool at the Ohio River. The Section in Columbiana County that has been completed extends from Latonia to Lisbon. They have one more mile to build north of Latonia to reach the Mahoning County border. The problem has been extending the trail further South. The RR line was bought up by the Vodry family (Beaver Creek Land Foundation). They are not amenable to having the trail pass through the land. It is currently a nature preserve. The Vodry family apparently gets State grant money by keeping it as a preserve. They also tore down the old RR trestle that crossed the river.

The Vodry family lives in Fredericktown, a tiny historic village. The family does not want tourists coming in.

The Beaver Creek Raul Trail Association is looking at alternatives. One possibility is following the former route of the Sandy & Beaver Canal. It connects to the trail in Lisbon, but would be much more costly since they would need to create a new trail bed.

There was another old rail bed between Lisbon and Columbiana, but it was recently purchased by the Port Authority to be used as an active line again. Therefore, that is no longer an alternative. However, the group is also looking at possible road routes to bridge this gap.

She noted that the land below the Vodry property along the RR bed passes through Beaver Creek State Forest between Grimms Bridge and the River. Since this is public land, she thought it may be possible to get access for the trail. She also stated that the group is still negotiating with the Vodry family to try to convince them to allow access.

I asked if there were other parks or trails that we may want to connect to. She named Thompson Park in East Liverpool, Scenic Vista Park in Lisbon and Beaver Creek State Park.

Mrs. Betz agreed to send us a map of the canal route as well as a trail brochure and other routes they are looking at.

Interview with Frank Gingras, Acting Director
Lawrence County Planning Department

Interview/Contact Date: October 27, 2005

4. Are there any recreational trails (existing or planned) in your County that are within [10] miles of the Beaver County border? How would we best make connections to them?

There is the North Country Trail. He couldn't think of any others.

5. Are there destination points (significant municipalities, parks, natural areas, cultural or historic sites) within [10] miles of Beaver County that our greenways or trails might connect to?

McConnells Mill State Park - the southern portion is just 11,000 feet from the border of Beaver County.

Ellwood City Borough – has historical society.

6. Are there any other planning efforts in your County that we should be aware of that might be relevant to our greenways & trails plan?

Lawrence County will be starting its own Greenways Plan in the near future. They are just starting to put together the funding.

7. I asked about access points to the Beaver River.

In the 1980's, he took a canoe down the 3 major rivers in Lawrence County for a County-wide Recreation Study. He paddled the Beaver River into Beaver County and got out at Rock Point Park on the Connequenessing. The park doesn't exist anymore, but he thinks that there may still be ways to put in and take out on the Connoquenessing.

There are access points in Lawrence County on the Shenango and at Wampum.

Key Person Interview with Howard Howe,
Rochester Borough Chamber of Commerce

Interview/Contact Date: September 6, 2005

14. What is your position/title and what is your organization's mission or role in the County?

He is a realtor and president of the Rochester Borough Chamber of Commerce. Their mission is to support and promote the business community.

15. Do you think a greenway network should be established in the County? If yes, what do you think are the principle reasons that a greenway network should be established in Beaver County?

Yes. Make recreation more available to population. Best example: Rochester's Riverfront Park. Lots of families go out and use the picnic area. He also stated that the County needs to recover the shorelines. This would help with erosion and flooding. The recovered shorelines could then be used for biking and walking trails.

16. Greenway plans often consist of a series of "hubs and spokes." The hubs consist of population centers; significant parks or other natural areas; as well as key cultural and historic sites. What are the areas that you think are the most significant destinations for visitors and residents?

- Rochester
- New Brighton
- Beaver Falls
- Beaver
- Bridgewater
- Brady's Run Park
- Brush Creek Park
- Vicary House

17. The spokes are the corridors that link the hubs. They may be rural hiking, biking, skiing or multi-use trails, water trails, abandoned rail lines redeveloped for recreational uses, urban waterfront paths as well as designated bike/pedestrian lanes on roads or urban streets.

- a. Are there existing or planned trails that should be used to help connect the "hubs?" Where are they?
- b. Where would you most like to see new trails developed?

He did not know about existing trails. He suggested the following connections:

- Rochester to New Brighton between RR and River – not sure about ownership
- McKinley Run (flows into Beaver River)– there is land at border between Rochester Borough and Rochester Twp to develop a park – would help with erosion and sediment control
- Include trails in industrial property redevelopment in Rochester along the Ohio River.
- He felt that there should be efforts to add to and improve the existing parks. They are poorly maintained. He noted that there has been talk of developing walking and biking trails in Brady’s Run Park for years along abandoned roads, but nothing has happened. This would be a great resource.
- Connection from Brady’s run down hill to Littell Steel through Fallston and Bridgewater to the Beaver River.
- He noted that Boulder, CO has a “greenbelt” surrounding the city with trails. They have a different mentality there.

18. Some greenways do not include trails, but simply conserve corridors of open space. Are there places in Beaver County that should be set aside primarily to protect wildlife habitat (e.g., streams, flyways) or sensitive environmental features (e.g., floodplains, steep slopes)?

Not sure. Not his area of expertise.

19. What types of greenways & trails would be the most economically beneficial for the County?

Snowmobile & skiing trails – bring new people into the County.

20. What economic benefits do you think greenways & trails will bring to Beaver County? What should the plan do to maximize those benefits?

Greenways and trails would be a good marketing tool to get young families to move to the County. Population is aging. Need to attract new families.

21. What do you see as the primary obstacles to developing a greenway plan? Are there ways to overcome these challenges?

The “imaginary boundary line,” specifically the line in people’s minds’ that divides “your town” and “my town.” There are a lot of politics. People are not willing to cooperate. He thinks this problem is engrained in people. No way to overcome.

Key Person Interview with Janet Butler,
U.S. Fish & Wildlife Service

Interview/Contact Date: September 1, 2005

2. What is your position/title and what is your organization's mission or role in the County?

She is the Visitor Services Manager for the Ohio River Islands National Wildlife Refuge.

The refuge consists of 22 islands in 3 states: Pennsylvania, West Virginia and Kentucky. These islands were acquired in 1990 and are federally managed to restore hardwood forests for migratory birds. The two islands in PA are Phillis Island (39 acres) and Georgetown Island (10 acres).

3. Didn't the Fish & Wildlife Service want to acquire more land in PA for the refuge?

Yes. It was looking to add the Ohioview Embayment, a significant wetland area on the north side of the River. However, they only have congressional authority to acquire islands at this point. The Fish & Wildlife Service is working on a land protection plan that would expand their authority to protect mainland wetlands. But until (and if) this passes, plans to acquire the Ohioview Embayment are on hold.

She said that the Service did a comprehensive study of all properties along the Ohio that they would like to add to the refuge. The only other property in PA that is included in the Plan is the Ohioview Embayment.

I asked her to fax us the pages from the study that discuss this property.

4. Does Fish & Wildlife have any funding sources to assist local governments in establishing conservation-based greenways?

She mentioned the "Partners for Fish & Wildlife" program that helps private landowners improve their properties as habitat areas. Other than that, she didn't know of anything. She suggested I contact their regional office in State College.

Key Person Interview with Janet Thorne,
Executive Director, Hollow Oak Land Trust

Interview/Contact Date: August 26, 2005

I called Janet Thorne to talk specifically about a piece of conservation land owned by HOLT, Boggs Run Conservation Area, that is partially located in Beaver County. (Note: I printed description of site from HOLT website.)

1. Tell me about the Boggs Run Conservation Area in Beaver County.

Boggs Run consists of 60 acres of wooded and boggy land adjacent to Boggs Run on the north side of the Beaver Valley Expressway. Only a small piece of the property extends into Beaver County. The property is landlocked, although it can be accessed if you pull off the expressway. It has a dirt road that runs along a gas pipeline that would be suitable for walking & biking. This road continues beyond the property into Beaver County paralleling the expressway.

2. Some people in Beaver County would like to find ways to connect up to the Montour Trail. Would it be possible to create such a connection, possibly through this property?

Janet thought there might be an opportunity. She suggested the following route:

On the Pittsburgh side of Boggs Run Conservation Area, there is a piece of property that is currently for sale (HOLT has looked at it, but has not purchased). This property connects to Spring Run Rd Extension. A trail could run from Boggs Run across this property, then follow Spring Run Rd Extension to Flaugherty Run Road, down to the Ohio River to Route 51 through Coraopolis to the beginning of the Montour Trail. This trail could consist of a combination of on-road bike lanes and paths running parallel to the RR tracks along the Ohio. This would be the easiest and flattest connection.

Janet offered to show us the Boggs Run property at any time. I indicated I would discuss it with John Buerkle and get back to her.

Interview with Jeff Lloyd,
Canoe Raccoon Creek

Interview/Contact Date: August 31, 2005

5. What is your position/title and what is your organization's mission or role in the County?

The group is very informal. No title. They worked with the Conservation District to establish and promote the Raccoon Creek Water Trail several years ago. Established four launch sites and signage. Group is not very active anymore. The group is strictly focused on Raccoon Creek, but Mr. Lloyd is an avid canoer and paddles on many of the County's streams and rivers.

6. Do you think a greenway network should be established in the County? If yes, what do you think are the principle reasons that a greenway network should be established in Beaver County?

Yes. Get people to enjoy the outdoors and get exercise.

7. Greenway plans often consist of a series of "hubs and spokes." The hubs consist of population centers; significant parks or other natural areas; as well as key cultural and historic sites. What are the areas that you think are the most significant destinations for visitors and residents?

- Brady's Run
- New Brighton Fishing Park (just established)
- Fort Macintosh (Beaver)
- Historic Heritage Museum (Beaver)
- Beaver Borough
- Ambridge (Old Economy)
- Raccoon Creek State Park

8. The spokes are the corridors that link the hubs. They may be rural hiking, biking, skiing or multi-use trails, water trails, abandoned rail lines redeveloped for recreational uses, urban waterfront paths as well as designated bike/pedestrian lanes on roads or urban streets.

- a. Are there existing or planned trails that should be used to help connect the "hubs?" Where are they?

There are some existing bike trails in Brady's Run

- b. Where would you most like to see new trails developed?

He would like to see more bike trails, particularly along the rivers, but there aren't many abandoned RR tracks like there are in other counties.

There is an abandoned track along the Little Beaver that would make a beautiful rail-to-trail.

Other than Raccoon Creek, he spoke of several canoeing opportunities in Beaver County:

- Little Beaver Creek – starts in Beaver County, but then flows into Ohio. Re-enters Beaver County just before it empties into the Ohio River. Very beautiful stream (wild & scenic). Canoeable April to June. There is a put in point at Grimms Bridge about 4 miles from the mouth. Used to put in at Frederickton (in Ohio), but now there is no parking there. Can also drive up to Beaver Creek State Park (15 miles upstream) and canoe down. Stream can be dangerous when water is too high. Can also put in about half a mile from the mouth and canoe into the Ohio River where the National Wildlife Refuge islands are accessible. The Little Beaver also has a fork that goes through Darlington. Not sure if its navigable.
- Beaver River from Beaver to Fallston Dam (this is the southernmost of three dams on the Beaver River. Good fishing there.
- Beaver River from Wampum in Lawrence County (access ramp there) to Beaver Falls). Can also put in at Koppel, but have to cross an active RR line.
- Connequenessing – this is only navigable from April to June. It's kind of muddy. He wasn't sure about access points. Hard to canoe to the Beaver River because of the rapids near the confluence.
- Ohio River – there are existing Fish & Boat Commission launch sites in Rochester, Monaca and New Brighton.

He felt that because several of these are seasonal, it may be difficult to establish official water trails.

He noted that there is an excellent canoeing guide that describes all these rivers. It is called something like "The Canoeing Guide to Western PA and Northern West Virginia," and it put out by the Pittsburgh Council of American Youth Hostels. (tel: 412-362-8182). It costs about \$25.

9. What do you see as the primary obstacles to developing a greenway plan? Are there ways to overcome these challenges?

He believes that property acquisition and money are the two big sticking points. He noted that Beaver Borough has developed lots of park plans, but little has moved forward due to lack of funding.

Key Person Interview with John Trant,
Cranberry Township Planning Department

We are in the midst of updating our Comprehensive Plan, which will include greenway/trail planning, so there isn't a whole lot on the books right now. However, I've provided some information below that you may find helpful. If you have any other questions, feel free to give me a call. (724-776-4806 ext. 1097)

1. Are there any recreational trails (existing or planned) in your area that are in close proximity to the Beaver County border? How would we best make connections to them?

Darlington Road is likely to include a trail adjacent to the Road when that area develops. It is a very scenic area (farms, woods).

2. Are there destination points in or around Cranberry (significant parks, natural areas, cultural or historic sites) that our greenways or trails might connect to?

A large new community park (Graham Park) will be under construction starting in '07. It is on the west side of the Turnpike, north of Rochester Road.

The Township's golf course is in the NW corner of the Township, near the Beaver County border.

3. Are there any other planning efforts in Cranberry that we should be aware of that might be relevant to our greenways & trails plan?

As I mentioned above, we are in process of updating our Comprehensive Plan, which will include recommendations for trail and greenway connections.

We recently completed the Brush Creek Smart Growth Plan, which includes pedestrian connections in the area west of the Turnpike and north of Rochester Road.

The Brush Creek Plan also includes Park Place, an 800 unit TND that is likely to be under construction starting next year. This will be a major destination in Cranberry. It will include a variety of housing types, as well as retail.

Interview with Keith Klos,
North Country Trail Association

Interview/Contact Date: August 26, 2005

22. What is your position/title and what is your organization's mission or role in the County?

He is the president of the Allegheny National Forest Chapter of the North Country Trail Association. This organization is working to establish a walking trail from Crown Point in New York to North Dakota. To date, 1700 miles have been certified by the National Park Service. It will be a walking path only.

He is vaguely familiar with the stretch in Beaver County, but suggested I talk to Joyce in their "Wampum Chapter." She is working on the trail in Beaver County. He agreed to send me her contact information.

Key Person Interview with Larry Morley,
New Brighton Borough

Key Person Interview with Larry Morley, New Brighton Borough Manager

I met with Larry in his office on 11/15/05. The purpose of the meeting was to discuss Larry's thoughts on trail development in New Brighton Borough. Larry suggested that we drive around the Borough to take a look at his thoughts for where trails might be located in the Borough.

Larry said the primary trail corridor in the Borough would begin in Big Rock Park and terminate at the Beaver County YMCA, located on Junction Stretch in Rochester Township.

Larry feels it will be difficult to connect New Brighton and Beaver Falls as the Seventh Street bridge has a narrow sidewalk and is not conducive to pedestrian or bicycle traffic.

Big Rock Park is located on the eastern bank of the Beaver River, and is between the river and several active railroad tracks. Big Rock Park is accessed through two tunnels that pass beneath the railroad. One is located at 8th Street and the second is located between 11th and 12th Streets.

The northernmost entrance to Big Rock Park is at Eighth Street and is about four blocks south of Larry's proposed terminus if the trail. It is possible for the trail to either be low, along the river, or be high where it would share the access road through the park. The lower option is more appealing although it would cost more to develop.

The trail would continue through Big Rock Park, and if it is placed low, along the river, it would climb the bank near the water intake building. At that point it will continue along the road to the southern park entrance located between 11 and 12th Streets. The trail would cross beneath the railroad tracks, through the tunnel, and upon exiting the tunnel turn south and follow Second Avenue. Second Avenue has sidewalks located along most of its length, and appears to be wide enough to accommodate bike lanes. Therefore, the trail will follow Second Avenue to the Fallston Bridge. The Fallston Bridge is being replaced, but the bridge is intended to remain for pedestrian and bicycle traffic. The bridge will allow residents of Fallston to access the trail.

The trail will continue along Second Avenue, to 19th Street. At 19th Street the trail would turn east, and cross State Route 18 at its intersection with 19th Street.

Between 19th and 21st Streets New Brighton Borough is constructing Fishing Park. The park is situated on the eastern bank of the Beaver River and it is located just south of the Townsend Dam. Recognizing this area was a popular location for anglers, the Borough had the opportunity to acquire the property and develop into a formalized fishing access. The park is currently under construction and will be completed in the Spring of 2006.

When completed the park will include accessible fishing access from a boardwalk located on the bank of the Beaver River. It is the only accessible fishing access point on the Beaver River in Beaver County.

After crossing State Route 18, the trail will turn south onto 3rd Avenue. At Third Avenue the trail will continue to the inactive railroad bed that extends the length of Junction Stretch, to Rochester Borough. As the trail continues along the railbed in New Brighton Borough, and enters Rochester Township, the trail will intersect with Sharon Road.

The new Veterans Memorial Bridge is proposed to connect Rochester Township, on the eastern side of the Beaver River, with Bridgewater Borough on the western banks of the Beaver River. The new bridge, in its current form, is proposed to have a ten foot wide shared use path located along the southern travel lanes of the bridge. Therefore, a trail spur is proposed to continue west from the Third Avenue and Sharon Road intersection, along Sharon Road to the new bridge. Once this trail segment crosses the bridge into Bridgewater it will continue through Bridgewater and Beaver Boroughs and will provide access to the Beaver Riverfront Park, and Brady's Run Park located in Brighton Township.

Following the tour of the riverfront Larry took me to the 10th Street Overlook. Although Larry said it cannot be connected to the trail system, he wanted to make us aware of the outstanding view of the Beaver River from the overlook. The overlook is located on the eastern bank of the Beaver River, where the former 10th Street Bridge was once located. The overlook provides an extraordinary riverfront view of the Beaver River Corridor with the Patterson Dam as the focal point and Beaver Falls as the backdrop.

While standing at the overlook I noticed a footpath on the hillside below. Larry noted that it has been created by anglers who use it to access fishing spots on the Beaver River. Larry also noted that it provides access to a biological diversity area as identified by the Western Pennsylvania Conservancy. Larry doesn't think the BDA was identified due to threatened or endangered species, but designated because it represents a vegetative community that is rare in Beaver County.

Interview with Laura Rubino,
Beaver County Corporation for Economic Development

Interview/Contact Date: April 5, 2006

I called Laura to discuss the Conceptual Master Plan for the Bridgewater Crossing Development.

1. Will there be an overpass over the railroad tracks at the entrance to the site?

No. They looked into constructing a tunnel under the tracks, however, the pedestrian lane would have had to be in a separate tunnel. This was prohibitively expensive. Therefore, the crossing will be at grade with gates and signals. There will be a pedestrian lane that will be suitable for bicycles.

2. Will the site have a boat access ramp?

No. The current sunken barges at water level are failing. They looked into repairing or replacing them, but this was also too costly. Therefore, the barges will be removed and the shoreline will be filled and rip-rapped. To compensate, the development will have a dock to the West of the overlook where boats can tie up. She will send us the plans for this dock.

3. Our Greenways and Trails Plan is proposing a shared use path that would start at the proposed Beaver Riverfront Park and continue under the railroad bridge through the Bridgewater Crossing development. Are the current plans for the site compatible with this trail proposal?

Yes. The plans show a trail that circles the site. In addition the road that currently ends in a cul-de-sac will eventually be extended to connect under the railroad bridge to Beaver Riverfront Park.

**Key Person Interview with Lincoln Kretchmar,
President, Beaver Area Chamber of Commerce**

Interview/Contact Date: September 8, 2005

23. What is your position/title and what is your organization's mission or role in the County?

Mr. Kretchmar is owner of Kretchmar Bakery in Beaver and is president of the Chamber of Commerce. The Chamber's mission is to improve the business community in downtown Beaver and promote the town as a whole.

24. Do you think a greenway network should be established in the County? If yes, what do you think are the principle reasons that a greenway network should be established in Beaver County?

Yes. It is a good idea to conserve land for recreation and conservation. Shows a commitment of legislators to create inviting environments for people to grow and blossom in. They need to manage land better. The big industries that use to dominate the area did not take this into consideration. The benefits of the plan would be to combat sprawl, improve habitats and attract new families and residents to the County.

25. Greenway plans often consist of a series of "hubs and spokes." The hubs consist of population centers; significant parks or other natural areas; as well as key cultural and historic sites. What are the areas that you think are the most significant destinations for visitors and residents?

- Historical sites (many)
- Beaver
- Ambridge (Old Economy)
- Beaver Falls
- Brady's Run
- New commercial areas (like those in Center)

26. The spokes are the corridors that link the hubs. They may be rural hiking, biking, skiing or multi-use trails, water trails, abandoned rail lines redeveloped for recreational uses, urban waterfront paths as well as designated bike/pedestrian lanes on roads or urban streets.

- a. Are there existing or planned trails that should be used to help connect the "hubs?" Where are they?

Not sure.

- b. Where would you most like to see new trails developed?

- i. Beaver to Beaver Falls
- ii. Trail to Ohio (along Route 68) – connecting to Ohio’s planned & existing trails
- iii. Trail along the Ohio River to Ambridge – putting on the Aliquippa side would give Aliquippa some help.
- iv. Overall, the trails should run close to those towns with denser populations.

27. Some greenways do not include trails, but simply conserve corridors of open space. Are there places in Beaver County that should be set aside primarily to protect wildlife habitat (e.g., streams, flyways) or sensitive environmental features (e.g., floodplains, steep slopes)?

Doesn’t know.

28. Are there brownfield sites, abandoned industrial properties, mine reclamation areas or other underutilized properties that would benefit from trail development?

Mentioned the old J&L site on the Aliquippa side of the Ohio.

29. Are there locations that provide important vistas of natural areas (hills, valleys, rivers) or man-made features (cities, villages, farms) that should be protected (scenic viewsheds)?

Brighton Township hill – looks over Beaver & Rochester
View from Monaca to Beaver

30. What do you see as the primary obstacles to developing a greenway plan? Are there ways to overcome these challenges?

- The communities themselves. When it comes to the public use of land, everyone has their own ideas and are not eager to compromise.
- Land ownership – uncooperative land owners

He indicated that the way to overcome these obstacles is to develop a good marketing plan to sell the greenways & trails plan and get people on the “same page.”

31. Do you have any reports or other written resources that would be useful to us in the development of the Greenway Plan?

No, the Chamber has not done any studies or surveys.

**Key Person Interview with Marlin Erin
Owner, Snitgers Bike Shop**

Interview/Contact Date: August 26, 2005

1. What is your position?

Owner of Snitgers Bike Shop

2. Why do you think a greenway network should be developed in Beaver County?

Would bring economic benefits. People are now driving to Fayette County, Montour Trail and other places to bike and spend their dollars. Actually taking money out of the County.

3. What are some of the prime opportunities for new trails?

- Brady's Run – 8-mile loop that would be a destination. Need to connect up a few roads and refurbish an abandoned road in the park.
- Abandoned RR line from Beaver to Brady's Run – would link County seat to the park. Make Brady's Run a major hub for the County. (There are also quad trails that run through the woods behind the medical center in Beaver to Brady's Run – but not flat. Good for mtn. biking).
- Abandoned line from Beaver to East Liverpool – parallels Route 68 – above the road on the hillside. A few stretches are interrupted. Runs by the restaurant (Meryl's Landing – used to be Lock 6 Landing).
- Another abandoned RR line parallel to Route 51 in Fallston (brick factory; behind Steel factory)
- Abandoned RR line in Rochester- parallel to Route 65, but on hillside away from active lines. (There also used to be a canal that ran from Rochester to New Brighton?)
- Develop trail connecting Hillman State Park in Washington County to Raccoon Creek State Park. Hillman is leased to Game Commission, but there are several designated trails used by mountain bikers. Best mtn. biking in Western PA outside Laurel Highlands. Talk to Gene Hart, manager of Raccoon Creek State Park about possible connection.

I asked about the abandoned rail line I saw under the Koppel bridge, above the active line. He thinks it is the line that the Beaver Falls Rail Trail connects to and would eventually use. Ask Kathryn Johnson.

4. What are the obstacles?

Inertia and fear of change. He cited example in Beaver where he suggested at a Council meeting that River Road be changed to accommodate a bike lane and move parking to one side. This caused an uproar.

He also talked about the plans to improve the walking trail from Beaver to Bridgewater (Wolf Lane extension). Just got an easement from the railroad to allow improvements under the RR tracks. Took 5 years.

5. What are the on-road bike lane opportunities?

- Route 51 through Fallston to Chippewa. Existing.
- Route 68 – PennDOT recently widened the road from Midland to Ohio to include shoulder. This should be done all the way to Beaver. Discuss with PennDOT bike-ped coordinator, Francis Millick (District 11).
- I mentioned State Bike Route A – he said he has no idea how this was chosen. Possibly traffic counts. But, bikers don't use these roads when they ride north to Erie.

6. Other Opportunities?

The most beautiful property in the County lies around the Ambridge Reservoir, but it is not open to the public. He noted that in Highland Park, there is a jogging trail around the reservoir, so there is a precedent. Would need to come up with a way to convince the Ambridge Water Authority that allowing a recreational path would benefit them.

7. Where would water trails make sense?

He said this was not an area he spent much time thinking about, but he noted Raccoon Creek and the Upper Beaver River (pristine).

Interview with Richard Lutz,
North Country Trail Association

Interview/Contact Date: August 26, 2005

- 1. What is your position/title and what is your organization's mission or role in the County?**

Mr. Lutz is a volunteer with the Wampum Chapter. He was one of the founders of the chapter and now organizes trail maintenance crews. He lives in Lawrence County.

The chapter works on a segment of the North Country trail in Beaver and Lawrence Counties. It roughly follows the Little Beaver Creek valley. The trail covers about 20 miles in Beaver County, with 3 miles established in State Game Land 285. The other 17 miles are in private ownership. The chapter has been attempting to negotiate with landowners to get easements, but no agreements have been signed. A few oral agreements have been reached.

The chapter is trying to work with Darlington to provide for some services for long-distance hikers. They have been speaking with the Darlington Historical Society.

- 2. What connections would be possible from the trail to other trails or destinations in Beaver County?**

Darlington & New Galilee

Trail comes close to the Big Beaver Borough Community Park – that could be a major tie in for the trail.

- 3. Are there any plans for the trail to go through reclaimed strip mines?**

Not in Beaver County. In Ohio, the trail will actually interpret a reclaimed strip mine. However, he noted that several areas the trail will pass through in Beaver County were previously mined and are in fact reclaimed areas (part of Gameland 285).

- 4. When does the National Park Service expect that the trail will be completed?**

Could take 100 years.

There is little funding for acquisition.

Also the chapters have few resources and no training in how to work with landowners.

Need a designated person to provide guidance and assistance.

5. Do you have any documents or mapping you could share with us?

There is GIS mapping. Contact Tiffany Stram at the national office in Michigan: 1-866-HIKENCT.

Key Person Interview with Stacy Small,
PA Audubon Society

Interview/Contact Date: September 14, 2005

Ms. Small is the Director of Bird Conservation for PA Audubon. I called her to discuss the Important Bird Area in Beaver County. Because the IBA covers the entire southern half of the County, I asked whether she could help us identify those areas of primary significance.

Ms. Small emailed me a copy of the Phase I Conservation Plan for the Raccoon Creek Valley and State Park IBA. She then called me to discuss the highlights of the plan.

She noted that the IBA contains one of the few unfragmented forest areas of Ohio River floodplain forest. This is unique and nationally recognized. The Western PA Conservancy has designated a large part of this as a Landscape Conservation Area. It is important to get the County to recognize the uniqueness and value of this habitat. She would like to see the County preserve it and think about restoring other areas of floodplain forest that were lost to industrial development. She highlighted that the plan states that seven species of concern designated by U.S. Fish & Wildlife breed in the IBA.

Ms. Small also pointed out the recreational potential of these areas. The Three Rivers Birding Club has officially adopted this IBA. She noted that birding is one of the fastest growing recreational pursuits in the country and has real economic benefit. The County should be made aware of this benefit to preserving the forests. She agreed to send me some data that quantifies the growth of birding and its economic potential.

She noted that the following areas within the IBA are of particular significance:

- Landscape Conservation Area that includes Raccoon Creek State Park (Wildflower Reserve of special significance)
- Biological Diversity Areas
- Headwaters of Raccoon Creek (Traverse Creek, Little Service Run, and others)
- Forest areas adjacent to wildflower reserve and Raccoon Creek

The report stresses the importance of maintaining the unfragmented forest area contained in the LCA as well as protecting Traverse Creek and other headwaters within the IBA.

Interview with Vicky Michaels,
Independence Marsh Foundation & Raccoon Creek Watershed Association

Interview/Contact Date: August 30, 2005

32. What is your position/title and what is your organization's mission or role in the County?

She is Vice President of the Raccoon Creek Watershed Association which covers northern Washington County, southern Beaver County and western Allegheny County. She serves as grant writer and environmental projects manager.

She is also the Executive Director of the Independence Marsh Foundation. It is both a watershed association and a 501(c)(3) land trust and also straddles the three counties. It was originally formed to provide long-term stewardship of Independence Marsh, however that property is now owned and managed by the Conservation District. The Foundation does not currently have any property or projects in Beaver County. But Vicky lives there and is familiar with its natural areas.

33. Do you think a greenway network should be established in the County? If yes, what do you think are the principle reasons that a greenway network should be established in Beaver County?

Yes. People now go elsewhere to use the Panhandle or Montour Trails. Take their money out of the County. Need to get past provincial thinking. Create connections to other trails.

34. Greenway plans often consist of a series of "hubs and spokes." The hubs consist of population centers; significant parks or other natural areas; as well as key cultural and historic sites. What are the areas that you think are the most significant destinations for visitors and residents?

Brady's Run
Brush Creek
Economy Park
Raccoon Creek State Park
New Brighton/Beaver Falls
Alliquippa/Ambridge
Pockets of new development in New Sewickley, Chippewa & Center Twps

35. The spokes are the corridors that link the hubs. They may be rural hiking, biking, skiing or multi-use trails, water trails, abandoned rail lines redeveloped for recreational uses, urban waterfront paths as well as designated bike/pedestrian lanes on roads or urban streets.

- Are there existing or planned trails that should be used to help connect the “hubs?” Where are they?
North Country Trail
- Where would you most like to see new trails developed?
Connect Brady’s Run & Brush Creek
Connect Raccoon Creek to Montour or Panhandle Trail
Trails along the Beaver River

She also noted that plans to develop a trail along the old trolley line between Vanport and Ohioview are NOT a good idea. At western end there is a house with residents. There are no endpoints or parking opportunities. There is no bridge over Four-Mile Run (was removed).

36. Some greenways do not include trails, but simply conserve corridors of open space. Are there places in Beaver County that should be set aside primarily to protect wildlife habitat (e.g., streams, flyways) or sensitive environmental features (e.g., floodplains, steep slopes)?

She stated that these have been terribly ignored in Beaver County. She cited new mall in Center Twp that is sitting on top of water supply as an example. She named these potential conservation corridors:

- Raccoon Creek Valley, including Gums Run & Fishpot Run
- Service Creek
- Mill Creek (high quality cold water fishery)
- Traverse Creek (north and south fork)
- Raredon Run (near Independence Marsh)
- Pegs Run Alley (behind Shippingsport)
- Hills overlooking Montgomery Dam (Potter Twp)
- Ohioview Embayment (National Park Service was looking to acquire it as part of the Ohio River National Wildlife Refuge)
- Wolf Run
- Six-Mile Run
- Four-Mile Run
- Sebring Hollow
- Little Beaver Creek (Federal Wild & Scenic River) – discharges into Ohio River at Glasgow. Part of it is in Ohio and is surrounded by Ohio State Parks.

37. Are there brownfield sites, abandoned industrial properties, mine reclamation areas or other underutilized properties that would benefit from trail development?

Yes, many along the Beaver River.

J&L site in Aliquippa is 7.5 miles long.

Also, there is a mine reclamation site near Darlington (near North Country Trail) – contract has just been let.

38. Are there locations that provide important vistas of natural areas (hills, valleys, rivers) or man-made features (cities, villages, farms) that should be protected (scenic viewsheds)?

- Raccoon Creek Valley
- Branches of Brady's Run
- All hillsides along the Ohio & Beaver Rivers
- Views along the Beaver Valley Expressway from Vanport to Chippewa
- Little Beaver Creek (Federal Wild & Scenic River)

39. What do you see as the primary obstacles to developing a greenway plan? Are there ways to overcome these challenges?

Property acquisition because of lack of money and uncooperative landowners.

40. What natural areas in the County are most threatened?

Areas in Center Twp surrounding the new mall.
Sebring Hollow and Four-Mile Run (housing development pressures)

41. What types of uses can be accommodated in these areas? Should they be strictly conservation greenways or can some recreation (passive? active?) be tolerated?

She thinks uses should be kept to a minimum. Footpaths and passive recreation.
Definitely no motorized recreation.

42. Are there protected lands in the County under the stewardship of land trusts or subject to conservation easements?

Doesn't know of any. They are a land trust and they believe they are the only active one in Beaver County. May be negotiating to accept donated land in Raccoon Twp on the Fishpot watershed. There is also a constructed wetland area in Chippewa that the landowner wants to preserve.

43. (Audubon) About one-third of the County is designated as an Important Bird Area. Are there particular places within the IBA that are most deserving of protection? Can these areas be connected into a conservation greenway?

She suggested I contact Roy Lenhart (x12) or Tricia O'Neil (x24) at Audubon. She believes the critical areas are the Raccoon Creek watershed and the Ohioview Embayment.

44. What are the best places to site water trails?

She established the water trail at Raccoon Creek. She would suggest another be created on the Beaver River.

Key Person Interview with Wayne Cole,
Expert on Local Railroad History

Interview/Contact Date: October 31, 2005

I met with Mr. Cole to discuss abandoned railroad corridors in Beaver County that may be suitable for development as rails-to-trails. Mr. Cole is a retired high school English teacher with a life-long interest in railroads. He has written several books on railroad history in the Regions including "Rails of Dreams" (2003), "Beaver Valley Railroad Company" (2004) and "Ghost Rails (1850-1980), Volume I" (2005). He is currently working on another book. He is a member of the Little Beaver Historical Society.

I asked him to discuss the abandoned railroad segments we have identified on our Recreation Resources Map and to identify any that we may have omitted.

Corridors on our Map

- 1) Bridgewater to Vanport – this line was operated by the Beaver Valley Railroad Company. It connected the Pennsylvania Railroad line with the Pennsylvania & Lake Erie line. The track operated through Beaver on 5th Street until 1969. It terminated near the present day Agway in Bridgewater. Today, not much of the track remains. The rails through Beaver were removed in 1969.
- 2) Georgetown to Shippingport – this was formerly operated by the Cumberland and Chester Railroad. The right of way also extended south through Georgetown toward Greene Township, but was never built upon. He thinks it has probably reverted to private ownership. The Crain Brothers barge company could probably provide us with information about ownership. This could make a good trail, although the continuation of this line in Ohio is still very active. He also noted that there could be security issues near the Shippingport nuclear plant.
- 3) Little Beaver Creek railroad lines – this included two segments: the Smith's Ferry Branch from Glasgow in Beaver County to Negley Ohio and the Ohio Central line from Negley through Darlington. The part of the Ohio Central line passing through Darlington is still active; however the brick factory in Darlington just shut down and he believes the line could soon be abandoned. He also noted that the Vodry family has purchased some of the right-of-way of the former Smith's Ferry branch in Ohio. Any plans to develop a trail there would require negotiating with them. He noted that this would make a really scenic trail.
- 4) New Brighton to Rochester – This corridor is very short, only about two miles long. There is a watershed area it connects to that would allow the trail to make a loop. He did not know who currently owns the right-of-way.
- 5) Segment above Koppel with crossing to Ellwood City – this segment could connect the Beaver River Trail (once completed) with the Pittsburgh to Harmony Railroad trail. This line formerly connected Pittsburgh with Harmony, Ellwood City and New Castle. There are plans to develop a trail on that former right-of-

way. Our system could connect to it by using the abandoned right-of-way and railroad bridge over the Beaver River (now owned by Big Beaver Borough). He noted that there is also an abandoned switchback that comes off of this line and travels into Wampum in Lawrence County.

Other Corridors

- 1) Beaver Valley Traction or “Yellow Car” line - this is the right-of-way we’ve been calling the Steubenville Trolley line. It carried passengers from Beaver Falls to Beaver, Vanport, East Liverpool, Ohio and eventually to Steubenville, Ohio. He believes much of this right-of-way has reverted to private ownership or is covered over by city streets.
- 2) Glasgow – there is a former railroad right-of-way along the Ohio border on the other side of Little Beaver Creek that led to a coal tipple. It is only about 4 miles long.
- 3) Crows Run – there is an abandoned corridor formerly owned by the North Shore Railroad and Ohio River Junction Railroad companies. It extended about 5 miles up the hill and terminated at a place not far from present day Route 989. It was supposed to extend to Butler, but that never occurred. A highway has been planned for this corridor for the last 20 years.
- 4) Thompsons Run corridor – another abandoned right of way exists along Thompsons Run in North Sewickley. It terminates near t quarry near Route 65. This is not too far from Brush Creek Park.

Mr. Cole also noted that Greersburg Academy in Darlington became a RR station after it ceased functioning as a school and is considered the oldest RR station in the Country. It is now home to the Little Beaver Museum.

Interview with Wayne Cumer,
President, Raccoon Creek Watershed Association

Interview/Contact Date: August 25, 2005

45. What is your position/title and what is your organization's mission or role in the County?

He is President. The Association has about 10-12 active members. Their mission is to protect and conserve natural resources; restore water quality and scenic beauty through abandoned mine reclamation; and promote recreation.

46. What projects has Raccoon Creek Watershed Association been working on in Beaver County?

- Canoe Trail on Raccoon Creek from Raccoon Creek State Park to the Ohio River. Developed launch sites at State Park, Independence Marsh, Green Garden and Rocky Bottom. They were planning to develop more, but the canoe group has not been very active lately.
- Cleanup of mining sites – most in Washington County
- Moffatt Mill Cleanup Campaign – Raccoon & Potter Twps
- Spring & Fall macroinvertebrate studies in cooperation with DEP and Burgettstown High School.

Because Mr. Kumer does not live in Beaver County, he did not feel that he had enough information to make recommendations about trails & greenways. He suggested I talk to Vicky Michaels, Vice President of the Raccoon Creek Watershed Association.

Appendix D

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 E

Model Conservation Easement and Commentary



Documents provided with the permission of The Pennsylvania Land Trust Association. The Pennsylvania Land Trust Association is pleased to provide this growing and regularly updated set of state-of-the-art model documents. The expansive (and must-read) commentaries cover alternative and optional provisions and the reasoning behind it all.

If you have suggestions for improvements, please contact Andy Loza at 717-230-8560 or aloza@conserveland.org.



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  W I L L I A M P E N N
F O U N D A T I O N

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 F

Model Riparian Buffer Protection Easement and Commentary



Documents provided with the permission of The Pennsylvania Land Trust Association. The Pennsylvania Land Trust Association is pleased to provide this growing and regularly updated set of state-of-the-art model documents. The expansive (and must-read) commentaries cover alternative and optional provisions and the reasoning behind it all.

If you have suggestions for improvements, please contact Andy Loza at 717-230-8560 or aloza@conserveland.org.



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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F O U N D A T I O N

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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 G

Sample Stream Corridor Buffer Easement



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 (1/2) 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 H

Model Floodplain District Overlay



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 1

Sample Steep Slope
Conservation Overlay
District Ordinance



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.

Appendix J

Model Forest Management Regulations



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 K

Model Trail Easement and Commentary



Documents provided with the permission of The Pennsylvania Land Trust Association. The Pennsylvania Land Trust Association is pleased to provide this growing and regularly updated set of state-of-the-art model documents. The expansive (and must-read) commentaries cover alternative and optional provisions and the reasoning behind it all.

If you have suggestions for improvements, please contact Andy Loza at 717-230-8560 or aloza@conserveland.org.



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

Pennsylvania Department of Conservation and
Natural Resources Bureau of Recreation and
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]*
 - 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.
 - The right to exercise Holder's rights and duties under this Agreement should Holder fail to make the Trail available for public recreation.
 - The right of prior approval of any amendment of this Agreement.
 - 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 L

Model Fishing Access Agreement and Commentary



Documents provided with the permission of The Pennsylvania Land Trust Association. The Pennsylvania Land Trust Association is pleased to provide this growing and regularly updated set of state-of-the-art model documents. The expansive (and must-read) commentaries cover alternative and optional provisions and the reasoning behind it all.

If you have suggestions for improvements, please contact Andy Loza at 717-230-8560 or aloza@conserveland.org.



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:

Owner’s Name: _____

Witness/Attest:

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



Project Team
Patricia L. Pregmon, Esq., principal author
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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 Contribution¹

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 Benefit²

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 Interests³

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 Regulations⁴

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 M

Model Water Quality Agreement and Commentary



Documents provided with the permission of The Pennsylvania Land Trust Association. The Pennsylvania Land Trust Association is pleased to provide this growing and regularly updated set of state-of-the-art model documents. The expansive (and must-read) commentaries cover alternative and optional provisions and the reasoning behind it all.

If you have suggestions for improvements, please contact Andy Loza at 717-230-8560 or aloza@conserveland.org.



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.

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based on model v. 7/15/2005

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 N

Sample Mandatory

Fee-in-Lieu of

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.

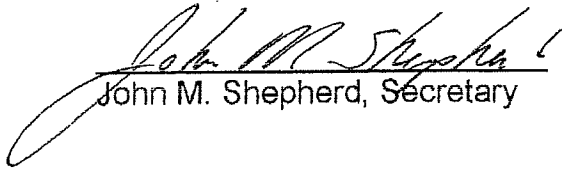
Chart 504-1

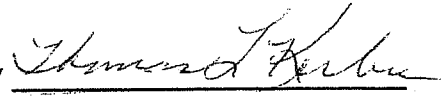
Park Classification	Definition	Facilities	Min. Size acres	Service Area Radius mile	Acreage Req't per 1,000 Pop. acres
Neighborhood	Walk to park; intense recreational activities; 100% developed	playfields, playgrounds, tot lots, multi-purpose hardcourts, recreation center, picnicking	0.25-5	0.5	2.0
Community	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 O

Beaver and
Lawrence Counties
Intergovernmental
Cooperation Resolution,
Agreement, and Shared
Greenway Coordinator
Position Description



RESOLUTION NO. 091307-47

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF BEAVER IN THE COMMONWEALTH OF PENNSYLVANIA, APPROVING THE AGREEMENT BETWEEN THE COUNTY OF BEAVER, AND THE COUNTY OF LAWRENCE, TO SHARE THE USE AND SERVICES OF A BEAVER COUNTY AND LAWRENCE COUNTY SHARED GREENWAYS AND ENVIRONMENTAL PLANNER FOR THE BEAVER COUNTY COMPREHENSIVE GREENWAYS AND TRAILS PLAN AND LAWRENCE COUNTY COMPREHENSIVE GREENWAYS AND TRAILS PLAN, FOR A CONTRACT PERIOD OF EIGHT (8) YEARS, AT A COST OF \$520,000.00, \$100,000.00 FUNDED BY THE PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES (DCNR), \$100,000.00 FUNDED BY THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, \$160,000.00 (ESTIMATED OVER AN 8 YEAR PERIOD) FUNDED BY THE COUNTY OF BEAVER AND THE REMAINING \$160,000.00 FUNDED BY THE COUNTY OF LAWRENCE (ESTIMATED OVER AN 8 YEAR PERIOD);

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Beaver, a fourth class county under the laws of the Commonwealth of Pennsylvania, AND IT IS HEREBY RESOLVED:

1. That, pursuant to the recommendation of Frank Mancini, Jr., Director of the Planning Commission, the Agreement between the County of Beaver and the County of Lawrence, to share the use and services of a Beaver County and Lawrence County Shared Greenways and Environmental Planner, for the Beaver County Comprehensive Greenways and Trails Plan and the Lawrence County Comprehensive Greenways and Trails Plan, for a contract period of eight (8) years, at a cost of \$520,000.00, \$100,000.00 funded by the Pennsylvania Department of Conservation and Natural Resources (DCNR), \$100,000.00 funded by the Pennsylvania Department of Community and Economic Development, \$160,000.00 (estimated over an 8 year period) funded by the County of Beaver and the remaining \$160,000.00 funded by the County of Lawrence (estimated over an 8 year period), a copy of which is attached hereto and by reference made a part hereof, is hereby approved.

2. That the Board of Commissioners, for and on behalf of the County of Beaver, is hereby authorized to execute six duplicate counterparts of said Agreement and the Chief Clerk of the County of Beaver is hereby directed to attest the due execution thereof and to affix the Seal of the County of Beaver thereto.

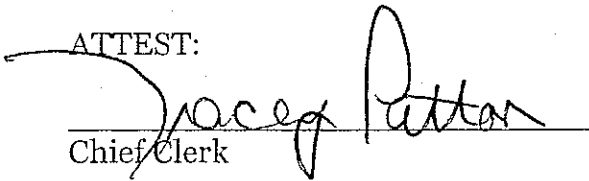
3. That, following the proper execution, attestation and sealing of said duplicate counterparts of said Agreement, the Chief Clerk of the County of Beaver is hereby directed to cause delivery of the same to be made as follows: The original to the Controller of the County of Beaver; and the remaining duplicate counterparts to Frank Mancini, Jr., Director of Planning and Economic Development, for proper distribution.

Adopted this 13 day of September, 2007.

BOARD OF COMMISSIONERS
COUNTY OF BEAVER

(SEAL)

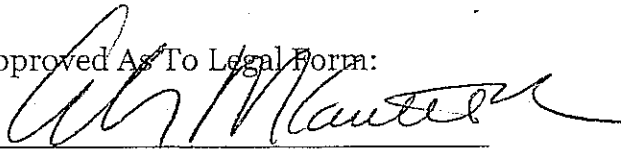
ATTEST:

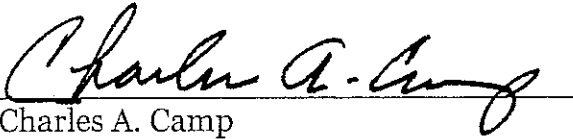

Chief Clerk


Joe Spanik, Chairman


Dan Donatella

Approved As To Legal Form:


County Solicitor's Office


Charles A. Camp

AGREEMENT

THIS AGREEMENT is made this 13 day of Sept, 2007 pursuant to the authority set forth in the Intergovernmental Cooperation Act of December 19, 1966, 53 Pa. C.S.A. §§ 2301 et seq., by and between the COUNTY OF BEAVER, a Fourth Class County of the Commonwealth of Pennsylvania with its office located at 810 Third Street, Beaver, Pennsylvania, 15009, hereafter called "Beaver County", and the COUNTY OF LAWRENCE, a Fifth Class County of the Commonwealth of Pennsylvania with its office located at 430 Court Street, New Castle, PA 16101, hereafter called "Lawrence County".

WHEREAS, Beaver County, through the Beaver County Planning Commission (BCPC), has undertaken the development of the Beaver County Comprehensive Greenways and Trails Plan (BCCG&T Plan), said plan funded in part by a grant received from the Pennsylvania Department of Conservation and Natural Resources (DCNR); and

WHEREAS, the BCPC intends to recommend that the Beaver County Board of Commissioners (Beaver County BOC) adopt the BCCG&T Plan; and

WHEREAS, it is the intention of the Beaver County BOC to adopt the BCCG&T Plan at a duly advertised public meeting as an official planning document of the County of Beaver and as an amendment to the Beaver County Comprehensive Plan; and

WHEREAS, Lawrence County, through the Lawrence County Planning Department (LCPD), has undertaken the development of the Lawrence County Comprehensive Greenways and Trails Plan (LCCG&T Plan), said plan funded in part by a grant received from the DCNR; and

WHEREAS, the LCPD intends to recommend that the Lawrence County Board of Commissioners (Lawrence County BOC) adopt the LCCG&T Plan; and

WHEREAS, it is the intention of the Lawrence County BOC to adopt the LCCG&T Plan at a duly authorized public hearing as an official planning document of the County of Lawrence; and

WHEREAS, the BCCG&T Plan contains a recommendation that a person be hired to implement that plan; and

WHEREAS, the LCCG&T Plan contains a recommendation that a person be hired to implement that plan; and

WHEREAS, the BCPC Director and the LCPD Director have met with representatives of the DCNR and representatives of the Pennsylvania Department of Community and Economic Development (DCED) and have proposed that Beaver County and Lawrence County jointly share a person to implement the BCCG&T Plan and the LCCG&T Plan (hereinafter Beaver County and Lawrence County Shared Greenways and Environmental Planner and/or Shared Planner); and

WHEREAS, the BCPC Director has reported to the Beaver County BOC and the LCPD Director has reported to the Lawrence County BOC that the DCNR and the DCED support the hiring of the Beaver County and Lawrence County Shared Greenways and Environmental Planner and that the DCNR and the DCED would consider funding the position in an amount of \$100,000.00 from each Department in the form of a grant subject to DCNR's and DCED's receipt of an application(s) for such funding and approval thereof; and

WHEREAS, Beaver County and Lawrence County understand that approved grant funds received from DCNR totaling \$100,000.00 and approved grant funds received from DCED totaling \$100,000.00 will be used for the direct salary to support the Shared Planner position; and

WHEREAS, Beaver County and Lawrence County, subject to the receipt of the grant funds in the amounts identified hereinabove, will commit to equally funding the Shared Planner position for an eight year period, said commitment to include funding the cost of benefits and expenses associated with the position and funding the salary of the position not otherwise funded by the above mentioned DCNR and DCED grants; and

WHEREAS, Beaver County and Lawrence County desire to share the use and services of a Beaver County and Lawrence County Shared Greenways and Environmental Planner as described in the job description attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the covenants hereafter set forth, Beaver County and Lawrence County agree as follows:

1. Beaver County and Lawrence County shall prepare the Application(s) for submittal to the DCNR and the DCED by Lawrence County as the applicant.
 2. A copy of this Agreement, executed by Beaver County and Lawrence County, shall be submitted with the Application(s) as evidence of each county's support of the Shared Planner position and the cooperation associated therewith by each County.
 3. Subject to the approval of the Application(s), Beaver County and Lawrence County will advertise and jointly interview persons to fill the position of Shared Planner and submit their joint recommendation of the person to be hired for the position of Shared Planner to DCNR and DCED for review and concurrence by DCNR and DCED.
 4. The person selected for the position of Shared Planner will be an employee of Lawrence County and shall adhere to, comply with and be subject to all personnel and other applicable policies of Lawrence County.
 5. The Shared Planner will be contracted to Beaver County by Lawrence County and shall be deemed to be an independent contractor of Beaver County.
 6. Lawrence County will be responsible to provide and issue all compensation and benefits associated with the position of Shared Planner (Shared Planner Compensation). The initial salary for the Shared Planner will be jointly established by the Counties with all benefits being those as offered by Lawrence County. Thereafter, any "across the board" increase and/or change in salary or change in benefits offered by Lawrence County to its salaried employees is deemed as jointly approved by the Counties as part of the Shared Planner Compensation. For any increases and/or change to the Shared Planner Compensation that are other than the
-

- “across the board” increases and/or changes as mentioned above, the Counties must jointly approve such increase and/or changes.
7. Lawrence County will receive all DCNR and DCED grant funds mentioned hereinabove to support the position of Shared Planner.
 8. For Beaver County’s share of the Shared Planner Compensation, Lawrence County will issue requests for reimbursement to Beaver County on a quarterly basis, said reimbursement requests to be paid by Beaver County to Lawrence County within 30 days of Beaver County’s receipt of said reimbursement request.
 9. Each county will provide adequate and appropriate office space, equipment, supplies, etc. to properly support the Shared Planner position and allow the Shared Planner to reasonably perform and discharge the duties associated with the Shared Planner Position.
 10. To the extent possible, Beaver County and Lawrence County shall equally share the costs of travel and related expenses subject to the approval of the BCPC Director and the LCPD Director in accordance with the following guidelines.
 - Payment of mileage reimbursement expenses incurred solely within either of the Counties or expenses that plainly pertain to one county and not the other shall be the responsibility of the County in which said travel and/or expenses occurred.
 - The BCPC Director/Beaver County and the LCPD Director/Lawrence County shall jointly approve all requests associated with the Shared Planner’s attendance at conferences, seminars, training sessions, out of town meetings and similar travel and shall equally share the costs associated therewith. In the event that the BCPC Director and the LCPD Director do not jointly approve such attendance, then the County which approves such attendance shall be solely responsible for the payment of associated expenses.
 11. Beaver County and Lawrence County shall equally fund the Shared Planner position for an eight year period subject to the receipt of grant funds from the DCNR and the DCED in the amounts stated hereinabove.
 12. To the extent possible, the Shared Planner shall equally split time between Beaver County and Lawrence County under the supervision of the BCPC Director and the LCPD Director.
 13. In the event of a dispute between Beaver County and Lawrence County which the counties are unable to resolve, then the counties agree to simple mediation with costs thereof to be equally shared by the Counties and the decision resulting there from to be binding upon the Counties.
 14. This Agreement may be amended, in writing, by the mutual agreement of the parties thereto and all such amendments shall be submitted to the DCNR and the DCED.
 15. The parties hereto represent that each of the individuals signing on behalf of the legal entities hereto have been duly authorized, and have the power, authority and capacity to bind the respective legal entity for the purpose herein stated.
 16. This Agreement may be executed in duplicate counterparts by the parties thereto.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND HEREBY, the parties hereto by the hands and seals of their duly empowered officers and/or agents have caused this Agreement to be duly executed the date and year first written above.

Attest:

By:

Tracey Patton
Tracey Patton, Chief Clerk
County of Beaver

County of Beaver

By:

Joe Spanik
Joe Spanik, Chairman
Beaver County Board of Commissioners

By:

Dan Donatella
Dan Donatella, Member
Beaver County Board of Commissioners

By:

Charles A. Camp
Charles A. Camp, Member
Beaver County Board of Commissioners

Attest:

By:

James Gagliano, Chief Clerk/
Administrator

County of Lawrence

By:

Dan Vogler, Chairman
Lawrence County Board of Commissioners

By:

Edward Fosnaught, Member
Lawrence County Board of Commissioners

By:

Steve Craig, Member
Lawrence County Board of Commissioners

EXHIBIT A

3/26/07

Beaver County and Lawrence County Shared Greenways and Environmental Planner

PURPOSE OF POSITION

The purpose of this position is to provide technical and planning assistance to the Beaver County Planning Commission, the Lawrence County Planning Department and the municipalities in Beaver and Lawrence Counties regarding: the development and implementation of open space, greenways and recreation planning that includes land preservation initiatives and recreation and conservation greenway development throughout/between the Counties and adjacent counties; and in the areas of environmental land use, stormwater management, sewage and water development plans.

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.

- Develop appropriate administrative procedures that are consistent with the objectives of the Beaver County Greenways and Trails Plan and the Lawrence County Greenways and Trails Plan and implement each of these County Plans.
- Increase awareness of Greenways, and their benefits, among the general public and elected officials.
- Provide Technical and planning assistance to municipalities in the administration, planning and development of greenway, trail, and open space programs; promote and support multi-municipal/regional greenway and open space planning efforts; advise municipalities regarding consistency of local plans with adopted County greenways/trails/open space plans.
- Coordinate specific greenways acquisition and development projects with the counties, municipalities, non-profit organizations, and other appropriate entities by providing technical assistance and grant writing services.
- Make recommendations to municipal boards and councils regarding updates and amendments to local ordinances as they relate to greenways (both recreation and conservation) open space programs and sustainable development.
- Educate elected officials on the value of conservation planning, and encourage municipalities to adopt a conservation based approach to land development

- Perform comprehensive planning activities related to greenways (recreation and conservation), conservation, open space and environmental elements of each County's Comprehensive Plan; primarily providing technical assistance to local municipalities in implementing goals of the Counties' Plans in those areas and strengthening community planning and implementation efforts of local municipalities.
- Take a leadership role in environmental planning and the development of special projects such as county plans addressing stormwater management, water supply adequacy and flood plain management.
- Review permit applications/renewals and grant applications for submittals pertaining to water, sewage, recreation, agricultural preservation, mine reclamation, waste disposal, Act 527 sewage facilities planning modules etc.
- Review land development and subdivision plans as they relate to county, municipal and regional environmental and natural resource planning and sustainable development efforts and coordinate reviews with the County Conservation district when applicable
- Attend 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 in greenways open space environmental and natural resource planning.
- Prepare and/or assist in the preparation of maps, tables, graphics and charts using software programs and complete various geographic information system (GIS) projects as needed; maintain and update and/or assist in the maintenance and updates of various county and/or municipal GIS layers related to greenway, open space, natural resource and environmental planning efforts at both the county and local municipal level.
- Prepare, write and complete a variety of correspondence, reports and recommendations including application and plan recommendations, quarterly reports, program presentation, financial summaries and press releases.

MINIMUM QUALIFICATIONS, TRAINING AND EXPERIENCE

Bachelor's Degree in environmental, community, rural, regional, or natural resource planning, or a related field; supplemented by five (5) years of previous experience/or training involving environmental, 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 ESRI ArcGIS

Geographic Information Systems (GIS) is required. Must possess and maintain a valid Pennsylvania driver's license.

PERFORMANCE APTITUDES

Data Utilization: Requires the ability to evaluate, audit, deduce, and/or assess data and/or information using established criteria. Includes exercise of discretion in determining actual or probable consequences, and in referencing such evaluation to identify and select alternatives.

Human Interaction: As necessary, the ability to: provide first line supervision; persuade, convince, and train others; and the ability to advise and provide interpretation regarding the application of policies, procedures and standards to specific situations.

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.

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, ration and proportion; may include ability to calculate surface areas, volumes, weights, and measures.

Functional Reasoning: Requires the ability to apply principles of influence systems, such as motivation, incentive, and leadership. Ability to exercise independent judgment to apply facts and principles for developing approaches and techniques to problem resolution.

Situational Reasoning: Requires the ability to exercise the judgment, decisiveness and creativity required in situations involving evaluation of information against measurable or verifiable criteria.

Physical Ability: Tasks involve the ability to exert light physical effort in sedentary to light work, but which may involve some lifting, carrying, pushing and/or pulling of objects and materials of light weight. Tasks may involve extended periods of time at a keyboard or workstation.

Sensory Requirements: Some tasks require the ability to perceive and discriminate tastes. Some tasks require the ability to perceive and

discriminate colors or shades of colors. Some tasks require visual perception and discrimination. Some tasks require oral communications ability.

Environmental Factors: Task may risk exposure to wetness, dust/pollen, humidity and temperature/noise extremes.

ESSENTIAL FUNCTION OF THE POSITION

This position will be a shared position between the County of Beaver and the County of Lawrence and as such the successful candidate will be expected to properly manage time so that tasks are timely and accurately completed within a results oriented framework. The employee will be an employee of one of the Counties but will follow the personnel policies of each County - and in the case of conflict between policies, the more stringent will apply.

AGREEMENT

THIS AGREEMENT is made this 13 day of Sept 2007 pursuant to the authority set forth in the Intergovernmental Cooperation Act of December 19, 1966, 53 Pa. C.S.A. §§ 2301 et seq., by and between the COUNTY OF BEAVER, a Fourth Class County of the Commonwealth of Pennsylvania with its office located at 810 Third Street, Beaver, Pennsylvania, 15009, hereafter called "Beaver County", and the COUNTY OF LAWRENCE, a Fifth Class County of the Commonwealth of Pennsylvania with its office located at 430 Court Street, New Castle, PA 16101, hereafter called "Lawrence County".

WHEREAS, Beaver County, through the Beaver County Planning Commission (BCPC), has undertaken the development of the Beaver County Comprehensive Greenways and Trails Plan (BCCG&T Plan), said plan funded in part by a grant received from the Pennsylvania Department of Conservation and Natural Resources (DCNR); and

WHEREAS, the BCPC intends to recommend that the Beaver County Board of Commissioners (Beaver County BOC) adopt the BCCG&T Plan; and

WHEREAS, it is the intention of the Beaver County BOC to adopt the BCCG&T Plan at a duly advertised public meeting as an official planning document of the County of Beaver and as an amendment to the Beaver County Comprehensive Plan; and

WHEREAS, Lawrence County, through the Lawrence County Planning Department (LCPD), has undertaken the development of the Lawrence County Comprehensive Greenways and Trails Plan (LCCG&T Plan), said plan funded in part by a grant received from the DCNR; and

WHEREAS, the LCPD intends to recommend that the Lawrence County Board of Commissioners (Lawrence County BOC) adopt the LCCG&T Plan; and

WHEREAS, it is the intention of the Lawrence County BOC to adopt the LCCG&T Plan at a duly authorized public hearing as an official planning document of the County of Lawrence; and

WHEREAS, the BCCG&T Plan contains a recommendation that a person be hired to implement that plan; and

WHEREAS, the LCCG&T Plan contains a recommendation that a person be hired to implement that plan; and

WHEREAS, the BCPC Director and the LCPD Director have met with representatives of the DCNR and representatives of the Pennsylvania Department of Community and Economic Development (DCED) and have proposed that Beaver County and Lawrence County jointly share a person to implement the BCCG&T Plan and the LCCG&T Plan (hereinafter Beaver County and Lawrence County Shared Greenways and Environmental Planner and/or Shared Planner); and

WHEREAS, the BCPC Director has reported to the Beaver County BOC and the LCPD Director has reported to the Lawrence County BOC that the DCNR and the DCED support the hiring of the Beaver County and Lawrence County Shared Greenways and Environmental Planner and that the DCNR and the DCED would consider funding the position in an amount of \$100,000.00 from each Department in the form of a grant subject to DCNR's and DCED's receipt of an application(s) for such funding and approval thereof; and

WHEREAS, Beaver County and Lawrence County understand that approved grant funds received from DCNR totaling \$100,000.00 and approved grant funds received from DCED totaling \$100,000.00 will be used for the direct salary to support the Shared Planner position; and

WHEREAS, Beaver County and Lawrence County, subject to the receipt of the grant funds in the amounts identified hereinabove, will commit to equally funding the Shared Planner position for an eight year period, said commitment to include funding the cost of benefits and expenses associated with the position and funding the salary of the position not otherwise funded by the above mentioned DCNR and DCED grants; and

WHEREAS, Beaver County and Lawrence County desire to share the use and services of a Beaver County and Lawrence County Shared Greenways and Environmental Planner as described in the job description attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the covenants hereafter set forth, Beaver County and Lawrence County agree as follows:

1. Beaver County and Lawrence County shall prepare the Application(s) for submittal to the DCNR and the DCED by Lawrence County as the applicant.
2. A copy of this Agreement, executed by Beaver County and Lawrence County, shall be submitted with the Application(s) as evidence of each county's support of the Shared Planner position and the cooperation associated therewith by each County.
3. Subject to the approval of the Application(s), Beaver County and Lawrence County will advertise and jointly interview persons to fill the position of Shared Planner and submit their joint recommendation of the person to be hired for the position of Shared Planner to DCNR and DCED for review and concurrence by DCNR and DCED.
4. The person selected for the position of Shared Planner will be an employee of Lawrence County and shall adhere to, comply with and be subject to all personnel and other applicable policies of Lawrence County.
5. The Shared Planner will be contracted to Beaver County by Lawrence County and shall be deemed to be an independent contractor of Beaver County.
6. Lawrence County will be responsible to provide and issue all compensation and benefits associated with the position of Shared Planner (Shared Planner Compensation). The initial salary for the Shared Planner will be jointly established by the Counties with all benefits being those as offered by Lawrence County. Thereafter, any "across the board" increase and/or change in salary or change in benefits offered by Lawrence County to its salaried employees is deemed as jointly approved by the Counties as part of the Shared Planner Compensation. For any increases and/or change to the Shared Planner Compensation that are other than the

- “across the board” increases and/or changes as mentioned above, the Counties must jointly approve such increase and/or changes.
7. Lawrence County will receive all DCNR and DCED grant funds mentioned hereinabove to support the position of Shared Planner.
 8. For Beaver County’s share of the Shared Planner Compensation, Lawrence County will issue requests for reimbursement to Beaver County on a quarterly basis, said reimbursement requests to be paid by Beaver County to Lawrence County within 30 days of Beaver County’s receipt of said reimbursement request.
 9. Each county will provide adequate and appropriate office space, equipment, supplies, etc. to properly support the Shared Planner position and allow the Shared Planner to reasonably perform and discharge the duties associated with the Shared Planner Position.
 10. To the extent possible, Beaver County and Lawrence County shall equally share the costs of travel and related expenses subject to the approval of the BCPC Director and the LCPD Director in accordance with the following guidelines.
 - Payment of mileage reimbursement expenses incurred solely within either of the Counties or expenses that plainly pertain to one county and not the other shall be the responsibility of the County in which said travel and/or expenses occurred.
 - The BCPC Director/Beaver County and the LCPD Director/Lawrence County shall jointly approve all requests associated with the Shared Planner’s attendance at conferences, seminars, training sessions, out of town meetings and similar travel and shall equally share the costs associated therewith. In the event that the BCPC Director and the LCPD Director do not jointly approve such attendance, then the County which approves such attendance shall be solely responsible for the payment of associated expenses.
 11. Beaver County and Lawrence County shall equally fund the Shared Planner position for an eight year period subject to the receipt of grant funds from the DCNR and the DCED in the amounts stated hereinabove.
 12. To the extent possible, the Shared Planner shall equally split time between Beaver County and Lawrence County under the supervision of the BCPC Director and the LCPD Director.
 13. In the event of a dispute between Beaver County and Lawrence County which the counties are unable to resolve, then the counties agree to simple mediation with costs thereof to be equally shared by the Counties and the decision resulting there from to be binding upon the Counties.
 14. This Agreement may be amended, in writing, by the mutual agreement of the parties thereto and all such amendments shall be submitted to the DCNR and the DCED.
 15. The parties hereto represent that each of the individuals signing on behalf of the legal entities hereto have been duly authorized, and have the power, authority and capacity to bind the respective legal entity for the purpose herein stated.
 16. This Agreement may be executed in duplicate counterparts by the parties thereto.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND HEREBY, the parties hereto by the hands and seals of their duly empowered officers and/or agents have caused this Agreement to be duly executed the date and year first written above.

Attest:

By:

Tracey Patton
Tracey Patton, Chief Clerk
County of Beaver

County of Beaver

By:

Joe Spalik
Joe Spalik, Chairman
Beaver County Board of Commissioners

By:

Dan Donatella
Dan Donatella, Member
Beaver County Board of Commissioners

By:

Charles A. Camp
Charles A. Camp, Member
Beaver County Board of Commissioners

Attest:

By:

James Gagliano
James Gagliano, Chief Clerk/
Administrator

County of Lawrence

By:

Dan Vogler
Dan Vogler, Chairman
Lawrence County Board of Commissioners

By:

Edward Fosnaught
Edward Fosnaught, Member
Lawrence County Board of Commissioners

By:

Steve Craig
Steve Craig, Member
Lawrence County Board of Commissioners

EXHIBIT A

3/26/07

**Beaver County and Lawrence County
Shared Greenways and Environmental Planner****PURPOSE OF POSITION**

The purpose of this position is to provide technical and planning assistance to the Beaver County Planning Commission, the Lawrence County Planning Department and the municipalities in Beaver and Lawrence Counties regarding: the development and implementation of open space, greenways and recreation planning that includes land preservation initiatives and recreation and conservation greenway development throughout/between the Counties and adjacent counties; and in the areas of environmental land use, stormwater management, sewage and water development plans.

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.

- Develop appropriate administrative procedures that are consistent with the objectives of the Beaver County Greenways and Trails Plan and the Lawrence County Greenways and Trails Plan and implement each of these County Plans.
- Increase awareness of Greenways, and their benefits, among the general public and elected officials.
- Provide Technical and planning assistance to municipalities in the administration, planning and development of greenway, trail, and open space programs; promote and support multi-municipal/regional greenway and open space planning efforts; advise municipalities regarding consistency of local plans with adopted County greenways/trails/open space plans.
- Coordinate specific greenways acquisition and development projects with the counties, municipalities, non-profit organizations, and other appropriate entities by providing technical assistance and grant writing services.
- Make recommendations to municipal boards and councils regarding updates and amendments to local ordinances as they relate to greenways (both recreation and conservation) open space programs and sustainable development.
- Educate elected officials on the value of conservation planning, and encourage municipalities to adopt a conservation based approach to land development

- Perform comprehensive planning activities related to greenways (recreation and conservation), conservation, open space and environmental elements of each County's Comprehensive Plan; primarily providing technical assistance to local municipalities in implementing goals of the Counties' Plans in those areas and strengthening community planning and implementation efforts of local municipalities.
- Take a leadership role in environmental planning and the development of special projects such as county plans addressing stormwater management, water supply adequacy and flood plain management.
- Review permit applications/renewals and grant applications for submittals pertaining to water, sewage, recreation, agricultural preservation, mine reclamation, waste disposal, Act 527 sewage facilities planning modules etc.
- Review land development and subdivision plans as they relate to county, municipal and regional environmental and natural resource planning and sustainable development efforts and coordinate reviews with the County Conservation district when applicable
- Attend 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 in greenways open space environmental and natural resource planning.
- Prepare and/or assist in the preparation of maps, tables, graphics and charts using software programs and complete various geographic information system (GIS) projects as needed; maintain and update and/or assist in the maintenance and updates of various county and/or municipal GIS layers related to greenway, open space, natural resource and environmental planning efforts at both the county and local municipal level.
- Prepare, write and complete a variety of correspondence, reports and recommendations including application and plan recommendations, quarterly reports, program presentation, financial summaries and press releases.

MINIMUM QUALIFICATIONS, TRAINING AND EXPERIENCE

Bachelor's Degree in environmental, community, rural, regional, or natural resource planning, or a related field; supplemented by five (5) years of previous experience/or training involving environmental, 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 ESRI ArcGIS

Geographic Information Systems (GIS) is required. Must possess and maintain a valid Pennsylvania driver's license.

PERFORMANCE APTITUDES

Data Utilization: Requires the ability to evaluate, audit, deduce, and/or assess data and/or information using established criteria. Includes exercise of discretion in determining actual or probable consequences, and in referencing such evaluation to identify and select alternatives.

Human Interaction: As necessary, the ability to: provide first line supervision; persuade, convince, and train others; and the ability to advise and provide interpretation regarding the application of policies, procedures and standards to specific situations.

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.

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, ration and proportion; may include ability to calculate surface areas, volumes, weights, and measures.

Functional Reasoning: Requires the ability to apply principles of influence systems, such as motivation, incentive, and leadership. Ability to exercise independent judgment to apply facts and principles for developing approaches and techniques to problem resolution.

Situational Reasoning: Requires the ability to exercise the judgment, decisiveness and creativity required in situations involving evaluation of information against measurable or verifiable criteria.

Physical Ability: Tasks involve the ability to exert light physical effort in sedentary to light work, but which may involve some lifting, carrying, pushing and/or pulling of objects and materials of light weight. Tasks may involve extended periods of time at a keyboard or workstation.

Sensory Requirements: Some tasks require the ability to perceive and discriminate tastes. Some tasks require the ability to perceive and

discriminate colors or shades of colors. Some tasks require visual perception and discrimination. Some tasks require oral communications ability.

Environmental Factors: Task may risk exposure to wetness, dust/pollen, humidity and temperature/noise extremes.

ESSENTIAL FUNCTION OF THE POSITION

This position will be a shared position between the County of Beaver and the County of Lawrence and as such the successful candidate will be expected to properly manage time so that tasks are timely and accurately completed within a results oriented framework. The employee will be an employee of one of the Counties but will follow the personnel policies of each County - and in the case of conflict between policies, the more stringent will apply.

Appendix P

Sample Resource
Protection Ordinance
- Pocopson Township



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 Q

Conservation by Design



Growing Greener: Conservation by Design is a collaborative effort of the 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 initiatives shares the same *Growing Greener* name, but is a separate program funding natural resource protection and land preservation efforts across the Commonwealth.



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

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Appendix R

Land Trust
Standards and
Practices - Land
Trust Alliance



Land Trust Standards and Practices



Acknowledgements

The Land Trust Alliance extends its sincere appreciation to the members of the 2004 Land Trust Standards and Practices Revisions Advisory Team and to the hundreds of land conservationists across the country who participated in the development of the 2004 revisions. The Land Trust Alliance also gratefully acknowledges the individuals involved in establishing *Land Trust Standards and Practices* in 1989 and revising them in 1993 and 2001.

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Land Trust Standards and Practices are the ethical and technical guidelines for the responsible operation of a land trust. The Land Trust Alliance developed *Land Trust Standards and Practices* in 1989 at the urging of land trusts who believe a strong land trust community depends on the credibility and effectiveness of all its members and who understand that employing best practices is the surest way to secure lasting conservation. This is a living document and was revised in 1993, 2001 and 2004 to reflect changes in land trust practices and regulations governing nonprofit organizations. The 2004 revisions were prepared by a team of land trust leaders and reviewed by hundreds of conservationists to capture and share the experience of land trusts from throughout the country.

The nation's more than 1,500 nonprofit land trusts have conserved millions of acres of wildlife habitat, farms, ranches, forests, watersheds, recreation areas and other important lands. The continued success of land trusts depends both on public confidence in, and support of, the conservation efforts of these organizations, and on building conservation programs that stand the test of time. It is every land trust's responsibility to uphold this public trust and to ensure the permanence of its conservation efforts.

Implementing *Land Trust Standards and Practices* helps land trusts uphold the public trust and build strong and effective land conservation programs. The Land Trust Alliance requires that member land trusts adopt *Land Trust Standards and Practices* as the guiding principles for their operations, indicating their commitment to upholding the public trust and the credibility of the land trust community as a whole. (See the sample adoption resolution on the next page.) The Land Trust Alliance encourages all land trusts to implement *Land Trust Standards and Practices* at a pace appropriate for the size of the organization and scope of its conservation activities.

Land Trust Standards and Practices are organized into 12 standards and supporting practices to advance the standards. The practices are guidelines; there are many ways for a land trust to implement the practices, depending on the size and scope of the organization. The Land Trust Alliance provides resources to assist land trusts in the implementation of *Land Trust Standards and Practices*. General information on *Land Trust Standards and Practices* and on LTA publications and training programs related to the standards and practices can be found at www.lta.org. LTA member land trusts and partners can find additional technical information and sample documents at www.LTAnet.org.

While *Land Trust Standards and Practices* are designed primarily for nonprofit, tax-exempt land trusts, they also provide important guidance for any organization or government agency that holds land or easements for the benefit of the public.

Land trusts are a respected and integral part of the nation's land conservation work. With this recognition comes responsibility to ensure that all land trusts operate effectively and that their conservation efforts are lasting. *Land Trust Standards and Practices* are a critical tool in meeting these challenges.

Sample Board Adoption Resolution

The Land Trust Alliance (LTA) requires that all Sponsor members of LTA adopt *Land Trust Standards and Practices* as their guiding principles. Some public or private funders also ask for such a statement. Below is a sample resolution.

WHEREAS, the [organization] has reviewed *Land Trust Standards and Practices* published by the Land Trust Alliance in 2004; and,

WHEREAS, the [organization] agrees that *Land Trust Standards and Practices* are the ethical and technical guidelines for the responsible operation of a land trust;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors of the [organization], hereby adopts *Land Trust Standards and Practices* as guidelines for the organization's operations and commits to making continual progress toward implementation of these standards and practices.

_____ date adopted

Standard I: Mission

The land trust has a clear mission that serves a public interest, and all programs support that mission.

Practices

- A. Mission. The board adopts, and periodically reviews, a mission statement that specifies the public interest(s) served by the organization.
- B. Planning and Evaluation. The land trust regularly establishes strategic goals for implementing its mission and routinely evaluates programs, goals and activities to be sure they are consistent with the mission.
- C. Outreach. The land trust communicates its mission, goals and/or programs to members, donors, landowners, the general public, community leaders, conservation organizations and others in its service area as appropriate to carry out its mission.
- D. Ethics. The land trust upholds high standards of ethics in implementing its mission and in its governance and operations.

Part I: Organizational Strength

Standard 2: Compliance with Laws

The land trust fulfills its legal requirements as a nonprofit tax-exempt organization and complies with all laws.

Practices

- A. Compliance with Laws. The land trust complies with all applicable federal, state and local laws.
- B. Nonprofit Incorporation and Bylaws. The land trust has incorporated according to the requirements of state law and maintains its corporate status. It operates under bylaws based on its corporate charter or articles of incorporation. The board periodically reviews the bylaws.
- C. Tax Exemption. The land trust has qualified for federal tax-exempt status and complies with requirements for retaining this status, including prohibitions on private inurement and political campaign activity, and limitations and reporting on lobbying and unrelated business income. If the land trust holds, or intends to hold, conservation easements, it also meets the Internal Revenue Code's (IRC) public support test for public charities. Where applicable, state tax-exemption requirements are met.
- D. Records Policy. The land trust has adopted a written records policy that governs how organization and transaction records are created, collected, retained, stored and disposed. (See 9G.)
- E. Public Policy. The land trust may engage in public policy at the federal, state and/or local level (such as supporting or opposing legislation, advocating for sound land use policy, and/or endorsing public funding of conservation) provided that it complies with federal and state lobbying limitations and reporting requirements. Land trusts may not engage in political campaigns or endorse candidates for public office.

Standard 3: Board Accountability

The land trust board acts ethically in conducting the affairs of the organization and carries out the board's legal and financial responsibilities as required by law.

Practices

- A. Board Responsibility. The board is responsible for establishing the organization's mission, determining strategic direction and setting policies to carry out the mission, and, as required by law, the oversight of the organization's finances and operations.
- B. Board Composition. The board is of sufficient size to conduct its work effectively. The board is composed of members with diverse skills, backgrounds and experiences who are committed to board service. There is a systematic process for recruiting, training and evaluating board members.
- C. Board Governance. The land trust provides board members with clear expectations for their service and informs them about the board's legal and fiduciary responsibilities. The board meets regularly enough to conduct its business and fulfill its duties, with a minimum of three meetings per year. Board members are provided with adequate information to make good decisions. Board members attend a majority of meetings and stay informed about the land trust's mission, goals, programs and achievements.
- D. Preventing Minority Rule. The land trust's governing documents contain policies and procedures (such as provisions for a quorum and adequate meeting notices) that prevent a minority of board members from acting for the organization without proper delegation of authority.
- E. Delegation of Decision-Making Authority. The board may delegate decision-making and management functions to committees, provided that committees have clearly defined roles and report to the board or staff. If the land trust has staff, the board defines the job of, oversees and periodically evaluates the executive director (or chief staff person). (See 3F and 7E.)
- F. Board Approval of Land Transactions. The board reviews and approves every land and easement transaction, and the land trust provides the board with timely and adequate information prior to final approval. However, the board may delegate decision-making authority on transactions if it establishes policies defining the limits to that authority, the criteria for transactions, the procedures for managing conflicts of interest, and the timely notification of the full board of any completed transactions, and if the board periodically evaluates the effectiveness of these policies.

Standard 4: Conflicts of Interest

The land trust has policies and procedures to avoid or manage real or perceived conflicts of interest.

Practices

- A. Dealing with Conflicts of Interest. The land trust has a written conflict of interest policy to ensure that any conflicts of interest or the appearance thereof are avoided or appropriately managed through disclosure, recusal or other means. The conflict of interest policy applies to insiders (see definitions), including board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public. Federal and state conflict disclosure laws are followed.
- B. Board Compensation. Board members do not serve for personal financial interest and are not compensated except for reimbursement of expenses and, in limited circumstances, for professional services that would otherwise be contracted out. Any compensation must be in compliance with charitable trust laws. The board's presiding officer and treasurer are never compensated for professional services.
- C. Transactions with Insiders. When engaging in land and easement transactions with insiders (see definitions), the land trust: follows its conflict of interest policy; documents that the project meets the land trust's mission; follows all transaction policies and procedures; and ensures that there is no private inurement or impermissible private benefit. For purchases and sales of property to insiders, the land trust obtains a qualified independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state-licensed or state-certified appraiser who has verifiable conservation easement or conservation real estate experience. When selling property to insiders, the land trust widely markets the property in a manner sufficient to ensure that the property is sold at or above fair market value and to avoid the reality or perception that the sale inappropriately benefited an insider.

Standard 5: Fundraising

The land trust conducts fundraising activities in an ethical and responsible manner.

Practices

- A. Legal and Ethical Practices. The land trust complies with all charitable solicitation laws, does not engage in commission-based fundraising, and limits fundraising costs to a reasonable percentage of overall expenses.
- B. Accountability to Donors. The land trust is accountable to its donors and provides written acknowledgement of gifts as required by law, ensures that donor funds are used as specified, keeps accurate records, honors donor privacy concerns and advises donors to seek independent legal and financial advice for substantial gifts.
- C. Accurate Representations. All representations made in promotional, fundraising, and other public information materials are accurate and not misleading with respect to the organization's accomplishments, activities and intended use of funds. All funds are spent for the purpose(s) identified in the solicitation or as directed in writing by the donor.
- D. Marketing Agreements. Prior to entering into an agreement to allow commercial entities to use the land trust's logo, name or properties, the land trust determines that these agreements will not impair the credibility of the land trust. The land trust and commercial entity publicly disclose how the land trust benefits from the sale of the commercial entity's products or services.

Standard 6: Financial and Asset Management

The land trust manages its finances and assets in a responsible and accountable way.

Practices

- A. Annual Budget. The land trust prepares an annual budget that is reviewed and approved by the board, or is consistent with board policy. The budget is based on programs planned for the year. Annual revenue is greater than or equal to expenses, unless reserves are deliberately drawn upon.
- B. Financial Records. The land trust keeps accurate financial records, in a form appropriate to its scale of operations and in accordance with Generally Accepted Accounting Principles (GAAP) or alternative reporting method acceptable to a qualified financial advisor.
- C. Financial Reports and Statements. The board receives and reviews financial reports and statements in a form and with a frequency appropriate for the scale of the land trust's financial activity.
- D. Financial Review or Audit. The land trust has an annual financial review or audit, by a qualified financial advisor, in a manner appropriate for the scale of the organization and consistent with state law.
- E. Internal System for Handling Money. The land trust has established a sound system of internal controls and procedures for handling money, in a form appropriate for the scale of the organization.
- F. Investment and Management of Financial Assets and Dedicated Funds. The land trust has a system for the responsible and prudent investment and management of its financial assets, and has established policies on allowable uses of dedicated funds and investment of funds.
- G. Funds for Stewardship and Enforcement. The land trust has a secure and lasting source of dedicated or operating funds sufficient to cover the costs of stewarding its land and easements over the long term and enforcing its easements, tracks stewardship and enforcement costs, and periodically evaluates the adequacy of its funds. In the event that full funding for these costs is not secure, the board has adopted a policy committing the organization to raising the necessary funds. (See 6F, 11A and 12A.)
- H. Sale or Transfer of Assets (Including Land and Easements). The land trust has established policies or procedures on the transfer or sale of assets, including real property. (See 4C, 9K and 9L.)
- I. Risk Management and Insurance. The land trust assesses and manages its risks and carries liability, property, and other insurance appropriate to its risk exposure and state law. The land trust exercises caution before using its land to secure debt and in these circumstances takes into account any legal or implied donor restrictions on the land, the land trust's mission and protection criteria, and public relations impact.

Standard 7: Volunteers, Staff and Consultants

The land trust has volunteers, staff and/or consultants with appropriate skills and in sufficient numbers to carry out its programs.

Practices

- A. Capacity. The land trust regularly evaluates its programs, activities and long-term responsibilities and has sufficient volunteers, staff and/or consultants to carry out its work, particularly when managing an active program of easements.
- B. Volunteers. If the land trust uses volunteers, it has a program to attract, screen, train, supervise and recognize its volunteers.
- C. Staff. If the land trust uses staff, each staff member has written goals or job descriptions and periodic performance reviews. Job duties or work procedures for key positions are documented to help provide continuity in the event of staff turnover.
- D. Availability of Training and Expertise. Volunteers and staff have appropriate training and experience for their responsibilities and/or opportunities to gain the necessary knowledge and skills.
- E. Board/Staff Lines of Authority. If the land trust has staff, the lines of authority, communication and responsibility between board and staff are clearly understood and documented. If the board hires an executive director (or chief staff person), the board delegates supervisory authority over all other staff to the executive director. (See 3E.)
- F. Personnel Policies. If the land trust has staff, it has written personnel policies that conform to federal and state law and has appropriate accompanying procedures or guidelines.
- G. Compensation and Benefits. If the land trust has staff, it provides fair and equitable compensation and benefits, appropriate to the scale of the organization.
- H. Working with Consultants. Consultant and contractor relationships are clearly defined, are consistent with federal and state law, and, if appropriate, are documented in a written contract. Consultants and contractors are familiar with sections of *Land Trust Standards and Practices* that are relevant to their work.

Standard 8: Evaluating and Selecting Conservation Projects

The land trust carefully evaluates and selects its conservation projects.

Practices

- A. Identifying Focus Areas. The land trust has identified specific natural resources or geographic areas where it will focus its work.
- B. Project Selection and Criteria. The land trust has a defined process for selecting land and easement projects, including written selection criteria that are consistent with its mission. For each project, the land trust evaluates its capacity to perform any perpetual stewardship responsibilities.
- C. Federal and State Requirements. For land and easement projects that may involve federal or state tax incentives, the land trust determines that the project meets the applicable federal or state requirements, especially the conservation purposes test of IRC §170(h).
- D. Public Benefit of Transactions. The land trust evaluates and clearly documents the public benefit of every land and easement transaction and how the benefits are consistent with the mission of the organization. All projects conform to applicable federal and state charitable trust laws. If the transaction involves public purchase or tax incentive programs, the land trust satisfies any federal, state or local requirements for public benefit.
- E. Site Inspection. The land trust inspects properties before buying or accepting donations of land or easements to be sure they meet the organization's criteria, to identify the important conservation values on the property and to reveal any potential threats to those values.
- F. Documenting Conservation Values. The land trust documents the condition of the important conservation values and public benefit of each property, in a manner appropriate to the individual property and the method of protection.
- G. Project Planning. All land and easement projects are 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.
- H. Evaluating the Best Conservation Tool. The land trust works with the landowner to evaluate and select the best conservation tool for the property and takes care that the chosen method can reasonably protect the property's important conservation values over time. This evaluation may include informing the landowner of appropriate conservation tools and partnership opportunities, even those that may not involve the land trust.
- I. Evaluating Partnerships. The land trust evaluates whether it has the skills and resources to protect the important conservation values on the property effectively, or whether it should refer the project to, or engage in a partnership with, another qualified conservation organization.

- J. Partnership Documentation. If engaging in a partnership on a joint acquisition or long-term stewardship project, agreements are documented in writing to clarify, 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 acknowledgement of each partner's role in the project.
- K. Evaluating Risks. The land trust examines the project for risks to the protection of important conservation values (such as surrounding land uses, extraction leases or other encumbrances, water rights, potential credibility issues or other threats) and evaluates whether it can reduce the risks. The land trust modifies the project or turns it down if the risks outweigh the benefits.
- L. Nonconservation Lands. A land trust may receive land that does not meet its project selection criteria (see 8B) with the intent of using the proceeds from the sale of the property to advance its mission. If the land trust intends to sell the land, it provides clear documentation to the donor of its intent before accepting the property. Practices 4C, 9K and 9L are followed.
- M. Public Issues. A land trust engaging in projects beyond direct land protection (such as public policy, regulatory matters or education programs) has criteria or other standard evaluation methods to guide its selection of and engagement in these projects. The criteria or evaluation methods consider mission, capacity and credibility.

Standard 9: Ensuring Sound Transactions

The land trust works diligently to see that every land and easement transaction is legally, ethically and technically sound.

Practices

- A. Legal Review and Technical Expertise. The land trust obtains a legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced with real estate law. As dictated by the project, the land trust secures appropriate expertise in financial, real estate, tax, scientific, and land and water management matters.
- B. Independent Legal Advice. The land trust refrains from giving specific legal, financial and tax advice and recommends in writing that each party to a land or easement transaction obtain independent legal advice.
- C. Environmental Due Diligence for Hazardous Materials. The land trust takes steps, as appropriate to the project, to identify and document whether there are hazardous or toxic materials on or near the property that could create future liabilities for the land trust.
- D. Determining Property Boundaries. The land trust determines the boundaries of every protected property through legal property descriptions, accurately marked boundary corners or, if appropriate, a survey. If an easement contains restrictions that are specific to certain zones or areas within the property, the locations of these areas are clearly described in the easement and supporting materials and can be identified in the field.
- E. Easement Drafting. Every easement is tailored for the property according to project planning (see 8G) and: identifies the important conservation values protected and public benefit served; allows only permitted uses and/or reserved rights that will not significantly impair the important conservation values; contains only restrictions that the land trust is capable of monitoring; and is enforceable.
- F. Documentation of Purposes and Responsibilities. The land trust documents the intended purposes of each land and easement transaction, the intended uses of the property and the roles, rights and responsibilities of all parties involved in the acquisition and future management of the land or easement.
- G. Recordkeeping. Pursuant to its records policy (see 2D), the land trust keeps originals of all irreplaceable documents essential to the defense of each transaction (such as legal agreements, critical correspondence and appraisals) in one location, and copies in a separate location. Original documents are protected from daily use and are secure from fire, floods and other damage.
- H. Title Investigation and Subordination. The land trust investigates title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values on the property are discharged or properly subordinated to the easement.

- I. Recording. All land and easement transactions are legally recorded at the appropriate records office according to local and state law.
- J. Purchasing Land. If the land trust buys land, easements or other real property, it obtains a qualified independent appraisal to justify the purchase price. However, the land trust may choose to obtain a letter of opinion (see definitions) from a qualified real estate professional in the limited circumstances when a property has a very low economic value or a full appraisal is not feasible before a public auction. In limited circumstances where acquiring above the appraised value is warranted, the land trust documents the justification for the purchase price and that there is no private inurement or impermissible private benefit. If negotiating for a purchase below the appraised value, the land trust ensures that its communications with the landowner are honest and forthright.
- K. Selling Land or Easements. If the land trust sells land or easements, it first documents the important conservation values, plans the project according to practice 8G, and drafts protection agreements as appropriate to the property. The land trust obtains a qualified independent appraisal that reflects the plans for the project and protection agreements and justifies the selling price. (The land trust may choose to obtain a letter of opinion from a qualified real estate professional in the limited circumstance when a property has a very low economic value.) The land trust markets the property and selects buyers in a manner that avoids any appearance of impropriety and preserves the public's confidence in the land trust, and in the case of selling to an insider (see definitions) follows practice 4C. (See 6H for sales of other assets.)
- L. Transfers and Exchanges of Land. If the land trust transfers or exchanges conservation land or easements, the land trust considers 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. If transferring to a party other than another nonprofit organization or public agency, the consideration is based on a qualified independent appraisal (or letter of opinion when the property has a very low economic value) in order to prevent private inurement or impermissible private benefit.

Standard IO: Tax Benefits

The land trust works diligently to see that every charitable gift of land or easements meets federal and state tax law requirements.

Practices

- A. Tax Code Requirements. The land trust notifies (preferably in writing) potential land or easement donors who may claim a federal or state income tax deduction, or state tax credit, that the project must meet the requirements of IRC §170 and the accompanying Treasury Department regulations and/or any other federal or state requirements. The land trust on its own behalf reviews each transaction for consistency with these requirements.
- B. Appraisals. The land trust informs potential land or easement donors (preferably in writing) of the following: IRC appraisal requirements for a qualified appraisal prepared by a qualified appraiser for gifts of property valued at more than \$5,000, including information on the timing of the appraisal; that the donor is responsible for any determination of the value of the donation; that the donor should use a qualified appraiser who follows Uniform Standards of Professional Appraisal Practice; that the land trust will request a copy of the completed appraisal; and that the land trust will not knowingly participate in projects where it has significant concerns about the tax deduction.
- C. No Assurances on Deductibility or Tax Benefits. The land trust does not make assurances as to whether a particular land or easement donation will be deductible, what monetary value of the gift the Internal Revenue Service (IRS) and/or state will accept, what the resulting tax benefits of the deduction will be, or whether the donor's appraisal is accurate.
- D. Donee Responsibilities — IRS Forms 8282 and 8283. The land trust understands and complies with its responsibilities to sign the donor's Appraisal Summary Form 8283 and to file Form 8282 regarding resale of donated property when applicable. The land trust signs Form 8283 only if the information in Section B, Part 1, "Information on Donated Property," and Part 3, "Declaration of Appraiser," is complete. If the land trust believes no gift has been made or the property has not been accurately described, it refuses to sign the form. If the land trust has significant reservations about the value of the gift, particularly as it may impact the credibility of the land trust, it may seek additional substantiation of value or may disclose its reservations to the donor. (See 5B for other gift substantiation requirements.)

Standard II: Conservation Easement Stewardship

The land trust has a program of responsible stewardship for its easements.

Practices

- A. Funding Easement Stewardship. The land trust determines 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 these funds and has a policy committing the funds to this purpose. (See 6G.)
- B. Baseline Documentation Report. 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. The report documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement. 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 acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulations §1.170A-14(g)(5)(i)] are signed by the landowner at closing.
- C. Easement Monitoring. The land trust monitors 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.
- D. Landowner Relationships. The land trust maintains regular contact with owners of easement properties. When possible, it provides 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. The land trust establishes and implements systems to track changes in land ownership.
- E. Enforcement of Easements. The land trust has a written policy and/or procedure detailing how it will respond to a potential violation of an 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. (See 6G and 11A.)
- F. Reserved and Permitted Rights and Approvals. The land trust has 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.

- G. Contingency Plans/Backups. The land trust has 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. (See 11H.)
- H. Contingency Plans for Backup Holder. If a land trust regularly consents to being named as a backup or contingency holder, it has a policy or procedure for accepting easements from other land trusts and has a plan for how it will obtain the financial resources and organizational capacity for easements it may receive at a future date. (See 11G.)
- I. Amendments. The land trust recognizes that amendments are not routine, but can serve to strengthen an easement or improve its enforceability. 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.
- J. Condemnation. The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation and the IRC, 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.
- K. Extinguishment. 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.

Standard I2: Fee Land Stewardship

The land trust has a program of responsible stewardship for the land it holds in fee for conservation purposes.

Practices

- A. Funding Land Stewardship. The land trust determines the immediate and long-term financial and management implications of each land transaction and secures the dedicated and/or operating funds needed to manage the property, including funds for liability insurance, maintenance, improvements, monitoring, enforcement and other costs. If funds are not secured at or before the completion of the transaction, the land trust has a plan to secure these funds and has a policy committing the funds to this purpose. (See 6G.)
- B. Stewardship Principles. The land trust establishes general principles to guide the stewardship of its fee-owned properties, including determining what uses are and are not appropriate on its properties, the types of improvements it might make and any land management practices it will follow.
- C. Land Management. The land trust inventories the natural and cultural features of each property prior to developing a management plan that identifies its conservation goals for the property and how it plans to achieve them. Permitted activities are compatible with the conservation goals, stewardship principles and public benefit mission of the organization. Permitted activities occur only when the activity poses no significant threat to the important conservation values, reduces threats or restores ecological processes, and/or advances learning and demonstration opportunities.
- D. Monitoring Land Trust Properties. The land trust marks its boundaries and regularly monitors its properties for potential management problems (such as trespass, misuse or overuse, vandalism or safety hazards) and takes action to rectify such problems.
- E. Land Stewardship Administration. The land trust performs administrative duties in a timely and responsible manner. This includes establishing policies and procedures, keeping essential records, filing forms, paying insurance, paying any taxes and/or securing appropriate tax exemptions, budgeting, and maintaining files.
- F. Community Outreach. The land trust keeps neighbors and community leaders informed about its ownership and management of conservation properties.
- G. Contingency Backup. The land trust has a contingency plan for all of its conservation land in the event the land trust ceases to exist or can no longer manage the property. To ensure that a contingency holder will accept the land, the land trust has complete and accurate files and stewardship funds available for transfer.
- H. Nonpermanent Holdings. When a land trust holds fee land with the intention to sell or transfer the land, the land trust is open about its plans with the public and manages and maintains the property in a manner that retains the land trust's public credibility. (See 8L.)
- I. Condemnation. The land trust is aware of the potential for condemnation, understands its rights and obligations under condemnation, and works diligently to prevent a net loss in conservation values.

Definitions of Key Terms

Capacity: the ability to perform all the actions required to acquire and manage conservation land and easements and manage other programs by having adequate human and financial resources and organizational systems in place.

Conflict of Interest: a conflict of interest arises when “insiders” are in a position, or perceived to be in a position, to benefit financially (or create a benefit to a family member or other organization with which they are associated) by virtue of their position within the nonprofit organization.

GAAP: the Federal Accounting Standards Board (FASB) issues Generally Accepted Accounting Principles (GAAP). FASB’s Statement of Account Standards 116 and 117 provide standards for Financial Statements for Not-for-Profit Organizations.

Important Conservation Values: these are the key values on a site that are the focus of protection efforts. Important conservation values are determined during property evaluation and project planning.

Insiders: board and staff members, substantial contributors, parties related to the above, those who have an ability to influence decisions of the organization and those with access to information not available to the general public.

The IRS generally considers “insiders” or disqualified persons under IRC §4598 to be persons who, at anytime during the five-year period ending on the date of the transaction in question, were *in a position to exercise substantial influence over the affairs of the organization*. “Insiders” generally include: *board members, key staff, substantial contributors* [see IRC §507(d)(2)], *parties related to the above and 35-percent controlled entities*. While these are strict definitions within the tax code, land trusts are advised to take an even more proactive approach to the potential damage that conflicts of interest may cause an organization and also include in the definition of “insiders” *all staff members and those with access to information not available to the general public* (such as certain volunteers).

Related parties is defined by the IRS to include spouse, brothers and sisters, spouses of brothers and sisters, ancestors, children, grandchildren, great-grandchildren and spouses of children, grandchildren and great-grandchildren.

IRC: Internal Revenue Code

Land Trust: a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or easement acquisitions, or by engaging in the stewardship of such land or easements.

Letter of Opinion: a written estimation of a property's value, most often prepared by a qualified appraiser and occasionally prepared by a highly experienced real estate professional.

A letter of opinion may be used instead of a qualified independent appraisal when the economic value of the property is so low as to negate concerns about private inurement or private benefit or when a full appraisal is not feasible before a public auction. (A letter of opinion is not sufficient in the case of transactions with insiders.) An appraiser may call this document a Restricted Use Appraisal Report.

Private Inurement: when the net earnings of a tax-exempt organization come to the benefit of any private shareholder or individual.

Federal tax-exempt law requires that “no part of ... [a tax-exempt organization's] net earnings [may] inure to the benefit of any private shareholder or individual.” Generally this means that the financial assets of the organization may not be transferred to a private individual (without the organization receiving adequate compensation) solely by virtue of the individual's relationship with the organization. The IRS prohibition on inurement is absolute. The IRS also imposes penalties on directors, officers, key employees and other disqualified persons who engage in excess benefit transactions.

Qualified Independent Appraisal: an independent appraisal prepared in compliance with the Uniform Standards of Professional Appraisal Practice by a state-licensed or state-certified appraiser who has verifiable conservation easement or conservation real estate experience.

Widely Marketed: announcing the availability of a property for sale to lists of prospective buyers, through Web pages, mailings, and listings in newsletters and other publications or media. “Widely marketed” does not require public listing with a real estate agent.



The Land Trust Alliance, founded in 1982, promotes voluntary land conservation and strengthens the land conservation movement by providing the leadership, information, skills and resources land trusts need to conserve land for the benefit of communities and natural systems.

The Land Trust Alliance provides resources to assist land trusts in the implementation of *Land Trust Standards and Practices*. General information on *Land Trust Standards and Practices* and on LTA publications and training programs related to the standards and practices can be found at www.lta.org. LTA member land trusts and partners can find additional technical information and sample documents at www.LTAnet.org.

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