



**Conservation Law in
Pennsylvania**
**Municipalities Planning Code
Open Space Lands Act**

**2015 Annual Conference
Pennsylvania Land Trust Association
Gettysburg, PA, May 7, 2015**

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Municipal approaches available under the law can significantly augment Land Trust efforts!

As we review legal aspects, we also will look at land trust and municipal partnership opportunities they raise.



I wear both hats! but I am not a lawyer!

Brandywine Conservancy

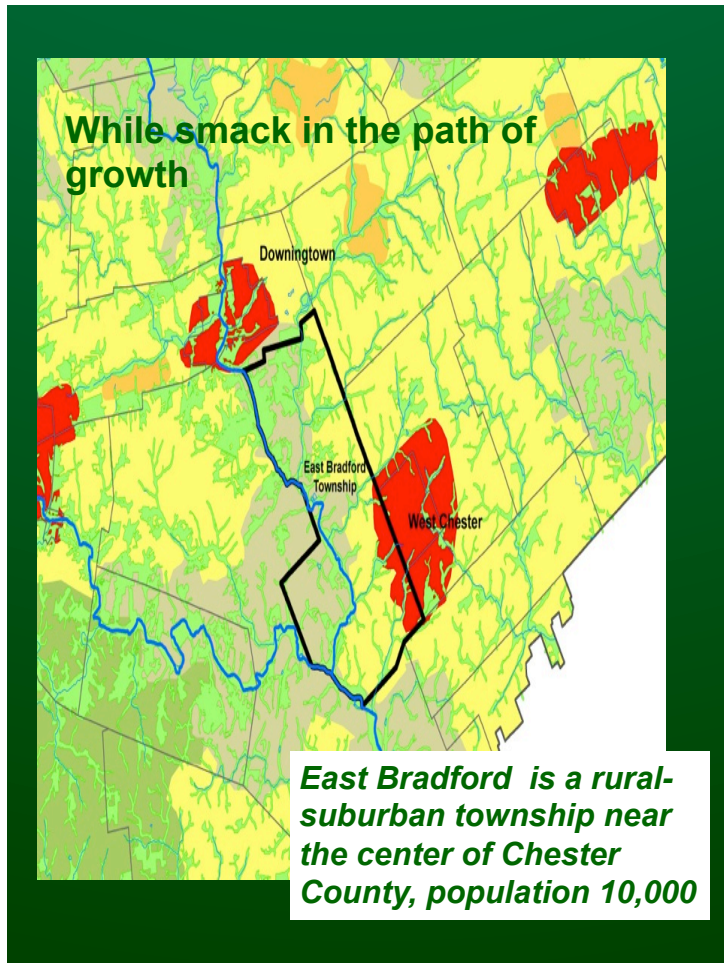
A Regional Land Trust



- Working to preserve natural and working lands through public and private conservation efforts
- Assisting county & municipal planning efforts, including draft regulation & development review
- Promoting long-term stewardship of community resources



East Bradford has preserved 60% of its land mass in open space!



The Constitution of the Commonwealth of Pennsylvania

Article I, Section 27 states:

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

Tools available under the Municipalities Planning Code

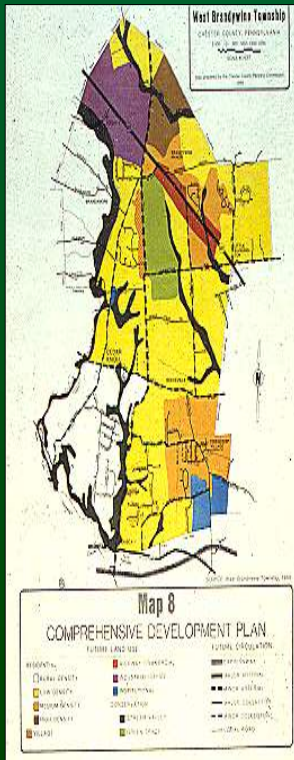
- Comprehensive planning
- Open space, recreation & environmental resources components
- Official Map
- Zoning and Subdivision ordinances

The Pennsylvania Municipalities Planning Code (MPC)

Article III (Comprehensive Plan),
Section 301

- Preparation of Comprehensive Plan (301.a) The comprehensive plan, consisting of maps, charts and textual matter, shall include, but need not be limited to, the following related basic elements:
 - (6) ***A plan for the protection of natural and historic resources*** to the extent not preempted by Federal or State law. This clause includes, but is not limited to, wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas and historic sites.

Comprehensive Planning



Conventional comprehensive planning efforts often have focused on development and not on resource conservation or community character

Comprehensive Planning

Community Value Surveys can underline planning issues most important to residents:

West Brandywine Township Survey

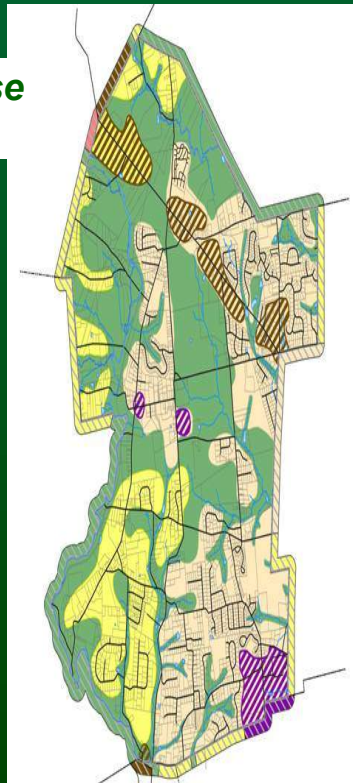
- 55% Natural resource protection
- 50% Retention of rural atmosphere
- 43% Traffic and road conditions
- 33% Conservation of scenic landscapes / views
- 32% Agricultural preservation
- 32% Conservation of quality water supply
- 22% Adequate sewage disposal
- 11% Protection of historic resources
- 10% Housing affordability
- 8% Community recreation opportunities
- 5% Employment opportunities
- 4% Shopping opportunities

West Brandywine Comprehensive Plan

Future Land Use Plan

Legend

- Roads
- Streams
- Adjacent municipalities
- Tax parcels
- Municipal boundary
- Water Resources (e.g., ponds, reservoirs)
- Planned Land Use in Contiguous Communities**
- Agriculture/conservation/open space/natural
- Low density residential
- Moderate to high density residential
- Commercial
- Institutional
- Industrial, special use, etc.
- West Brandywine Township Future Land Use**
- Community institutional focus overlay
- Mixed use focus overlay
- Suburban site-responsive development
- Rural suburban site-responsive development
- Open space / resource protection focus



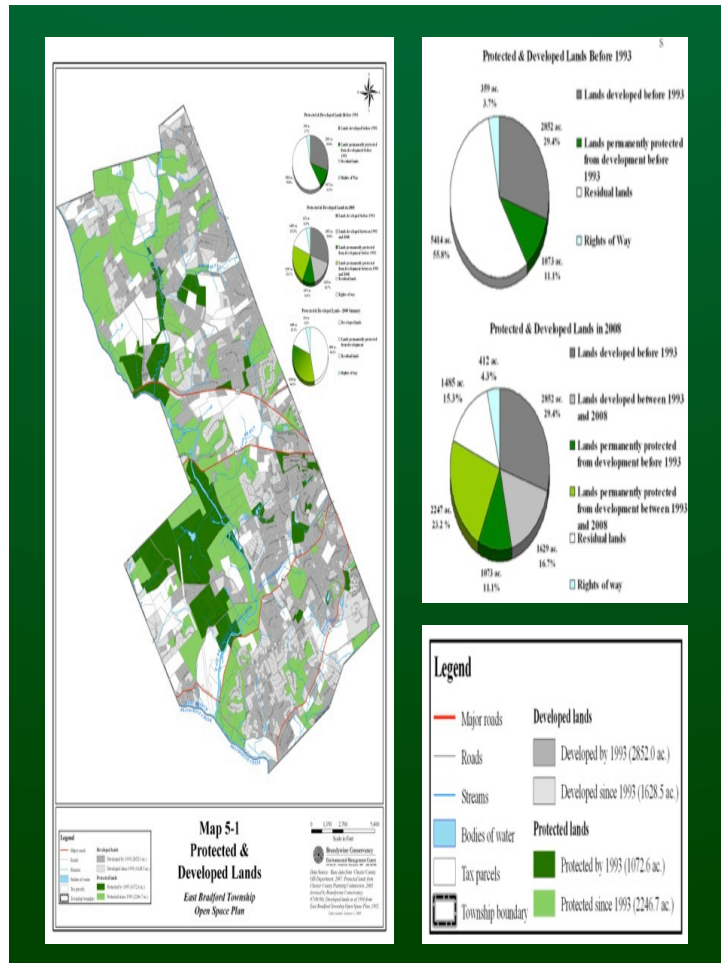
Open Space Plan

*Adopted as component or addendum
to Comp Plan*

East Bradford Open Space, Recreation & Environmental Resources Plan



**Open Space Plan can bring
resource issues to forefront
of planning efforts**



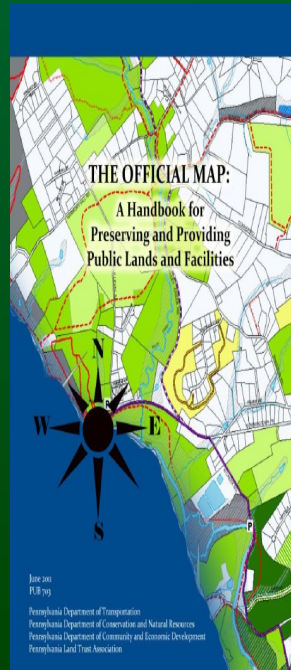
The Pennsylvania Municipalities Planning Code (MPC)

Article IV (Official Map), Section 401:

- Grant of Power. (401.a) The governing body of each municipality shall have the power to make or cause to be made an official map of all or a portion of the municipality which may show appropriate elements or portions of elements of the **comprehensive plan** with regard to public lands and facilities, and which may include, but need not be limited to:
 - (2) Existing and proposed public parks, playgrounds and **open space reservations**.

Official Map

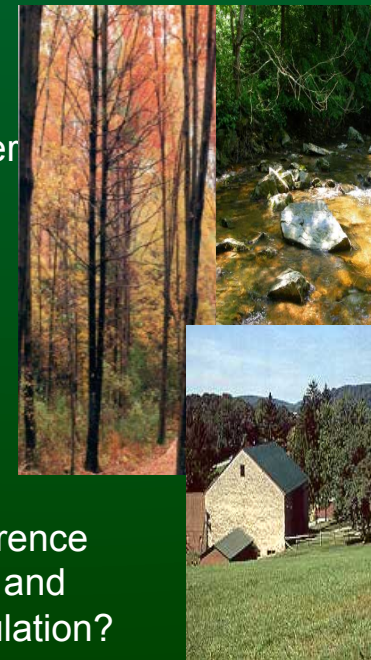
- **What is an Official Map?**
 - Authorized by MPC
 - Combined map & ordinance
 - Implements Comprehensive plan
 - Shows planned future public lands and facilities
 - Can include open space!
 - “Buys” a “right of refusal”
- **What are the benefits?**
 - Prioritization
 - Informs citizens of vision
 - Springboard for



PUB 703 PA DOT, PA DCNR, PA DCED, PALTA

Zoning and Subdivision regulations also can provide for Conservation!

- Steep slopes
- Wetlands
- Riparian Buffer
- Woodlands
- Historic Resources
- Scenic Resources



What is the difference between Zoning and Subdivision regulation?

The Pennsylvania Municipalities Planning Code (MPC)

Article V (Subdivision), Section 503 mandates that the layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof.

Article VI (Zoning), Subsection 603(g)(2) mandates:
“zoning ordinances SHALL provide for protection of natural and historic features and resources,”

The Pennsylvania Municipalities Planning Code (MPC)

Subsection 604(1) stipulates that among the purposes of zoning SHALL be included provisions:

“to promote, protect and facilitate . . . the preservation of the natural, scenic and historic values in the environment . . .”

Subsection 603(b)(5) provides that zoning ordinances may regulate for the:

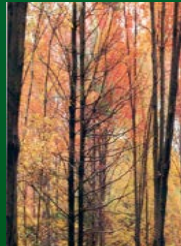
“protection and preservation of natural and historic resources and prime agricultural soils and activities,”

Subsection 603(c)(7) provides that zoning ordinances include:

“provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance”

Critical Local Regulatory Issues

- Resource Inventory
- Resource Definition
- Site Analysis
- Limitations/Prohibitions
- Performance Criteria
- Incentive Provisions
- Regulatory Modifications



Steep Slope Functions And Values

- Erodable soils
- Scenic views and ridgelines
- Increased stormwater runoff causing stream siltation and flooding
- Often forested; building blocks for greenways
- Property protection
- Replenish groundwater and maintain springs



*Specific Ordinance Provisions
Steep Slopes*

- **Limitations and/or performance standards**
 - Use
 - Impervious cover
 - Vegetation management
- **Add steep slope management**
- **Architecture/engineering**



Wetland Functions And Values

- **Hydrological –**
 - **Water quality and quantity**
 - **Flooding reduction**
 - **Stormwater filtering**
 - **Groundwater discharge and recharge**



*Specific Ordinance Provisions
Wetlands*

- **Augment state/federal regulation**
- **Add margins or hydric soils**
- **Submission of delineation/permits**
- **Exemptions for state approval**



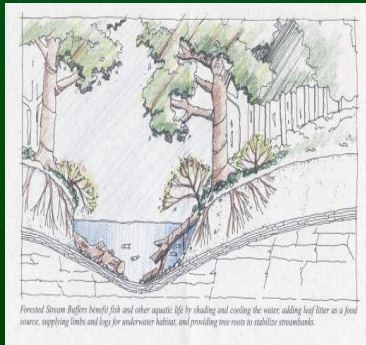
*Riparian Buffer Functions And
Values*

- **Filters nutrients and sediment**
- **Protects stream bank**
- **Helps establish and maintain productive stream geometry**
- **Cools water temperatures**
- **Provides woody debris and leaf litter**
- **Maximizes native biodiversity (e.g., wild trout)**
- **Aesthetics and recreation**

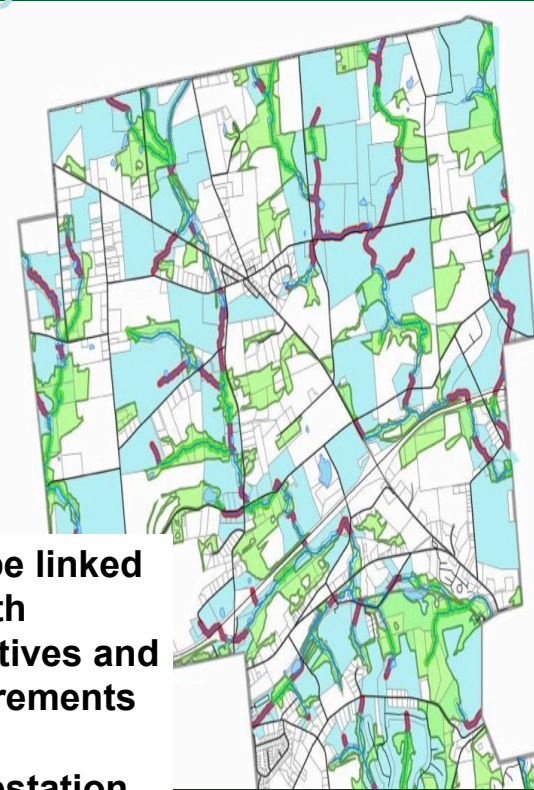


Specific Ordinance Provisions Riparian Buffers

- **Variable versus fixed width**
- **Differential gradations or “zones”**
- **Disturbance Limitations**
- **Reforestation provisions**



Sample Riparian Opportunities Map



Can be linked to both incentives and requirements for reforestation

Woodland Functions And Values

- Stormwater management
- Stream buffers
- Groundwater recharge
- Evapo-transpiration
- Off-set impervious coverage
- Steep slope protection



- Wildlife habitat
- Recreation
- Aesthetics
- Air filtering
- Energy use
- Economics

Specific Ordinance Provisions Woodlands

- Differential disturbance limitations
- Tree replacement provisions
- Timber harvesting regulation (Forestry)



Timber harvesting regulations

- Consistent with MPC requirements
- Require harvesting plan with municipal review
- Promote municipal forester consultant role
- Harvest limits based on woodland classification system riparian locations and canopy fragmentation considerations
- Identify higher value species (e.g. oaks) for partial retention

Historic Resources in Pennsylvania run the gamut . . .



Unlike natural resources, historic resources require human use and investment to survive!

Regulatory approaches to preservation must facilitate viable economic use.



Specific Ordinance Provisions Historic Resources

- Regulations applicable to specific resource inventory
- Provide special or extra use opportunities
- Provide for variation in area & bulk regulations and flexible development standards
- Establish procedures for review and approval of demolition or alteration
- Require study of impacts of land use change and may provide for mitigation
- May be integrated with other zoning tools

Program tomorrow morning focused on historic preservation

Scenic Landscapes

- Few subjective inventories exist – we “know them when we see them”
- State scenic river and scenic byway corridors offer clear grounds for recognition of significance
- Municipal Comp Plan may designate scenic landscapes as well as scenic roads

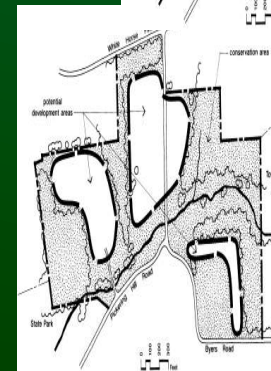


*Specific Ordinance Provisions
Scenic Landscapes*

- Regulate as zoning overlay focused on flexible location of development to avoid scenic impacts
- Provide vegetation management provisions and limitations notably along scenic roads
- Add landscape and screening provisions
- Add architectural provisions



Conservation Design can reverse conventional subdivision design

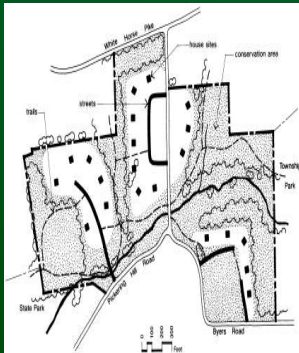
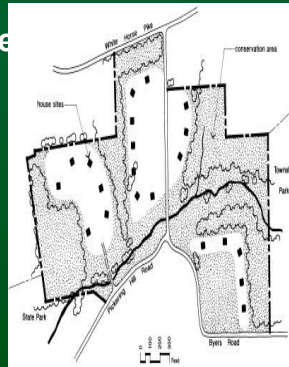


Step 1: Identify Open Space

Consider "Green" Infrastructure Up Front!

Conservation Design

Step 2: Locate House Sites



Step 3: Locate Infrastructure

Step 4: Delineate Lot Lines

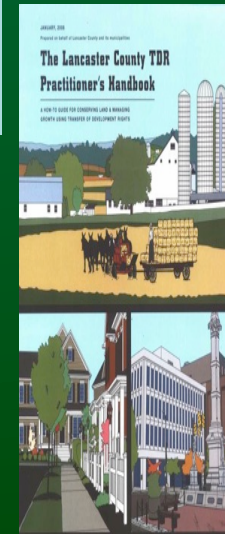


Transferable Development Rights (TDR)

Landowners in one area (sending zone) may sever and sell their development rights to landowners or developers in another area (receiving zone).



Land from which the development rights are sold is permanently protected while land where the sold development rights are applied is enhanced in development value.



Who uses TDR? What do they protect?



Of 191 TDR programs in 33 states:

- 69 environmental
- 46 environment & farmland
- 41 farmland
- 15 historic preservation
- 20 other (housing, infrastructure, urban design, revitalization)



TDR – A Unique Tool!



=



TDRs are established by regulation, but are driven by the real estate market

Warwick Township, Lancaster County

Non-Residential TDR Receipt

- Parcels
- Zoning Districts
 - Conservation
 - Agriculture (Sending Area)
 - Rural Estate
 - R-1 Residential
 - R-2 Residential
 - Mixed Use
 - Community Commercial
 - Industrial 1
 - Campus Industrial (Receiving Area)
 - Quarry



Sending Area: 3,980 acres
Receiving Area: 167 acres

Warwick Township, Lancaster County

Recent Program Highlights

- 647 TDRs severed/sold
- 278 TDRs transferred to receiving development
- Warwick cooperates with County Ag. Preserve Board & Lancaster Farmland Trust.



Preserved Farms since 1997

- 2,203 total acres have been preserved
- 1,319 acres preserved through TDRs

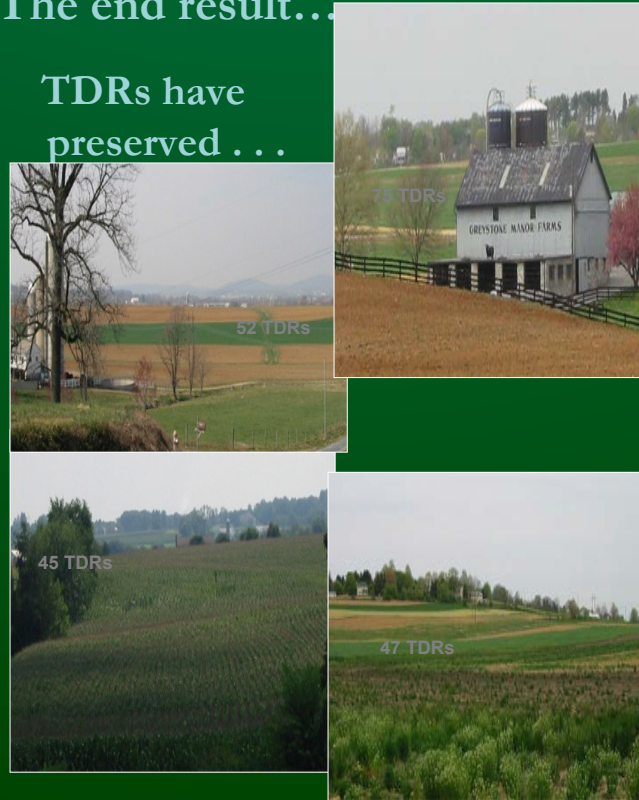
Warwick Township Development Receiving TDRs
Campus Industrial development



**Additional Annual School Tax Revenues
= \$544,000.00**

The end result...

TDRs have preserved . . .



TDR Partnership

Case Study (in progress): Caernarvon and East Earl Townships, Lancaster County, PA



Photo: Patty O'Brien

- TDR Ordinances written by Brandywine Conservancy
- Townships started preserving land, pursuant to ELANCO Regional comprehensive plan and ordinance
- But lack experience and staff to administer preservation and TDR program
- Land trust (Lancaster Farmland Trust) serves in both capacities, effectively “banking” TDRs!

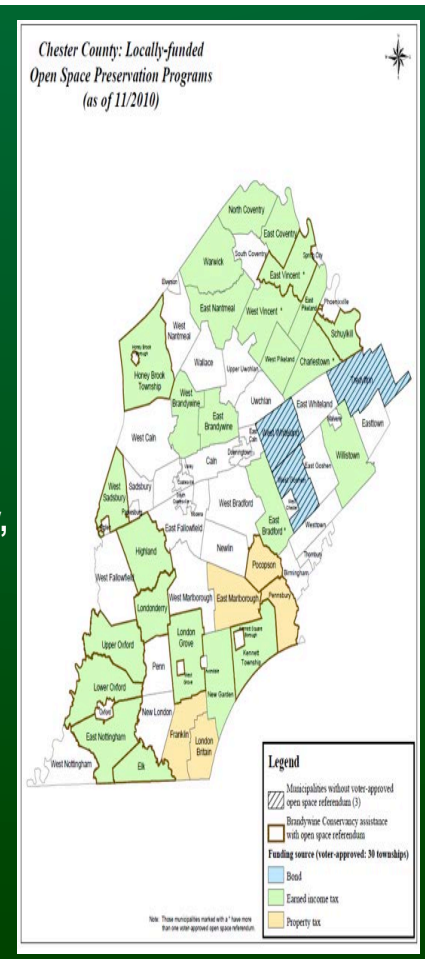
Act 153, the Open Space Lands Act *additional opportunities for conservation!*

- May establish via referendum a property tax or earned income tax (EIT) to fund open space and agricultural preservation in excess of rate limits set by various municipal code provisions and the Local Tax Enabling Act (which otherwise caps the municipal EIT rate at 1%).

PA Act 153 Provisions

- Authorizes municipalities to purchase property interests on long-term installment basis
- Allows school districts to adopt a millage property tax freeze for properties subject to an easement held by a local government or an easement under the state's Agricultural Security Area law.

33 Chester County PA municipalities have established dedicated open space preservation funding sources and rely on county, state, federal and other funds to LEVERAGE their limited resources to meet local and regional open space preservation goals.



Required Steps

- Pass ordinance for a referendum on the question of the imposition of the new tax, specifying the type and rate
 - At least 13 Tuesdays before the next primary or general election
- For debt questions, file ordinance with county board of elections at least 45 days in advance of the election
- Publish election notices in local newspapers and legal journals beginning no earlier than 3 weeks before the election but not later than two weeks before.

Ballot Question

- “Do you favor the imposition of a [describe tax in millage or rate] by [the local government unit] to be used [describe purpose]?”

(E.g.: for the acquisition of land and conservation easements for open space, recreation and preservation of farmland.)

The Campaign – Publicity and Outreach

- Create message
- Conduct outreach, education, publicity
 - Direct outreach: letters, phone, meetings
 - Indirect: Ads, letters to the editor, fliers, website, Facebook, Twitter, yard signs

The Open Space tax proposal only applies to earned income. People on fixed incomes such as Social Security or pensions would not see a tax increase.

The official question as it reads on the November 2nd ballot:
Proposed Earned Income Tax Increase for Open Space

Do you favor the imposition of an additional Earned Income Tax at the rate of one half (1/2) of one percent (1% (.005) by East Nottingham Township to be used for financing the acquisition of open space for the purpose of acquiring agricultural conservation easements and for the purpose of acquiring recreation or historic lands?

Reasons to vote YES on the referendum

- You want to slow the rate of housing development.
- You want to limit traffic on local, country roads.
- You like having farms in your community.
- You want to slow the rate of

Farming is hard work.

Local or regional land trusts are uniquely positioned to spur the campaign

Development is taxing.

In East Nottingham Township, for every \$1.00 generated in revenue from residential land uses, \$1.11 is spent.
That's an 11% deficit.

For every \$1.00 generated in revenue from agriculture, commercial, and industrial land uses, \$0.04 is spent.
That's a 96% surplus.

Therefore, saving some open space and farm land now will decrease the rate at which taxes must increase to bridge the negative cost/revenue gap created by new/future housing developments.

The tax increase for most East Nottingham households would only be 86 cents per day.
 That's less than your morning cup of coffee.

That's less than the potential tax increases associated with more housing development.
 That's an investment in your future.

KEEP FRANKLIN RURAL
VOTE "YES" FOR OPEN SPACE
May 17, 2011

PA Required Implementation Procedures

- If approved by a majority of voters, the governing body must pass an ordinance in order to enact the proposed financing.
- Adopt a prioritization plan identifying lands for acquisition of open space interests
- Establish procedures for acquisition
- Hold public hearing for each project

East Bradford Township - a test case for Land Trust collaboration

- Open space prioritization
 - Open Space Plan
 - Official Map
- Conservation Easement – held by Land Trust
 - Cultivation
 - Preparation
 - Monitoring & management
- Fee lands held by Township
 - Subject to Stewardship Plans prepared by Land Trust

Overview of East Bradford Township's Open Space Program

- Program began in 1985 with Comprehensive Plan update
- Township has used a variety of conservation tools
- Act 153 tax referenda – 1998 & 2000
 - ¼ of 1% earned income tax
 - \$15.5 million borrowed
- **Township has partnered with several land trusts to accomplish variety of projects**
- Accomplishments
 - 3,500 acres protected via restriction
 - 2,500 acres protected via regulation
 - 16 Township parks / preserves (~750 ac)
 - 30 miles of public trails
 - \$4 million leveraged



East Bradford Township
2009 Open Space, Recreation
& Environmental Resources Plan



June, 2009

East Bradford Prioritization Example



- Priority properties placed on Official Map
- Land trust & municipality can partner on:
 - Acquisition of open space interests
 - Grant funding
 - Education & communication
- Municipality can provide:
 - Property information & data
 - Volunteer & staff support
 - Channel of communication
- Land trusts can provide:
 - Offer an alternative to “government”
 - Knowledge of environmental science
 - Planning & regulatory expertise
 - Mapping & analysis capabilities
 - Land stewardship expertise
- **Both can:**
 - Partner on funding
 - Cooperate on easement and stewardship terms

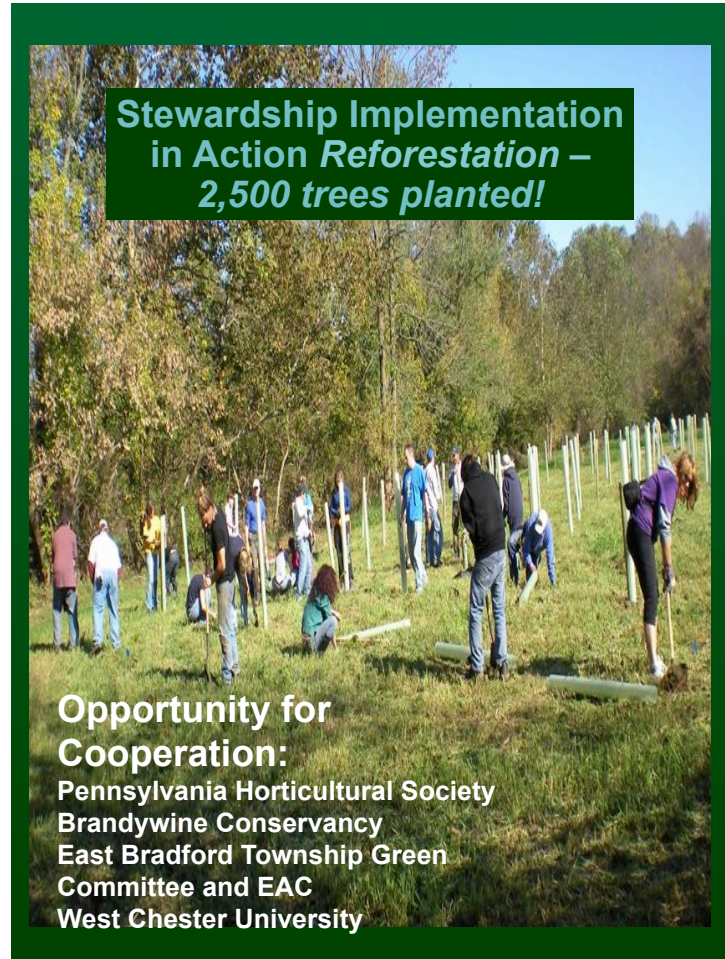
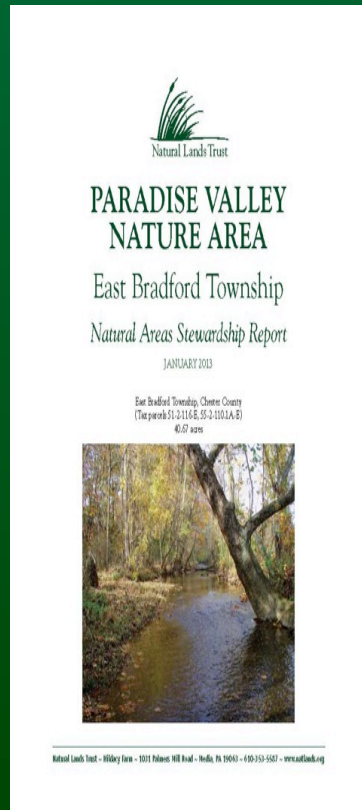
Stewardship

“Why bother? It’s open space and it’s green!

Besides, it’s not mandated!

Stewardship plans

- Summarize complexity & dynamics of natural systems
- Document natural areas on a property today
- Provide recommendations for sustaining natural resources



What Land Trusts Can Offer Municipalities

- Management experience
- Planning expertise
- Hands on assistance
- Training
- Resource Interpretation
- Regulatory technical assistance



Finally, belts and suspenders!

- **East Bradford does not trust Harrisburg!**
 - Not the Legislature
 - Not the Courts
 - Not the Public Trust Doctrine
- **All Township-owned lands placed under conservation easement to North American Land Trust (NALT)**
- **Courts or the Legislature could undue Act 153**
- **Easements cannot be broken except by eminent domain**

