

ConserveLand

A Publication of the Pennsylvania Land Trust Association

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The Pennsylvania Land Trust Association envisions a Pennsylvania where people know that their treasured green places will endure. We envision a Commonwealth where the lands that guarantee our water quality are safeguarded; where outdoor recreation opportunities abound; where our productive farmlands and forests are conserved, securing our food and wood supplies; and where natural areas are protected. We envision future generations enjoying the beauty, the water, the productive lands and wildlife we enjoy today.

Pennsylvania Land Trusts Protect 57,087 Acres in Two Years

Total Land Conserved Now at 592,476 Acres

The Pennsylvania Land Trust Association recently completed its biannual census of land trusts. As of 12/31/2009, the ninety-one land trusts operating in Pennsylvania have conserved 592,476 acres of farmland, forest, parks, trail corridors and other green spaces that people love. These lands - conserved with conservation easements, via land trust ownership and management, or by transfer to local or state government - make up 2% of Pennsylvania's land mass.

See more analysis on pages 2-5.

PALTA Releases Drafts of Three Ground-Breaking Model Documents for Peer Review

Don't miss the opportunity to suggest changes, alternative approaches and areas needing more commentary

The landowner who cannot or will not make a cash contribution or pledge up front to cover the conservation easement holder's long term stewardship liability may be willing to establish a payment structure that will be borne by future owners of the land or that will only be paid upon certain triggering events.

Ensuring that the conservation organization can collect these payments,

The screenshot shows the ConserveLand.org website. The main content area is titled 'Other Model Documents'. It includes a brief introduction about the purpose of the model documents and a call to action for users to provide feedback. Three model documents are listed:

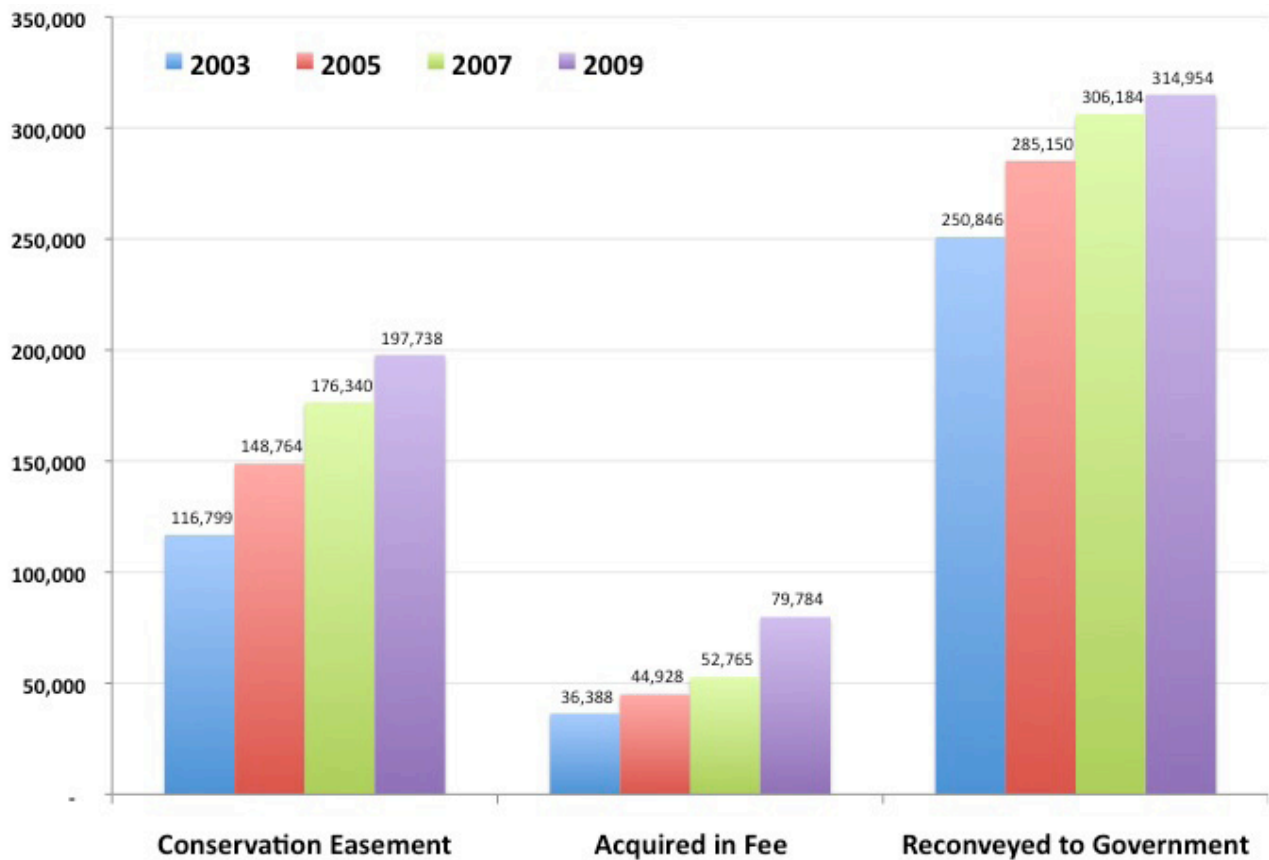
- Model Mortgage Subordination:** Used to obtain "subordination" of a mortgage to a conservation easement. It includes links for the Model Document (9/7/2010 edition), Commentary (9/7/2010 edition), and a link to the library item.
- Model Conservation Funding Covenant:** Used to secure payment of stewardship fees. It includes links for the Model Document (9/30/2010 draft), Commentary (pending), and a link to the library item.
- Model Donation Memorandum:** COMING SOON. Used to spell out the terms under which landowners may donate and land trusts may accept a conservation easement. It includes links for the Model Document (pending), Commentary (pending), and a link to the library item.

The sidebar on the left contains links to various resources, including 'Technical Guidance & Resources', 'Tools, Library, Experts & Events', 'Conservation Basics', 'Model Easements', 'Other Model Documents', 'Classroom & Education Materials', 'Land Trusts & Other Groups', 'Conserved Real Estate for Sale', 'Public Policy', 'Stories', and 'Jobs'. There is also a 'Blog' section with a recent post titled 'Ya'll Get Together Now, Ya Here?' by dsherman.

Continued on page 9

"Conservation is a great moral issue, for it involves the patriotic duty of ensuring the safety and continuance of the nation." ~ President Theodore Roosevelt

Aggregate Acreages Conserved by Land Trusts



Land Trusts Make Tremendous Gains in Last Six Years

- In just the past six years, Pennsylvania's land trusts increased their easement acreage by **69%** and number of easements by **85%**.
- They increased the conservation land they own and manage by **119%**.
- The acreage transferred to local and state government for conservation purposes increased by **26%**.

32% of the conservation work of **ALL** the conservation work ever completed by land trusts was accomplished in the past six years.

Figures in this issue are based on a survey conducted by the Pennsylvania Land Trust Association. The data includes only Pennsylvania land transactions completed through December 31, 2009. Some land trusts have also protected substantial acreage outside Pennsylvania but this acreage is not included in these totals. If data was not submitted by a specific land trust, it is assumed there have been no significant changes from data collected as of 12/31/2007.

Acreage Owned by Pennsylvania Land Trusts

Organization	# Acres		
1 Western Pennsylvania Conservancy	16,992	54 NorthFork Conservancy	56
2 Nature Conservancy (PA Chapter), The	12,500	55 Pine Creek Land Conservation Trust	38
3 Natural Lands Trust, inc.	11,401	56 Merrill W. Linn Land & Waterways Conservancy	33
4 Earth Conservancy	10,000	57 Fox Chapel Area Land Trust	33
5 Lancaster County Conservancy	2,931	58 Independence Conservancy	21
6 Hawk Mountain Sanctuary Association	2,600	59 Manada Conservancy	20
7 Brandywine Conservancy	2,348	60 West Vincent Land Trust, Inc.	15
8 Wildlands Conservancy	2,222	61 Mid-Atlantic Karst Conservancy	14
9 Conservation Fund (PA Office), The	1,500	62 Friends of the National Park at Gettysburg	10
10 Heritage Conservancy	1,420	63 Evergreen Conservancy	10
11 Allegheny Land Trust	1,224	64 Neighborhood Gardens Association	8
12 Pocono Heritage Land Trust	946	65 Land Conservancy of Adams County	7
13 Mount Nittany Conservancy	825	66 Northcentral Pennsylvania Conservancy	6
14 Pennypack Ecological Restoration Trust	703	67 Keystone Trails Association	6
15 North Branch Land Trust	675	68 ClearWater Conservancy	6
16 Roaring Run Watershed Association	653	69 Regional Trail Corporation	5
17 Somerset County Conservancy	600	70 Shenango Conservancy	2
18 Wissahickon Valley Watershed Association	567	71 Buck Hill Falls Conservation Foundation	2
19 Lacawac Sanctuary Foundation Inc	545		
20 Wild Waterways Conservancy	475		
21 Armstrong County Conservancy Charitable Trust	441		
22 E.L.Rose Conservancy of Susquehanna County	438		
23 Friends of Salt Springs Park	437		
24 Central Pennsylvania Conservancy	410		
25 Hollow Oak Land Trust	409		
26 Rocky Mountain Elk Foundation	407		
27 Southern Alleghenies Conservancy	400		
28 Berks County Conservancy	378		
29 Open Land Conservancy of Chester County	362		
30 Allegheny Valley Land Trust	352		
31 Montour Trail Council	344		
32 Audubon Society of Western Pennsylvania	341		
33 French Creek Valley Conservancy	339		
34 Allegheny Valley Trails Association	334		
35 Conemaugh Valley Conservancy	297		
36 Westmoreland Conservancy	260		
37 Countryside Conservancy	260		
38 Mokomo Conservancy	243		
39 Willistown Conservation Trust	223		
40 Allegheny Valley Conservancy	208		
41 Cumberland Valley Rails to Trails Council	185		
42 North American Land Trust	174		
43 Audubon Pennsylvania	142		
44 French and Pickering Creeks Conservation Trust	134		
45 Land Conservancy for Southern Chester County	133		
46 Chartiers Nature Conservancy	122		
47 Appalachian Trail Conservancy	114		
48 Westmoreland Land Trust	105		
49 Lackawanna Valley Conservancy	92		
50 Scott Conservancy	77		
51 London Britain Township Land Trust	75		
52 Pine Creek Valley Watershed Association, Inc.	67		
53 Lake Erie Region Conservancy	63		

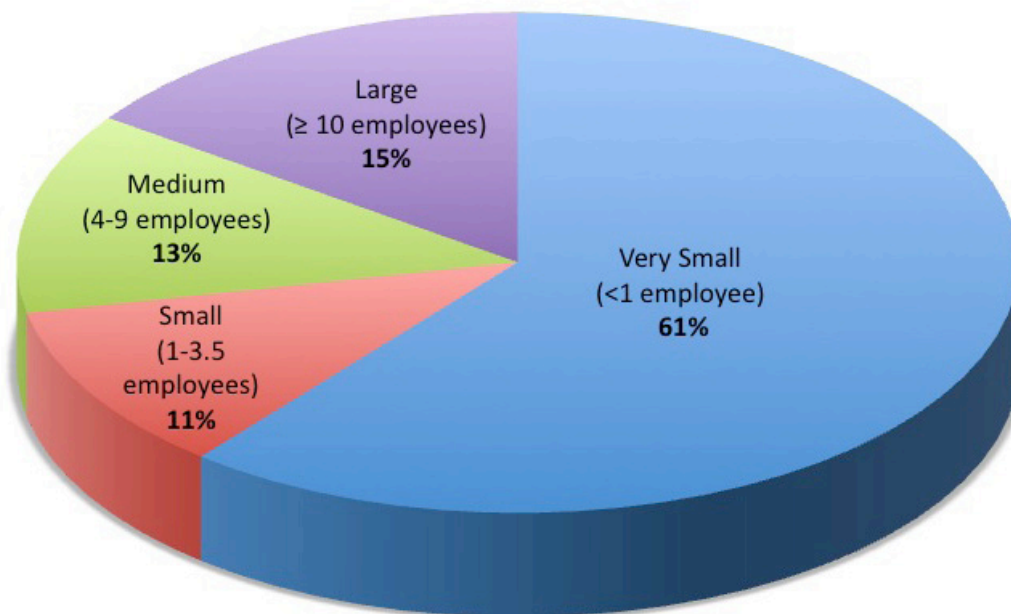
Acreage Reconveyed to Government

Organization	# Acres
1 Western Pennsylvania Conservancy	174,522
2 Conservation Fund (PA Office), The	68,000
3 Wildlands Conservancy	34,276
4 Nature Conservancy (PA Chapter), The	11,600
5 Northcentral Pennsylvania Conservancy	6,309
6 Seneca Highlands Conservancy	4,000
7 French and Pickering Creeks Conservation Trust	3,338
8 ClearWater Conservancy	2,894
9 Trust for Public Land- NJ/PA Field Office	2,733
10 Trust for Public Land, The	2,644
11 Natural Lands Trust, inc.	2,336
12 Central Pennsylvania Conservancy	1,554
13 Delaware Highlands Conservancy	1,191
14 Armstrong County Conservancy Charitable Trust	462
15 Berks County Conservancy	421
16 Farm & Natural Lands Trust of York County	361
17 Lancaster County Conservancy	260
18 Pennsbury Land Trust	123
19 French Creek Valley Conservancy	100
20 Lake Erie Region Conservancy	100
21 Montour Trail Council	96
22 Heritage Conservancy	60
23 Westmoreland Conservancy	56
24 Montgomery County Lands Trust	42
25 Land Conservancy of Adams County	41
26 Countryside Conservancy	34
27 Wallace Trust, The	22
28 Wild Waterways Conservancy	10
29 Allegheny Valley Land Trust	9
30 Lackawanna Valley Conservancy	3
31 Willistown Conservation Trust	2

Acreage Under Easement in Pennsylvania

Organization	# Acres		
1 Brandywine Conservancy	34,864	32 Rocky Mountain Elk Foundation	512
2 Western Pennsylvania Conservancy	31,791	33 Pine Creek Valley Watershed Association, Inc.	400
3 Lancaster Farmland Trust	21,200	34 E.L.Rose Conservancy of Susquehanna County	321
4 Natural Lands Trust, inc.	16,397	35 Lebanon Valley Conservancy, Inc.	289
5 North Branch Land Trust	10,180	36 Land Conservancy for Southern Chester County	272
6 Delaware Highlands Conservancy	7,529	37 Eden Hill Conservancy	217
7 Farm & Natural Lands Trust of York County	7,434	38 West Vincent Land Trust, Inc.	200
8 Wildlands Conservancy	7,274	39 Pennsbury Land Trust	181
9 Land Conservancy of Adams County	6,648	40 Wallace Trust, The	166
10 Berks County Conservancy	5,659	41 Audubon Society of Western Pennsylvania	137
11 French and Pickering Creeks Conservation Trust	5,384	42 Allegheny Land Trust	135
12 Heritage Conservancy	4,894	43 Allegheny Valley Trails Association	130
13 Northcentral Pennsylvania Conservancy	4,490	44 Conservancy of Montgomery County, The	128
14 Bedminster Regional Land Conservancy	3,890	45 Buck Hill Falls Conservation Foundation	125
15 Tinicum Conservancy	3,889	46 Open Land Conservancy of Chester County	118
16 Nature Conservancy (PA Chapter), The	3,500	47 Pennypack Ecological Restoration Trust	98
17 Montgomery County Lands Trust	2,762	48 Hollow Oak Land Trust	96
18 Pocono Heritage Land Trust	2,098	49 Lower Merion Conservancy	91
19 Willistown Conservation Trust	2,086	50 Schuylkill County Conservancy	79
20 North American Land Trust	1,612	51 Mid-Atlantic Karst Conservancy	70
21 Central Pennsylvania Conservancy	1,600	52 Chestnut Hill Historical Society	67
22 ClearWater Conservancy	1,505	53 Lackawanna Valley Conservancy	56
23 Lancaster County Conservancy	1,000	54 Appalachian Trail Conservancy	47
24 Countryside Conservancy	882	55 Independence Conservancy	46
25 Merrill W. Linn Land & Waterways Conservancy	740	56 Lake Erie Region Conservancy	40
26 Conservation Fund (PA Office), The	724	57 Sandy Creek Conservancy	35
27 Centre County Farmland Trust	700	58 West Pikeland Land Trust	25
28 French Creek Valley Conservancy	678	59 Fox Chapel Area Land Trust	24
29 Allegheny Valley Conservancy	632	60 Montour Trail Council	20
30 Wissahickon Valley Watershed Association	618	61 London Britain Township Land Trust	17
31 Manada Conservancy	518	62 Radnor Conservancy, The	6
		63 Southern Alleghenies Conservancy	5
		64 Pine Creek Land Conservation Trust	1

PA Land Trusts by Number of Employees



**Pennsylvania
land trusts
count 107,062
members &
contributors.**

Total # of Easements Held in PA

Organization	Total #		
1 Brandywine Conservancy	478	32 Pennsbury Land Trust	10
2 Lancaster Farmland Trust	337	33 West Vincent Land Trust, Inc.	10
3 Natural Lands Trust, inc.	237	34 French Creek Valley Conservancy	8
4 Western Pennsylvania Conservancy	151	35 Manada Conservancy	8
5 French and Pickering Creeks Conservation Trust	122	36 Merrill W. Linn Land & Waterways Conservancy	8
6 Land Conservancy of Adams County	105	37 Centre County Farmland Trust	7
7 Tinicum Conservancy	96	38 Pennypack Ecological Restoration Trust	7
8 Bedminster Regional Land Conservancy	91	39 Mid-Atlantic Karst Conservancy	6
9 Berks County Conservancy	91	40 Pine Creek Valley Watershed Association, Inc.	6
10 Heritage Conservancy	90	41 Pocono Heritage Land Trust	6
11 Farm & Natural Lands Trust of York County	88	42 Lebanon Valley Conservancy, Inc.	5
12 Wildlands Conservancy	63	43 Allegheny Land Trust	4
13 Willistown Conservation Trust	61	44 London Britain Township Land Trust	4
14 Delaware Highlands Conservancy	51	45 Allegheny Valley Conservancy	3
15 North American Land Trust	46	46 E.L.Rose Conservancy of Susquehanna County	3
16 North Branch Land Trust	45	47 Audubon Society of Western Pennsylvania	2
17 Montgomery County Lands Trust	43	48 Eden Hill Conservancy	2
18 Northcentral Pennsylvania Conservancy	42	49 Hollow Oak Land Trust	2
19 Lancaster County Conservancy	40	50 Independence Conservancy	2
20 Wissahickon Valley Watershed Association	34	51 Lackawanna Valley Conservancy	2
21 Appalachian Trail Conservancy	33	52 Lake Erie Region Conservancy	2
22 Nature Conservancy (PA Chapter), The	33	53 Radnor Conservancy, The	2
23 Chestnut Hill Historical Society	31	54 West Pikeland Land Trust	2
24 Countryside Conservancy	22	55 Allegheny Valley Trails Association	1
25 Wallace Trust, The	20	56 Buck Hill Falls Conservation Foundation	1
26 Central Pennsylvania Conservancy	19	57 Conservation Fund (PA Office), The	1
27 Lower Merion Conservancy	16	58 Fox Chapel Area Land Trust	1
28 Land Conservancy for Southern Chester County	15	59 Montour Trail Council	1
29 Open Land Conservancy of Chester County	15	60 Pine Creek Land Conservation Trust	1
30 ClearWater Conservancy	12	61 Rocky Mountain Elk Foundation	1
31 Conservancy of Montgomery County, The	11	62 Sandy Creek Conservancy	1
		63 Schuylkill County Conservancy	1
		64 Southern Alleghenies Conservancy	1

of Easement Transactions in 2009

Organization	Total #		
1 Natural Lands Trust, inc.	20	16 Montgomery County Lands Trust	2
2 Lancaster Farmland Trust	17	17 Pennypack Ecological Restoration Trust	2
3 Farm & Natural Lands Trust of York County	11	18 Willistown Conservation Trust	2
4 Land Conservancy of Adams County	11	19 ClearWater Conservancy	1
5 Brandywine Conservancy	10	20 Countryside Conservancy	1
6 French and Pickering Creeks Conservation Trust	7	21 Hollow Oak Land Trust	1
7 Tinicum Conservancy	7	22 Lake Erie Region Conservancy	1
8 Western Pennsylvania Conservancy	6	23 Land Conservancy for Southern Chester County	1
9 Bedminster Regional Land Conservancy	5	24 Lebanon Valley Conservancy, Inc.	1
10 Delaware Highlands Conservancy	5	25 Manada Conservancy	1
11 Heritage Conservancy	4	26 Mid-Atlantic Karst Conservancy	1
12 North Branch Land Trust	3	27 Nature Conservancy (PA Chapter), The	1
13 Wallace Trust, The	3	28 Northcentral Pennsylvania Conservancy	1
14 Berks County Conservancy	2	29 Pocono Heritage Land Trust	1
15 Centre County Farmland Trust	2	30 Wildlands Conservancy	1
		31 Wissahickon Valley Watershed Association	1

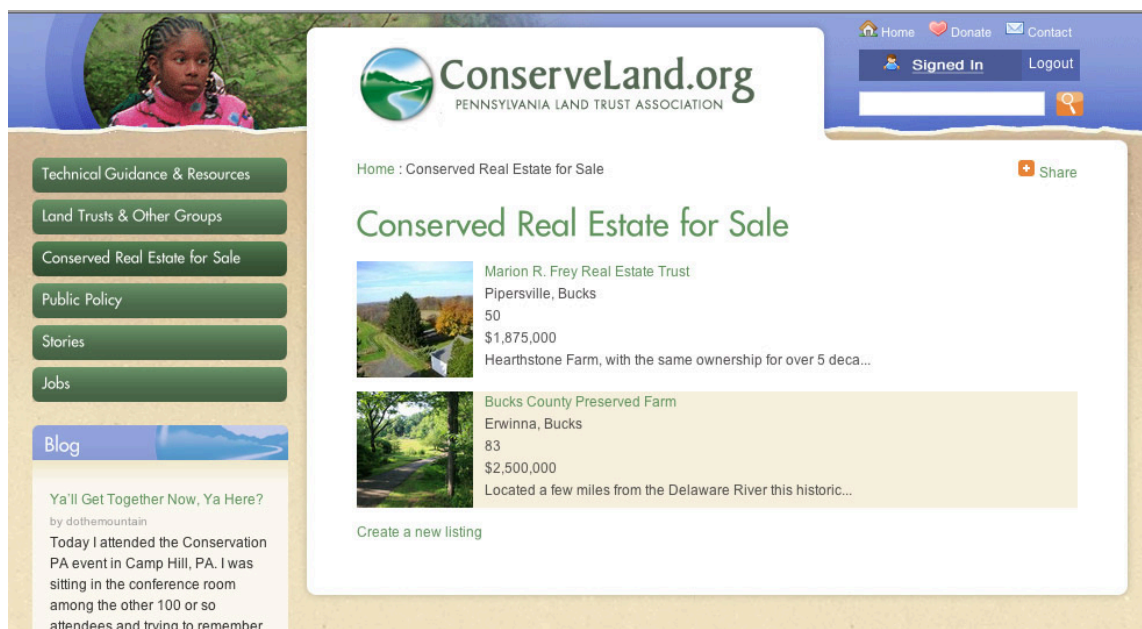
Marketing Conserved Real Estate at ConserveLand.org

Among the new features at the revamped ConserveLand.org is a new opportunity for property owners and realtors to market conserved real estate. The goal of this feature is to match sellers with buyers who share the same values of land conservation. Real estate agents and/or property owners may use this site to market the unique characteristics of their conservation property.

Land trusts and agricultural preservation boards should encourage farmers and land-owners of eased properties to use this site as an additional marketing resource if and when they decide to sell their land.

Individuals seeking conservation properties will benefit from a list of available properties at their fingertips.

Contact Nicole Faraguna at nfaraguna@conserveLand.org if you have questions. ☞



Pennsylvania Conservation Lifetime Leadership Award

The Pennsylvania Land Trust Association is soliciting nominations to honor individuals for decades of leadership and dedication in conserving our special places and landscapes.

Learn more and download the nomination form at ConserveLand.org.

Congratulations to Our Past Honorees

2004



*William
Sellers*

2005



*Dennis
Collins*

2006



*Phoebe
Driscoll*

2007



*Judge
Hart Rufe*

2008



*Larry
Williamson*

2009



*Ralph
"Bud" Cook*

2010



*Amos
Funk*

PALTA Updates Model Trail Easement Agreement and Commentary

Also publishes a short-form alternative

The third edition of the **Model Trail Easement Agreement and Commentary**, published in September 2010, addresses user experiences and comments of the past two years. The commentary to the third edition includes new optional and alternative provisions as well as additional explanatory content. Changes to the model itself are minimal and limited to Sections 3.01(a), 4.02(b) and 5.01.

The model is widely used by those seeking to establish and maintain public trails. Users outside of Pennsylvania customize it to account for differences in state laws. The Pennsylvania Department of Conservation and Natural Resources strongly encourages use of the model for DCNR grant projects.

Also in September 2010, PALTA published the Model Grant of Trail Easement and Commentary

as a short form alternative to the Model Trail Easement Agreement. This model's key feature is brevity while maintaining core protections for easement holders. Its purpose is to address situations where having a short legal document is more important to a landowner than any protections he or she might gain from a longer document.

PALTA is developing additional guidance on trail easements. Look for it in early

2011 at ConservationTools.org under the following Tool & Topic headings:

- Trail Easements
- Reducing Liability Associated with Trails

Find the new models at ConserveLand.org under “Technical Guidance & Resources” as well as in the ConservationTools.org library. ☐



Compliance with MPC's Time Limitations for Formal Decisions

Philomeno and Salamone v. Board of Supervisors of Upper Merion Township

This case involves complexities and nuances within the subject matter of “deemed approvals” of subdivision or land development plans, where the municipality fails to comply with time limitations for formal decisions, as set forth in Section 508 of the Pennsylvania Municipalities Planning Code (“MPC”).

Facts

The landowner, Philomeno and Salamone (“Applicant”) submitted a subdivision plan to divide an 18-acre parcel into 17 residential lots and one remnant parcel. By written agreement between the Applicant and the township, the “90-day” review period specified in Section 508 of the MPC was extended. Prior to the expiration of the extended deadline, however, the Applicant filed an “alternate” development application, in the form of a conditional use application to develop the subject property into 28 townhouse units, together with 8-plus acres of open space and 4-plus acres of recreational uses.¹ The alternate plan for townhouse development was submitted at the request of the Planning Commission, its motivation being to foster the preservation of more of the subject property as open space.

After hearings, the conditional use application for the townhouse development was denied by the township Board of Supervisors. Meanwhile, the extended deadline for action on the original 17-lot subdivision plan had come and gone, and after receiving the Board’s denial of its conditional use application for townhouse development, the Applicant filed an action in mandamus, seeking judgment that its original subdivision plan had been deemed approved by failure of the township to take formal action within the extended time limit.

The Montgomery County Court of Common Pleas granted the mandamus, ruling that the township’s failure to act had served to grant deemed approval to the original plan. Commonwealth Court reversed the decision of the County Court, holding that by filing the subsequent application for conditional use approval

of the townhouse development, the Applicant had abandoned the original subdivision plan application. The Court noted that in prior decisions, where the applicant’s actions had caused confusion, the otherwise applicable deemed approval rules did not apply.

The Pennsylvania Supreme Court then granted allowance of appeal “to determine whether filing a subsequent conditional use application effectively withdraws a pending inconsistent subdivision application for the same tract of land.”

Decision

The Supreme Court reversed the Commonwealth Court’s decision, concluding that the applicant was in fact entitled to the benefit of the deemed approval rule of Section 508 of the PaMPC:

“Our courts have long permitted landowners to file inconsistent subdivision or land development applications, and they are entitled to action on all applications.” 966 A.2d at 1111.

Note that the Pennsylvania Supreme Court itself had not previously dealt with this type of issue, and was therefore constrained to cite several prior decisions of the Commonwealth Court in reaching its conclusion.

The Court first paid its respects to the Commonwealth Court decisions in *Wiggs v. Northampton County Hanover Township Board of Supervisors*, 441 A.2d 1361 (Pa.Cmwlt. 1982) and *DePaul Realty Company v. Borough of Quakertown*, 324 A.2d 832 (Pa.Cmwlt. 1974) where Commonwealth Court had concluded that the submission by an applicant of a revised subdivision plan containing substantial revisions served to automatically restart the 90-day “clock” for municipal

¹ The inference is that single family lots were a permitted use by right and that townhouse development was a use permitted by conditional use under the applicable zoning ordinance provisions.

action:

“Cases holding that a revised subdivision application causes the time for decision to run from the filing of the revised plan [is herein applicable].” 966 A.2d at 1110.

The Court also noted that Commonwealth Court had previously held Section 508 to be “inoperative where an applicant creates confusion by submitting two inconsistent plans for the same tract,” *Morris v. Northampton County Hanover Township Board of Supervisors*, 395 A.2d 697 (1978), but see *Appeal of David Fiori, Realtor, Inc.*, 422 A.2d 1207 (1980), where the deemed approval rule was nevertheless applied.

The Pennsylvania Supreme Court went on to note, however, that the Commonwealth Court’s opinion in *Philomeno* had failed to address three of its own prior decisions, being *Capital Investment Development Corp. v. Jayes*, 373 A.2d 785 (1977), *Bobiac v. Richland Township Planning Commission*, 412 A.2d 202 (1980) and *Appeal of David Fiori, Realtor, Inc.*, *supra*.

The leading case of this trio was *Capital Investment Development Corp.*, where two mutually exclusive subdivision plans were submitted to the township. When the township failed to take formal action on either application, the Court concluded that the developer had the option to pursue either plan as “deemed approved,” at the developer’s option.

In *Bobiac*, two alternate plans had been submitted, one being for a shopping center and the other for a restaurant. While the second plan was timely rejected, the rejection of the original plan was past the 90-day time clock. Hence, the original plan was considered deemed approved in spite of the fact that the “alternate” plan had been subsequently filed during the pendency of the approval period for the original plan.

The Pennsylvania Supreme Court in *Philomeno* also failed to find any evidence of confusion on the part of the Upper Merion Township Board of Supervisors owing to the submission of the alternate townhouse plan. In this regard, the two plans were fundamentally different, one being for single family residential lots and the other for townhouse dwellings.

A Concurring Opinion was filed by Mr. Justice Saylor. In the Concurring Opinion, Justice Saylor

comments on the majority Opinion as follows:

“One difficulty with this analysis, it seems to me, is that the words ‘alternate,’ ‘inconsistent’ and ‘revised’ are not clearly defined, and in the context of land development plans, these terms are not necessarily mutually exclusive.” 966 A.2d at 1113.

With respect to the submission of revised plans, Justice Saylor draws the distinction initially made by Commonwealth Court in the *Wiggs* and *DePaul* decisions:

“In the case of minor revisions, I do not believe that a new 90 day period should begin.” 966 A.2d at 1114, F.N. 5.

Comment

Although the procedural context of this decision is based upon the submission of an alternate, inconsistent development plan as a conditional use application, rather than as a subdivision or land development plan under Article V of the MPC, the Pennsylvania Supreme Court does not, in this decision, make any distinction between these two scenarios. Consequently, I would treat the applicability of this decision to all subdivision or land development applications, whether or not the underlying use is one permitted only by conditional use or special exception.

Secondly, the single most important procedural issue is for municipalities to avoid making any undocumented assumptions with respect to whether or not the 90-day approval period for a particular application has been extended.

Any subsequent filing by an applicant during the pendency of an “original” plan would fall into one of the following three categories:

1. a new or alternate plan, proposing a use or configuration inconsistent with a pending initial plan. (For example, a new townhouse plan, as was the case in *Philomeno*, is clearly an alternate plan; similarly, a new plan based upon cluster zoning requirements would be considered a new or alternate plan in the face of an initial filing of a “straight lot” subdivision plan, with no open space.) In this context, following *Philomeno*, both plans are entitled to indepen-

Case Law Review (continued)

dent consideration, and each plan must be decided and acted upon within the MPC Section 508 90-day time clock.

2. revisions to the initial plans which are “minor” or “insubstantial.” Here, the 90-day time clock is not extended, and the plan as so modified must be acted upon within the 90-day limit.
3. “substantial” revisions to the original plan. In commenting on Wiggs and DePaul, the Supreme Court in Philomeno states that the type of revision to a pending plan which would serve to restart the 90-day clock must be both “voluntary” and “contain substantial changes.”

While it seems that it should be fairly easy to discern an “alternate plan” when it is filed (and thus that the original plan is still entitled to the 90-day deemed approval protection of §508), an issue may

often arise with respect to whether revisions to an original plan should be considered “minor or insubstantial” (thus not restarting the 90-day clock) or “voluntary and substantial” (thus restarting the 90-day clock). The lack of a “bright line” between what is minor versus what is substantial can lead to errors in judgment. (This is the point which Mr. Justice Saylor makes in his Concurring Opinion). Municipal staff should therefore request, when any revised or new plans are filed, that the “position” of the applicant should be clearly stated with respect to possible extension of the time clock, with that position being reduced to writing (and a written extension received where applicable), so that mistakes can be avoided. ☐

Frone Crawford, Esq. can be reached at 484.356.1906 or fcrawford@fcrawfordlaw.com.

Breadth and Depth of Guidance Grows at **CONSERVATION TOOLS.ORG**

More than 40 topics now covered including:

Agricultural Conservation Easement Purchase Program

Agricultural Security Areas

Audubon at Home

Build-Out Analysis

Clean and Green

Community Visioning

Conservation Easement

Conservation Referendum

Cost of Community Services Studies

Development Threat Analysis

Donation by Will

Environmental Advisory Council

GPS (Global Positioning System)

Growing Greener: Conservation by Design

Important Bird Areas

Installment Agreement

Invasive Species Management Programs

Land Trust Accreditation

Land Trust Standards and Practices

Lighting Ordinance

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Mortgage Subordination

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PA Land Choices

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Sign Ordinance

Steep Slope Ordinance

Stewardship Fees: Binding Future Owners to Present Promises

Traditional Neighborhood Development

Transfer of Development Rights

Tree Ordinance

Urban Growth Boundary

Walk for Wellness

What topics will be added in 2011 and 2012?

You tell us. Contact Nicole Faraguna at nfaraguna@conserveland.org.

Three Ground-Breaking Model Documents...

Continued from page 1

requires careful planning. The **Model Conservation Donation Covenant and Commentary** provides a number of alternatives to provide funding for stewardship over time and mechanisms to bind future owners of conserved land to fulfill those obligations.

The **Model Funding Memorandum and Commentary** establishes a structure and documents the terms under which landowners may donate and conservation organization may accept an easement as well as cash gifts. The details of the process and commitments made by landowners and conservation organizations bear heavily on their future relationship as well as tax deductibility for the landowner.

When a mortgage precedes an easement on a property, there is no guaranty of perpetual easement enforceability unless the holder of the mortgage (the “mortgage holder”) signs a document, often called a mortgage subordination, that allows the easement to survive a foreclosure of the mortgage. Mortgage holders are increasingly reluctant to sign mortgage subordinations that truly meet the landowners’ and conservation organization’s needs. The **Model Mortgage Subordination and Commentary** seeks to address the concerns of the mortgage holder while (1) assuring that the conservation easement will not be impaired by the exercise of mortgage holder’s rights and (2) conforming to the requirements of the internal revenue code.

Please send your suggestions for improvements to Andy Loza at aloza@conserve-land.org. Also, if you should use one of these drafts in a real-world project, please share your experience. Thanks! ☑

ConservationTools.org provides broad guidance on the issues addressed by these models under the following tool & topic headings:

- Donations and pledge agreements
- Stewardship fees: binding future owners to present promises
- Mortgage subordination

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Buck Hill Conservation Foundation
Central Pennsylvania Conservancy
Centre County Farmland Trust
Chartiers Nature Conservancy
Chesapeake Bay Foundation
Chestnut Hill Historical Society
ClearWater Conservancy
Conservancy of Montgomery County
The Conservation Fund, Pa. Office
Cooks Creek Conservancy
Countryside Conservancy
Delaware Highlands Conservancy
Earth Conservancy
East Nantmeal Land Trust
Eden Hill Conservancy
Edward L. Rose Conservancy
Farm & Natural Lands Trust of York Cty.
Fox Chapel Land Conservation Trust
French & Pickering Creeks Cons. Trust
French Creek Valley Conservancy
Hawk Mountain Sanctuary Association
Heritage Conservancy
Hollow Oak Land Trust
Independence Conservancy
Kennett Township Land Trust
Keystone Conservation Trust
Keystone Trail Association
Lacawac Sanctuary Foundation
Lackawanna Valley Conservancy
Lancaster County Conservancy
Lancaster Farmland Trust
Land Conservancy of Adams County
Lebanon Valley Conservancy
Lower Merion Conservancy
Manada Conservancy
Merrill W. Linn Land & Waterways Cons.
Mid-Atlantic Karst Conservancy
Mokoma Conservancy
Montgomery County Lands Trust
Montour Trail Council
Mount Nittany Conservancy
Natural Lands Trust
The Nature Conservancy, Pa. Chapter
Neighborhood Gardens Association
North American Land Trust
North Branch Land Trust
Northcentral Pa. Conservancy
Open Land Conservancy of Chester Cty.
Pennsbury Land Trust
Pennsylvania Environmental Council
Pa. Recreation and Park Society
Pennypack Ecological Restoration Trust
Pine Creek Land Conservation Trust
Pine Creek Valley Watershed Assn.
Pocono Heritage Land Trust
The Radnor Conservancy
Rails-to-Trails Conservancy
Regional Trail Corporation
Schuylkill County Conservancy
Solebury Twnshp. Land Preserv. Comm.
Somerset County Conservancy
Tinicum Conservancy
Tri-County Rails-to-Trails
The Trust for Public Land
The Wallace Trust
Western Pennsylvania Conservancy
West Pikeland Land Trust
Wild Waterways Conservancy
Wildlands Conservancy
Willistown Conservation Trust
Wissahickon Valley Watershed Assn

Ground Breaking Models for Review

- ✓ **Model Conservation Funding Covenant**
- ✓ **Model Mortgage Subordination**
- ✓ **Model Donation Memorandum**

Download at ConservationTools.org or at ConserveLand.org. Email Andy Loza at aloza@conserve-land.org with questions and comments.

This publication is funded in part by the Pennsylvania Department of Conservation & Natural Resources/Bureau of Recreation & Conservation/Community Conservation Partnerships Program.



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*80 conservation organizations make up the
Pennsylvania Land Trust Association.*

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