

ConserveLand

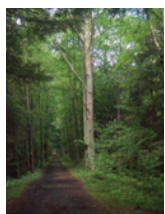
A Publication of the Pennsylvania Land Trust Association

How Much Do We Value Conservation?

In 2005, the first Growing Greener bonds were issued with the Pennsylvania General Assembly allocating \$80 million to farmland preservation and \$90 million to open space protection. This investment will protect tens of thousands of acres of new parklands, wildlife habitat, farmland, working forests and other lands important to communities. The very last of this \$170 million is now being spent.

In the coming years, what should state spending priorities be? Should Growing Greener be renewed? If so, how much money? \$1 billion? \$2 billion?

Here are a few examples of what \$250 million can do:



Permanently secure 90,000 acres of forested land for public recreation, water quality protection, sustainable timber harvest and wildlife habitat.

PA Department of Conservation & Natural Resource's three most recent major forest purchases averaged \$2,750/acre.



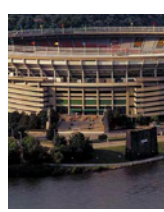
Protect 80,000 acres of farmland, enough land to feed 23,000 or more people.

*The average cost of protecting farmland under the state and county Agricultural Conservation Easement Purchase Program is \$3,073 per acre.**



Construct 7 miles of rural limited access highway

Allocations of tax dollars to the Turnpike Commission funded 31 miles of the Mon/Fayette Expressway and Southern Beltway toll roads. Another \$5 billion would be needed to finish them.

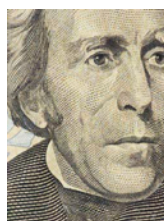


Build eighty-six percent (86%) of a new sports arena

The projected cost for the Pittsburgh Penguins hockey team arena presently under construction is \$290M. Taxpayers are footing roughly 80% of the bill.



Establish over 2,000 miles of safe bicycle and pedestrian trails connecting communities across PA
Based on DCNR-funded rail to trail projects.



Provide each of Pennsylvania's 12.5 million citizens with a \$20 check.

** The actual number of people fed varies greatly depending on share of meat in the diet, types of farmland protected and diversion of crops for biofuels.*

"Conservation is the foresighted utilization, preservation and/or renewal of forests, waters, lands and minerals, for the greatest good of the greatest number for the longest time." - Governor Gifford Pinchot

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Bloggers Wanted

ConserveLand.org is seeking bloggers interested in donating their time, thoughts and writing abilities for the **NEW** ConserveLand Blog.

Contact Nicole Faraguna at nfaraguna@conserveand.org or 717.909.1298.

Stewardship Fees *Binding Future Owners to Present Promises*

In 2010, the Pennsylvania Land Trust Association will develop model language and guidance for implementing stewardship fees (including transfer fees) as part of conservation easement projects. As a prelude to this, the Association published "Stewardship Fees: Binding Future Owners to Present Promises" at ConservationTools.org in December. Comments on this first edition are welcome.

This piece presents a variety of alternative approaches to securing stewardship fees from future landowners, examines enforceability issues and describes legal risks and other considerations. It is the most comprehensive and in-depth examination of stewardship fee options ever published. 

Pennsylvania #1 in Accredited Land Trusts

In fall 2009, the Land Trust Accreditation Commission announced that three more Pennsylvania land trusts had achieved accreditation, bringing the number of Pennsylvania accredited land trusts to a total of ten.

We congratulate these organizations and are pleased to share their testimonials:

Lancaster County Conservancy
"Going through the accreditation process was a way for us to fine tune our operations and to publicly demonstrate how seriously we take our mission to permanently protect our lands and natural resources. Achieving the status of an accredited land trust is truly a distinction."
- Ralph Goodno, Executive Director

Natural Lands Trust
"Imagine reviewing and documenting fifty-five years worth of an organization's work. It was well worth the effort. Applying for accreditation gave us the opportunity to reflect on our current management and ensure that we were operating at the very highest level."
- Andy Pitz, Vice President, Policy & Planning

Tinicum Conservancy
I am very proud of our trustees and staff, who have made this designation possible. Supporters, and those considering support for the Conservancy, can feel confident that their generous contributions of money and time will be well invested in Tinicum's future."
- Jim Vaseleck, President

Pennsylvania's Accredited Land Trusts

Bedminster Land Conservancy
Brandywine Conservancy
Countryside Conservancy
Heritage Conservancy
Lancaster County Conservancy
Lancaster Farmland Trust
Natural Lands Trust
North Branch Land Trust
Tinicum Conservancy
Willistown Conservation Trust

ConservationTools.org Launched A New and Free Conservation Resource

Match a conservation tool to your needs. Identify experts that can help. Find and download relevant guides, articles, models and other publications.

- ConservationTools.org launched in January 2010. During its *beta* development phase in the previous year, substantial content was developed for the site including:
- Succinct summaries, in-depth guidance and links to resources on 33 conservation tools and topics, much of it unavailable—free or otherwise—anywhere else.
- Contact information, biographies and references for 200 people who can advise and help with implementation of conservation endeavors
- Many hundreds of publications for download and links with summary descriptions of all items.

Substantial additional content is being developed and will be loaded to the site over the coming months.

Users can access all of this information via the site's powerful search engine or through topic directories. Users can also check out upcoming events and find extensive information on land trusts, agricultural preservation boards, trail groups and other organizations working in Pennsylvania.

If you are particularly knowledgeable or want to market your conservation or land use related services, make yourself known to others by listing yourself as an expert at the site. If you are with a conservation organization, make sure people can easily find good information about your organization by updating your listing or creating a new listing.

The site welcomes additional partners who can submit publications and other content to help the site grow. You can contribute content to the site at any time. Partners contributing significant material may have their organization logo added to the logos rotated in and out on all the site's pages. ☞

ConservationTool.org Partners



Sampling of Tools Available

Land Use Ordinances & Development Standards

- Growing Greener: Conservation by Design
- Traditional Neighborhood Development
- Transfer of Development Rights
- Urban Growth Boundry
- Public Dedication of Land
- Tree Ordinance
- Lighting Ordinances

Acquisition of Land & Easements

- Option Agreements
- Reserved Life Estate
- Model Conservation Easement
- Stewardship Fees
- Reversionary Interests
- Right of First Purchase
- GPS (Global Positioning System)

Financing Conservation

- Pledges and Donation Agreements
- Installment Agreement
- Seller Take Back Financing
- Conservation Referendum

Studies, Planning, Research & Analysis

- Cost of Community Services Studies
- Pennsylvania Natural Heritage Program
- Build-Out Analysis
- Development Threat Analysis

Incentives & Help for Landowners

- Agricultural Conservation Easement Purchase Program
- Agricultural Security Areas
- Audubon at Home
- Clean & Green

Education & Communication

- Important Bird Areas
- Pennsylvania Land Choices
- Environmental Advisory Council

Pennsylvania Supreme Court Rules on Zoning of Billboards

Township of Exeter v. Zoning Hearing Board of Exeter Township

In the Exeter Township Zoning Ordinance, the term “Advertising Sign” was defined as a sign directing attention to a business elsewhere than upon the premises where the sign is displayed—an off-site sign or billboard, in common parlance. While the township did allow “Advertising Signs” to be constructed in the commercial and industrial zoning districts of the township, the maximum size of any proposed off-site sign was limited to 25 square feet per side.

Facts

A billboard company known as Land Displays, Inc. obtained rights from various property owners to construct billboards along the portion of U.S. Route 422 within Exeter Township, and thereafter filed a challenge to the validity of that portion of the Exeter Township Zoning Ordinance which limited the size of off-premises signs to 25 square feet. Land Displays, Inc. based its validity challenge, filed with the Township Zoning Hearing Board, on the allegation that the 25-square foot maximum area for off-premises signs constituted a de facto exclusion of billboards. Land Displays submitted evidence that in the “national outdoor advertising industry,” the standard billboard size was either 300 square feet or 672 square feet, quite a departure from the 25-square foot maximum allowed in Exeter Township.

The township submitted evidence to the Zoning Hearing Board, however, that there were several existing 25-square foot Advertising Signs along Route 422 in Exeter Township, and that any larger size would have an adverse impact on aesthetics and traffic safety along Route 422. The speed limits along that highway vary from 40 MPH to 55 MPH.

The Zoning Hearing Board concluded that the 25-square foot size limitation was “grossly deficient when compared with the national standards” and that “national advertisers will not purchase billboard space on 25 square foot signs.” Thus, the Zoning Hearing Board sustained the validity challenge as filed by Land Displays, Inc. The Zoning Hearing Board granted partial “site specific” relief, allowing certain 300-square foot billboards to be constructed by Land Displays, Inc. The Zoning Hearing Board also recommended that the township, through the services of a qualified expert, establish a sliding scale of billboard sizes relating to the location and roadway circumstances (allowing larger billboards along the Route 422 bypass) and to establish a separation distance of 1200 feet between permissible billboards.

The Berks County Court affirmed the decision of the Zoning Hearing Board, and thereupon the township appealed to Commonwealth Court, which reversed the decision. Land Displays, as an additional party to the Commonwealth Court proceedings, filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, the

Court thereupon accepting the case for final review.

Decision

The Supreme Court first reviewed the two types of exclusion, noting that here, where “Advertising Signs” (off-premises signs) are permitted, the validity challenge is based upon the alleged de facto exclusion where “the challenger alleges that an ordinance appears to permit a use, but under such conditions that the use cannot in fact be accomplished.”

In this regard, the use alleged to be excluded was “industry-standard billboards”—a concept that is narrower than the broader concept of “off-premises signs.” (For example, off-premises signs could include directional signs to a local business, rather than a national advertising sign.)

The Court noted that billboards are considered to be a legitimate business use “not objectionable per se” (each municipality must provide for billboard usage within its borders).¹

¹ *The door is always open for municipalities to try to establish extraordinary justification for exclusion of legitimate uses. In fact, the Supreme Court’s Order at the end of its decision was to remand the matter back to the Commonwealth Court with respect to the analysis of the township’s aesthetic and*

The Supreme Court was then left to decide what size (assuming 25 square feet is de facto exclusionary) will suffice to avoid the stamp of de facto exclusion of billboards. On this issue, the Court elected not to rule, but rather stated:

“Industry size standards are not automatically controlling in determining what size sign restriction can be deemed de facto exclusionary. ... The 300 square foot industry minimum was a matter of industry standardization, and not necessarily the absolute minimum size necessary to make a billboard effective in serving its communication purpose and thus economically viable.” 962 A.2d at 662.”

The Court essentially discounted both the township’s claim that since it already had 25-square foot off-premises signs on its roadways it was not exclusionary of billboards, and the Land Displays’ argument that only a 300-square foot sign or larger would meet industry standards. Thus, the Court stated:

“This case does not require us to determine what size a sign must be to function as a billboard. We only consider whether the record established that a 25 square foot sign does not. ...

We do not conclude that a zoning ordinance must allow for signs that meet national industry size standards in order to avoid being labeled a de facto exclusion of billboards.” 962 A.2d at 663 – see footnote 8.

Comment

The general concepts here discussed by the Pennsylvania

Supreme Court are not new. In fact, billboards have been considered a legitimate business use since the 1965 decision in *Norate Corp. v. ZBA of Upper Moreland Township*, 417 Pa. 397, 207 A.2d 890 (1965). The case does break new ground, however, in applying the doctrine of de facto exclusion to billboards. Many municipalities are working on zoning ordinance revisions to deal with the de facto exclusion issue, and at the same time, at least in southeastern Pennsylvania, companies such as Land Displays, Inc. and other billboard companies are looking for loopholes to obtain approvals for more, larger, and strategically located billboards.

An analysis of the issue, however, should begin with a fundamental premise that off-site signs in general, and billboards in particular (as a category of off-site signs), are “principal uses,” just like retail stores, restaurants and offices. Most of us think of signs as accessory uses, and surely they are when they are on the same premises as the business to which they relate. But when a billboard is constructed, advertising some national brand or other off-site business, it cannot be conceived as accessory to anything and, thus, constitutes a principal use.

Ordinances often specify that only one principal use per lot may be approved, as part of a land development plan. There is no reason why a municipality in its zoning ordinance cannot require a billboard to be the sole principal use of a commercial property. This

leads, of course, to the question of setback and lot size for such usage. The courts have not weighed in on this issue, but it is a fair judgment that requiring a large lot for a single billboard—let’s say a half acre for the sake of argument—would in turn be challenged as de facto exclusionary. Just as the Supreme Court has left open the question of just where a size limitation crosses the line to constitute de facto exclusion (somewhere between 25 square feet and 300 square feet), the question of a reasonable lot size and setback requirement for billboards is an entirely open issue.

The case also leaves open the concept of varying the maximum permissible size for billboards according to the local conditions. Foremost among the local conditions, it would seem, is the speed limit of the road to which a proposed billboard would be adjacent. Where a central business district is located on a road with a 25-mile per hour speed limit, a smaller maximum size requirement would seem to be more reasonable than on a more open highway, with a 55-mile per hour limit.

The proverbial bottom line is that (i) billboards cannot be excluded, either facially or by unreasonable regulation, in any municipality’s zoning ordinance, and (ii) the Court’s refusal to endorse “national billboard standards” as the determining factor in regulating the size of billboards leaves room for municipalities to make their own “judgment calls” as to what maximum size may be reasonable. ☐

Ralph “Bud” Cook Honored with Lifetime Leadership Award

In 1979, Bud joined The Nature Conservancy as the first Executive Director of its Pennsylvania/New Jersey program. During his 11 years as Executive Director, The Nature Conservancy protected more than 40,000 acres of natural lands in New Jersey and Pennsylvania at 90 different sites.

One of Bud’s strengths is his ability to create and pursue huge conservation opportunities. In 1998, he initiated the Monroe County Citizens for Open Space and led a successful open space campaign that garnered \$25 million for land protection in Monroe County.

That program has leveraged an additional \$50 million in matching funds and protected more than 12,000 acres. Bud shared his open space campaign experience to help others in Pike County, Northampton & Lehigh Counties, and Stroud Township. Altogether, he has leveraged more than \$100 million in public funding for open space preservation in those areas.

Past Award Honorees

Judge Hart Rufe III, 2008

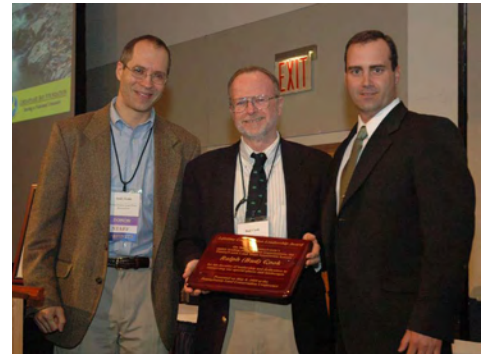
Larry Williamson, 2007

Phoebe Driscoll, 2006

Dennis Collins, 2005

Bill Sellers, 2004


The award was presented at the 2009 Pennsylvania Land Conservation Conference in State College by Chris Kocher and Andy Loza. Read more about Bud Cook at conserveland.org. 



2009 Government Leadership Award: Oley and Middletown Townships

The Pennsylvania Land Trust Association is pleased to honor two townships this year for innovative land use planning and zoning regulations for the purpose of protecting sensitive and scenic areas and critical natural resources. Both Oley Township of Bucks County and Middletown Township of Delaware County will receive the Government Leadership Award. The award was presented at the 2008 Pennsylvania Land Conservation Conference in Malvern and Township Chairman Paul Solomon accepted the award on behalf of the township.

Oley Township is located in Berks County, just outside Philadelphia, and has experienced its share of development pressures. Yet, through proactive zoning and leadership, the township has retained its scenic rural landscape and has made it a place of destination. Oley’s preservation statistics are impressive: In a township that consists of 15,500 acres, 12,216 of these are enrolled in its Agricultural Security Area; over 9,900 acres are protected with effective agricultural zoning, and 6,722 acres are permanently preserved with Agricultural Conservation Easements.

On the heels of rapid growth during the previous three decades, land conservation had become a priority for Middletown Township, located in Delaware County. All told, the Township now owns nearly 646 acres of ground, some of which is used for active recreation, some for passive recreation, and some which is simply kept as natural buffer that protects precious resources and contributes to the community’s viewshed. Read more at conserveland.org. 



Past Award Honorees

Shrewsbury Township, 2008

Chester County, 2007

Warwick Township, 2007

Association Files Brief in Conservation Case of the Century

In a 1926 land acquisition, the City of Erie covenanted to forever “keep and maintain the premises hereby conveyed, as a public golf course or for public park purposes, or both.” When the city recently sought to sell the land (now a public golf course) for development to raise cash, the Lake Erie Region Conservancy (LERC) intervened.

LERC prevailed in the Court of Common Pleas, but the Commonwealth Court reversed the lower court. The Pennsylvania Supreme Court is now reviewing the Commonwealth Court’s decision.

The case has major implications for public parks and open spaces in Pennsylvania. The Commonwealth Court’s decision ignores over 100 years of precedent on a municipality’s duty to hold dedicated parklands in trust for the public and essentially enables parks to be sold or converted to other uses at a municipality’s discretion. If the Supreme Court affirms the Commonwealth Court’s decision, parks and open spaces across Pennsylvania would be constantly threatened by shortsighted municipal whims and budgetary needs.

In defense of conservation, the Pennsylvania Land Trust Association, as lead amicus, filed an amicus curiae brief with the Supreme Court. Joining the Association are the PA Recreation and Park Society, the Commonwealth of Pennsylvania, and others.

The Association thanks the attorneys who donated their time in this effort: Samuel C. Stretton, who prepared the brief; Debra Wolf Goldstein and Pat Pregmon, who provided substantial input for the brief; and Steve Schiffman for his early work on the issue. The Association also thanks LERC for taking action when the local government ignored its conservation responsibility. ☞

Pennsylvania Land Choices: A Curriculum for All Ages

PA Land Choices offers teachers, conservation professionals and community leaders a new way to engage and enlighten students and adults regarding the importance of civic involvement and land use planning.

Fully revised in 2009, PA Land Choices is a collection of activities that help the learner understand the power of choice. Learn more at www.palandchoices.org. ☞



Guided Organizational Assessment Grants Available

Pennsylvania Land Trust Association is offering Guided Organizational Assessment grants to land trusts that are considering accreditation in the next few years or organizations simply interested in improving their overall impact. An assessment would typically cost \$5,000. However, with the grant support, the cost to the land trust is reduced to \$500. Visit conserveland.org/ltsc/assessment for more information. ☞

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Central Pennsylvania Conservancy
Centre County Farmland Trust
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ClearWater Conservancy
Conservancy of Montgomery County
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Cooks Creek Conservancy
Countryside Conservancy
Delaware Highlands Conservancy
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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
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Schuylkill County Conservancy
Solebury Twship. 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.

Registration Materials Now Available
at conserve-land.org
8th Annual
Pennsylvania Land Conservation Conference
April 8-10, 2010 ♦ Malvern (Chester County)

Keynote Speaker Tim LaSalle, Rodale Institute
discusses sustainable agriculture and climate change solutions

Check out the twelve full-day and half-day seminars

Twenty-seven (27) 90-minute sessions
*Full-day tracks on land management, municipal resources,
farmland preservation, natural gas drilling, & board development*

Farm to Table: Local Food Tour

*Continuing Education credits available for attorneys, professional planners,
appraisers, park managers and foresters*

